$~

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

% ***Judgment reserved on: 14.09.2026***
Judgment pronounced on: 04.11.2026
Judgment uploaded on: 04.11.2026

\# **CNR No. DLHC010073162026**

\+ FAO(OS) (COMM) 45/2026, CM APPL. 13348/2026, CM APPL. 13349/2026 and CM APPL. 13350/2026

VICEROY ENGINEERING .....Appellant

Through: Mr. Murari Tiwari, Sr. Adv. with Ms. Nimisha Gupta Mr. Rahul Kumar Ms. Indira Murthy, Mr. Devansh Malhotra, Advs.

versus

SMITHS DETECTION VEECON SYSTEMS PVT. LTD. .....Respondent

Through: Ms. Payal Chawla, Ms. Heena Shaheen, Mr. Sidharth Kaushik and Ms. Anushka, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') assails the judgment dated 17.10.2025 passed in O.M.P. (COMM) 302/2019 captioned ***Viceroy Engineering v. Smiths Detection Veecon Systems Private Limited***.[1] By the Impugned Judgment, the learned Single Judge dismissed the Petition filed by Viceroy Engineering ('Viceroy') under Section 34 of

[1] Hereinafter, the Impugned Judgment

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

the Act challenging the rejection of its counterclaims in the Arbitral Award dated 15.03.2019[2]. The Award rejected both the claims of Smiths Detection Veecon Systems Private Limited ('Smiths') and the counterclaims of Viceroy. Smiths did not challenge the Award.

2. The principal dispute centres on Viceroy's counterclaim for outstanding payments under an outsourcing agreement. Viceroy contends that the learned Tribunal rejected this counterclaim despite admissions and documentary evidence establishing Smiths' liability. It also assails the learned Tribunal's refusal to receive correspondence relating to an amendment to the agreed service fee. The question is whether these objections justify interference under Sections 34 and 37 of the Act. The rejection of three other counterclaims is also challenged.

FACTUAL MATRIX

3. Viceroy is an engineering enterprise engaged in providing technical services and personnel. Smiths is engaged in the business of detection technologies. On 12.08.2010, the parties entered into an Outsourcing Agreement ('Agreement') for a term of five years. Under the Agreement, Viceroy was to provide technicians for the installation and commissioning of Smiths' equipment, as well as after-sales support and maintenance services for its customers.

4. Clause 4.1 of the Agreement provided for payment of the service fee specified in Annexure II, subject to proper performance of the services. Clause 4.2 required Viceroy to raise monthly invoices

[2] Hereinafter, The Award

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

and Smiths to pay the service fee within fifteen days of receiving an invoice. Under Clause 4.3 of the Agreement[3], revision of the service fee required the agreement and approval of Smiths' Vice President Service, Finance Director and Managing Director. Payments were subject to deduction of tax at source under Clause 4.5.

5. The original Annexure II recorded that the service fee was "To be agreed later", while also specifying components of employee cost and associated fees. Viceroy relied upon an amendment dated 01.04.2011 replacing that schedule with rates for different categories of personnel, administrative fees and expense reimbursements. The substituted schedule stated a validity period from 01.04.2011 to 31.07.2012. Viceroy maintained that the amended rates governed its invoices from April 2011 until July 2015. The contractual effect of the amendment and proof of the amount remaining payable became matters of dispute before the learned Tribunal.

6. By a communication dated 24.07.2015, Smiths informed Viceroy that the Agreement would not be renewed. Its term expired on 11.08.2015. Viceroy maintained that payments for services rendered during the contractual period remained outstanding. It also alleged that Smiths had participated in soliciting its employees through ANI Instruments Private Limited ('ANI'), causing business loss and reputational injury. Separately, Viceroy claimed payment for services which it stated it had continued to provide at the airports between 12.08.2015 and 31.08.2015.

---

[3] *"4.3 The Service Provider may revise the Service Fee provided that the revised Service Fee has been agreed and approved by the Company's Vice President Service, Finance Director and Managing Director."*

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

7. The disputes were referred to a Sole Arbitrator. Smiths sought recovery on account of alleged overcharging and also advanced claims alleging collusive activities, failure to furnish service reports, and loss of reputation and legal costs. Viceroy contested those claims and sought the following amounts by way of counterclaims:

Counterclaim	**Amount originally claimed**
Outstanding payments against invoices	₹14,25,52,798/- (subsequently reduced to ₹13,92,35,909/-)
Damages for loss of reputation	₹10,00,000/-
Damages for breach of the non-solicitation obligation and consequent business loss	₹17,40,00,000 /-
Payment for services continued after expiry of the Agreement	₹63,02,752/-

Viceroy also claimed interest.

8. In its final written submissions before the learned Tribunal, Viceroy reduced the counterclaim for outstanding payments to ₹13,92,35,909/- after giving credit for an additional TDS amount of ₹33,16,889/-. Its revised computation proceeded on invoices aggregating to ₹103,95,63,521/- and aggregate receipts of ₹90,03,27,612/-. Separately, the transaction figure of ₹98,83,94,246/- reflected in Form 26AS, when compared with the corrected receipts, yielded a difference of ₹8,80,66,634/-.

9. During the arbitral proceedings, Viceroy sought permission to place the amended Annexure II and related correspondence on record.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

By Order dated 09.01.2018, the learned Tribunal admitted the amended Annexure II but declined to receive the correspondence, observing that it had neither been filed nor referred to in the statement of defence nor put to Smiths' witness. By a separate order of the same date, the Tribunal directed production of certain accounting and employment records of Viceroy sought by Smiths to contest the counterclaim. Viceroy relies upon the treatment of these applications in support of its complaint of procedural unfairness.

10. By the Award dated 15.03.2019, the learned Tribunal rejected the claims and counterclaims. In relation to outstanding payments, it examined the contractual fee provisions, the asserted amendment and the evidence relied upon to establish the amount payable. The learned Tribunal concluded that Viceroy had not proved its entitlement to the claimed balance. The learned Tribunal also rejected the counterclaims for reputational injury and breach of the non-solicitation obligation. It held the counterclaim for post-expiry services to be outside the scope of the reference.

11. Viceroy challenged the rejection of its counterclaims under Section 34 of the Act. The learned Single Judge found no ground to interfere with the Award, rejecting Viceroy's objections founded on admissions, the alleged inconsistency between rejection of the claims and counterclaims, the exclusion of the correspondence, and the findings on solicitation and reputational injury. As regards the counterclaim for post-expiry services, the Court noted the learned Tribunal's ruling on maintainability and also recorded that arguments had not been advanced on that counterclaim.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

12. In the present Appeal, Viceroy seeks setting aside of the Impugned Judgment and of the Award insofar as its counterclaims were rejected, together with allowance of those counterclaims. The rejection of Smiths' affirmative claims is not under challenge.

SUBMISSIONS ON BEHALF OF THE PARTIES

13. Learned Senior Counsel appearing for Viceroy, would submit that the Appellant provided services throughout the contractual period and that Smiths received and approved its invoices without communicating any objection. Viceroy relies upon the emails dated 16.07.2015, 25.07.2015 and 03.08.2015, the reply to its counterclaim, and the answers of Smiths' witness in cross-examination. According to Viceroy, this material establishes an admitted liability which the learned Tribunal could not reject for want of further proof. Its written submissions also invoke Section 58 of the Indian Evidence Act, 1872 in support of the proposition that admitted facts need not be proved.

14. Particular emphasis is placed on the TDS records. Viceroy contends that these records reflect transactions aggregating to ₹98,83,94,246/-, against which Smiths paid only ₹89,70,10,723/-. On that unadjusted computation, it asserts that, even apart from the full invoice claim, a balance of ₹9,13,83,523/- stood acknowledged. It submits that the learned Tribunal failed to consider the combined effect of the tax records, invoice approvals and assurances of payment.

15. Viceroy further contends that the Award is internally inconsistent. It argues that, having rejected Smiths' claim of overcharging, the Tribunal could not reject the counterclaim founded

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

on the same invoices and supporting evidence. Smiths' decision not to challenge the rejection of its claims is also relied upon. In its written submissions, Viceroy additionally asserts that Smiths had undertaken to clear its dues in the winding-up proceedings and subsequently invoked arbitration to avoid payment.

16. The refusal to receive the correspondence relating to the amended Annexure II is challenged as a denial of a fair opportunity to present the counterclaim. Viceroy submits that the correspondence explained the agreed rates and formed part of the transaction embodied in the amendment. It contrasts its exclusion with the direction permitting Smiths to obtain further accounting and employment records during the cross-examination of Viceroy's witness. The Appellant also maintains that the evidence supporting its counterclaims for solicitation, reputational injury and continued services after expiry was not properly considered.

17. *Per contra*, learned Counsel appearing for Smiths support the Impugned Judgment and submits that the Appeal seeks a fresh assessment of the merits beyond the scope of Section 37. It denies that the communications or the evidence contain an admission of the debt claimed. According to Smiths, the learned Tribunal considered the emails, invoices and TDS material and gave reasons for concluding that Viceroy had not established its entitlement. It maintains that deduction of tax at source does not establish an admitted debt and that rejection of its own claims did not relieve Viceroy of the burden of proving the counterclaims.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

18. On the procedural objection, Smiths' position is that the correspondence was tendered after its evidence had concluded, although it had neither been referred to in Viceroy's pleadings nor put to Smiths' witness. It relies upon the admission of the amended Annexure II and the learned Tribunal's findings on contractual approval and the amount payable. Smiths also opposes partial setting aside, contending that the claims and counterclaims are intertwined and were presented through a common statement of defence and counterclaim. It also relies upon ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***[4]. As regards the remaining counterclaims, it supports their rejection and relies, in relation to post-expiry services, upon the recording that the challenge was not argued before the learned Single Judge.

ANALYSIS AND FINDINGS

19. The jurisdiction under Section 37 is confined by the grounds of interference available under Section 34 of the Act. The appellate Court examines whether the learned Single Judge correctly applied those grounds. It does not undertake a fresh determination of the claims. The principles governing deference to a possible contractual interpretation and the limits of review have recently been reiterated in ***Prakash Atlanta (JV) v. National Highways Authority of India***[5].

20. In ***Ssangyong Engineering and Construction Co. Ltd. v. National Highways Authority of India***[6], the Supreme Court explained

[4] (2025) 7 SCC 1
[5] 2026 INSC 76
[6] (2019) 15 SCC 131

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

that patent illegality must go to the root of the matter. Erroneous application of law or disagreement with the appreciation of evidence does not suffice. A finding based on no evidence, or reached by ignoring vital evidence, may warrant interference. Construction of the contract remains primarily for the Tribunal, provided its interpretation is a possible one.

21. The procedural objection must be examined under Section 34(2)(a)(iii), read with Sections 18 and 19 of the Act. The learned Tribunal's discretion over procedure and the admissibility, relevance, materiality and weight of evidence must operate consistently with equal treatment and the full opportunity to present the case secured by Section 18. The inquiry turns on the fairness of the proceedings in their actual context, including the opportunity previously available to the party seeking to introduce further evidence.

22. In ***Fortuna Skill Management Pvt. Ltd. v. Jaina Marketing and Associates***[7], this Court explained that the opportunity secured by Section 18 is subject to considerations of reasonableness and fairness. A Court reviewing an evidentiary ruling must assess whether it falls within the range available to a reasonable and fair-minded tribunal in those circumstances. The significance of the proposed evidence and the stage at which it was offered must both be considered. A preference for a different procedural course does not establish a ground for setting aside the award.

23. A related limit governs the reasons on which an award may be

[7] FAO(OS)(COMM.) 123/2024, decided on 03.07.2024

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

sustained. In ***OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd.***[8], the Supreme Court distinguished reasons that are discernible but inadequately expressed from reasons that are absent, unintelligible or perverse. The Court may explain an underlying reason apparent from the award read with the documents recited or relied upon in it, but it cannot supply a different basis for the decision. These principles govern this Court's examination of the invoice counterclaim.

24. Viceroy's submission that the rejection of Smiths' claim necessarily entailed the allowance of its counterclaim proceeds on a flawed premise. Smiths sought recovery of amounts allegedly overpaid. Viceroy sought payment of an outstanding contractual balance. Each party was required to establish the entitlement asserted by it. The use of common documents did not make the two claims reciprocal outcomes of a single inquiry, such that failure of one necessarily established the other.

25. The learned Tribunal's reasons for rejecting Smiths' overcharging claim bear this out. In Paragraphs 71 and 72 of the Award, it held that Smiths had not established the quantum of overcharging or identified the invoices against which excess payments were recoverable. In Paragraphs 73-75 of the Award, it rejected reliance on ANI's lower rates as a benchmark, since the Agreement contained no provision permitting such a comparison. Those findings defeated Smiths' claim for recovery, but they did not determine what

[8] 2024 INSC 711

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

amount, if any, remained payable to Viceroy.

26. Paragraph 74 of the Award recognised that the parties' agreed contractual terms could not be displaced by another service provider's rates. It did not hold that the amendment dated 01.04.2011 satisfied the requirements for revision of the service fee, or that every invoice represented an amount payable under it. The finality of the rejection of Smiths' claims does not enlarge those findings.

EXCLUSION OF CORRESPONDENCE

27. The procedural complaint relates to the contractual basis of Viceroy's invoice counterclaim. Viceroy asserted that an amendment to Annexure II replaced the original method of charging with agreed rates for categories of personnel. By its Order dated 09.01.2018, the learned Tribunal received the amended instrument but excluded the correspondence tendered with it. The Award subsequently held that the approvals required by Clause 4.3 had not been proved. Viceroy submits that the excluded emails were evidence of those very approvals.

28. The learned Tribunal possessed the power to receive the correspondence. Section 19 entrusts it with the conduct of proceedings and the determination of evidentiary questions, subject to Part I of the Act. Section 23(2) contemplates submission or identification of supporting documents, while Section 23(3) permits a claim or defence to be amended or supplemented unless the Tribunal considers that course inappropriate having regard to the delay. An earlier omission did not create an absolute bar to later production. The request required

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

consideration in its actual procedural setting, including the continued examination of Viceroy's witness.

29. The question under Section 34(2)(a)(iii) is whether the refusal deprived Viceroy of a fair opportunity to present its case. The inquiry turns on the opportunity previously afforded, the purpose of the proposed evidence, the explanation for its timing and the effect of receiving it on the opposing party. A party's failure to use an adequate opportunity cannot, without more, be attributed to the Tribunal. Equally, an earlier opportunity does not place every subsequent restriction beyond review. Section 37 requires examination of whether the statutory ground is established. If it is, an additional finding of patent illegality is unnecessary. The availability of a preferable evidentiary course does not establish that ground.

30. Viceroy's application said that questions regarding the basis of its invoices prompted its witness to verify earlier records, in which she came across the correspondence relating to the rates and the amendment. It also said that Smiths had not previously raised the particular objection to the charging basis and that the emails and amendment formed part of the same transaction. The contention that no explanation was offered cannot be accepted.

31. A participant in an earlier correspondence may retrieve or recollect it when a particular question arises during cross-examination. That explanation accounts for what prompted the search. It does not explain why the amendment and the correspondence asserting its approval could not have been presented earlier.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

32. The significance of that omission lies in the nature of Viceroy's demand. The counterclaim sought payment of fees asserted to be contractually due. The terms authorising those fees were part of its affirmative case. Paragraph 65 of the Award acknowledges that Smiths had not specifically pleaded overcharging through breach of the original invoicing formula. Viceroy was entitled to rely on that limitation when answering Smiths' recovery claim. It did not follow that the contractual foundation of Viceroy's own demand could not be tested.

33. Viceroy had pleaded agreed fees and relied upon acknowledged invoices, payments and approvals by Smiths' officials. Its statement of defence and counterclaim did not, however, identify the instrument dated 01.04.2011 or allege that it replaced the original charging method with category rates. The approval correspondence had also not been presented before Smiths completed its evidence.

34. The cross-examination of 06.11.2017 brought that omission into focus. Questions 119-126 addressed particular charges included in the counterclaim. Viceroy's witness referred to subsequent correspondence and a communication issued in 2011 when asked to identify their contractual basis. She accepted that the material was not on the Tribunal's record. The fact that these questions prompted production supports Viceroy's account of the sequence. It does not establish that Smiths introduced a transaction unrelated to the counterclaim or that Viceroy had previously been prevented from identifying the terms on which its invoices depended.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

35. Viceroy forwarded the documents under a list dated 10.11.2017. During the further cross-examination, the learned Tribunal recorded, after question 160, that they had been filed without being called for or permission having been sought. Viceroy thereafter applied for leave by its application dated 15.11.2017. The initial production did not secure admission in evidence. However, once leave was sought, the application required consideration on its merits.

36. Viceroy's evidence remained open. The application was therefore materially different from an attempt to introduce evidence after the entire reference had reached final arguments. Smiths could have questioned Viceroy's witness about the correspondence. The learned Tribunal could also have allowed time for a response and, if necessary, further evidence. These were available procedural means of receiving material bearing directly upon the dispute.

37. The continuing cross-examination addressed only part of the procedural concern. Testing an opponent's witness differs from preparing and presenting one's own evidence on a disclosed case. The email dated 18.08.2011 addressed the administrative fee and conditions governing the revised arrangement, required invoices to follow the amendment, and stated: "Ratish, JK and I approve paying the outstanding amounts as per these agreed rates". Its bearing on approval was substantial. Its reception could also require Smiths to address the participants' capacities, the terms approved and the period covered.

38. Smiths' participation in those historical communications did not

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

establish notice, before it completed its evidence, that Viceroy would rely on them to satisfy Clause 4.3. Failure to put the emails to Smiths' witness did not make them intrinsically inadmissible, but was relevant to Smiths' opportunity to meet the case.

39. A further opportunity for Smiths could have addressed that concern. Its availability weighs in favour of admission, but does not create an entitlement to every additional opportunity sought. The learned Tribunal was entitled to assess whether the explanation justified introducing the specific contractual case at that stage, after the opponent's evidence, notwithstanding the earlier opportunity to disclose it.

40. The Order dated 09.01.2018 recorded Viceroy's explanation, Smiths' objection and the earlier omission. The learned Tribunal reasoned that the emails had neither been filed nor referred to in the statement of defence and had not been put to Smiths' witness. Read in its procedural setting, the refusal to admit the emails rested on the late presentation of the case founded on those communications after Smiths had given its evidence.

41. The admission of the amendment is the strongest circumstance supporting Viceroy's objection. The instrument and the correspondence were tendered together, faced the same objection of earlier omission, and bore upon the effectiveness of the same transaction. The Order would have been clearer had it explained their different treatment. The question nevertheless remains whether that limited permission, viewed with the earlier opportunity and the stage

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

reached, made refusal of the remaining documents incompatible with a fair hearing.

42. Paragraph 65 of the Award gives two reasons for rejecting Viceroy's complaint that it lacked an opportunity to meet the charging case. It first relies on Viceroy's pleading that its fees conformed to the Agreement and its consequent opportunity to establish that assertion. It then refers, as an additional reason, to admission of the amendment. The latter reason does not resolve the present complaint on its own. The former does not disappear because the Tribunal received one of the late documents.

43. The refusal remained within the learned Tribunal's procedural discretion. Viceroy sought to introduce the instrument and approval correspondence after Smiths had completed its evidence, without identifying an earlier impediment to presenting that case. The Tribunal could limit further production on those grounds, notwithstanding the relevance of the correspondence and the continuing cross-examination. Admission of the instrument did not itself require admission of every connected document.

44. The financial and employment records were ordered to be produced after Smiths had pursued interrogatories, a notice for production and questions seeking documents held by Viceroy. The Order recorded earlier refusals based on privilege and required production to complete the pending cross-examination. Viceroy's application sought to introduce contractual material not previously disclosed as the basis of the amendment case. Their substantive

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

connection did not require identical treatment of the two requests.

45. This conclusion accords with the contextual approach in ***Fortuna Skill Management*** *(supra)*. The request in that case followed closure of evidence and completion of the claimant's arguments, and the Court identified additional considerations bearing upon its *bona fides*. Those circumstances cannot be attributed to Viceroy. The relevant principle is that the fairness of an evidentiary ruling must be examined in the circumstances in which it was made, with due regard to the Tribunal's procedural responsibility.

46. The importance of receiving material evidence is illustrated by ***Sugandhi v. P. Rajkumar***[9]. There, the plaintiff had already concluded his evidence when documents traced later were offered during the defendants' evidence. The Supreme Court found the explanation cogent and the documents necessary for a just decision, and allowed their production under Order VIII Rule 1A(3) of the Code of Civil Procedure, 1908. Closure of the opposing party's evidence cannot therefore be treated as an automatic bar to additional evidence. The present inquiry remains whether, having regard to the earlier opportunity, the explanation for the timing and the circumstances of the proposed production, the refusal deprived Viceroy of the opportunity protected by Section 34(2)(a)(iii).

47. Taken together, the circumstances do not establish that ground. The ongoing cross-examination, the relevance of the correspondence

[9] (2020) 10 SCC 706

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

and admission of the instrument supplied substantial reasons for granting leave. They did not make refusal incompatible with the fair opportunity already afforded.

48. This Court's conclusion is confined to procedural fairness. The excluded correspondence could bear materially upon approval. Rejecting the procedural challenge does not require a finding that it was irrelevant, legally incapable of proving approval, or necessarily insufficient on its merits.

49. Smiths nevertheless relies on Paragraph 107 of the Award as an independent reason for rejecting the counterclaim even if the amendment were accepted. Paragraph 107 of the Award reads:

> *"107. Even otherwise, it was incumbent on the Respondent to demonstrate and prove the said amount as payable by the Claimant, which it has been unable to do. The Respondent has not filed any documentation, or led any evidence to demonstrate that the aforesaid allegedly unbilled amount was as per even Amended Annexure II. The ledger of Accounts of the Respondent filed at pp.71-107 of its List of Documents with index dated 16.11.2016, is admittedly an internal document of the Respondent, and since payment was made by the Claimant on a running account basis, the same also does not indicate which invoices remained due and payable. Furthermore, admittedly the invoices raised by the Respondent and filed by the Claimant in its List of Documents, do not provide the heads of the charges on the basis of which the Respondent has invoiced the Claimant. In the absence of any documentation to prove the same, given that the Claimant had strongly disputed (which I agreed with) the requirement to pay any charges beyond those specified in Annexure II, I find myself unable to agree with the Respondent that the said amount was payable. I have already expressed my views regarding the lack of any evidentiary value of the so-called 2011 Annexure II, amended in 2011."*

50. Paragraph 107 opens with the words 'Even otherwise' and finds the amount unproved, referring to Viceroy's internal ledger, running-account payments and invoice particulars. Its concluding sentences

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

return to the original Annexure II and the rejection of the amendment. It is unnecessary to decide the weight of the ledger or the adequacy of the invoice particulars. Equally, the Court cannot supply a reconciliation or an accounting defect which the learned Tribunal did not identify. ***OPG Power Generation*** *(supra)* requires attention to the reason actually discernible in the Award.

51. This Court will assume in Viceroy's favour that Paragraph 107 supplies no independent answer and examine whether the other reasons sustain rejection.

52. The procedural ground has failed for the reasons already given. The separate challenge to the admitted evidentiary record remains to be considered. Paragraph 105 of the Award contains the finding on the prescribed approvals, while Paragraph 98 assesses further entitlement under the original charging arrangement. Neither can be sustained by assuming the correctness of the other. The contractual finding must first withstand the challenge before the cost comparison can answer the demand.

COUNTERCLAIM FOR OUTSTANDING PAYMENTS

53. Viceroy contends that rejection of the invoice counterclaim cannot be reconciled with Smiths' pleadings, the answers of its witness, the correspondence and the tax records. This Court must identify the facts said to be admitted and the material said to have been disregarded, and examine their bearing on the Award's reasons.

54. The nature of each alleged admission must first be identified. A clear admission in a pleading may dispense with proof of the admitted

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

fact. An acknowledgment in correspondence is evidence whose scope and effect must be assessed with the rest of the record. The distinction is explained in ***Nagindas Ramdas v. Dalpatram Ichharam***[10]**.** Section 19 of the Act does not bind an arbitral tribunal to the Evidence Act, but procedural flexibility does not justify treating a clearly admitted fact as unproved without addressing the admission. Equally, the fact admitted must be identified accurately. An admission that invoices were raised or remained unpaid does not necessarily resolve a dispute about the contractual basis on which they were raised.

55. Smiths' reply acknowledges deployment of Viceroy's employees, monthly invoices and payments on a running account. It then uses the words "It was specifically admitted" in a sentence stating that ₹14,25,52,798/- billed up to 31.07.2015 had not been paid despite assurances and remained "outstanding and payable". The following sentence explicitly denies liability to pay that amount. The surrounding passage also asserts that Viceroy's breaches disentitled it to further payment. The Court cannot replace "admitted" with "denied" on an assumed drafting error. Nor can it extract that sentence without considering the express denial which immediately follows it.

56. Read as a whole, the passage does not unequivocally abandon Smiths' defence to contractual recovery. For the limited purpose of testing the other reasons in the Award, this Court will nevertheless assume that the balance asserted on Viceroy's invoicing basis remained unpaid, subject to the additional credit which Viceroy subsequently conceded. This is an assumption in Viceroy's favour, not

[10] (1974) 1 SCC 242.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

a finding that its account or the debt stood proved. The inquiry is whether the existing contractual reasons sustain rejection even on that footing.

57. For the purpose of examining this challenge, this Court accepts Viceroy's reading of the answers to questions 50, 51 and 54 as acknowledging approval of the invoices for payment. Their relationship to the later answers in questions 115-119 need not be resolved, nor does this Court determine the witness's credibility.

58. The emails dated 16.07.2015, 25.07.2015 and 03.08.2015 are relied upon for the same purpose. They concern collection of dues, Smiths' cash position and arrangements or assurances to honour outstanding payments. Their significance is not exhausted by the absence of a quantified closing balance in each communication. An acknowledgment may be read with the documents identifying the liability to which it relates. Paragraph 57 of the Award considered the communications of 16.07.2015 and 03.08.2015 when rejecting the plea of estoppel. That rejection permitted the invoices to be disputed, but it did not establish the merits of the defence.

59. Viceroy further relied upon deductions of ₹9,88,39,433/- and the corresponding transaction figure of ₹98,83,94,246/- reflected in Form 26AS. Paragraphs 99-102 of the Award considered that material. The records may corroborate recognition of the invoiced transactions without conclusively establishing contractual recoverability or the balance after all credits. That corroborative significance is consistent with the favourable assumption adopted

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

above. It does not dispense with examination of the contractual basis of recovery.

60. The Company Court proceedings provide no independent admission of liability. The order dated 06.05.2019 records no undertaking to pay the quantified counterclaim, while the earlier dismissal of the winding-up petition proceeded upon the Award itself and therefore cannot independently validate it.

61. The question is whether the finding that the original charging arrangement continued to govern survives the challenge. Approval of invoices and approval of a revision to the fee arrangement are distinct matters, although evidence of the former may bear upon the latter. This Court cannot assume that the original arrangement governed in order to treat evidence of its replacement as immaterial.

62. The words "TO BE AGREED LATER" in the original Annexure II do not stand alone. The schedule contains heads for salary and benefits, the cost of the employee and an administration fee of 16%, although the corresponding amounts are blank. Annexure III contains a sample billing format based on the employee's monthly costs. The Tribunal's reading of those provisions as prescribing a method of charging, while leaving figures to be supplied, was reasonably available on the contractual text. The absence of completed amounts did not compel it to find that the agreement contained no charging method.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

63. The instrument dated 01.04.2011 purported to replace Annexure II with category rates and different administrative fees. Clause 4(a) of the instrument preserved the Agreement's other terms except as explicitly modified. The learned Tribunal's application of Clause 4.3 to that instrument cannot be regarded as an interpretation unavailable on the contract. Viceroy's description of the instrument as completing an earlier blank schedule does not eliminate the changes which it introduced.

64. Clause 4.3 permitted revision of the service fee provided that the revised fee had been agreed and approved by the Company's Vice President Service, Finance Director and Managing Director. Clause 19 required an amendment to be in writing and executed by both parties. The two provisions address different requirements. The relevant question was whether the prescribed approvals had been proved, whatever permissible form the evidence of approval took.

65. In Paragraph 105 of the Award, the learned Tribunal noted the Managing Director's signature and found that approval by the Vice President Service and Finance Director had not been established. It also relied upon Clause 17, which required a waiver to be in writing, and found that no such waiver had been pleaded or proved. The finding must therefore be understood as a failure to establish the additional approvals or a waiver of their requirement. It cannot be sustained by enlarging Clause 4.3 into a requirement that all three officers countersign the same instrument.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

66. The excluded 2011 correspondence was relevant to the procedural challenge. Having rejected that challenge, this Court must now test the contractual finding on the admitted evidence. It cannot use the excluded emails as substantive proof that the prescribed approvals were obtained.

67. The case founded on admissions must first be distinguished from the case founded on an inference from conduct. On the favourable reading adopted above, the invoices were approved for payment, payments were made and outstanding dues were acknowledged. The pleaded admission, the answers relied upon and the payment correspondence does not establish that the amended schedule received both additional approvals identified in Paragraph 105 of the Award. The approval finding therefore does not contradict an express admission of compliance with Clause 4.3. Whether the conduct could establish that compliance by inference requires separate consideration.

68. Viceroy also advanced an argument from conduct. Part VIII(B)(xi) of its arbitral written submissions states that, since the rates had not been agreed in the original Annexure II, the agreement on rates had to be established from the parties' dealings. It relied upon the August 2013 correspondence to show invoice approval by foreign directors. That argument was before the learned Tribunal and cannot be dismissed as a new contention. Its premise must nevertheless be tested against the Tribunal's permissible reading of the original schedule as prescribing a method of charging, and of Clause 4.3 as governing its revision. The question is whether the treatment of

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

conduct in Paragraph 106 vitiates the findings on compliance with that requirement or its waiver.

69. Paragraph 106 states too broadly that subsequent conduct may be considered only where contractual terms are ambiguous. ***MMTC Ltd. v. Vedanta Ltd***.[11] recognises the relevance of conduct and correspondence in construing a contract. Here, there is the further distinction between using conduct to interpret the original arrangement and using it to prove approval of a later arrangement. The absence of ambiguity does not answer the latter contention. An erroneous refusal to consider vital evidence for that purpose could undermine Paragraph 105. Such evidence need not conclusively establish Viceroy's case in order to be vital.

70. Approval may be inferred from conduct and need not take the form of signatures on the revised schedule. The difficulty here is that Viceroy's argument moves from acceptance of invoices by Smiths' officials to enforceability of the revised rates, without addressing the further approval requirement identified in Paragraph 105. The August 2013 correspondence extends the evidence of invoice approval beyond the local Managing Directors. Viceroy has not, however, identified how that correspondence, the later payment assurances and the tax records evidence assent to the revised fee by both the Vice President Service and Finance Director, even after taking the invoice approvals, payments and acknowledgments together in Viceroy's favour.

[11] (2019) 4 SCC 163

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

71. In Paragraph 105, the learned Tribunal separately considered whether the additional approval requirement had been waived. Viceroy identifies no written waiver under Clause 17. That does not answer whether the approvals were actually obtained. On the learned Tribunal's interpretation, however, acceptance and payment of invoices did not dispense with the requirement of approval.

72. Paragraph 105 therefore survives the challenge. This Court has examined the asserted admissions and the argument from conduct against the approval and waiver requirements which the learned Tribunal applied. It has not supplied a fresh assessment of whether the prescribed approvals were given, or treated circumstantial proof as inadmissible. The proposition in Paragraph 106 is disapproved to the extent stated above, but the challenge has not shown that its overstatement vitiates the findings on the prescribed approvals and waiver.

73. Paragraph 98 of the Award must therefore be examined under the original charging method. It compared Viceroy's recorded expenditure with payments received and found no further entitlement proved. The learned Single Judge considered that reasoning in Paragraphs 22-25 of the Impugned Judgment.

74. Paragraph 98 recorded Viceroy's salary, benefit and wage-register figures and ultimately used the larger amount of approximately ₹20.53 crore in the Staff Salary Statements, including other reimbursements, against approximately ₹89 crore received. Its assessment was therefore not confined to basic salary or dependent

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

upon excluding every disputed reimbursement.

75. Ground I(E) of the Section 34 Petition correctly points out that salary was not the only contractual component. The original Annexure II also addressed the administrative fee, disbursement fees excluding T&E, bonus and separate T&E reimbursement. Paragraph 98 of the Award recognised the administrative fee and service tax in stating the formula, and its discussion extended beyond basic salary to benefits and other reimbursements, including repair, travel, boarding and lodging expenses.

76. Paragraph 98 of the Award does not set out a complete reconciliation, and the percentage additions mentioned at its commencement are not separately worked out in the concluding comparison. Ground I(E) does not identify, by reference to the accounting evidence, any particular cost or reimbursement omitted from the larger total considered by the Tribunal. Nor does the challenge demonstrate how the absence of a separate calculation of the contractual additions undermines the Tribunal's conclusion. The category rates in the invoices reflect the different contractual basis advanced by Viceroy, which the Tribunal rejected for the reasons already examined. On the challenge as advanced, the absence of a separately worked computation does not establish patent illegality going to the root of the determination.

77. The use of Viceroy's financial records for that purpose was consistent with the order directing their production. Paragraph 71 of the Award records that production had been allowed to answer the

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

counterclaim, and Paragraph 97 identifies the same defensive purpose. As explained earlier, rejection of Smiths' claim to recover an identified overpayment did not establish Viceroy's entitlement to further payment. It also did not prevent the Tribunal from considering those records for the purpose for which they had been required.

78. This does not revive Smiths' rejected recovery claim or use it as a set-off against an otherwise established debt. The finding rests on Viceroy's failure to establish that any further sum was payable after crediting receipts under the applicable fee arrangement. The learned Single Judge read Paragraph 98 of the Award with the reasons for rejecting Smiths' claim and found no contradiction between the two results. On the contractual basis which has survived the present challenge, no error in that conclusion requiring interference under Section 34 has been demonstrated.

79. The challenge to rejection of the invoice counterclaim accordingly fails. Paragraph 105 of the Award, read with the assessment under the original charging arrangement in Paragraph 98, supplies the existing reasons sustaining rejection. Since those reasons survive the challenge, it is unnecessary to decide whether Paragraph 107 independently defeats the demand. The learned Single Judge's refusal to set aside this part of the Award is sustained for these reasons.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

COUNTERCLAIM FOR BREACH OF NON-SOLICITATION

80. The counterclaim for ₹17,40,00,000/- arises from the alleged breach of Clause 13.3 of the Outsourcing Agreement. That clause prohibited Smiths from soliciting or employing Viceroy's employees, directly or indirectly, during the subsistence of the Agreement, unless otherwise mutually agreed. Viceroy's case was that ANI Instruments Private Limited had solicited its employees with the knowledge and active involvement of Smiths, thereby disabling Viceroy from servicing other contracts and pursuing further business.

81. The learned Tribunal in Paragraph 111 of the Award rejected the non-solicitation counterclaim for failure to establish recruitment during the contractual period, Smiths' involvement, and the damages claimed by reference to actual loss.

82. The first of these considerations requires closer examination. The dates on which the employees reported the alleged approaches cannot be treated as the dates on which those approaches occurred. Arun Chauhan's email dated 23.08.2015 referred to calls commencing on 21.07.2015. Jaspal Singh's email dated 22.08.2015 similarly referred to an approach on 21.07.2015. Prashant Chaudhary's communication dated 25.08.2015 referred to calls commencing on 20.07.2015. The documents also included an offer from ANI dated 08.08.2015, stipulating a joining date on or before 10.08.2015. These communications could not all be characterised as relating to recruitment initiated after the Agreement expired on 11.08.2015.

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

83. The observation in Paragraph 36 of the Impugned Judgment that the emails pertained to offers made after the contractual relationship ended is, therefore, too broad. So is the statement that the communications contained nothing suggesting Smiths' involvement. Arun Chauhan's email attributed to ANI's representatives a statement that Smiths' officials had asked ANI to recruit Viceroy's experienced employees. That attribution formed part of the material relied upon by Viceroy. Whether it sufficiently proved Smiths' participation was a distinct question. Likewise, ANI's existence since 1984 answered the allegation that it had been created for the purpose alleged. It did not answer whether ANI subsequently acted in concert with Smiths.

84. These qualifications do not, however, dispose of the learned Tribunal's separate finding on damages. Paragraph 111 records that the sum of ₹17,40,00,000/- had not been quantified by reference to the loss caused. Viceroy asserted that the recruitment paralysed its operations and deprived it of business opportunities. The challenge does not identify material establishing the resulting loss, or a basis for assessing it, which the Tribunal overlooked. The recruitment communications bear upon the alleged breach. They do not establish the financial consequences asserted in support of this counterclaim.

85. Business loss need not always admit of exact calculation. The question before this Court is whether the challenge demonstrates an infirmity in the learned Tribunal's finding that the damages sought had no established foundation in actual loss. It does not. Consequently, even taking the recruitment material at its highest for the purpose of examining the challenge, the separate basis on which

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

the monetary counterclaim was rejected remains undisturbed. The inaccuracies identified above do not warrant setting aside that rejection.

REMAINING COUNTERCLAIMS

86. The counterclaim for ₹10,00,000/- towards loss of reputation requires a similar distinction between the presentation of a claim and its proof. Paragraph 109 of the Award states that Viceroy neither advanced arguments nor demonstrated reputational loss attributable to Smiths. Viceroy's written submissions before the Tribunal did contain a section addressing this counterclaim.

87. That section, however, reiterated the allegation that Smiths' conduct at the expiry of the Agreement injured Viceroy's reputation with airport operators, the Government and the industry. The learned Tribunal separately found that the alleged injury had not been demonstrated. The learned Single Judge addressed that failure in Paragraph 38 of the Impugned Judgment. Viceroy has not identified evidence of reputational injury, attributable to Smiths, which renders that finding untenable. Describing ₹10,00,000/- as a nominal amount in comparison with the asserted injury does not supply the missing factual foundation. The rejection of this counterclaim accordingly calls for no interference.

88. The remaining counterclaim is for ₹63,02,752/- towards services allegedly continued at the airports after expiry of the Agreement. In Paragraph 44 of the Award, the learned Tribunal held that this claim fell outside the scope of the reference. It referred to the

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

absence of an agreed extension under Clause 2.2, Smiths' notice of non-renewal, and Viceroy's pleaded case that it continued the services at the airports' request. This was a ruling on the maintainability of the counterclaim in the reference, rather than an adjudication of the amount recoverable for those services.

89. Viceroy challenged that ruling in its Petition under Section 34. Paragraph 39 of the Impugned Judgment records that arguments were not advanced on this counterclaim. The present appeal does not challenge the correctness of that record. Ground H in the memorandum of appeal generally questions the rejection of the remaining counterclaims, and Paragraph 11 adopts the submissions made below. Neither addresses the recorded failure to argue this challenge before the learned Single Judge or explains why it should now be entertained.

90. In ***Daman Singh v. State of Punjab***[12], the Supreme Court distinguished grounds contained in a pleading from grounds pursued in argument, and explained that a party cannot complain of the Court's failure to consider a ground which was not argued.

91. Applying that principle, the general reiteration of the counterclaim in this appeal does not provide a basis for reopening the challenge which, according to the unchallenged record of the proceedings, was not argued below. We therefore decline to entertain a contention which had not been argued and pressed before the Court

[12] (1985) 2 SCC 670

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05

exercising jurisdiction under Section 34.

92. It is consequently unnecessary to determine in this appeal whether the learned Tribunal correctly construed the scope of the arbitration agreement in relation to the post-expiry services. We clarify, however, that our decision should not be understood as endorsing a broad proposition that the expiry of a substantive contract necessarily excludes arbitration over every dispute arising from subsequent services. We decline to reopen it in the appeal as presented and express no fresh view on the merits of the underlying monetary demand.

CONCLUSION

93. For these reasons, the grounds urged do not establish a basis for setting aside the Award. The Impugned Judgment refusing interference with the Award is accordingly sustained for the reasons stated above. In view of that conclusion, the objection regarding severability and partial setting aside does not arise.

94. The present Appeal, along with the pending applications, is accordingly dismissed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

NOVEMBER 04, 2026
sp/ad

Signature Not Verified
Signed By:JAI NARAYAN
Signing Date:04.11.2026 15:23:05