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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Reserved on: 17<sup>th</sup> April, 2026****Pronounced on: 27<sup>th</sup> April, 2026**

+ ARB. A. (COMM.) 12/2026 &amp; I.A. 1379/2026

M/S NK TOLL ROAD LTD.

.....Petitioner

Through: Mr. Ankur Kashyap, Mr. Hasan Murtaza, Mr. Aman Bajaj, Mr. Sameer Sharma, Mr. Aman Bajaj, Mr. Purushartha Singh, Mr. Ankit Kr. Singh and Mr. Siddharth Dua, Mr. Jaideep Khot, Advs.  
M: 9289037441

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Respondent

Through: Mr. Nishant Awana, Ms. Rini Badoni and Ms. Nitya Sharma, Advs.  
M: 7838760760

**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****JUDGMENT****MINI PUSHKARNA, J.****Background**

1. The present appeal has been filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) against the interim order dated 03<sup>rd</sup> January, 2026 (“**impugned order**”), passed in the on-going arbitration proceedings, titled as “*N.K. Toll Road Limited Versus National Highway Authority of India*”. The Arbitral Tribunal, *vide* the impugned order, disposed of the application of the appellant/claimant/concessionaire, i.e., N.K. Toll Road Limited, filed under



Section 17 of the Arbitration Act, seeking stay on the operation and effect of the Cure Period Notice dated 07<sup>th</sup> October, 2025, issued by the respondent, namely, National Highway Authority of India (“**NHAI**”) under Articles 32.1.1 and 32.1.3 of the Concession Agreement dated 30<sup>th</sup> January, 2006 (“**Concession Agreement**”), executed between the parties.

2. More particularly, the Arbitral Tribunal restrained the respondent from taking any action with respect to the breaches/defaults alleged by it in *Para 9(a)(i) to (iii)* of the Cure Period Notice, since the said allegations were subject matter of adjudication by the Arbitral Tribunal in the on-going arbitration proceedings. However, the Arbitral Tribunal held that the respondent would be well within its right to proceed with the Cure Period Notice in respect of the alleged default of non-compliance of divestment requirements under the Concession Agreement, as mentioned in *Para 9(a)(iv)* of the Cure Period Notice.

3. By way of the present appeal, the appellant has confined its challenge to the limited extent that while the Arbitral Tribunal has granted interim protection to the appellant against the alleged defaults relating to periodic overlay obligations, consequential damages, and *FASTag* remittance forming part of the Cure Period Notice [*Para 9(a)(i) to (iii)*], it nevertheless permitted the respondent to proceed further with the said Cure Period Notice, insofar as it concerns the alleged non-compliance of Article 34.11 of the Concession Agreement [*Para 9(a)(iv)*], thus, rendering the Concession Agreement exposed to forthwith termination.

### **Factual Matrix**

4. The facts, in brief, leading to the filing of the present appeal are as follows:



4.1. The parties entered into the Concession Agreement dated 30<sup>th</sup> January, 2006 for design, construction, development, finance, operation and maintenance of a project highway from Km 258.645 (end of Namakkal Bypass) to Km 292.600 (start of Karur Bypass), on NH-7 from a two-lane to a four-lane highway, covering 33.48 Kms to be executed on a Build-Operate-Transfer (“**BOT**”) Toll basis. Additionally, the project involved the improvement, operation and maintenance of the Sections from Km 248.625 (start of the proposed flyover on Namakkal Bypass) to Km 258.645 (end of Namakkal Bypass) on NH-7 on a BOT basis.

4.2. The aforesaid Concession Agreement commenced from 29<sup>th</sup> July, 2006, and is scheduled to expire on 28<sup>th</sup> July, 2026, i.e., for a period of twenty (20) years, which is further extendable by three (3) months.

4.3. In furtherance of the Concession Agreement, the appellant completed the construction of the project highway, and thereby, commenced the toll operations. However, during the operation and maintenance of the project highway, various disputes arose between the parties, in relation to the interpretation and enforcement of specific provisions of the Concession Agreement.

4.4. Upon failure of resolution of the disputes amicably, the appellant herein invoked the arbitration clause, i.e., Article 39.2 of the Concession Agreement, by issuing a letter dated 24<sup>th</sup> May, 2024, wherein, the appellant claimed damages against the respondent under two broad heads, namely, *Force Majeure* (Covid-19) and Change in Law.

4.5. Pursuant thereto, an Arbitral Tribunal was constituted for adjudication of the disputes between the parties. Before the said Arbitral Tribunal, the appellant filed its Statement of Claims (“**SoC**”), seeking declaration that the



appellant is not liable to pay damages *qua* the claims of the respondent pertaining to non-performance of periodic Bituminous Concrete (“BC”) overlay obligations, non-payment of damages, non-remittance of *FASTag* additional fee/double toll fee, etc. Additionally, the appellant raised various monetary claims in the form of compensation from the respondent, majorly on account of *Force Majeure* and Change in Law.

4.6. In response, the NHAI filed its Statement of Defence (“SoD”), along with a Statement of Counter-Claims.

4.7. During the pendency of the arbitration proceedings, the respondent issued the Cure Period Notice on 07<sup>th</sup> October, 2025, thereby, invoking Articles 32.1.1 and 32.1.3 of the Concession Agreement, alleging certain defaults on the part of the appellant. The alleged defaults, summarized in *Para 9* of the Cure Period Notice, included failure to undertake the periodic overlay works, failure to pay damages imposed by the respondent on account of the alleged delay in such overlay works, non-remittance of additional *FASTag* fee and non-compliance of Article 34.11 relating to retention of funds in the Escrow Account or, alternatively, furnishing of a Bank Guarantee. Further, the Cure Period Notice also envisaged termination of the Concession Agreement in the event of failure of appellant to cure the alleged defects within a period of 30 days.

4.8. The aforesaid Cure Period Notice had been issued by the respondent on the basis of a letter dated 28<sup>th</sup> September, 2024 of the Independent Consultant/Engineer (“IE”), i.e., L N Malviya Infra Projects Pvt. Ltd, which had, in terms of Article 34.11 of the Concession Agreement prepared calculations in compliance of divestment requirements under the said Article. As per the said letter, in terms of Article 34.11, the amount to be



retained corresponding to calculations based upon traffic volume taken at 10,000 Passenger Car Units (“PCUs”) came to a total of Rs. 46,54,70,305/-, whereas, the calculation *qua* the renewal works was to the tune of Rs. 39,01,98,330/-. Accordingly, the appellant was directed to retain a sum of Rs. 46,54,70,305/- in the Escrow Account, or furnish a Bank Guarantee of an equivalent sum, on account of the said calculation based on traffic volume being higher than the calculation in respect of renewal works.

4.9. Pursuant to the said letter of the IE, the respondent sought compliance of Article 34.11 from the appellant *vide* its letter dated 05<sup>th</sup> October, 2024, whereby, the appellant was requested to retain the amount of Rs. 46,54,70,305/- as a Bank Guarantee.

4.10. The aforesaid requirement, as pointed out by the respondent, was disputed by the appellant *vide* its response dated 11<sup>th</sup> November, 2024, by stating that the very basis for seeking compliance with divestment requirements was pending adjudication before the Arbitral Tribunal.

4.11. It is in this background that during pendency of the arbitral proceedings, which were at the stage of final hearing, the Cure Period Notice came to be issued by the respondent on 07<sup>th</sup> October, 2025. The appellant, in response to the Cure Period Notice, *vide* letter dated 23<sup>rd</sup> October, 2025, denied the defaults alleged by the respondent.

4.12. Further, aggrieved thereof, the appellant filed an application under Section 17 of the Arbitration Act before the Arbitral Tribunal, seeking stay of the Cure Period Notice issued by the respondent and interim protection against coercive and consequential actions arising therefrom.

4.13. Consequently, the impugned order came to be passed, whereby the Arbitral Tribunal partly allowed the application filed by the appellant under



Section 17 of the Arbitration Act. The appellant/claimant has, thus, filed the present appeal seeking to set aside the impugned order.

**Rival Submissions of the Parties:**

5. Before recording the submissions of the parties, it is reiterated that the challenge before this Court is only confined to the finding of the Arbitral Tribunal in respect of *Para 9(a)(iv)* of the Cure Period Notice. Though the respondent in its reply has also sought to dispute the finding of the Arbitral Tribunal pertaining to determinable nature of the Concession Agreement between the parties, no separate appeal has been preferred by the respondent against the impugned order, in any respect. Therefore, this Court deems it appropriate to restrict the submissions of the parties *qua* the sole issue raised before this Court, as noted hereinabove.

6. Accordingly, on behalf of the appellant, the following submissions have been advanced:

6.1. The Arbitral Tribunal permitted enforcement of Article 34.11 of the Concession Agreement on the basis of an unreasoned order, in absence of any finding of a breach/default and permitted subsequent coercive action, which violates the Principles of Natural Justice and constitutes a failure to exercise its jurisdiction in accordance with Section 17 of the Arbitration Act.

6.2. Article 34.11 of the Concession Agreement is not an independent obligation. The said Article forms part of the Chapter VIII, i.e., “Defects Liability”, which is applicable only post-identification of an undisputed defect that requires rectification. Further, Articles 34.1 to 34.10 establish a structured mechanism commencing with joint inspections of the project highway, followed by the respondent’s assessment of the road condition, proposals for renewal works, the IE’s technical scrutiny and objections, and



if necessary, resolution of disputes through the dispute resolution mechanism enshrined in the Concession Agreement. Thus, Article 34.11 operates within and not outside the inspection centric framework.

6.3. Article 34.11 has been invoked by the respondent based upon the letter dated 28<sup>th</sup> September, 2024 of the IE, as per which, the IE had assumed that the appellant failed to undertake the third periodic overlay, whereas, the disputed overlay obligation is *sub-judice* before the Arbitral Tribunal. Further, the respondent by placing reliance on the IE's letter and Article 34.11, in its SOD and Counter-Claims has itself brought the issue of third overlay within the scope of adjudication before the Arbitral Tribunal.

6.4. Once the principal issue regarding the alleged third BC overlay is before the Arbitral Tribunal, all contractual obligations flowing therefrom shall necessarily fall within the Arbitral Tribunal's adjudicatory domain. Therefore, allowing the respondent to invoke Article 34.11 amounts to pre-judging the issues that are yet to be finally decided by the Arbitral Tribunal.

6.5. The pavement condition of the project highway continues to remain compliant with the contractual parameters. The same is apparent from the technical assessments carried out by the IE, as recorded in its various letters, which contain the results pertaining to Bump Integrator Test and Benkelman Beam Deflection, as prescribed under Articles 4.3.1(ii) and 4.3.2 of *Schedule-L* attached along with the Concession Agreement.

6.6. The contentions of the respondent regarding public safety are misplaced as public interest lies in preserving the operational stability rather than precipitating a change of operator in the final months of the concession period. Furthermore, termination at this stage would frustrate and render the pending arbitration proceedings substantially infructuous.



6.7. The impugned finding of the Arbitral Tribunal also suffers from infirmity on account of failure to interpret and construct Article 34.11 of the Concession Agreement, and further, by omitting to balance the interest of the parties, while rendering the impugned finding.

7. *Per contra*, on behalf of the respondent, the following submissions have been put forth:

7.1. The appellate interference under Section 37 of the Arbitration Act is extremely circumscribed and the appellant has failed to demonstrate any perversity, patent illegality or jurisdictional error in the impugned order. The Arbitral Tribunal, on the basis of the record before it, has taken a plausible view, which does not warrant any interference.

7.2. The Concession Agreement expressly confers upon the respondent an independent and substantive non-derogable right to issue a Cure Period Notice, and upon failure of the appellant to cure defaults specified in the Cure Period Notice within the stipulated cure period, to further terminate the Concession Agreement. The same is not contingent upon or subordinate to the arbitral proceedings.

7.3. The pendency of the arbitral proceedings does not create any embargo on exercise of contractual rights by either party, and moreover, the appellant's monetary claims, being fully compensable in damages, can be efficaciously adjudicated irrespective of whether the Concession Agreement continues or stands terminated.

7.4. The Arbitral Tribunal itself recognised the separability and enforceability of Article 34.11 and expressly permitted the respondent to proceed in respect thereof.



7.5. The admitted failure of the appellant to retain Rs. 46,54,70,305/- or to furnish a Bank Guarantee, constitutes a clear and continuing default, which justifies invocation of the cure mechanism under the Concession Agreement.

7.6. Article 34 of the Concession Agreement provides a comprehensive framework for defects liability and the divestment requirements therein are linked to renewal works, which are not merely restricted to BC overlay, as expressly provided in the Clause 33.2 of the Concession Agreement. Thus, the compliance under Article 34.11 is not dependent on the completion of a particular overlay cycle, but rather, is a mechanism to ensure a reserve of adequate funds so that renewal works can be executed prior to handing over of the project highway to the respondent upon expiry of the concession period. Moreover, the said Article operates “*from the date which is 2 years prior to the expiry of the Concession Period*”, and is not made contingent upon adjudication of any prior dispute.

7.7. Any injunctive relief that disables the respondent from implementing an express divestment-stage safeguard (Article 34.11) and from exercising termination rights (Article 32), despite admitted non-compliance, would interfere with the respondent’s statutory duty and frustrate the public interest in relation to safe and efficient operation of the national highways.

**Analysis and Findings:**

8. I have heard learned counsels appearing for both the parties and perused the pleadings and documents on record before this Court.

9. At the outset, this Court notes that the respondent *vide* the letter dated 07<sup>th</sup> October, 2025, i.e., the Cure Period Notice, issued to the appellant, highlighted various defaults of the appellant under the Concession Agreement, in *Para 9(a)* of the same, as follows:



“xxx xxx xxx”

9. (a) In a nutshell, the various defaults of the Concessionaire notified by IE/NHAI are highlighted as under:

- (i) Periodic Renewal/ Maintenance Obligation as per clauses 18.1 to 18.4 of the CA read with para 4.3.1 of Schedule-L of CA.
- (ii) Failure to pay the damages as per clause 18.13 on delay in carrying out the overlay.
- (iii) Non Remittance of Additional fee charged from vehicle not fitted with FASTag or vehicles without valid functional FASTag including interest
- (iv) Non-compliance of divestment requirement of retaining Rs.46.54 Cr in Escrow account and non-furnishing a Bank Guarantee of equivalent sum.

xxx xxx xxx”

10. On the basis of the aforesaid defaults, the appellant was called upon by the respondent to deposit various amounts, as notified in Para 9(b) of the Cure Period Notice, in the following manner:

“xxx xxx xxx

(b) The total dues to be paid to NHAI by the Concessionaire, if not paid within the cure period given herein and consequently would lead to 'Material Breach' of the CA by the Concessionaire, are summarized as under:

Sl. No	Description	Damages		Due Amount (Rs. in Cr)
		From	To	
1.	Damages for non-compliance - Renewal Coat of BC (Periodic 1 <sup>st</sup> overlay )	21.09.2014	05.02.2021	2.33
1(a)	Interest from due date (1698 days)	05.02.2021	30.09.2025	1.72
2.	Damages for non-compliance - Renewal Coat of BC (Periodic 2 <sup>nd</sup> overlay )	21.09.2019	26.12.2022	45.92
		27.12.2022	10.02.2024	
2(a)	Interest from due date (598 days)	10.02.2024	30.09.2025	12.85
3.	Damages for non-compliance - Renewal Coat of BC (Periodic 3 <sup>rd</sup> overlay )	21.09.2024	31.05.2025 (Not commenced)	11.46
4.	Non - Remittance of double fee charged over Non-FASTag vehicles	16.02.2021	30.06.2025	3.64
4(a)	Interest @ Bank rate + interest 5%			0.89
5.	Non-compliance of divestment requirement of Renewal work prior to handing over of stretch as per clause 34.11			46.54
	<b>Total</b>			<b>Rs.125.35 Cr</b>

xxx xxx xxx”

11. As regards the defaults highlighted by the respondent in the Cure Period Notice in Paras 9(a)(i), (ii) and (iii), and recovery of damages



thereto are concerned, the Arbitral Tribunal categorically held that the said issues were pending before it, and therefore, such notice for recovery of damages in respect of the aforesaid alleged defaults would tantamount to pre-judging the issues already pending adjudication before the Arbitral Tribunal.

12. However, in relation to the defect pointed out in *Para 9(a)(iv)* of the Cure Period Notice, with regard to non-compliance of the divestment requirement of retaining certain amounts in the Escrow Account, and deposit of Rs. 46.54 Crores on account thereof, the Arbitral Tribunal categorically held that retention of such amount in the Escrow Account is an independent obligation of the appellant under the Concession Agreement, and therefore, the same is required to be retained by the appellant herein. The finding of the Arbitral Tribunal in this regard, which is subject matter of challenge in the present appeal, is reproduced as under:

“xxx xxx xxx

8. However, at the same time, amount of Rs. 46.54 Cr. Claimed by the Respondent alleging non-compliance of divestment requirement in Escrow Account and non-furnishing of Bank Guarantee of the equivalent sum is concerned, the same is required to be deposited by the Claimant in Escrow Account as per Clause 34.11 of the Concession Agreement. Clause 34.11 of the Concession Agreement reads as| under:



***“34.11 From the date which is 2 years prior to the expiry of the Concession period a sum equal to the Fees realisable during the last two years of the Concession period for a traffic volume calculated at the rate of 10,000 (ten thousand) PCUs per day per year or a higher sum estimated by the Independent Consultant for Renewal Works, shall notwithstanding anything to the contrary contained in this Agreement, be retained in the Escrow Account provided that if a Bank Guarantee of an equivalent sum in the form and content acceptable to NHAI has been furnished by the Concessionaire to NHAI, no such retention shall be made.”***

8.1 As per Clause 34.11, the Claimant is under an obligation to retain an amount in Escrow Account calculated @ 10,000 PCUs per day per year or a higher sum estimated by the Independent Consultant from the date which is 2 years prior to the expiry of the Concession Periods equivalent to the fees leviable during the last two years of the Concession Period for a traffic volume for renewal works provided that if Bank Guarantee of equivalent sum in the form and content acceptable to NHAI has been furnished by the Concessionaire to the NHAI, no such retention shall be made. Therefore, the Claimant will be under an obligation to act and/or maintain the Escrow Account or furnish Bank Guarantee as per Clause 34.11, which is an independent obligation for the renewal works. The aforesaid is not the subject matter of Issue/dispute before the Arbitral Tribunal. Therefore, the Respondent will be well within its right to issue Cure Period Notice and/or call upon the Claimant to act as per Clause 34.11 and proceed further with the same in accordance with law.

xxx xxx xxx



12.1 However, as observed hereinabove, so far as the alleged default mentioned in Para-9(a)(iv) is concerned, the same is not the subject matter of the present arbitral proceedings and the same is not the issue before the Arbitral Tribunal, the Respondent will be well within its right to proceed further with the Cure Period Notice for the alleged defaults of non-compliance of divestment requirement of retaining Rs. 46.54 Crores in Escrow Account and non-furnishing the Bank Guarantee of equivalent sum (in the alternative) as per Clause 34.11 in accordance with law.

13. In view of the above and for the reasons stated above, the present application is allowed in part. The Respondent/s is/are hereby restrained from taking further steps/action pursuant to the Cure Period Notice dated 7.10.2025 insofar as various defaults mentioned in Para 9(a)(i) to (iii). However, the Respondent will be at liberty to proceed further with the present Cure Period Notice dated 7.10.2025 insofar as the alleged defaults mentioned in Para 9(a)(iv). The present application under Section 17 of the Arbitration Act stands disposed of in terms of the above.

xxx xxx xxx”

13. In respect of the issues raised before this Court, it is to be noted that the Concession Agreement between the parties imposes continuous obligations upon the appellant, being the concessionaire, regarding various compliances, which are required to be made under the Concession



Agreement. The issue regarding the obligation of the appellant to retain the sums in Escrow Account emanates from Article 34.11 of the Concession Agreement, which reads as under:

**“34.11. From the date which is 2 years prior to the expiry of the Concession Period a sum equal to the Fees realisable during the last two years of the Concession Period for a traffic volume calculated at the rate of 10,000 (ten thousand) PCUs per day per year or a higher sum estimated by the Independent Consultant for Renewal Works, shall notwithstanding anything to the contrary contained in this Agreement, be retained in the Escrow Account provided that if a Bank Guarantee of an equivalent sum in the form and content acceptable to NHAI has been furnished by the Concessionaire to NHAI, no such retention shall be made.”**

*(Emphasis Supplied)*

14. Hence, Article 34.11 of the Concession Agreement provides that from two years prior to expiry of the concession period, a sum equal to the fees realizable during the last two years of the concession period or a higher sum estimated by the IE for renewal works, shall be retained in the Escrow Account, or be secured by furnishing a Bank Guarantee of an equivalent sum. The said covenant, as mandated under Article 34.11, is notwithstanding anything to the contrary contained in the Concession Agreement, meaning thereby, the mandate of Article 34.11 is an independent obligation, irrespective of other stipulations under the Concession Agreement. The mandate under Article 34.11 cannot be linked to other stipulations provided under the Concession Agreement with regard to requirement of BC overlay, as sought to be done by the appellant.

15. In terms of the aforesaid Article, the IE by way of his letter dated 28<sup>th</sup> September, 2024, calculated the amount of toll revenue as Rs. 46,54,70,305/-, whereas, the amount for renewal works was estimated as Rs. 39,01,98,330/-. The letter dated 28<sup>th</sup> September, 2024 issued by the IE is



reproduced as under:

**DOCUMENT P-5**  
**L N MALVIYA INFRA PROJECTS PVT LTD**

**Head Office :T-10, III<sup>rd</sup> Floor, City Centre, Press Complex, Plot No. -1, M.P.NagarZone -I,Bhopal (M.P.), 462011, Tel./Fax: 0755-4295421**

**Ref:** LNMIPPL/TSN/NHAI/PD/2024/738

**To**  
**The Deputy General Manager (Tech) & Project Director,**  
Project Implementation Unit,  
National Highways Authority of India,  
Door No.212-3/D3-1, Narasothipatti,  
Salem - 636 004.

**Project:** Independent Engineer (IE) Services for Operation & Maintenance Period of Four Lane Thumbipadi – Salem – Namakkal Section from Km.181/000 to Km.248/625 (TN-02) and 4-Lane Namakkal – Karur Section from Km.248/625 to Km.292/600 (TN 03) of NH-44 in the State of Tamilnadu.

**Subject:** Four Lane Namakkal – Karur Section from Km.248+625 to Km 292+600 (TN 03) of NH-44 in the State of Tamilnadu -- **Compliance to Divestment requirement as per clause 34.11 of Concession Agreement – Reg.**

**Ref:** 1. PIU Salem Letter No. NHAI/PIU-SLM/NH-44 /TN-03/CW/2024/1255 dated 09.08.2024.  
2. Concession Agreement dated : 30.01.2006.

**Sir,**

With reference to the above subject matter, we would like to inform that Concession agreement clause 34.11 states that

*"From the Date which is 2 years prior to the expiry of the concession period a sum equal to the fees realizable during the last two years of the concession period for a traffic volume calculate at the rate of 10,000 (TenThousand) PCUs per day per year or a higher sum estimated by the Independent Consultant for Renewal works ,shall notwithstanding anything to the contrary contained in this Agreement ,be retained in the Escrow Account provided that if Bank Guarantee of an equivalent sum in the form and content acceptable to NHAI has been furnished by the concessionaire to NHAI, no such retention shall be made"*

The concessionaire M/s NK Toll Road Limited appointed to NHAI the collecting user fee as Appointment date 29.07.2006 to Concession end date on 28.07.2026 (20 Years as from appointed date as per Concession Agreement ).

**NHAI-PIU-SALEM**

Date : 30/09/2024 Date: 28.09.2024

Op. No: 3113

(T)/DM(T)

Site Engineer ✓ 2 3

Accountant ✓


H.O.O


L.O

MT/yp

Project Director

1 of 2





CaruppattiPalay, Bypass Road Namakkal-637003.

75/+91 9111010 Hasan

**True Copy**



The concessionaire shall retain amount corresponding to 10,000 PCUs Mentioned therein clause 34.11 of Concession Agreement, which is as under

S.No	Vehicle Class as per User Fee Rates	Actual Average Daily Traffic for FY 23-24 (A)	PCU Factor (B)	Corresponding PCU (C) = (A)*(B)
1	CAR	9,537	1	9,537
2	LCV	1,026	1.5	1,539
3	Truck & BUS	1,991	3	5,972
4	Max -(> 2 Axle)	2,049	4.5	9,223
	<b>Total</b>			<b>26,271</b>

(C)	Corresponding PCU	26,271
(D)	Toll Revenue for FY 2023-2024	61,14,07,635
(E)	Average Revenue per Day (E)=(D)/366	16,70,513
(F)	Corresponding Revenue for 10,000 PCUs per Day (F)=(E)/(C) x10,000	6,35,888
(G)	Toll Revenue for 732 Days for 10,000 PCUs (G)=(F)x732days	<b>46,54,70,305</b>

As the concessionaire has to complete the 3<sup>rd</sup> renewal coat (Bituminous Renewal work) had to be completed before 22.08.2024 but the concessionaire has not yet start the 3<sup>rd</sup> renewal coat i.e Overlay by Bituminous Concrete before the stipulated time period i.e 22.08.2024.

In this regard IE prepared detailed estimate in Annexure -1 and arrived to the amount of Rs. 39,01,98,330/-

As per the above clause, the concessionaire has to retain certain amount in their Escrow Account equivalent to the fees realizable during last two years of concession period for a traffic volume of 10,000 PCU per day per year or a higher amount estimated by IE for renewal works . Hence, the considering above the Concessionaire has to retain **RS.46,54,70,305/-** as a Bank Guarantee equivalent to this amount acceptable to the authority at the earliest.

This is for your information and further necessary action.

Thanking you,

Yours Sincerely,



P.V. Murali Malina,  
Team Leader cum Senior Highway Engineer,  
L.N. Malviya Infra Projects Pvt Ltd.

Encl : As above

Copy to: 1. The Project Manager/Authorized Signatory, M/s.NKTRL. for your information.

2. Shri. A.K. Saxena - The Project Coordinator – Head Office, Bhopal.



Hasan  
True Copy



16. Thus, in terms of Article 34.11, the appellant was required to retain the higher sum towards the toll revenue as calculated by the IE, which in the present case is an amount of Rs. 46,54,70,305/-.

17. The appellant has never challenged the calculations made by the IE *vide* the letter dated 28<sup>th</sup> September, 2024. Accordingly, since the calculation in respect of traffic volume was higher, the appellant was required to retain Rs. 46.54 Crores in the Escrow Account or furnish a Bank Guarantee of an equivalent sum, in terms of Article 34.11 of the Concession Agreement. The retention of the sum under Article 34.11 is a separate and independent obligation under the Concession Agreement, which the appellant is enjoined upon to comply.

18. Further, it is to be noted that the fifteen issues, which are subject matter of adjudication before the Arbitral Tribunal, have been framed *vide* the Procedural Order dated 10<sup>th</sup> March, 2025. It is manifest from the reading of the said issues that none of them can be said to overlap, in any manner whatsoever, with the obligation under Article 34.11. Furthermore, the appellant's attempt to confine Article 34.11 solely to a disputed BC overlay obligation is contrary to the plain language of the contractual terms. Article 34.11 relates to renewal works across all project assets, including pavement, structures and ancillary facilities. The obligation under Article 34.11 is not dependent upon completion of a particular BC overlay cycle, but on ensuring that adequate funds are reserved so that all renewal works can be executed prior to handing back. The fact that the appellant has been continuing to perform the various renewal works is no justification for not complying with the obligation under Article 34.11, which stipulates in categorical terms regarding retaining an amount in Escrow Account or



providing Bank Guarantee of equivalent sum in terms of the calculations made by the IE.

19. Accordingly, in view of the aforesaid discussion, this Court finds no infirmity with the impugned finding of the Arbitral Tribunal.

20. It is well settled that the scope of adjudication under Section 37 of the Arbitration Act is extremely narrow and the consideration under Section 37(2)(b) of the Arbitration Act is not fundamentally different from that under Section 34 of the Arbitration Act. It is only when the interim order suffers from patent illegality or perversity that the Court shall exercise its jurisdiction under Section 37(2)(b) of the Arbitration Act. However, as long as the view adopted by the Arbitral Tribunal is a plausible one, the Court should refrain from interfering with the order passed by the Arbitral Tribunal. Thus, this Court in the case of *Dinesh Gupta and Others Versus Anand Gupta and Others, 2020 SCC OnLine Del 2099*, held as follows:

“xxx xxx xxx

**114. This Court, while exercising appellate jurisdiction, under Section 37(2) of the 1996 Act, over the interim order of the learned Sole Arbitrator, is not expected, or even required, to delve deep into the facts of the case. Nor is it expected to substitute its own discretion, for the discretion of the learned Sole Arbitrator. If the exercise of discretion, by the learned Sole Arbitrator, suffers from patent illegality, or is otherwise unconscionable in law or on facts, interference may be justified; never otherwise.**

xxx xxx xxx”

(Emphasis Supplied)

21. Viewing the present case in the light of the settled proposition of law regarding minimal interference by Courts under Section 37 of the Arbitration Act, the view expressed by the learned Arbitral Tribunal is plausible and well-reasoned.

22. Furthermore, the issue with respect to balance of convenience, *prima*



2026:DHC:3544



*facie* case and irreparable prejudice cannot be raised by a party with regard to questions involving compliance of mandatory obligations under the contract. Thus, the appellant cannot seek to raise such pleas *qua* the compliances required to be made by the appellant under the terms of the Concession Agreement.

23. For the aforesaid reasons, no interference is warranted in the impugned order passed by the Arbitral Tribunal. The present appeal is accordingly dismissed.

**MINI PUSHKARNA  
(JUDGE)**

**APRIL 27, 2026/SK**