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

Judgment reserved on: 24.09.2026
Judgment pronounced on:23.11.2026

\# **CNR No. DLHC013591952017**

\+ O.M.P. (COMM) 361/2017 & I.A. 11448/2017

DELHI DEVELOPMENT AUTHORITY .....Petitioner

Through: Ms. Chand Chopra and Mr. Punishk Handa, Advocates for Mr. Sanjay Katyal, Standing Counsel.

versus

B.G.SHIRKE CONSTRUCTIONS TECHNOLOGY PRIVATE LIMITED .....Respondent

Through: Mr. Rajiv Kapoor and Mr. Ashit Kapoor, Advocates with Mr. Ashok Patil in person.

O.M.P. (COMM) 362/2017 & I.A. 11451/2017

DELHI DEVELOPMENT AUTHORITY .....Petitioner

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versus

B.G.SHIRKE CONSTRUCTIONS TECHNOLOGY PRIVATE LIMITED .....Respondent

Through: Mr. Rajiv Kapoor and Mr. Ashit Kapoor, Advocates with Mr. Ashok Patil in person.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 23.11.2026

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1. The present petitions under Section 34 of the Arbitration and Conciliation Act, 1996[1] have been filed by the Delhi Development Authority[2] challenging two Arbitral Awards, both dated 22.05.2017 passed by the Arbitral Tribunal, comprising Shri S.R. Pandey, Presiding Arbitrator, Shri P.S. Chadha, Arbitrator, and Shri K.K. Varma, Arbitrator, in Arbitration Case Nos. ARB/SRP/201 and ARB/SRP/202 respectively. Since both of these petitions arise out of similar Agreements and involve the same dispute regarding the use of, and payment for, excess cement in M-30 grade concrete, they are being disposed of by this common judgment.

FACTUAL MATRIX

2. It emerges from the records that DDA invited tenders for the construction of 24,660 LIG and 7,130 EWS houses in Narela and Rohini, Delhi, using prefabricated technology, with RCC columns, beams and slabs. The work was divided into two groups. Group-I comprised the construction of 11,566 LIG and 2,275 EWS houses, along with internal development and electrification works in Sectors G-7 and G-8, Narela, and Sectors 34 and 35, Rohini. Group-II comprised the construction of 13,094 LIG and 4,855 EWS houses, along with internal development and electrification works in Sectors G-2, G-6, G-3 and G-4, Narela.

3. DDA issued two separate letters of award, both dated 18.04.2013 in favour of the Respondent for Group-I and Group-II works, bearing Nos. F-56(28)/A/c's/ND-12/DDA/2011-12/264 and F-

[1] "Act" hereinafter
[2] "DDA/Petitioner" hereinafter

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56(28)/A/c's/ND-12/DDA/2011-12/265 respectively. The Respondent accepted the letters of award by letter dated 23.04.2013, and the agreements for the respective works were executed on 25.04.2013[3].

4. The Agreement had clauses relating to the specifications to be followed in execution of the works and also contained the quantity of cement to be used in RCC. Clause 8 prescribed the order of preference in the event of any inconsistency between the contractual documents.

5. Insofar as cement consumption is concerned, Clause 9.1.2 of the Agreement provided that the minimum cement content would be as prescribed under the CPWD Specifications, 2009[4], and IS:456. Clause 9.1.3, however, stipulated a minimum cement content of 360 kg per cubic metre for "any grade of RCC". It further specified quantities of 410 kg and 428 kg per cubic metre for M-25 and M-35 grade concrete, respectively. Additionally, in respect to M-25 and M-35, the terms provided that if the actual quantities used fell below the benchmark specified in the Agreement, the Petitioner would be entitled to effect recovery from the Respondent.

6. Apparently, CPWD Specifications prescribed a minimum cement content of 330 kg and a maximum of 500 kg per cubic metre, with the actual quantity to be determined through the design mix. Clause 9.1.3, however, prescribed a minimum of 360 kg per cubic metre for any grade of RCC. Thus, the Agreement contained two conflicting minimum quantities, and this discrepancy gave rise to the dispute between the parties.

[3] "Agreement" hereinafter
[4] "CPWD Specifications" hereinafter

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7. It also emerges from the records that the aforesaid issue was also raised by the Respondent at the pre-bid stage. During the first pre-bid meeting, the Respondent pointed out the apparent conflict between Clauses 9.1.2 and 9.1.3 and sought clarification as to whether cement consumption would be governed by the CPWD Specifications or by the higher quantities mentioned in Clause 9.1.3. DDA responded that the "NIT provision shall prevail". The Respondent raised the same issue in the second pre-bid meeting, but the response remained the same by DDA.

8. During execution of the works, DDA instructed the Respondent to prepare design mixes with a cement content higher than 330 kg per cubic metre. According to the Respondent, its quoted rates were based on a cement content of 330 kg per cubic metre, whereas it was technically forced to use a higher quantity of cement pursuant to the DDA's directions. The Respondent, therefore, claimed that it had incurred additional expenditure on account of the higher cement consumption. However, DDA rejected the claim and declined to make payment.

9. The dispute was therefore referred to arbitration. The Respondent invoked arbitration by letter dated 23.01.2015, and the Arbitral Tribunal was constituted on 28.06.2015. Before the Tribunal, the Respondent claimed additional payment for excess cement consumption in the works up to 30.06.2015 and also sought a declaration that it would be entitled to payment for any further excess cement used until completion of the works. It also claimed pre-

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reference, pendente lite and future interest, along with the costs of arbitration.

10. DDA resisted the claim in its entirety. On merits, it contended that the parties were bound by the terms of the Agreement, which prescribed a minimum cement content of 360 kg per cubic metre, and that this requirement could not be displaced by the CPWD Specifications. The DDA also raised a preliminary objection to the maintainability of the arbitration proceedings, relying on Clause 8.2 of the Conditions of Contract. It was its case that, under the said clause, the Conditions of Contract were to prevail over other clauses, terms and conditions of the contract, and any alleged discrepancy therein could be resolved only by the Work Advisory Board. On this basis, the DDA contended that the Arbitral Tribunal lacked jurisdiction to adjudicate the claims or pass an award thereon.

11. By way of the impugned Awards, the Arbitral Tribunal rejected the DDA's objection to its jurisdiction, holding that the dispute was arbitrable and that the requirement to approach the Work Advisory Board did not bar reference of the dispute to arbitration. The Tribunal thereafter proceeded to examine the dispute on merits.

12. Upon considering Clauses 9.1.2 and 9.1.3 and the pre-contractual correspondence between the parties, the Tribunal found that there was a contradiction between the two provisions. Therefore, applying the principle of *contra proferentem*, it held that the minimum cement content prescribed under the CPWD Specifications, i.e., 330 kg per cubic metre, would apply to all grades of RCC. The Tribunal

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further held that Clause 9.1.3 did not prescribe a specific recovery threshold for M-30 grade concrete and, accordingly, directed the DDA to make payment to the Respondent for cement consumed in excess of 330 kg per cubic metre.

13. Accordingly, the Tribunal awarded Rs. 3,16,78,614 for the alleged excess cement consumption in M-30 grade concrete up to 30.06.2015. It also directed DDA to refund the amounts already recovered towards cement consumption in M-30 grade concrete and to pay the Respondent at the rate of Rs. 6 per kg for excess cement consumed from 01.07.2015 onwards. The relevant directions in the impugned Awards are reproduced below:

> *"23.7 Award:*
> *On the basis of findings above, AT makes the award as under.*
> *a) A sum of Rs.3,16,78,614 is awarded on account of use of excess cement for M30 grade concrete for the work done up to 30.06.2015.*
> *b) The amount already recovered on account of use of cement less than 410 kg per cum for M30 grade concrete shall be refunded by the respondent to the claimant.*
> *c) Respondent shall make payment to the claimant for use of cement in excess of 330 kg per cum for M30 grade concrete for the work done from 01.07.2015 onwards, at the rate of Rs.6.00 per kg.*
> *d) Claim for excess use of cement for M25 grade concrete is rejected."*

PROCEEDINGS BEFORE THIS COURT

14. Learned Counsel for the Petitioner submitted that the Arbitral Tribunal had fundamentally misread the contractual provisions, particularly Clause 9.1.3, which expressly stipulated that the minimum quantity of cement for "any grade of RCC" would be 360 kg per cubic

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metre, and that the subsequent reference to M-25 and M-35 grade concrete for the purposes of recovery did not dilute the opening stipulation, which was equally applicable to M-30 grade concrete.

15. It was further submitted that Clause 9.1.2 could not be read in isolation, as the reference to the CPWD Specifications merely incorporated the technical specifications governing execution of the work and did not prevent the parties from prescribing a higher minimum cement content under the Agreement, particularly when paragraphs 5.8.4.1 and 5.8.4.2 of the CPWD Specifications prescribed a permissible range of 330 to 500 kg per cubic metre within which the cement content was to be determined through the design mix.

16. Learned Counsel further submitted that the Respondent had raised queries regarding cement consumption in the pre-bid meetings, and was informed on both occasions that the "NIT provision shall prevail". Despite this, the Respondent proceeded with the bid and executed the Agreement and therefore, the Respondent could not subsequently claim that the cement requirement amounted to an employer-imposed variation entitling it to additional payment.

17. It was further submitted that the Tribunal had awarded compensation without identifying any contractual provision conferring such entitlement, recording a breach of the Agreement by DDA, or determining any loss arising from such breach under Section 73 of the Indian Contract Act, 1872, and that an arbitral tribunal, being a creature of the contract, could neither travel beyond its terms nor substitute, supplement or modify the parties' bargain. Reliance in this

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regard was placed on ***Associated Engineering Co. v. Government of Andhra Pradesh***[5]***, Rajasthan State Mines & Minerals Ltd. v. Eastern Engineering Enterprises***[6]***, DDA v. R.S. Sharma and Co.***[7]***, Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum***[8]***, Pulin Comtrade Ltd. v. Handicrafts & Handlooms Exports Corporation of India Ltd.***[9]***, Jindal Rail Infrastructure Ltd. v. Union of India***[10]***, Technology Information Forecasting & Assessment Council v. Strategic Engineering (P) Ltd***[11] **and** ***Export Credit Guarantee Corporation of India Ltd. v. Garg Sons International***[12]***, Galaxy Transport Agencies v. New J.K. Roadways***[13]**, **and** ***Agmatel India (P) Ltd. v. Resoursys Telecom***[14]**.**

18. Learned Counsel further contended that the principle of *contra proferentem* had been wrongly applied, as the contractual provisions, when read together, disclosed no ambiguity warranting recourse to that rule, and that the tendering authority's interpretation of its own tender conditions ought to be given due weight, particularly where the issue had been raised by the Respondent before submission of its bid and answered by DDA.

19. *Per contra*, learned Counsel for the Respondent submitted that the Petitioner was seeking to raise a new ground by contending that the AT could not have granted anything for the quantity of cement to

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[5] **(1991) 4 SCC 93**
[6] **(1999) 9 SCC 283**
[7] **(2008) 13 SCC 80**
[8] **(2022) 4 SCC 463**
[9] **2024 SCC OnLine Del 5630**
[10] **2024 SCC OnLine Del 3065**
[11] **2025 SCC OnLine Del 9486**
[12] **(2014) 1 SCC 686**
[13] **(2021) 16 SCC 808**

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be used for Concrete grade of M-30, although no such objection had been raised before the Arbitral Tribunal. It was submitted that the Tribunal had considered the claims for both M-25 and M-30 concrete, rejected the claim relating to M-25, and allowed only a partial claim in respect of M-30, as the Agreement did not prescribe for any recovery threshold for M-30 grade.

20. It was also submitted that the Respondent had specifically raised the discrepancy between Clauses 9.1.2 and 9.1.3 during both pre-bid meetings, but the DDA had failed to clarify the same. On the contrary, the DDA had itself directed the Respondent to prepare a design mix with a cement content of 410 kg per cubic metre. The Respondent could not, therefore, be denied payment for the additional cement consumed pursuant to the Petitioner's own directions.

21. Learned Counsel also submitted that the Tribunal had considered the rival interpretations and, upon finding an inconsistency between Clauses 9.1.2 and 9.1.3, held that Clause 9.1.2 would prevail. It was contended that this was an interpretation of the contractual provisions and not a rewriting of the Agreement as the Tribunal had also dealt with the issue of recovery under Clause 9.1.3 and had allowed the Respondent's claim only to the extent it found justified, while permitting recovery in respect of M-30 concrete. It was, therefore, submitted that the Tribunal's interpretation disclosed no patent illegality or other ground warranting interference under Section 34 of the Act.

[14] **(2022) 5 SCC 362**

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22. In rejoinder, learned Counsel for DDA submitted that the Tribunal had misread Clause 9.1.2 by treating the reference to the CPWD Specifications as prescribing a minimum cement content of 330 kg per cubic metre for all grades. It was vehemently argued that Clause 9.1.2 had to be read along with Clause 9.1.3, which specifically prescribed the minimum cement content and could not be ignored by relying on the general provisions of the CPWD Specifications.

23. Learned Counsel further submitted that the Respondent could not rely on *quantum meruit* principle under Section 70 of the Indian Contract Act, 1872, as no such plea had been raised before the Tribunal and the Award was not based on it. It was further reiterated that Section 73 could also not come to the Respondent's aid, as a claim for damages would require proof of breach of contract, which could not be assumed merely because additional cement had been consumed in the works.

ANALYSIS

24. The first principle to be kept in mind by this Court while considering the present petitions is that this Court does not exercise appellate jurisdiction over an arbitral award. While exercising jurisdiction under Section 34 of the Act, the Court is not required to examine whether it would have arrived at the same conclusion as the Arbitral Tribunal. The Arbitral Tribunal is entitled to interpret the terms of the contract, and its award cannot be interfered with merely because another interpretation is possible.

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25. This does not, however, mean that an award is immune from interference where its findings run contrary to the express terms of the contract. In ***South East Asia Marine Engg. & Constructions Ltd. (SEAMEC LTD.) v. Oil India Ltd.***[15], the Supreme Court set aside the award after finding that the interpretation adopted by the Tribunal could not be sustained on a reading of the contract as a whole. The Supreme Court reiterated that a written contract must be construed as a whole and its provisions must be read harmoniously, so far as possible. It further held that an interpretation which defeats the express wording of the contract cannot be regarded as a possible interpretation. The relevant observations are as follows:

> *"28. In this context, the interpretation of Clause 23 of the Contract by the Arbitral Tribunal, to provide a wide interpretation cannot be accepted, as the thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. In the case at hand, this basic rule was ignored by the Tribunal while interpreting the clause.*
>
> *29. The contract was entered into between the parties in furtherance of a tender issued by the Respondent herein. After considering the tender bids, the Appellant issued a Letter of Intent. In furtherance of the Letter of Intent, the contract (Contract No. CCO/FC/0040/95) was for drilling oil wells and auxiliary operations. It is important to note that the contract price was payable to the 'contractor' for full and proper performance of its contractual obligations. Further, Clauses 14.7 and 14.11 of the Contract states that the rates, terms and conditions were to be in force until the completion or abandonment of the last well being drilled.*
>
> *30. From the aforesaid discussion, it can be said that the contract was based on a fixed rate. The party, before entering the tender process, entered the contract after mitigating the risk of such an increase. If the purpose of the tender was to limit the risks of price*

[15] **(2020) 5 SCC 164**

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variations, then the interpretation placed by the Arbitral Tribunal cannot be said to be possible one, as it would completely defeat the explicit wordings and purpose of the contract. ***There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into margin, while bidding in the tender.*** *Such price fluctuations cannot be brought under Clause 23 unless specific language points to the inclusion.*

31. The interpretation of the Arbitral Tribunal to expand the meaning of Clause 23 to include change in rate of HSD is not a possible interpretation of this contract, as the appellant did not introduce any evidence which proves the same."

Emphasis supplied

26. A similar principle was reiterated by this Court in ***GMR Ambala Chandigarh Expressways Pvt. Ltd. v. National Highways Authority of India***[16], wherein it was held that neither a Court nor an Arbitral Tribunal can add or subtract from the terms of a commercial contract, or introduce considerations which do not find place in the agreement. The contract must be construed in accordance with the bargain struck between the parties. The relevant observations are as follows:

" 27.1.2 It is well settled that, in interpreting contracts, especially commercial contracts, the Court cannot add to or subtract from covenants of or considerations in the contracts on its own accord. Specifications and stipulations, which are not to be found in commercial contracts, cannot be read into such contracts by a Court - or, for that matter, by an Arbitral Tribunal. The principle governing interpretation of the terms of commercial contracts is that the contractual terms are to be treated as manifesting, in their entirety, the intent of the parties to the contract. *There is a presumption, in law, that commercial contracts, especially contracts involving large projects, are executed after minutest and most precise circumspection. Every term of such a contract is expected to reflect the intent of the parties. A consideration which does not find place in such a contract, therefore, it is expected, was a consideration which the parties did not intend to be part thereof. A Court or an Arbitral Tribunal cannot presume the existence of*

[16] **O.M.P. (COMM) 480/2020**

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such a consideration. Casus omissus cannot be provided by a Court or by an Arbitral Tribunal, into the covenants in a commercial contract.

Emphasis supplied

27. Thus, the permissible latitude in construing a contract cannot be stretched to the point of rewriting it. The inquiry before this Court, while exercising jurisdiction under Section 34 of the Act, is limited to examining whether the interpretation adopted by the Tribunal finds reasonable sustenance in the contractual language and whether the relief granted is borne out by the Agreement or is otherwise supported by an independent legal entitlement.

28. It is against this backdrop that the controversy concerning Clauses 9.1.2 and 9.1.3 of the Agreement falls for consideration before this Court. After considering the record, there is no doubt that there is an apparent tension between Clauses 9.1.2 and 9.1.3 of the Agreement. Clause 9.1.2 requires the minimum cement content to be governed by the CPWD Specifications and IS 456, which prescribe a minimum cement content of 330 kg per cubic metre and a maximum of 500 kg per cubic metre. Clause 9.1.3, on the other hand, stipulates that the minimum quantity of cement for "any grade of RCC" shall be 360 kg per cubic metre. Therefore, the apparent conflict on the face of the Agreement is as to whether the minimum quantity of cement for RCC ought to be 330kg or 360kg.

29. The Respondent had raised queries regarding this apparent inconsistency even at the pre-bid stage, to which the DDA had responded that the "NIT provision shall prevail". This shows that the

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issue of cement content was not raised for the first time after execution of the contract as an afterthought. In these circumstances, the Tribunal was justified in examining whether the two clauses were at variance with each other and/or inconsistent. The relevant findings of the Tribunal are reproduced below:

> *"23.6.1 The contention of the respondent that 'even if any ambiguity existed, the claimant could not invoke the arbitration clause because as per clause 6.1. (Page 696 of the agreement), the ambiguity in regard to interpretation of specification(s), the decision of the Executive Engineer shall be final and binding' is held as misplaced and misconceived as there is no dispute that the Design Mix of the concrete of various grades as well as the work was to be carried out as per CPWD Specifications 2009 nor there is any dispute over the interpretation of CPWD Specifications 2009 in regard to minimum cement content which, as specified in para 5.8.4.1 of CPWD Specifications 2009 is 330 Kg per cum for all grades of concrete. The dispute involves three issues (i) Whether the minimum cement content should be taken as 330 Kg per cum for all grades of concrete as per clause 9.1.2 which refers to CPWD Specifications 2009 or 360 Kg per cum as mentioned in clause 9.1.3 (ii) Whether the claimant is liable for recovery if cement used is less than 410 Kg per cum for M25 grade concrete and less than 428 Kg per cum for M35 grade concrete as mentioned in clause 9.1.3 and (iii) Whether the claimant is entitled to be compensated for use of cement in excess of 330 Kg per cum as claimed by the claimant. The contention of the respondent is therefore, rejected and it is held that the claim is arbitrable.*
>
> *23.6.2 As regards the issue of contra proferentum raised by the claimant and objected by the respondent, the AT is of the view that there is clear contradiction between clause 9.1.2 and 9.1.3 in regard to minimum cement content as according to clause 9.1.2, the minimum cement content shall be. as per CPWD Specifications 2009 which means 330 Kg per cum for all grades of concrete as specified in para 5.8.4.1 of the said Specifications. whereas, in clause 9.1.3, it has been mentioned that minimum cement content for any grade of concrete will be 360 Kg per cum. As the tender document was drafted by the respondent, the contradictory provision has to be held against the respondent. Accordingly, para 9.1.2 would prevail, that is, the minimum cement content has to be taken as 330 Kg per cum for all grades of concrete as specified in CPWD Specifications 2009. In fact, the respondent too, has admitted this position as stated in para24.5 (e) hereinabove, albeit*

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with a qualifying statement that if the work had been executed by the claimant with 330 Kg of cement per cum, the same could not be rejected but given the provision of clause 9.1.3, the claimant cannot say that nothing would be deducted if it uses the cement below 410 Kg per cum for M25 grade concrete and below 428 kg per cum for M35 grade concrete. AT is therefore of the view that unless specified otherwise, the claimant's quoted price has to be considered as based on use of cement at the rate of 330 kg per cum for all grades of concrete.

23.6.3 As regards the provision as per clause 9.1.3 that recovery shall be made in case cement used is less than 410 kg per cum for M25 grade and less than 428 kg per cum for M-35 grade concrete, AT is of the view that this stipulation is independent of the requirement of minimum quantity of cement to be used for any grade of concrete and there is no contradiction in this regard as contended by the claimant. In fact, it is obvious from the query raised by the claimant in the second pre-bid meeting as reproduced, in para19.5 supra, that the claimant was conscious of the fact that irrespective of minimum cement content specified in clause 9.1.2 or 9.1.3, recovery would be made if the cement used is less than 410 kg per cum for M25 grade concrete and less than 428 Kg per cum for M35 grade concrete. AT is therefore of the view that the claimant must have quoted its price accordingly. it is therefore, held that the claimant is not entitled to be compensated for using cement in excess of 330 kg per cum for M25 and M35 grade concrete, whereas, the respondent would be well within its rights to make recovery if cement used is less than 410 kg per cum for M25 grade concrete and less than 428 Kg per cum for M35 grade concrete.

23.6.4 It is also held that in view of the respondent's rebuttal vide letter dated 20.09.2014 (Ex. C-7), what had been stated in para4 by the claimant in its letter dated 03.09.2014 (Ex. C-6) cannot be construed as acceptance of its contention by the respondent Engineer Member that it had quoted its price for both M25 and M35 grade concrete considering clause 9.1.2 and hence it is entitled to be compensated for use of cement in excess of 330 Kg per cum for M25 and M35 grade concrete.

23.6.5 The claim relates to use of cement in excess of 330 Kg per cum for M25 and M30 grade concrete which has been admittedly used as per instruction of the respondent.

23.6.6 As per finding recorded in para 23.6.3 hereinabove, the claimant is not entitled to be compensated for using cement in excess of 330 Kg per cum for M25 and M35 grade concrete. Hence, the component of the claim relating to use of cement in

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excess of 330 Kg per cum for M25 grade concrete is held as untenable.

23.6.7 As regards the component of the claim relating to use of cement in excess of 330 Kg per cum for M30 grade concrete, it is noticed that clause 9.1.3 on which the respondent has relied to deny the claim, is silent on M3U grade concrete. Hence, no recovery is to be made if the cement used for M30 grade concrete is less than 428 kg per cum or even less than 410 kg per cum. Further to this, the AT has recorded a finding in para23.6.2 hereinabove that unless specified otherwise, the claimant's quoted price has to be considered as based on the use of cement at the rate of 330 kg per cum for all grades of concrete. As unlike M25 and M35 grade concrete, nothing otherwise has been specified in clause 9.1.3 or anywhere else in the agreement in regard to M30 grade concrete, it is held that the claimant is entitled to be compensated for use of cement in excess of 330 Kg per cum for M30 grade concrete as the same has been admittedly used as per instruction of the respondent.

23.6.8 The claim as stated in para 23.3 (a) hereinabove is on account of use of cement in excess of 330 kg per cum for both M25 and M30 grade concrete for the work done up to 30.06.2015. As held in para 23.6.6 hereinabove, the component of the claim relating to use of cement in excess of 330 kg per cum for M25 grade concrete is not tenable. However, as regards use of cement in excess of 330 kg per cum for M30 grade concrete, it has been held in para 23.6.7 above that the claimant is entitled to be compensated for use of cement in excess of 330 kg per cum. The amount payable to the claimant on this account is worked out in the paras that follow.

23.6.9 Admittedly, for the M30 grade concrete in the RCC work, executed up to 30.06.2015, the cement has been used at the rate of 410 Kg per cum, that is, 80 Kg in excess of 330 Kg per cum.

24.6.10 As per the SOC (ref. page 22), the claimant has raised its claim for cement used in excess of 330 Kg per cum, that is, 80 Kg per cum, on the basis that a quantity of 76195.584 cum of M30 grade concrete has been used in ACC work executed up to 30.06.2015.

24.6.11 As per directions of the AT, the respondent, vide letter dated 04.06.2016 filed a statement jointly signed by the parties, which, inter alia, shows quantity of M30 grade concrete used in various RCC members up to 30.06.2015 and as per this statement, the quantity of M30 grade concrete used up to 30.06.2015 is

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69,827.84 cum. Based on this quantity, the claimant filed its modified claim as per its letter dated 09.06.2016.

24.6.12 The same quantity (i.e. 69,827.84 cum) as mentioned in para above was indicated in the statement filed by the respondent as per letter dated 02.09.2016 and the claimant reiterated its modified claim on the basis of this quantity as per its letter dated 21.09.2016.

24.6.13 The claimant, as per its written synopsis dated 25.11.2016 (ref. page 12), which is its final submission, has amended the claim taking the quantity of M30 grade concrete as 65,997.11 cum. Hence, the quantity of M30 grade concrete involving excess quantity of cement which would qualify for payment has to be taken as 65,997.11 cum. Accordingly, the quantity of cement used in excess of 330 Kg per cum for which the claimant is entitled to be paid = 52,79,769 Kg (=65,997.11 X 80).

24.6.14 The rate claimed for excess use of cement is Rs.6.62 per kg. As per clause 1.12 of special conditions (page 577), recovery rate for less use of cement is Rs.6000 per MT (Rs.6.00 per kg). The AT is of the view that the rate for payment for excess use of cement should be the same as recovery rate for less use of cement, that is, Rs.6.00 per kg. Accordingly. the amount payable for the quantity of 52,79,769 kg as stated in para 24.6.13 above = 52,79,769 x 6 = Rs.3,16,78,614."

30. Since the primary contention of the Petitioner is that there was no contractual inconsistency, both clauses are reproduced hereinbelow for reference:

"9. CONDITIONS FOR RCC WORK:-

9.1 The following special conditions for RCC work shall be followed:-

9.1.1 The cement concrete mix design shall be got done by the contractor through approved organization/ testing labs mentioned in para 10.2.

9.1.2 The maximum water cement ratio and minimum cement content of various Grade concrete mix shall be as under:-

Grade of Mix	*Maxi. W/C Ratio*	*Mini. Cement Content (in Kg.)*
M-25	*0.50*	***Minimum cement contents in Kg.***

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M-35	*0.45*	***shall be as per CPWD specification 2009 for cement, mortar, cement concrete and reinforce cement concrete work and IS:456 (latest.)***

However, in RCC works in piles minimum cement content shall be as per IS: 2911.

9.1.3 ***The minimum quantity of cement for any grade RCC will be 360 Kg Ordinary Portland Cement per cum.*** *In case cement used is more than 410 Kg. And 428 Kg per cum of M-25 and M-35 grade RCC respectively nothing extra shall be payable whereas recovery shall be effected, for cement is used less than above quantities i.e. 410 Kg and 428 Kg per cum of M-25 and M-35 grade RCC respectively at market rates to be decided by Engineer-in-Charge whose decision shall be final and binding on the contractor."*

Emphasis supplied

31. A careful reading of the said clauses indicates that Clause 9.1.2 provides that the minimum cement content for M-25 and M-35 grade concrete shall be governed by the CPWD Specifications and IS 456. The relevant CPWD Specifications prescribe a minimum of 330 kg and a maximum of 500 kg of cement per cubic metre. Clause 9.1.3, on the other hand, has two distinct components. The first prescribes a minimum quantity of 360 kg per cubic metre for "any grade of RCC". The second specifies the quantities of 410 kg and 428 kg per cubic metre for M-25 and M-35, respectively, for the purpose of determining recovery in case of deficient cement consumption.

32. The Tribunal considered these clauses and found an inconsistency between them as Clause 9.1.2 prescribed a minimum of 330 kg per cubic metre, whereas Clause 9.1.3 prescribed a minimum of 360 kg per cubic metre. Applying the principle of *contra*

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proferentem, the Tribunal held that the minimum cement content would be 330 kg per cubic metre for all grades.

33. It further treated the specific recovery thresholds for M-25 and M-35 as operating independently of the general minimum requirement and held that the respective thresholds of 410 kg and 428 kg per cubic metre would continue to apply, as the Respondent was aware of those conditions when submitting its bid. On this basis, the Tribunal rejected the Respondent's claim for additional payment for excess cement used in M-25 grade concrete.

34. In the considered view of this Court, the figure of 360 kg per cubic metre prescribed in Clause 9.1.3 falls within the range of 330 kg to 500 kg stipulated under the CPWD Specifications, and the two clauses could have been read harmoniously. The Tribunal, however, found those clauses inconsistent and applied the principle of *contra proferentem* in favour of the Respondent.

35. However, the mere fact that the clauses could have been read harmoniously does not render the Tribunal's interpretation unsustainable or implausible. The Tribunal considered the relevant provisions and took the view that they were ambiguous which is a plausible view after a reading of Clause 9.1.2 and 9.1.3. This court need not burden this judgment with a catena of authorities that have consistently held that the interpretation of a contract lies within the exclusive domain of the Arbitral Tribunal, and this Court, while exercising jurisdiction under Section 34 of the Act cannot interfere merely because another interpretation is more plausible. Accordingly,

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this Court finds no ground to interfere with the Tribunal's interpretation of Clauses 9.1.2 and 9.1.3 in relation to M-25 and M-35.

36. The position concerning M-30, however, stands on a different footing and warrants a separate examination by this Court. In respect of the M-30 grade as well, the Petitioner argued before the Tribunal that there was no ambiguity between the clauses. However, the Tribunal concluded that for the M-30 grade also, the minimum stipulated quantity is 330 kg per cubic metre, principally on the basis of its earlier finding that there is a contradiction between 9.1.2 and 9.1.3, and that since the Petitioner drafted the contract, it ought to be construed against the Petitioner. In arriving at this conclusion, the Tribunal confined its consideration solely to only these two clauses.

37. However, while arriving at this conclusion, the Tribunal overlooked the fact that Clause 9.1.2 specifically refers only to M-25 and M-35, whereas Clause 9.1.3 expressly stipulates a minimum cement content of 360 kg per cubic metre for "any grade of RCC", which necessarily includes M-30. The Tribunal failed to appreciate this distinction. Without examining the specific expression "any grade of RCC" used in Clause 9.1.3, it treated the divergence between the two clauses as an inconsistency even in relation to M-30, although Clause 9.1.2 does not refer to that grade at all.

38. In the absence of any ambiguity between Clauses 9.1.2 and 9.1.3 with respect to M-30, there was no occasion for the Tribunal to resort to the principle of *contra proferentem*. By doing so, the Arbitral Tribunal has, in effect, overridden the specific and unambiguous

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requirement of 360 kg per cubic metre expressly stipulated under Clause 9.1.3 for "any grade of RCC", which encompasses M-30. The conclusion that 330 kg per cubic metre is the minimum cement content for M-30 is, therefore, not a plausible interpretation of the contractual terms, as it fails to give effect to the express language of Clause 9.1.3. Without examining the M-30 grade separately, the Tribunal has travelled beyond the realms of contractual interpretation, ignored an express stipulation and arrived at a finding contrary to the terms of the Agreement as the Tribunal failed to address the specific requirement applicable to M-30 and mechanically extended its finding of inconsistency to that grade. Such a finding cannot be sustained and is accordingly set aside.

39. A separate question arises as to whether, even if 330 kg per cubic metre is taken to be the basis on which the Respondent quoted its rates, the Respondent was entitled to payment for every kilogram of cement used beyond the stipulated minimum quantity for M-30 concrete.

40. To examine the said issue, it is relevant to note that the Agreement was a lump-sum contract, under which the Respondent was entitled to the agreed contract price. The CPWD Specifications prescribe a range of 330 kg to 500 kg per cubic metre, and the requirement of 410 kg per cubic metre imposed by the Petitioner falls within that range. DDA has also raised before the learned Arbitrator that the use of the word 'minimum' in Clause 9.1.3 makes it abundantly clear that, under all circumstances, the cement content for all grades of concrete executed under the Agreement was required to be more than 360 kg per cubic metre, and any quantity below the said

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threshold was liable to be rejected. In such circumstances, the impugned Award does not explain how the requirement to use 410 kg per cubic metre, in itself, created a separate liability on the DDA.

41. The only relevant reasoning given by the Tribunal is that Clause 9.1.3 specifies recovery thresholds for M-25 and M-35 but does not prescribe a corresponding threshold for M-30 and therefore, the Respondent is entitled to the payment for the quantity admittedly used in excess. However, the absence of a specific threshold for M-30 may mean that the DDA could not recover amounts by applying the thresholds prescribed for M-25 and M-35 to M-30. It does not, however, follow that the Petitioner was liable to pay for every kilogram of cement consumed beyond 330 kg or 360 kg per cubic metre. It is to be noted that the absence of a right to recover an amount from the Contractor does not, by itself, create a corresponding right in the Contractor to claim payment.

42. This assumes significant importance in the present case because the Respondent's claim was not based on *quantum meruit*, nor was any such case was pleaded before the Tribunal. The Tribunal was, therefore, required to identify a contractual provision or some other legal basis for awarding additional payment but none of it was relied upon by the learned Tribunal.

43. Even if the additional cement was used on the Petitioner's instructions, the Tribunal was required to examine whether those instructions entitled the Respondent to additional payment under the Agreement or amounted to a variation of the contracted work carrying such an entitlement. The Award does not identify any such clause or

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explain how the additional consumption became separately payable under the lump-sum contract. It appears that, although not stated expressly, the Tribunal awarded the amount on the basis of fairness or equity which is impermissible in the absence of express authorisation by the parties under Section 28(2) of the Act.

44. The clauses in relation to the design mix also assumes importance. Paragraph 5.8.4.2 of the CPWD Specifications provides that the actual cement content for each grade of concrete shall be established through design mixes within the limits specified in paragraph 5.8.4.1. In the present case, the requirement to use 410 kg of cement per cubic metre fell within the prescribed range of 330 kg to 500 kg given in 5.8.4.1.

45. This further supports the Petitioner's case that its requirement was in accordance with the contract. If the Respondent failed to account for this requirement while quoting its rates, the Petitioner cannot be made liable for the Respondent's failure to do so. The Respondent was expected to exercise prudence while quoting its rates, keeping in mind that the Petitioner might instruct it to use cement beyond the prescribed minimum quantity, and to account for the same in its rates.

46. Further, the Tribunal also adopted the rate of Rs.6 per kg prescribed under Clause 1.12 for recovery in cases of deficient cement consumption and applied it to the excess quantity used in M-30. However, while the clause provides for recovery in specified circumstances, it does not stipulate that the same rate must be paid to

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the Contractor when consumption exceeds the prescribed quantity. The Tribunal has actually applied the recovery rate in reverse without identifying any contractual clause permitting it to do so.

47. It is a settled position of law that an Arbitral Tribunal is a creature of the contract and must operate strictly within its four corners. While the construction of contractual terms falls within the domain of the Tribunal, it cannot, under the guise of interpretation, rewrite the contract or invent a payment mechanism where none exists. It is well settled an award that ignores express contractual stipulations or re-writes the contract suffers from patent illegality under Section 34 of the Act. In the present case, the Tribunal imported a penalty/recovery rate meant solely for deficient consumption and converted it into a positive payment entitlement for excess consumption, and therefore, effectively rewritten the Agreement.

48. By adopting this approach, the Tribunal has also imposed a financial liability on the DDA without tracing it to any terms of the Agreement. In a lump-sum contract, the parties are bound by the bargain they have stuck. The mere fact that additional material was used, or that the Agreement does not provide for recovery in a particular contingency, cannot by itself justify imposing a reciprocal payment obligation upon the Petitioner, particularly when the Respondent's claim was not founded on *quantum meruit*.

49. Thus, even if the Tribunal's conclusion that 330 kg per cubic metre was the relevant baseline for M-30 is accepted, it does not by itself entitle the Respondent to additional payment. The Tribunal was

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required to establish both the Respondent's entitlement to payment for the excess cement and the basis for calculating that amount. Neither could be inferred merely from the DDA's instruction to use 410 kg per cubic metre or from the absence of a specific recovery threshold for M-30.

50. Furthermore, the DDA's hands were not tied by the stipulated baseline of 330 kg or 360 kg per cubic metre, as the contract permitted the cement content to be determined through a design mix within the prescribed limits, which included both these minimum quantities. The Tribunal nevertheless awarded payment at the rate of Rs. 6 per kg without recording a finding of any independent breach of the agreed contractual conditions.

51. Ultimately, the Tribunal awarded Rs. 3,16,78,614 towards excess cement consumed in M-30 grade concrete, without establishing any contractual basis for the same. Therefore, this no longer remains a case of merely adopting one plausible interpretation over another, rather, the Tribunal has travelled beyond the four corners of the Agreement and created an entitlement in favour of the Respondent that is devoid of any contractual or legal foundation. Such an approach renders the impugned Awards patently illegal to that extent, and the findings on this issue are accordingly set aside.

52. As far as consequential direction for payment towards M-30 cement consumption from 01.07.2015 onwards is concerned, once the underlying entitlement itself is found to be unsupported by the contractual terms or any other legal basis, such a consequential

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monetary direction cannot be sustained on the same reasoning and is also set aside.

53. In view of the findings recorded above, both the impugned Awards dated 22.05.2017 are set aside to the extent that they:

a) Hold that the minimum cement content for M-30 grade concrete is 330 kg per cubic metre;

b) award Rs.3,16,78,614/- to the Respondent towards alleged excess cement consumption in M-30 grade concrete up to 30.06.2015;

c) directs payment for excess cement consumption in M-30 grade concrete from 01.07.2015 onwards at Rs.6 per kilogram;

d) directs the refund of amounts recovered on account of cement consumption in M-30 grade concrete, to the extent that such refund is founded upon the same erroneous creation of a reciprocal payment entitlement; and

e) awards consequential interest on the aforesaid monetary/declaratory relief.

54. In view of the foregoing, both petitions are allowed in the aforesaid terms, while leaving the remaining findings of the impugned Awards undisturbed. Pending applications, if any, stand disposed of.

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55. No order as to cost.

OM PRAKASH SHUKLA, J.

NOVEMBER 23, 2026/*gunn*

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