2026:DHC:9031

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

\# **CNR No. DLHC011870732016**

\+ O.M.P. (COMM) 416/2016, I.A. 11463/2016 & I.A. 13265/2023

UNION OF INDIA .....Petitioner

Through: Mr. Jaswinder Singh and Ms. Shipra Shukla, Advs.

versus

MATHUR & KAPRE ASSOCIATES PVT. LIMITED .....Respondent

Through: Mr. Sudhanshu Batra, Sr. Adv. with Mr. Bhuan Gugnani and Mr. Rupendra Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 01.10.2026

1. The present petition assails the Arbitral Award dated 30.04.2016, arising out of the Agreement dated 10.12.2007 between the parties in relation to development of All India Institute of Medical Sciences[1] like Institution project at Jodhpur, Rajasthan.

2. The dispute arose out of a Consultancy Agreement dated 10.12.2007 between the Respondent, a Design and Detailed Project Report (DDPR) consultant, and the Petitioner for the proposed AIIMS like institute at Jodhpur.

3. Under the request for proposal (RFP), the Respondent was engaged for comprehensive consultancy services, including preparation

[1]"AIIMS" hereinafter

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of the master plan, architectural and engineering designs, DPR etc. for a fixed consultancy fee of Rs. 6 crores.

4. The RFP also indicated approximate project areas and contemplated Phase I design work spread over about 8 months followed by Phase II implementation assistance for a duration of about 28 months.

5. Disputes arose, when during the course of the project, the scope, specifications, area and duration of the project allegedly increased substantially.

6. According to the Respondent, the relevant built-up area ultimately increased from about 83,920 sq. metres to 1,42,527 sq. metres, as a result of which the project cost increased substantially.

7. Accordingly, the Respondent therefore sought enhancement of its consultancy fee and compensation for the extended period. However, the Petitioner, on the other hand, maintained that the original areas mentioned in the RFP were only guiding figures, and that, design development and revisions were already part of the comprehensive consultancy obligations, and that an increase in project area or cost did not by itself entitle the Respondent to additional payment.

8. Thus, the issue before the Arbitral Tribunal was essentially concerned and/or related to the Respondent's claim for enhancement of architectural/consultancy fees.

9. The Arbitral Tribunal dealt with the controversy in a structured manner so as to separately consider- (i) the jurisdiction and maintainability of the Respondent's claim for enhancement of fees; (ii) the interpretation of the contractual provisions, including the effect of the stipulated fixed fee of Rs. 6 crore (iii) whether the increase in area, project cost, specifications and duration resulted in a corresponding increase in the scope or quantum of the Respondent's services; (iv) whether such increase entitled the Respondent to additional remuneration under the contract (v) the appropriate quantum of such enhanced remuneration(vi) the Respondent's separate claims relating to refund of performance security, (vii) the counterclaims raised by the Petitioner.

10. Each of these issues was considered independently and findings were returned separately thereon. The finding of the Arbitral Tribunal on these issues can be summarized as follows:

(i) The Arbitral Tribunal rejected the Petitioner's objection to maintainability and held that the claim for enhancement of consultancy fees was arbitrable.

(ii) The Arbitral Tribunal found that Clause 20 of the Agreement was wide enough to cover disputes concerning the interpretation, of the contract, including the meaning of "*scope of work*" and the question whether the Respondent was entitled to charge fees beyond the originally stipulated amount.

(iii) The Arbitral Tribunal held that the originally agreed consultancy fee of Rs. 6 crores could not be treated as an absolute ceiling.

(iv) According to the Arbitral Tribunal, Clause 3.4, which contemplated no change in the assignment fee, had to be understood with reference to the project and scope of work existing when the contract was awarded, and not to the materially enlarged project that subsequently emerged with greater area.

(v) The Arbitral Tribunal specifically distinguished between the "*nature*" of the services and the "*quantum*" of the services. It held that although the Respondent continued to perform architectural and DDPR consultancy services of the same general nature, the actual quantity of work increased because the built-up area, project cost and duration of the project increased substantially.

(vi) On the increase in area, the Arbitral Tribunal noted that the area contemplated under the contractual documents was approximately 83,920 sq. metres, whereas the area ultimately increased to approximately 1,42,527 sq. metres.

(vii) It held that such an increase could not be regarded as an ordinary or reasonable variation within the original

contractual contemplation, particularly when the permissible variation discussed between the parties was approximately ±5% and the pre-bid clarification stated that "*no major change*" was envisaged.

(viii) The Arbitral Tribunal also found that the increase in area necessarily entailed additional architectural work. It expressly rejected the Petitioner's argument that even a doubling of area would not materially alter the design, observing that a larger area would necessarily involve changes in building plans thereby increasing the professional services required from the Respondent.

(ix) The Arbitral Tribunal further held, in the alternative, that the Respondent was entitled to compensation on principles analogous to Section 70 of the Indian Contract Act, 1872[2], because of extra work which was not contemplated in the original form.

(x) While determining the quantum of enhanced remuneration, the Arbitral Tribunal did not accept the Respondent's higher computations of approximately Rs.56.06 crore or 37.28 crore. Instead, it treated the Council of Architecture scale as a benchmark and applied a rate of 4.14% to the final project cost of Rs.510 crore,

[2] "ICA" hereinafter

arriving at a consultancy fee of approximately Rs.21.11 crore. After deducting Rs.5,62,25,000 already received by the Claimant, the Arbitral Tribunal awarded Rs.15,48,75,000 under Claim A.

(xi) On Claim B, the Arbitral Tribunal rejected the Petitioner's contention that the Respondent had failed to obtain or submit the requisite approval from the Jodhpur Development Authority. Relying on the evidence of the Assistant Town Planner and the approval dated 24.09.2008, it held that the condition for refund of the performance security stood satisfied and awarded refund of Rs.32.50 lakh together with interest at 9% per annum from November 2009.

(xii) On Claim C, the Arbitral Tribunal found that the Claimant had proved expenditure of Rs.17,92,375 towards providing additional copies of tender documents, whereas the Respondent had merely denied the claim without producing contrary material. It therefore awarded the said amount together with interest at 9% per annum from 23.06.2009.

(xiii) The Arbitral Tribunal awarded Rs.25 lakh towards the costs of arbitration, taking into account the arbitral fees and other expenses incurred by the Respondent as well as

the conduct of the Respondent during the proceedings.

(xiv) The Arbitral Tribunal dismissed the Petitioner's counterclaims aggregating approximately Rs.124.19 crore. It found that the Petitioner had not examined any witness in support of the counterclaims, and had failed to prove the disputed documents. It held that the Petitioner had not established the essential ingredients of breach, actual loss and mitigation.

(xv) The allegations relating to manipulation, changes in specifications, delay in drawings, excess area and increased project cost were therefore held to be vague and unsupported by evidence.

11. On the basis of the above findings, the Arbitral Tribunal ultimately awarded a total sum of Rs.16,53,96,561 in favour of the Respondent with consequential interest and costs.

12. Coming to the proceedings before this Court, Mr. Jaswinder Singh, learned Counsel appearing for the Petitioner submits that the learned Arbitral Tribunal rewrote the contract by holding that the fixed fee could be enhanced merely because the project cost, area or duration increased, despite express contractual provisions providing for a fixed consultancy fee.

13. According to the learned Counsel for the Petitioner, the finding

that the Respondent performed "*extra work*" is said to be conjectural and unsupported by evidence. It is argued that there was no proof that any fresh architectural design, or new statutory approval was prepared or obtained as a consequence of the increase in area.

14. The learned Counsel contends that there was no evidence showing any actual increase in the Respondent's work or expenditure. Therefore, according to him, additional compensation could not have been awarded merely on an assumption that an increase in area necessarily increased the architect's work.

15. Learned Counsel for the Petitioner relies on the meetings dated 05.11.2007 and 30.11.2007 to contend that the Respondent was already aware, before execution of the contract, of the changes in area and facilities. Since the nature of the services under Clause 14 allegedly remained unchanged, no additional fee could thereafter be claimed as per him.

16. On the aspect of the quantum, learned Counsel for the Petitioner argues that the Arbitrator travelled outside the contract by using a percentage of the final project cost and the Council of Architecture guidelines to calculate remuneration, even though the parties had already contractually fixed the consultancy fee. According to the Petitioner, there was no contractual basis for applying 4.7%/4.14% to a project cost of Rs.510 crore.

17. It is also contended that the award of Rs.17,92,375/- towards additional copies of tender documents was unsupported by evidence, as

there was allegedly no proof that such copies were actually printed or of the expenditure incurred in printing them.

18. Per *contra*, Mr. Sudhanshu Batra, learned Senior Counsel appearing on behalf of the Respondent submits that the Arbitral Tribunal correctly appreciated the material before it and did not rewrite the contract. He submits that original area of 83,920 square metres ultimately became approximately 1.42 lakh square metres and the project cost increased from Rs.145 crores to approximately Rs.510 crores.

19. Learned Senior Counsel for the Respondent further submits that such an enlargement could not logically be treated as the same quantum of work merely because the contractual description of the nature of services remained broadly similar. According to him, with an increase in area, facilities and design requirements, the quantum and nature of architectural services necessarily increased.

20. On Clause 3.4, Mr. Batra submits that the Arbitral Tribunal correctly construed the fee freeze provision as applicable to the original scope as existing when the work was awarded, and not to a project which ultimately emerged substantially larger in size, area, specifications and cost.

21. Mr. Batra further supports the alternative basis adopted by the Arbitral Tribunal under Section 70 of the ICA and contends that the additional effort, time, energy and resources expended by it were

connected with the contractual transaction and were beneficial to the Petitioner.

22. As regards the counterclaims, learned Counsel appearing for the Respondent submits that the Arbitral Tribunal rightly rejected them because the Petitioner did not prove breach and rested its case substantially upon allegations without supporting evidence.

23. I have heard both the parties at length and perused the record.

24. The central issue which arises for consideration in the present matter is whether, despite the consultancy fee having been fixed under the contract, whether the Arbitral Tribunal was justified in granting additional fees on the ground that the project later became larger and costlier.

25. Having gone through the findings of the learned Arbitral Tribunal on the fixed fee aspect, the Arbitral Tribunal has held with respect to the fixed fee clause of Rs. 6 crores that since the project area, cost, duration and specifications had increased, the fee of Rs. 6 crores should also increase.

26. It interpreted the fixed fee to mean that it had been fixed with reference to the original scope of work, and when these factors increased, the fee of Rs. 6 crores also increased. It tried to read the contract in a fair and reasonable way.

27. Now exercising Section 34 jurisdiction, the question is whether

the Arbitral Tribunal's view was reasonable and plausible upon looking at the contract and the evidence.

28. Thus, keeping in mind the Section 34 jurisdiction, first, this Court shall look at the relevant clauses governing this issue, and then examine the Arbitral Tribunal's view to see whether it was reasonable upon interpretation of the contract and the evidence that was considered.

29. At the outset, it would be relevant to refer to Clause 3.1, 3.2, 3.3 3.4, 14 and 15.

> *"3.1 Purpose of the Assignment*
>
> *Ministry of Health and Family Welfare, Government of India (MoHFW) intends to select a consultant for providing comprehensive consultancy for preparing design, Detailed Project Report and tender documents for Setting up AIIMS like Apex Healthcare Institute at_____ (name of the site).*
>
> *The Consultant shall be associated with the Client from concept to commissioning stage and shall be responsible for services as mentioned in the scope of work as per clause 3.2 of Terms of Reference.*
>
> *3.2 Scope of work*
> *The Project Consultant shall provide comprehensive consultancy services for setting up of the AIIMS like Apex Healthcare Institutes on all the matters of the project and shall be involved through the entire duration of the project till commissioning/handing over of the respective Institutes after the defect liability period. The Consultant shall be responsible for the following services for the Project:*
>
> *Phase 1- Design Phase*
>
> *Stage 1- Preliminary Design stage*
> - *Preparation of Master Plan/layout plan for the site.*
> - *Hospital planning based on functional analysis and workflow analysis including preparation of architectural brief and space*

programming, design concept, concept for all services etc.

- *The consultant should get the concurrence / approval of MoHFW/HLL for the master plan/layout plan and conceptual drawings before preparation of DPR and detailed drawings.*

Stage II- Detailed Design Stage

- *Preparation of Detailed Project Report (DPR). The consultant shall get the DPR approved by MoHFW*
- *Detailed design engineering including architectural and structural engineering. electrical engineering, HVAC plants, medical gases, medical equipment planning. central sterile services department, communication and networking plan, fire detection and protection plan, medical laboratory designs, waste management systems, signages, landscaping, interior design, furniture & furnishings etc. meeting all laws, regulations and local and global standards.*
- *Getting approvals/permits of the Statutory/local/Government agencies.*
- *Detailed project planning and scheduling.*

Stage III- Bidding stage

- *Preparation of tender documents (EOI & RFP documents) for selection of an Implementing Agency for the hospital and medical college*
- *Providing assistance to MoHFW in the evaluation of the tenders and finalization of vendor.*

Phase 2- Implementation Phase

Stage IV- Construction and Post Construction Stage

- *Initiate activities that will be necessary in the performance of the services in accordance with the Master Plan and changes if any*
- *Revision of drawings, if required, during execution stage due to site conditions or other unforeseen factors as desired by the Client.*
- *Obtaining all the required completion certificates/ NOCs from the various local authorities and furnish to MoHFW the building completion/occupancy certificate.*
- *Provide adequate profession assistance to the Implementing Agency*

Note:

1. The selected architectural concept and architectural designs shall

become the property of Ministry of Health & Family Welfare (MoHFW) including its copyright. MoHFW reserves the right to modify the architectural concept and architectural design for use in any of its projects.
2. Detailed scope of work is given in Volume 3 (Client Requirements) of this document.

3.3 Deliverables and Timelines
The timelines for the project are as follows:

Phase I	*Stage*	*Time from the date of Start of Work (months)*
Phase I	*Stage 1 to Stage 3*	*8*
Phase II	*Stage 4*	*30*

The consultant shall deliver the following to the Client:

Sl.No.	*Deliverable*	*Time from the date of Start of Work (weeks)*
1.	*Submission of Master Plan*	*4*
2.	*Submission of Preliminary design*	*8*
3.	*Draft DPR Including Specifications, Detailed Design and Bill of Quantities*	*26*
4.	*Final DPR*	*30*

The Consultant shall supply 10 (ten) sets and 1(one) soft copy of each to the Client. 10 (ten) sets of drawings will be supplied in AO size and 5(rive) sets in A3 size.Drawings shall be prepared on CADD (latest version) and structural design on STAAD 9 (latest version).A11 approvals except DPR shall be given by the Client as per the schedule mentioned above.

3.4 Payment:
3.4.1 Fee for Engagement
The Client shall pay to the Consultant, an Assignment Fee of a sum of Rs 6,00,00,000 (Rupees Six crores) only for providing services as required under per scope of work mentioned in the Contract Agreement. There shall be no change in the Assignment Fee for the Project on any account for the scope of work as mentioned in the Contract Agreement. The said fee is inclusive of all the direct and indirect taxes, duties/ cess to be paid by the Consultant, proof checking consultant's fee, any other fee/ expenditure incurred by the Consultant. Only the statutory expenses (excepting taxes and levies) made to statutory bodies for the Project shall be reimbursed by the Client over and above the Assignment Fees.. No reimbursement

shall be made by the Client until the Consultant has submitted a written claim for the same and has attached sufficient documentary evidence

In case, the Client uses the design of a technically successful Bidder at any other site, the Client shall pay a sum of Rs 30 lakh (including all taxes and levies) to the concerned Bidder. The Bidder shall note that this fees is full and final and no other payment shall be made by the Client in this regard. Further, such a payment shall not bind the Client in any manner, whatsoever it may be.

Unless otherwise explicitly stated in the Contract, the payment shall be as per accepted schedule of payment mentioned in RFP. The payment shall be subject to deductions as per Indian income tax laws.

3.4.2 Milestones and Payments Terms

Stage	*Sl.No*	*Milestone*	*% Payment*	*Cumulative percentage payment*
Stage 1	*1*	*Approval of Master Plan*	*5%*	*5%*
	2	*Approval of Preliminary Architectural Design*	*20%*	*25%*
	3	*Clearances and Approvals from Statutory bodies and basic working drawings*	*10%*	*35%*
	4	*Submission of Draft DPR*	*20%*	*55%*
Stage 2	*5*	*Proof Checking and approval of DPR*	*15%*	*70%*
Stage 3	*6*	*Approval of tender document*	*10%*	*80%*

Phase 2

Stage	*Sl.No*	*Milestone*	*%Payment*	*Cumulative percentage payment*
Stage 4	*1*	*Commencement of Work by Implementing Agency*	*5%*	*85%*
	2	*Completion of work*		*85%*
		a. 25% completion of work	*5%*	*90%*
		b. 50% completion of work	*5%*	*95%*
		c. 100% completion including all clearances and approvals including occupancy certificate	*5%*	*100%*

Note

1. Completion of scope of work for the consultant will be considered only after the completion of stage 4.

*** **** ****

14.0 Changes and Additions in Consultant's Scope of Work

Client shall have the right to request Consultant in writing to make any changes, modifications, and/or additions to Consultant's scope of Services. Consultant shall on such written requests carry out the consequential work on account of such changes/modifications or addendums etc. without any additional payment from the client."

30. The Arbitral Tribunal interpreted Clauses 3.1, 3.2, 3.4 and 14 together and concluded that the nature of the consultant's services remained the same. However, the quantum of those services had materially increased and therefore, the scope of work had effectively expanded beyond what was originally contemplated.

31. It further held that Clause 3.4 fixed the fee only with reference to the original scope of work, while Clause 14 could cover only reasonable variations and not major changes requiring substantially greater design and consultancy effort.

32. Thus, it could be said that on that reasoning, the Arbitral Tribunal held that the Respondent was entitled to claim proportionately higher remuneration.

33. Mr. Singh, learned Counsel for the Petitioner attacks these very findings of the Arbitral Tribunal by taking the plea that the Arbitral Tribunal effectively rewrote the contract. According to him, Clause 3.4 expressly fixed the consultancy fee and did not link that fee to any other thing. Further, Clause 14 itself contemplated variations within the agreed scope. According to the Petitioner, there was also no evidence that any fresh design, new building plan, additional statutory approval

or other identifiable extra work was actually carried out.

34. At this juncture, the issue therefore becomes whether the Arbitral Tribunal's interpretation that the fixed fee of Rs. 6 crores was confined to the originally contemplated scope and whether the same could increase when the project materially expanded, is a plausible interpretation of Clauses 3.1, 3.2, 3.4 and 14, or whether it amounts to rewriting of the contract.

35. The powers available to an Arbitral Tribunal for interpreting a contract and filling contractual gaps have been explained at length by the Supreme Court in ***Ramesh Kumar Jain v. BALCO***[3]. The relevant extract is reproduced hereinbelow for the sake of clarity. Let us go through the relevant extract is quoted herein below, for the sake of clarity:

> *"36. Having discussed the said law, we move ahead to another limb of the submission which was espoused by the Respondent particularly with reference to obligations of the arbitrator to decide the dispute in accordance with the terms of the contract. It is a fundamental principle that the arbitrator cannot award anything that is contrary to the contract. The arbitrator is bound by clear stipulations inter se the parties, and an award ignoring such stipulations would violate public policy by undermining freedom of contract. However, that does not mean that not every award which gives a benefit not expressly mentioned in the contract is in violation. The arbitral Tribunal in exercise of their power can very well interpret the implied terms or fill gaps where the contract is silent, so long as doing so does not contradict any express term. For example, if a contract is silent on interest on delayed payments, an arbitrator awarding reasonable interest is not contradicting the contract rather it is a power exercised by the arbitrator to fulfill the gap on the basis of equity which also mandated under Section 31(7)(a) of the A&C Act.* ***Similarly, if a contract does not say either***

[3] **2025 INSC 1457**

way about compensating extra work done at request, the arbitrator can imply a term or use principles of restitution to award a reasonable sum, without violating the terms of contract. The thin line is whether an express prohibition or restrictions in the contract is breached by the award? If the answer is in affirmative, the award is liable to struck down. However, where the contract is simply silent on a legitimate claim which is inherently linked to the natural corollary of contractual obligation of the parties the arbitrator will be well within his powers to interpret the contract in the light of principles of the contractual jurisprudence and apply the equity to that situation. A contrary interpretation would lead to opening a floodgate whereby a party who may have dominant position would intentionally not ink down the natural obligation flowing from the contract and subsequently; after obtaining the benefit the party would agitate absence of express terms to sway away from even discharging his alternative obligation of compensating the party at loss. *Hence the question which arises in such situations is, can the party who bears the brunt and suffers the loss due to silence under the contract regarding the natural contractual obligation which arises in usual course of business be left in limbo? In our view, that is the very purpose why section 70 of the Contract Act, 1872, has been an intrinsic part of our Contract Act. The said provision creates a statutory right independent of contract, often termed quantum meruit or unjust enrichment remedy. For ready reference the said provision has been extracted hereinbelow:*

> *"70. Obligation of person enjoying benefit of non-gratuitous act. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."*

36. It is clear from the above reading that where the contract does not expressly deal with compensation for extra work performed at the employer's request, the arbitrator may imply an obligation to pay reasonable compensation or apply the principles of restitution .This would not amount to rewriting the contract unless the award breaches an express prohibition or restriction contained in the contract.

37. The Hon'ble Supreme Court also went onto observe that an arbitrator may interpret implied terms or fill contractual gaps where the contract is silent. However, the thin separating line, is the said interpretation cannot contradict an express contractual stipulation.

38. Thus, applying the same to the facts of the case, the Arbitral Tribunal in the present matter was entitled to examine whether the admittedly enlarged scope of work constituted "*extra work*" falling outside the original scope of work for which the original Rs. 6 crore fees had been fixed.

39. If that additional work which was subsequently performed by the Respondent was not itself conclusively priced or expressly prohibited from attracting additional remuneration, the Arbitral Tribunal's determination of reasonable additional compensation would amount to filling a contractual gap rather than rewriting the contract.

40. The Arbitral Tribunal in the impugned award expressly considered Clause 3.4 but interpreted its "*no change in assignment fee*" stipulation as operating within the original scope of work. It found that the increase in area, cost, specifications and duration materially increased the quantum of architectural services and went beyond the reasonable variations contemplated by Clause 14.

41. Once that interpretation is accepted as a plausible one, ***Ramesh Kumar Jain*** (*supra*) squarely applies and the argument of rewriting of the contract would be defeated as it is an admitted fact that the contract did not provide remuneration for any kind of additional work.

42. At this stage, both parties are standing on opposite ends of the spectrum. The Petitioner's case is that the fee was fixed and that extra work was already contemplated under Clauses 3.4 and 14. The stand of the Arbitral Tribunal and the Respondent is that the fee was linked to the scope of work originally contemplated, but the fee for increase in the quantum of that work was not contemplated in the contract.

43. To further test the reasoning adopted by the Arbitral Tribunal i.e. as to whether the fixed fee of Rs. 6 crore was linked to the scope of work originally contemplated under the contract and, if so, whether the substantial increase in the quantum of work subsequently undertaken warranted additional remuneration, notwithstanding the absence of an express contractual provision in that regard. In this context, reliance may be placed on paragraph 35 of ***Ramesh Kumar Jain*** (supra). The same reads as follows:

> *"35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as* ***the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts****. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If* ***a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference.*** *However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the Court cannot regard the*

conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral Tribunal's conclusion cannot be reconciled with any permissible view of the evidence".

44. It could be well understood that Section 34 Court can interfere with an arbitral award for patent illegality only in exceptional situations i.e. where the arbitrator ignores vital evidence, relies on irrelevant material, or reaches a conclusion unsupported by any evidence, or adopts a view so irrational that no reasonable person could have reached it. The Supreme Court clarified that , "*no evidence*" means no evidence, not merely weak evidence. Therefore, even if there is some material on which the arbitrator could reasonably base the conclusion, the Court cannot set aside the award merely because it considers that evidence has less probative value.

45. Having understood the above, it is clear that the finding adopted by the Arbitral Tribunal cannot be interfered with merely because this Court may, upon independently construing Clauses 3.4 and 14, arrive at a different interpretation or the line of reasoning or documents adopted by the learned Arbitral Tribunal is weak or of less probative value.

46. Thus, this Court is of the view that Arbitral Tribunal's conclusion that the fixed fee was linked to the scope of work originally contemplated, whereas the substantial increase in the quantum of work was not specifically priced under the contract, was founded upon material before it and cannot be characterised as a finding based on "*no*

evidence".

47. The exact material relied upon by the Arbitral Tribunal for the above reached interpretation was:

> *(i) The project area increased from approximately 83,920 sq. m. to approximately 1,42,527 sq. m.*
>
> *(ii) Increase in cost and the extension of Phase I from 8 to 15 months and Phase II from 30 to 63 months.*
>
> *(iii) The Tribunal relied specifically on the clarification issued before the contract stating "No Major Change envisages."*
>
> *(iv) Moving from Limited air conditioning to a centrally air-conditioned building.*
>
> *(v) 50 bed Trauma Care Facility was added, and for the same the Respondent itself paid an additional Rs. 50 lakh.*

48. Thus, based on the above material and its own interpretation, the Arbitral Tribunal held that Clause 3.4 fixed the fee for the scope of work as originally contemplated, whereas the substantially increased quantum of work was not specifically priced in the contract and therefore fell outside the original fixed fee bargain.

49. This Court is of the view that as long as the Arbitral Tribunal's conclusion is reconcilable within a permissible view of the contractual provisions and some evidence is available to substantiate the same, the threshold of patent illegality is not crossed merely because another view of Clauses 3.4 and 14 is also possible.

50. The record before the Arbitral Tribunal disclosed that (i) the

project moved from an originally contemplated area of 83,920 sq. metres to approximately 1,42,527 sq. metres, (ii) that the project cost increased substantially from Rs.145 crores to Rs.510 crores, and that the (iii) original completion periods were materially extended.

51. Thus, the interpretation adopted by the Arbitral Tribunal therefore does not amount, in substance, to re-writing the fixed fee clause. The finding of the Arbitral Tribunal is not based on "no evidence".

52. In these circumstances, the contention that the learned Arbitral Tribunal simply "rewrote" the contract cannot be accepted as a sufficient ground for interference.

53. Having said that, the next question which arises for consideration is whether the amount of Rs.15,48,75,000/- awarded under Claim No.A calls for any interreference.

54. The record discloses that the Respondent had placed before the Arbitral Tribunal, more than one method for quantification, including an area-based approach, cost related factors, time extension and project cost methodology. The Arbitral Tribunal expressly stated that it need not accept all such components at that stage.

55. Instead, it selected the Council of Architecture's scale as a statutory benchmark and treated it as a fair and reasonable yardstick. It

then applied a percentage to Rs.510 crores project cost, and arrived at an amount of Rs.21.11 crores, deducted Rs.5,62,25,000/- already paid, and awarded the balance of Rs.15,48,75,000/-.

56. This Court is of the view that once the Arbitral Tribunal had found that the substantially increased quantum of work was not conclusively priced under the contract, it was entitled to determine reasonable compensation for such additional work.

57. There was no agreed contractual rate for the compensation in the subject agreement, and admittedly the Council of Architecture mechanism was not applied to substitute an agreed contractual rate.

58. Additionally, the Arbitral Tribunal did not mechanically apply the Council's 5% scale as it adopted 4.14%, which it found corresponding to the fee structure underlying the original contract, and also had before it comparable governmental projects carrying consultancy fees of approximately 4%.

59. Thus, the quantification was not a figure conjured out of thin air. In terms of ***Ramesh Kumar Jain*** (supra), the mere use of an external benchmark does not amount to patent illegality where the path of quantification is discernible and represents a reasonable assessment of compensation for extra work.

60. This Court may not agree that the selected methodology was the

most appropriate method of valuation. That, however, does not by itself justify interference under Section 34 of the Act.

61. The award on Claim No.B was based on oral and documentary evidence before the Arbitral Tribunal. The Arbitral Tribunal recorded the evidence of an Assistant Town Planner from Jodhpur Development Authority and relied upon the approval dated 24.09.2008 of the drawings submitted on behalf of AIIMS Jodhpur.

62. It, accordingly, held that the Respondent had established its entitlement to refund of the performance security.

63. This is a straightforward finding of fact based upon identified evidence. No perversity or jurisdictional defect is demonstrated by the Petitioner on Claim No.B.

64. Moving to Claim No. C, this Court finds that the claim was supported by documentary evidence of expenditure incurred towards additional copies of the tender documents, which the Arbitral Tribunal found had not been rebutted by anything except beyond a bare denial.

65. The award of the proved amount together with interest therefore discloses no basis for interference.

66. Coming to the challenge laid against counter-claim raised by the

Petitioner. The Petitioner had raised eight counterclaims amounting in aggregate to approximately Rs.124.19 crores before the learned Arbitral Tribunal.

67. The Petitioner has challenged the rejection of its counterclaims by alleging that the learned Arbitral Tribunal failed to consider the documentary evidence pertaining to the counterclaims.

68. However, the challenge, as pleaded, according to this Court does not identify any particular document allegedly ignored by the Arbitral Tribunal.

69. The counterclaim to which such document relates, or the manner in which such document establishes breach, causation or the quantum of loss has not been identified or relied upon by the Petitioner.

70. Thus, the petition, as far as it challenges the counterclaim, is rejected.

71. The entire challenge therefore falls short of establishing a viable ground, warranting interference under Section 34 with the impugned award.

72. In these circumstances, for the reasons recorded above, the objections raised by the Petitioner against the Arbitral Award dated 30.04.2016 are rejected.

73. The present petition is, accordingly, dismissed.

74. Pending application(s), if any, also stand disposed of.

OM PRAKASH SHUKLA, J

OCTOBER 1, 2026/*gunn*