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

% ***Judgment Reserved on: 18th September, 2025***
Judgment pronounced on: 17th October, 2025

\+ O.M.P. (COMM) 302/2019

VICEROY ENGINEERING .....Petitioner
Through: Mr. Gandharav Anand, Ms. Rachita Sood and Mr. Prakhar Dixit, Advocates

versus

SMITHS DETECTION VEECON SYSTEMS PRIVATE LIMITED .....Respondent
Through: Ms. Payal Chawla and Ms. Hina Shaheen, Advocates

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '***Act***') on behalf of the respondent/ counter claimant in the arbitration proceedings challenging the Award dated 15th March 2019 (hereinafter '***Impugned Award***') passed by the Arbitral Tribunal. The respondent/ counter claimant in the arbitration proceedings shall hereinafter be referred to as '***Viceroy***' and the claimant in the arbitration proceedings shall hereinafter be referred to as '***Smiths***'.

2. The Impugned Award was rendered while adjudicating the disputes between the parties arising out of an Outsourcing Agreement wherein the

Arbitral Tribunal comprising a Sole Arbitrator has dismissed the claims of Smiths as well as the counter claims of Viceroy.

3. By way of the present petition, Viceroy has challenged the Impugned Award to the extent it has dismissed Viceroy's counter claims.

4. Brief facts leading to the present petition are as under:

4.1. Viceroy is an engineering enterprise engaged in providing technical services and personnel.

4.2. Smiths deals in detection technologies including x-ray, trace detection, etc. operating with customers in the global transportation, ports and borders, critical infrastructure, military and emergency responder markets.

4.3. On 16th April 2010, Smiths was awarded a Maintenance Contract for passenger screening equipment by Delhi International Airport Private Limited.

4.4. On 12th August 2010, Viceroy and Smiths entered into an Outsourcing Agreement (hereinafter '***Agreement***') with a term of five years.

4.5. As per the Agreement, Viceroy agreed to provide service technicians to Smiths' customers for installation and commissioning Smiths' equipment, along with after sales support and maintenance services for the said equipment.

4.6. As per Clause 4.1 of the Agreement, Smiths agreed to pay to Viceroy a service fee as set forth in Annexure II of the Agreement. As per the said Annexure II, an employee's monthly cost included *basic monthly salary*, *pension fund contribution*, *insurance* and *other allowance and benefits, if any*.

4.7. On 1st April 2011, the Agreement was amended to replace the existing Annexure II with an amended Annexure II as the basis of the service fee to be charged by Viceroy.

4.8. The term of the Agreement expired on 12th August 2015.

4.9. Smiths subsequently issued a notice dated 16th May 2016 invoking the Arbitration Clause contained in the Agreement. Viceroy replied to the aforesaid notice *vide* letter dated 3rd June 2016.

4.10. The Sole Arbitrator entered reference on 27th June 2017.

4.11. Smiths filed its statement of claim before the Arbitrator seeking the following reliefs:

(i) Rs. 79.50 crores as compensation towards overcharging by Viceroy,

(ii) Compensation for loss suffered due to collusive activities between Viceroy and the Srivastavas and Smiths' other competitors,

(iii) Recovery of Rs. 12.10 crores towards Viceroy's failure to deliver the service reports, and

(iv) Rs. 1,00,00,000/- towards loss of reputation and legal costs.

4.12. Viceroy filed the following counter claims before the Arbitrator:

(i) Rs. 14,25,52,798/- towards outstanding payments due to Viceroy,

(ii) Rs. 63,02,752/- towards services rendered by Viceroy between 12th August 2015 and 31st August 2015,

(iii) Rs. 17,40,00,000/- towards damages/ loss due to breach of non-solicitation clause of the Agreement by Smiths, and

(iv) Rs. 10,00,000/- towards loss of reputation.

5. On 13th February 2017, the following issues were framed by the Arbitrator in the arbitration proceedings:

(i) Whether the statement of claim has been properly signed, verified and filed by the authorized representative?

(ii) Whether the counter claims as mentioned in prayer para 25(B) (iii) and (iv) are not maintainable?

(iii) Whether the claim of Smiths as mentioned in prayer (i) is not maintainable?

(iv) Whether Smiths is entitled to the claims as mentioned in the statement of claim?

(v) Whether Viceroy is entitled to the counter claims as mentioned in the counter claims?

(vi) Whether the parties are entitled to any interest and if so at what rate and from which date?

(vii) Relief.

6. *Via* the Impugned Award, the Arbitrator rejected the claims of Smiths as well as the counter claims of Viceroy. To be noted, Smiths did not challenge the Impugned Award.

7. Viceroy has challenged the Impugned Award to the extent its counter claims have been rejected.

SUBMISSIONS ON BEHALF OF VICEROY

8. In respect of rejection of counter claim (i), Viceroy has made the following submissions:

8.1. The Impugned Award ignores material evidence which sufficiently demonstrates admission on the part of Smiths for the outstanding amount due to Viceroy. It is submitted that despite the categorical admissions, the Arbitrator concluded that Smiths had not unequivocally accepted the invoices raised by Viceroy.

8.2. The Impugned Award is against public policy as it is self-contradictory in nature. Despite coming to the conclusion that Viceroy had not overcharged Smiths in violation of Annexure II and Clause 4 of the Agreement, the Arbitrator rejected Viceroy's counter claim on the ground that Viceroy was

unable to establish that the outstanding amount was in accordance with Annexure II.

8.3. The Impugned Award is patently illegal as the Arbitrator erred in refusing to take material documents, which were necessary for the just consideration of the dispute between the parties, on record. New documents essential for the adjudication of the dispute between the parties can be placed on record even at the stage of adjudication under Section 34 of the Act. Thus, the case of Viceroy is at a better standing as it sought to bring new documents on record during the arbitration proceedings itself. Thus, failure of the Arbitrator to take on record important additional evidence merely on procedural grounds is a sufficient basis for setting aside the Impugned Award.

9. Insofar as rejection of counter claim (iii) is concerned, it is submitted that the Impugned Award completely disregards material evidence on record which establishes Viceroy's claim that its employees were being poached by Smiths.

10. Insofar as rejection of counter claim (iv) is concerned, it is contended that the Impugned Award ignores the material contentions of Viceroy with respect to notional damages and is therefore not a reasoned award.

SUBMISSIONS ON BEHALF OF SMITHS

11. *Per contra*, counsel for Smiths has made the following submissions in response:

11.1. The Arbitrator has neither ignored any contention or material evidence supporting the case of Viceroy, nor has come to findings which are self-contradictory in nature. The Arbitrator has given due consideration to various communications and other documents relied upon by Viceroy and only thereafter has come to the respective findings with respect to each of the

counter claims of Viceroy. The Impugned Award therefore is a speaking and reasoned award.

11.2. Counter claim (ii) was not pressed before this Court and appears to have been abandoned. In any event, the Arbitrator rightly rejected this counter claim as one beyond the scope of Section 34 of the Act.

11.3. There was no admission of debt on behalf of Smiths.

11.4. In respect of the emails that were not taken on record by the Arbitrator, Viceroy has failed to offer any explanation for not producing the said emails at an earlier stage. Therefore, the Impugned Award is neither perverse nor patently illegal in refusing to take petitioner's additional documents on record.

ANALYSIS AND FINDINGS

12. I have heard counsel for the parties and perused the material on record.

13. The Supreme Court has defined the scope of interference by courts in a petition challenging an award passed by the Arbitrator under Section 34 of the Act in a plethora of judgments.

14. In ***Associate Builders* v. *Delhi Development Authority***[1], the Supreme Court made the following observations:

> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
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> *(i) a finding is based on no evidence; or*
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> *(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
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> *(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.*
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> *** *** ***
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> *33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the*

[1] (2015) 3 SCC 49

arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts…

34. It is with this very important caveat that the two fundamental principles which form part of the fundamental policy of Indian law (that the arbitrator must have a judicial approach and that he must not act perversely) are to be understood.

*** *** ***

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality - for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside."

15. In ***DMRC Limited* v. *Delhi Airport Metro Express (P) Ltd.***[2], the Supreme Court made the following observations:

"34. The contours of the power of the competent court to set aside an award under Section 34 has been explored in several decisions of this Court. In addition to the grounds on which an arbitral award can be assailed laid down in Section 34(2), there is another ground for challenge against domestic awards, such as the award in the present case. Under Section 34(2-A) of the Arbitration Act, a domestic award may be set aside if the court finds that it is vitiated by 'patent illegality' appearing on the face of the award.

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36. Patent illegality may also arise where the award is in breach of the provisions of the arbitration statute, as and when for instance the award contains no reasons at all, so as to be described as unreasoned.

37. A fundamental breach of the principles of natural justice will result in a patent illegality, where for instance the arbitrator has let in evidence behind the back of a party…"

16. I shall now proceed to apply the aforesaid principles in the facts and circumstances of the present case.

17. In support of its submission that the Impugned Award ignores material evidence with regard to admissions made by Smiths, reliance is placed on the

[2] (2024) 6 SCC 357

emails dated 21st January 2015, 17th March 2015, 24th June 2015, 16th July 2015, 25th July 2015 and 3rd August 2015.

18. All the aforesaid emails have been specifically referred to and dealt with in paragraph 57 of the Impugned Award, which is set out below:

> *"57. Even otherwise, under Section 115 of the Evidence Act, a person is estopped from denying/ challenging the truth of a thing in a subsequent proceeding, only when the said person has, "by his* ***declaration, act, or omission, intentionally caused*** *or permitted another person to believe a thing to be true* ***and act on such belief****." **The Respondent has also contended that the official of the Claimant, namely Mr. Tay George, has vide e-mail dated 15.07.2015 responded to Ms. Bindu Jha's e-mails dated 21.01.2015, 17.03.2015, 06.06.2015 and 15.07.2015 regarding pending payments, and in the said e-mail, he has specifically expressed his intention to clear the outstanding bills.** However, a perusal of the record would demonstrate that while the Respondent has filed Ms. Jha' s emails dated 21.01.2015., 17.03.2015, 06.06.2015 and 15.07.2015 at pages 56-60 of the Documents filed on 16.11.2016, there is no e-mail dated 15.07.2015 from Mr. Tay George filed. The Respondent has also filed e-mails dated 16.07.2015 (from Mr. Tay George) and 03.08.2015 (from Mr.Nathan Manzi) at pages 74-75 of the Documents filed on 31.01.2017, which according to the Respondent amounted to an admission on the part of the Claimant of its liability.* ***However, a perusal of the same would also not indicate that the Claimant has unequivocally accepted the invoices as raised by the Respondent as being correct. Therefore, in my considered view, there is no such declaration, act or omission on the part of the Claimant which was acted upon by the Respondent vis-à-vis the correctness of the invoices, and therefore, the Claimant cannot be barred from claiming that the said invoices were overcharged in the present proceedings.*** *However, admissibility of the claim is different from the merits of the same, which shall be dealt with after considering the Respondent's second preliminary objection to the said claim."*
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> [emphasis supplied]

19. After analysing the aforesaid emails, the Arbitrator held that the said emails do not indicate that Smiths has unequivocally accepted the invoices raised by Viceroy to be correct.

20. I have also perused the aforesaid emails relied upon by Viceroy. There is nothing to suggest in those emails that Smiths has made any admission with

regard to the alleged outstanding dues of Viceroy. Therefore, I am unable to accept the submission of Viceroy that the Arbitrator has ignored any material evidence while rendering the Impugned Award.

21. Next, it is contended on behalf of Viceroy that the Impugned Award is against public policy as it is self-contradictory in nature. It is submitted that on one hand the Arbitrator has rejected the contention of Smiths that Viceroy has overcharged Smiths in violation of the Agreement, on the other hand, the counter claim of Viceroy with regard to outstanding amount has also been rejected.

22. The aforesaid finding of the Arbitrator and the rationale behind the same is contained in paragraph 98 of the Impugned Award, which is set out below:

> *"98. Admittedly, under the said Agreement, the Respondent could only charge the Claimant as per Annexure II, i.e. the A bare perusal of the same, as demonstrated in 54 above, does appear to support the Claimant's submission that the Respondent, under the said Agreement, could only charge the Claimant based on the following formula of Annexure II, namely: Basic Monthly Salary plus benefits (restricted to PF, Insurance/ Hospitalization & other allowances and benefits if any) which would amount to the "Cost of Employee", on which the Respondent was entitled to charge a 16% Administrative Fee, and finally, a service tax of 10% was to be added.* ***A perusal of the Respondent's Balance Sheets, Employee Wage Register, Staff Salary statements, would demonstrate that the Respondent has paid its employees and an amount of Rs.12,67,68,290.01/- towards salary and an amount of Rs.1,05,94,241/- towards benefits (EPF, HRA, ESI, Insurance, conveyance, medical expenses etc.), (which are the allowable heads of payment under Annexure II). Further, according to the Wage Register, the Respondent has paid its employees an amount of Rs.12,11,36,562.32/-. The 'Staff Salary Statements' of the Respondent, contain two sections, one untitled section, and a section on "Other Reimbursements." The amounts under the untitled section broadly match those of the Wage Register, and RW-1, in her answer to question no.194 had admitted that the said 'other reimbursements' were not reflected in the Wage Register because the latter only included Basic Salary, HRA, DA, TDS, ESI, and PF. RW-1 has further explained the said 'other reimbursements' from its balance***

sheets as 'Expenditure', 'Repair and Maintenance expenses, Travelling, Boarding and Lodging Expenses'. It is the case of the Claimant that the said heads are not permissible under Annexure II, while the Respondent maintains that Annexure II had been subsequently amended. This submission of the Respondent shall be dealt with subsequently. Suffice to say, that even if the entire amount stated to have been paid to the employees as per the said Staff Salary Statements were to be taken, it would total approximately Rs. 20 crores 53 lakhs over the 5 year period, whereas the Claimant has admittedly already paid the Respondent (as per the Respondent's own Counter Claim), a sum of Rs. 89 crores odd. Thus, even though the Claimant was unable to specifically prove overcharging under the said Agreement, there is no question of the Respondent being entitled to the allegedly unbilled amount of Rs. 14 odd crores, either."

[emphasis supplied]

23. The Arbitrator has come to the aforesaid conclusion on the basis of a perusal of Viceroy's Balance Sheets, Employee Wage Register and Staff Salary Statements, which were produced by Viceroy in compliance of the order dated 9th January 2018.

24. Pertinently, a perusal of the Impugned Award shows that the Arbitrator has not outrightly rejected Smiths' claim of overcharging in the arbitration proceedings, but has held that Smiths was not able to specifically prove the quantum of overcharging by Viceroy. In this regard, paragraph 71 of the Impugned Award is extracted below:

"71. Therefore, it is amply clear that the Claimant had the opportunity to lead positive evidence, documentary and otherwise, to demonstrate the alleged overcharging in violation of Annexure II and Clause 4 of the Outsourcing Agreement, but has failed to do so. All the Claimant is relying on are the documents that the Respondent was directed to produce vide Order dated 09.01.2018. In this regard, admittedly, the production of the same was allowed only for the purpose of the Claimant to defeat the Respondent's Counter Claim, and in fact, the Claimant itself has submitted during the proceedings, that the said documents (i.e. Balance Sheets, Employee Wage Register, Staff Salary Slips, etc.) were required for it to answer the Respondent's Counter Claim. Even otherwise, the Claimant, even when relying on the said documents to attempt to prove its claim, has not been able to establish exactly what was overcharged by the Respondent and against which invoices, neither during its own evidence, nor during

> *the final arguments.* ***In the absence of any such demonstration by the Claimant, while it may well be that there may have been overcharging over and above the agreed terms of Clause 4/ Annexure II of the Outsourcing Agreement, the quantum of the same, has neither been proved by the Claimant, nor can the same be ascertained during the present proceedings atleast.****"*
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> [emphasis supplied]

25. In my view, therefore, there is no contradiction in the aforesaid finding and the Arbitrator has given sufficient reasoning in support of this finding. Therefore, this Court is not persuaded to hold that the Impugned Award is against public policy.

26. The next contention of Viceroy is that the Impugned Award is patently illegal because the Arbitral Tribunal refused to take vital documents on record. It is contended that Viceroy sought to place on record the addendum to the Agreement, amended Annexure-II as well as the correspondence exchanged between the parties leading to the addendum, which were vital for the adjudication of the disputes. However, the Arbitrator refused to take the aforesaid emails on record.

27. The Arbitrator, *vide* order dated 9th January 2018, rejected the application filed by Viceroy to place additional documents on record on the ground that it was filed belatedly after the evidence of Smiths (claimant) had been completed. It was further observed that no reference to the aforesaid emails was made in the statement of defence filed by Viceroy and nor were they put to the Smiths' (claimant's) witness during cross examination. Nevertheless, the Arbitrator did take on record the amended Annexure II filed by Viceroy.

28. If the aforesaid correspondence exchanged between the parties were so vital in adjudicating Viceroy's counter claim, at the very least, Viceroy should

have made a reference to those communications in its common statement of defence and counter claim. Hence, the decision of the Arbitrator in refusing to take the said documents on record cannot be termed as being perverse or patently illegal.

29. Though the Arbitrator has expressed doubts over the validity of the said amendment as not being in terms of the Agreement *(reference may be made to paragraph 105 of the Impugned Award)*, the Arbitrator has taken the amended Annexure-II on record. The relevant observations of the Arbitral Tribunal regarding the amended Annexure-II in the Impugned Award are set out below:

> *"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."*
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> [emphasis supplied]

30. The Arbitrator has held that Viceroy failed to file any document or lead any evidence to prove that payment to its employees under the head of 'other reimbursements' in the Staff Salary Statements which included expenses such as repair and maintenance expenses, travelling, boarding and lodging expenses was even under the amended Annexure II. It was further held that

even if it is assumed that Viceroy paid the entire amount to its employees as per its Staff Salary Statements, it has failed to produce any cogent evidence to claim the outstanding amount under the Agreement.

31. It is settled position of law that even if there is a possibility of a more plausible conclusion, the courts while exercising jurisdiction under Section 34 of the Act cannot substitute their own conclusion with that of the Arbitral Tribunal unless there is some material to show that the findings of the Arbitral Tribunal, on the face of it, are outcome of perversity.

32. In my opinion, the Arbitrator has given due consideration to the material available on record in the arbitration proceedings, including Viceroy's ledger of accounts and the invoices raised by Viceroy, to hold that Viceroy has not been able to establish its counter claim with respect to the alleged outstanding dues. I do not find any infirmity or perversity in the same.

33. Next, it is contended on behalf of Viceroy that the Impugned Award completely disregards the material evidence on record with regard to Viceroy's claim on non-solicitation. It is submitted that Viceroy had placed on record emails dated 23rd August 2015 and 25th August 2015 from the employees of Viceroy stating that they were being offered jobs by ANI Instruments Private Limited (hereinafter '***ANI***'). Yet, the Arbitrator held that Viceroy has not led any evidence in this regard.

34. Dealing with this issue, the Arbitrator has held that ANI, the company which has allegedly poached Viceroy's employees, has been in existence since 1984 and, therefore, rejected the contention of Viceroy that ANI was incorporated by Viceroy.

35. The Arbitrator also held that Viceroy has failed to prove that the alleged poaching by ANI occurred during the subsistence of the Agreement, nor has

Viceroy been able to prove that the poaching was done at the behest or involvement of Smiths.

36. I have perused the two emails dated 23rd August 2015 and 25th August 2015 relied upon by Viceroy. There is nothing in these letters to show the involvement of Smiths. Further, these emails suggest that ANI was offering jobs to employees of Viceroy after the termination of the contract of Viceroy with Smiths on 11th August, 2015. Therefore, there is no infirmity in the findings of the Arbitrator rejecting the said counter claim.

37. Finally, Viceroy challenges the award on the ground that the claim of Viceroy for notional damages has been rejected without any basis. It is stated that Viceroy suffered loss of reputation on account of unprofessional conduct by Smiths at the time of the expiry of the Agreement.

38. The Arbitrator has rejected this counter claim on the ground that Viceroy has neither led any arguments nor demonstrated any loss of reputation by the actions of Smiths. Even before this Court, Viceroy has not placed on record any material to show that it suffered a loss of reputation on account of actions of Smiths or that Viceroy has suffered any loss on account of such acts. Therefore, I am not inclined to accept the submission of Viceroy that the Arbitrator has unreasonably rejected Viceroy's counter claim for notional damages.

39. As far as counter claim (ii) is concerned, a bare perusal of paragraph 44 of the Impugned Award shows that the same was addressed by the Arbitrator who rejected the said counter claim as non-maintainable. In any event, as rightly pointed out by counsel for Smiths, arguments were not advanced on behalf of Viceroy with regard to the said counter claim before this Court.

40. In view of the discussion above, this Court is of the view that the findings of Sole Arbitrator in the Impugned Award are judicious, well-reasoned and based on cogent material and evidence on record. Therefore, no grounds for any interreference with the Impugned Award have been made out on behalf of Viceroy in terms of Section 34 of the Act.

41. The petition is accordingly dismissed.

AMIT BANSAL
(JUDGE)

OCTOBER 17, 2025
Vivek/-