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

Date of decision: 20.08.2026

CNR No. DLHC010052572026

+ **FAO(OS) (COMM) 25/2026, CM APPL. 9963/2026**

ESI CORPORATION Appellant

Through: **Mr. Vikrant Pachnanda, Mr. Mukul Katyal, Advs.**

versus

MS DESIGN ASSOCIATES Respondent

Through: **Mr. Shashank Garg, Mr. Arjun Mukherjee, Mr. Divyansha, Mr. Puneet Dhawan, Advs.**

CORAM:

HON'BLE MR. JUSTICE VIVEK CHAUDHARY

HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT

1. The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996, ("the Act") seeking to set aside the Judgment dated 16.01.2026, passed by the learned Single Judge of this Court in O.M.P. (COMM) No. 242 of 2024 titled as ***"ESI Corporation vs. M/S Design Associates"***, whereby the petition of the appellant under Section 34 of the Act was dismissed.

2. The dispute between the parties arises out of two contracts executed for architectural and engineering consultancy services in



relation to the ESIC Hospital at Andheri, Mumbai. Contract No. I was executed on 29.05.2008 for facelifting, modernisation, extension and upgradation of the hospital, while Contract No. II was executed on 12.11.2010 for construction of the Post-Graduate Hostel/Nursing College. Disputes arose between the parties principally concerning the prolongation of the project, revision in the scope of work and payments claimed by the respondent. The respondent invoked arbitration and raised six claims before the learned Sole Arbitrator, wherein, Claim A, relating to outstanding payments, and Claim B, relating to additional works/services, were allowed. Claim C, relating to interest, was partially allowed. Claims D and E were rejected, while Claim F, relating to litigation costs, was allowed.

3. The appellant challenged the said award under Section 34 of the Act. The learned Single Judge, after considering the rival submissions and perusing the arbitral record, rejected the said challenge. Aggrieved thereby, the present appeal has been preferred by the appellant.

4. Learned counsel for the appellant submitted that the Arbitrator failed to properly appreciate the contractual terms and the documentary evidence and that the learned Single Judge ought to have interfered with the award on the grounds of perversity and patent illegality. He submitted that the findings returned by the learned Arbitrator in paragraphs 204 and 205 of the award are contradictory, inasmuch as paragraph 204 records that deletion of one basement would result in reduction of the cost of the project, whereas the subsequent finding proceeds on the premise that such revision in the





scope of work would nevertheless constitute additional work. Moreso, the learned Arbitrator failed to take into consideration all the relevant documents placed on record before returning the findings.

5. No other submission was advanced on behalf of the appellant.

6. Learned counsel for the respondent, on the other hand, submitted that the impugned judgment calls for no interference. It was contended that the learned Single Judge had considered each of the objections raised by the appellant and had rightly declined to interfere with the arbitral award within the limited scope of jurisdiction under Section 34 of the Act. Learned counsel submitted that the alleged contradiction between paragraphs 204 and 205 of the award is misconceived and arises only upon reading the said observations in isolation, whereas the award, read as a whole, clearly records the revisions in the scope of work and the consequent requirement of fresh designs and drawings. Learned counsel further submitted that the appellant has not been able to identify any specific document, material to the determination of the claims, which was ignored by the learned Arbitrator. It was contended that the grounds raised in the present appeal essentially seek a re-appreciation of the evidence and a fresh examination of the findings returned by the learned Arbitrator, which is impermissible in exercise of jurisdiction under Section 37 of the Act.

7. We have heard the learned counsel for the parties and perused the material placed on record.

8. At the outset, it is necessary to bear in mind the restricted scope



of jurisdiction under Section 37 of the Act. An appeal under Section 37, against an order passed under Section 34, does not confer upon the appellate Court the same jurisdiction as would be available in an ordinary first appeal against a decree. The Apex Court in the judgment of ***MMTC Ltd. vs Vedanta Ltd. (2019) 4 SCC 163***, while dealing with the scope of an appeal under Section 37 of the Act, held as follows:

“14. As far as interference with an order made Under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference Under Section 37 cannot travel beyond the restrictions laid down Under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court Under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court Under Section 34 and by the court in an appeal Under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

(Emphasis supplied)

9. A three-judge Bench of the Supreme Court in ***UHL Power Co. Limited v. State of Himachal Pradesh (2022) 4 SCC 116***, held the following:

“15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the said court to do so in proceedings Under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. As it is, the jurisdiction conferred on courts



Under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal Under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.”

(Emphasis supplied)

10. In view of the aforesaid backdrop, we may now analyse the submissions advanced before us. The first submission of learned counsel for the appellant is with respect to the findings recorded by the learned Arbitrator in paragraphs 204 and 205 of the award. It is contended that there is a contradiction in the said findings, inasmuch as paragraph 204 records that deletion of one basement would result in reduction of the cost of the project, whereas paragraph 205 proceeds to hold that such revision in the scope of work would entail additional work.

11. The perusal of paragraphs 204 and 205 of the arbitral award makes it clear that the learned Arbitrator found that deletion of one basement would result in reduction in the cost of the project. However, the change in the plan necessarily required corresponding changes in the designs and drawings, for which fresh designs had to be prepared in accordance with the revised and finalised plan. It is also relevant that the respondent before us is engaged in architectural and engineering consultancy services and is not the construction agency executing the project. Consequently, a revision in the plan and scope of the project could entail additional architectural and engineering work on the part of the respondent. The findings in paragraphs 204





and 205, which are with regard to the cost of construction, therefore, cannot be read for designing purposes and rather the deletion of one basement would definitely reduce the project cost while the consequential revision in the plans required fresh architectural and engineering work and would amount to additional work for the respondent. In these circumstances, the conclusion of the learned Arbitrator that additional work had been undertaken by the respondent cannot be said to be perverse or patently illegal so as to warrant interference under Section 37 of the Act.

12. The second submission of learned counsel for the appellant is that the learned Arbitrator failed to take into consideration all the relevant documents placed on record. This contention, too, does not persuade us. The learned Single Judge has specifically considered the said objection and noted that although certain documents pertaining to other contracts were inadvertently been placed on record, the learned Arbitrator considered all the relevant documents concerning the contracts in question. The learned Single Judge further noted that the appellant had not identified any specific letter relevant to the issue which had not been considered by the learned Arbitrator.

13. Even before us, learned counsel for the appellant has not pointed out any specific document, material to the determination of the claim, which was before the learned Arbitrator but was ignored by him. A general assertion that the entire documentary evidence was not considered cannot, in itself, satisfy the threshold required for interference under Section 34, much less under Section 37 of the Act.





14. This submission of the appellant, therefore, essentially seek a re-appreciation of the evidence and a reconsideration of the factual findings returned by the learned Arbitrator. The learned Single Judge has already examined the objections raised by the appellant and has declined to interfere with the award within the parameters of Section 34 of the Act. We find no error in the exercise of jurisdiction by the learned Single Judge warranting interference in the present appeal.

15. No case is made out before us to demonstrate that the learned Single Judge has failed to exercise the jurisdiction vested in it under Section 34 of the Act or that the findings of the learned Arbitrator suffer from such patent illegality or perversity as would warrant interference under Section 37 of the Act.

16. The appeal is, accordingly, dismissed.

17. Pending application, if any, also stands disposed of.

VIVEK CHAUDHARY, J

RENU BHATNAGAR, J

AUGUST 20, 2026/kp