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

Judgment reserved on: 11.08.2026
Judgment pronounced on: 02.09.2026

\# **CNR No. DLHC011239802016**
\+ O.M.P. (COMM) 143/2016

DDA ....Petitioner
Through: Ms. Chand Chopra, Mr. Shivam Bansal, Advs.

versus

M/S SWASTIC CONSTRUCTION CO .....Respondent
Through: Mr. Vivekanand, Adv.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT
% **02.09.2026**

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996[1] has been filed by the petitioner ("DDA") assailing the award dated 30.05.2014 passed by the learned Sole Arbitrator, Shri S.K. Jain, in the disputes arising out of Agreement dated 10.09.2009.

2. Succinctly, the dispute arises out of the agreement dated 11.09.2009 executed between the parties concerning the work of construction of three slip roads, including footpath and cycle track, and the remodeling of the existing cloverleaf at Noida Mor Flyover, Phase-I. As per the agreement, the stipulated date of commencement of work

[1] "the Act" hereinafter

was 11.09.2009 and of completion was 10.05.2010, which, however, actually got completed on 25.02.2011 and the final bill was submitted by the respondent on 30.09.2011.

3. After completion of the work, disputes arose in relation to the final bill, rates for deviated and additional items, escalation, amounts withheld by DDA and the respondent's claim for losses during the prolonged period. As such, the disputes were referred to arbitration. The proceedings were initially before another Arbitrator and, upon his transfer, Shri S.K. Jain came to be appointed as the Sole Arbitrator. The learned Arbitrator after considering the pleadings, documents placed on record and submissions of the parties, passed the impugned award on 30.05.2014.

4. It is not in dispute that the work continued beyond the stipulated date of completion and the DDA attributes these delay substantially to the respondent and relies, amongst other material, upon its communications dated 06.01.2010 and 09.06.2010. The respondent, on the other hand, relies upon the hindrance register, the extension of time papers and the departmental recommendations to contend that the delay was not attributable to it. It is also an admitted position that extension of time was ultimately granted without levy of compensation.

5. The respondent had raised eleven claims before the learned Arbitrator. The present petition concerns Claim Nos.1, 2, 4, 5, 6, 8, 9 and 10 and Claim Nos.3, 7 and 11 are not under challenge. Insofar as Claim No.6 is concerned, an amount of Rs.43,81,836/- was awarded towards refund of the security deposit which, admittedly been released

and the order dated 27.05.2015 also records satisfaction of that claim. Therefore, Claim No.6, no longer survives for an effective adjudication.

6. Under Claim No.1, against a claim of Rs.25,56,031/- towards the amount stated to be due under the final bill, the learned Arbitrator awarded Rs.25,20,573/-. Under Claim No.2, relating to cutting and drilling of high-grade concrete and rebarring work, Rs.6,67,920/- was awarded against a claim of Rs.7,11,000/-. Under Claim No.4, relating to escalation under Clauses 10C and 10CA, the learned Arbitrator awarded Rs.20,63,543/- against a claim of Rs.32,31,821/-. Claim No.5 for Rs.1,00,000/-, which had been withheld in connection with the extension of time case, was allowed in full. Under Claim No.8, against a claim of Rs.15,00,000/- towards prolongation expenses, Rs.9,45,000/- was awarded. Under Claim No.9, out of Rs.50,000/- withheld towards quality control parameters, Rs.19,353/- was awarded after accepting an adjustment of Rs.30,647/- under Reduction Item Statement No.1. Claim No.10 concerns interest.

7. I have heard the learned Counsel for the parties and have considered the pleadings and written submissions placed on record.

8. The principal submission of DDA is that, while allowing the claims, the learned Arbitrator travelled beyond the terms of the agreement, ignored material contractual provisions and documentary evidence and, in some instances, adjudicated matters which were contractually excluded from arbitration.

9. *Per contra*, the respondent submits that the findings are based on the material placed before the learned Arbitrator and, at the very least, represent a possible interpretation of the contract and the contemporaneous record and are well reasoned.

10. According to the respondent, such findings cannot be reopened in proceedings under Section 34 as though the Court were hearing an appeal.

11. Since a substantial part of the challenge turns upon the permissible limits of interference under Section 34, the applicable legal position may first be noticed before dealing with the claims separately.

12. The present petition was instituted in 2014 as OMP No.1110/2014 and was later renumbered as OMP(COMM.) No.143/2016. The challenge is, therefore, governed by Section 34 as it stood prior to the amendments which came into force on 23.10.2015.

13. The position as to the prospective application of the amended provision was subsequently explained by the Supreme Court in ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI***[2].

14. Under the law applicable to the present petition, the expression "public policy of India" and the ground of patent illegality were

[2] **(2019) 15 SCC 131**

understood in the manner explained in ***ONGC Ltd. v. Saw Pipes Ltd.***[3] **and *Associate Builders v. DDA***[4].

15. On the aspect of scope of interference, it is settled, that Section 34 does not confer appellate jurisdiction upon the Court. The Supreme Court has repeatedly held that Construction of a contract is primarily for the Arbitrator and, if the view taken is a possible view, the Court does not substitute its own reading merely because another view may appear preferable.

16. This principle has been reiterated, inter alia, in ***National Highways Authority of India v. ITD Cementation India Ltd.,***[5] and ***Sutlej Construction Ltd. v. Union Territory of Chandigarh***[6]**.**

17. At the same time, an Arbitrator cannot travel outside the contract, decide an excepted matter which the parties have withheld from arbitration, or sustain a monetary award where the basic facts is wholly unsupported by evidence. It is within these limits that the present objections of the parties have to be examined.

18. Having said so, this court will first deal with the general objection raised by DDA founded on Clauses 9 and 25 of the agreement. According to DDA, the final bill was required to be submitted within the contractual period after completion and, once the final bill had been submitted, no claim which was not included therein could thereafter be

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[3] **(2003) 5 SCC 705**
[4] **(2015) 3 SCC 49**
[5] **(2015) 14 SCC 21**
[6] **(2018) 1 SCC 718**

entertained. It is further contended that the respondent did not follow the steps and timelines stipulated in Clause 25 before invoking arbitration.

19. The respondent on the other hand, disputes this construction and submits that the final bill was submitted immediately after the formal completion process and that, in any event, the final bill itself had not been finalized by DDA when disputes were raised.

20. The respondent also relies upon the order dated 27.05.2015 and upon the finding of the learned Arbitrator that genuine claims had been raised within the period of limitation. DDA, in its rejoinder, specifically disputes the suggestion that the order dated 27.05.2015 finally concluded the effect of Clause 9 in relation to every individual claim.

21. This Court is of the view that it is neither necessary to hold that the order dated 27.05.2015 finally concludes every objection under Clauses 9 and 25, nor is it necessary to decide, in the abstract, whether every time stipulation contained in Clause 9 is or is not enforceable, in the manner suggested by DDA.

22. The learned Arbitrator has interpreted Clause 9 and held that delayed presentation of the final bill did not, on the language of that clause, extinguish the respondent's right to have the bill considered.

23. Insofar as claims not included in the final bill are concerned, their maintainability has necessarily to be examined together with the nature of the particular claim and any specific contractual exclusion relied

upon by DDA. In other words, Clause 9 cannot, therefore, be applied in isolation or used as a substitute for examining the individual claims.

24. Needless to state, where the learned Arbitrator has adopted a possible construction of the clause in relation to a claim which arose during execution and was known to DDA, this Court cannot interfere merely because the interpretation suggested by DDA is also possible. The position would, however, be different where the contract expressly makes the subject matter final or excepted. Thus, this Court shall deal with the individual claims separately.

25. I now come to Claim No.1 concerning the final bill and, substantially, the rates to be applied to quantities which exceeded the deviation limits. The principal objection of DDA is that the respondent did not furnish a proper rate analysis based upon prevailing market rates, nor did it submit the supporting purchase vouchers contemplated by Clause 12.2 and relies upon its letter dated 09.06.2010 to contend that the material furnished by the respondent was incomplete and was not supported by a proper analysis.

26. It further relies upon Clause 7 and submits that payments made in the running account (RA) bills are only interim or on-account payments and do not finally settle either quantity or rate. According to DDA, therefore, payment at agreement rates up to the 10th RA bill did not prevent correction of the rates at the stage of the final bill.

27. It is further submitted that Clause 12.3, on which the learned Arbitrator placed reliance, applies where the Engineer-in-Charge

himself proposes a rate and does not apply to a case where the contractor has failed to furnish the material required under Clause 12.2.

28. DDA has also taken exception to the use of the expression "estoppel" in the award by the learned Arbitrator. It is submitted that the Arbitrator, being a creature of the contract, could not invoke estoppel to create an entitlement which the agreement itself does not provide.

29. DDA further points out that its letter dated 09.06.2010 itself stated that part rates were being released in proportion to rates which had merely been proposed for approval and had not been finally sanctioned by the competent authority.

30. The Respondent answers this by relying upon the procedure under Clause 12 noticed by the learned Arbitrator. According to the respondent, if DDA intended to adopt a rate lower than the agreement rate for the deviated quantities, the Engineer-in-Charge was required to communicate the proposed rate, give the contractor the stipulated opportunity to respond and thereafter take a decision. The learned Arbitrator found that this exercise was not undertaken during execution of the work.

31. The learned Arbitrator considered the 10th RA bill as well as the part-rate statement produced by DDA and noticed that agreement rates had continued to be paid for the excess quantities till that stage. On a combined reading of the contractual mechanism and DDA's contemporaneous conduct, the learned Arbitrator held that DDA could

not, after completion of the work, reduce the rates in the proposed final bill in the manner sought to be done.

32. This Court agrees with DDA only to this limited extent that payment in a RA bill, by itself, does not necessarily amount to a final and irreversible determination of the applicable rate.

33. This Court also do not read the award as laying down a general proposition that estoppel can override an express term of a work contract. The reasoning of the learned Arbitrator is, however, not confined to estoppel but much wider. The learned Arbitrator read Clauses 12.2 and 12.3 together, considered the letter dated 09.06.2010, noticed the rates actually adopted by DDA during execution and found that the contractual machinery for determination of a lower rate had not been put into operation at the relevant stage.

34. That may not be the only possible reading of Clause 12, but it cannot be said to be one which no reasonable person could adopt. The relevant documents on which DDA relies were before the learned Arbitrator and it is not open to this Court, in proceedings under Section 34, to re-weigh the expression "proposed for approval" in the letter dated 09.06.2010 against the 10th RA bill and arrive at a fresh contractual conclusion.

35. DDA's further reference to defects in the work and Clause 25-B also does not carry the challenge to Claim No.1 any further. A contractual finality attached to a decision concerning sub-standard work cannot, without a demonstrated connection, convert every dispute in a

final bill, including a dispute concerning rates for deviated quantities, into an excepted matter. No such jurisdictional connection has been shown in respect of the rate dispute which forms the substantial part of Claim No.1. The award of Rs.25,20,573/- under Claim No.1 is founded on a possible interpretation of the agreement and upon material which the learned Arbitrator was entitled to evaluate. Thus, no ground for interference is made out under Claim No. 1.

36. Claim No.2 relates to the alternative method adopted for cutting and drilling high grade concrete and for anchoring/rebarring. DDA's case is that the original contractual method contemplated dismantling the concrete to the required depth, stitching the reinforcement and thereafter re-concreting. According to DDA, the respondent initially executed a substantial portion by the prescribed method, but later proposed anchoring of rebars because of inadequacy of its own labour and tools and plant.

37. In the said regard, DDA again relies upon the letter dated 09.06.2010 and submits that the respondent was specifically informed that, if the alternative method involved any additional financial burden, it should proceed in accordance with the original drawings and specifications. It is further submitted that no assurance was ever given that the alternative work would be paid as an extra item.

38. Since the amount was admittedly not included in the final bill, DDA therefore it also invokes Clause 9. DDA had further disputed, before the learned Arbitrator, the third-party confirmations relied upon by the respondent. The respondent's answer is that an alternative

structural method of this nature could not have been adopted at site without the approval of the consultant and the Engineer-in-Charge. It too relies upon the same letter dated 09.06.2010 because, while questioning the analysis already furnished, DDA itself called upon the respondent to submit a proper rate analysis for consideration. According to the respondent, this contemporaneous conduct is inconsistent with DDA's present stand that the entire operation was to be carried out at the contractor's own cost and without any payment.

39. The learned Arbitrator accepted that the alternative work had in fact been executed through a specialized agency and with the consent of the consultant and the Engineer-in-Charge. He also relied upon material showing payment of Rs.4,45,280/- by the respondent to the specialized agency. After taking into account water and electricity charges, scaffolding, supporting staff, overheads and contractor's profit, the learned Arbitrator assessed the payable amount at Rs.6,67,920/-. DDA contends that the award wrongly observes that the amount had not been disputed.

40. Even if that observation in the award is put to one side, the award does not become one based on no evidence. The finding is based upon actual execution of the alternative work, departmental consent to the method adopted, DDA's own request for a rate analysis and material showing payment to the specialized agency. These were matters which the learned Arbitrator was entitled to appreciate.

41. The objection under Clause 9 was also before the learned Arbitrator. The finding has to be understood in the factual context that

this was not a claim invented after completion for an unknown item. It arose out of work admittedly executed during the contract through a changed method which, on the Arbitrator's finding, had the approval of DDA's consultant and Engineer-in-Charge.

42. In these circumstances, the view that the claim did not stand extinguished merely because it was omitted from the final bill forms part of the Arbitrator's interpretation of the contractual machinery. DDA has not shown any separate provision which makes the determination of the price of this alternative item an excepted matter. The objection is therefore, in substance, seeks a fresh assessment of the correspondence and evidence of expenditure, which is not permissible under Section 34.

43. Thus, the challenge to the award of Rs.6,67,920/- under Claim No.2 is accordingly rejected.

44. Claim No.4 concerns escalation under Clauses 10C and 10CA. DDA submits that neither clause permits the contractor to claim increases arising beyond the stipulated date of completion merely because extension of time was granted without levy of compensation. DDA also relies upon the conditions attached to the extension and contends that the respondent had, in fact, been overpaid by Rs.6,01,130/- under Clause 10C.

45. According to DDA, Rs.14,28,146/- had been paid whereas only Rs.8,27,016/- was admissible. Reliance is also placed upon correspondence alleging slow progress and delay on the part of the

respondent. DDA further submits that the learned Arbitrator wrongly treated extension of time without compensation as if it were a finding that DDA alone was responsible for the delay. It further questions reliance upon an internal departmental communication dated 10.05.2012 and submits that an internal communication could not enlarge the respondent's contractual entitlement.

46. The Respondent's answer is important because it explains the precise manner in which the learned Arbitrator understood Clauses 10C and 10CA. The respondent does not say that a fresh increase which arose only after 10.05.2010 became payable. Its case is that an increase which had already accrued during the original contractual period remained applicable to eligible work which, because of the extension, came to be executed later. Put simply, if the admissible increase up to the stipulated date of completion was Rs.10/-, the Arbitrator allowed that increase on eligible work done during the extended period, he did not allow a subsequent increase of, say, Rs.20/- which arose only after the stipulated date.

47. This Court also construes the award in the same manner. The learned Arbitrator held that Clause 5 did not permit DDA to add the rider in the manner suggested by it, but at the same time restricted the variation to the increase which had become operative up to the stipulated date of completion.

48. In relation to Clause 10CA, he further held that the variation had to be worked out with reference to the All India Wholesale Price Indices published by the Economic Adviser, Ministry of Commerce and

Industry, and not on the indices adopted in DDA's calculation. This distinction is important. The learned Arbitrator did not simply proceed on the broad proposition that extension of time without levy of compensation automatically entitled the contractor to escalation for the whole of the extended period. He froze the relevant increase as on the stipulated date of completion and applied that admissible increase to eligible work. Whether this is the interpretation which the Court itself might have adopted is not the test under Section 34. It is plainly a possible reading of the contract as it has been placed before the Court.

49. The objection regarding the alleged overpayment of Rs.6,01,130/- has also to be seen in the same light. DDA's figure proceeds upon its own method of calculation. The learned Arbitrator did not accept either the indices or the basis of calculation adopted by DDA and recorded that DDA had not furnished a satisfactory counter-calculation on the basis which he considered applicable. Once that underlying methodology was rejected, the alleged excess of Rs.6,01,130/- did not remain an admitted arithmetical recovery which the Arbitrator was bound separately to deduct.

50. The internal letter dated 10.05.2012 may have been noticed as part of the surrounding record, but the source of the respondent's entitlement in the award is the Arbitrator's construction of Clauses 5, 10C and 10CA. The award, therefore, does not stand or fall merely on that internal letter and to recalculate escalation, select a different index or substitute DDA's interpretation of the clauses would amount to an appellate exercise. The award of Rs.20,63,543/- under Claim No.4 does

not disclose a ground for interference under Section 34 and is accordingly upheld.

51. Claim No.5 is for Rs.1,00,000/- which had been withheld in connection with the extension of time case. DDA submits that the amount could not be released because the final bill had not been approved and because defects noticed during the inspection held on 15.09.2011 had not been rectified. Particular reliance is placed upon its letter dated 21.09.2011 and contended that the learned Arbitrator wrongly treated a letter issued by the respondent of the same date as proof of rectification. As such, the relevant chronology has to be noticed.

52. The award first refers to DDA's letter dated 07.09.2011 recording rectification of earlier defects and re-laying of paver blocks. Thereafter an inspection was carried out on 15.09.2011, during which further deficiencies were noticed. DDA put those deficiencies in writing by its letter dated 21.09.2011. The respondent's consistent case was that the deficiencies had been orally pointed out at site during the inspection itself, that rectification was undertaken between 15.09.2011 and 21.09.2011 and that its letter dated 21.09.2011 intimating rectification was dispatched before DDA's written communication of the same date was received.

53. Seen in this factual background, the DDA's submission that rectification on the same date was impossible does not by itself displace the finding of the learned Arbitrator. The respondent was not suggesting that it first learnt of the defects from DDA's letter dated 21.09.2011 and

rectified them immediately thereafter. Its case was that the defects were made known during the inspection on 15.09.2011 and had been attended to during the intervening period.

54. The learned Arbitrator also recorded that DDA did not produce evidence of any subsequent notice requiring further rectification during the defect liability period and that no action under Clause 17 was taken to have the alleged defects rectified at the respondent's risk and cost. DDA may dispute the weight to be given to that circumstance, but it was plainly a circumstance which the learned Arbitrator was entitled to take into account.

55. There is another independent aspect to consider. The amount of Rs.1,00,000/- had been withheld for the extension of time case and extension was subsequently sanctioned. DDA sought to justify continued withholding by referring to defects and possible adjustments, but the learned Arbitrator found, on the documents before him, that the stated basis for retaining the amount no longer survived.

56. It is possible that a Court deciding the matter in the first instance may have drawn a different factual inference. That, however, is not sufficient for interference under Section 34. The award under Claim No.5 is supported by contemporaneous correspondence and by a possible appreciation of the sequence of events. Therefore, the challenge to the award of Rs.1,00,000/- is accordingly rejected.

57. As already noticed, Claim No.6, relating to refund of the security deposit of Rs.43,81,836/-, stands satisfied by payment and the earlier

order dated 27.05.2015 records this position, thus nothing survives for adjudication. The challenge to that claim has, therefore, become infructuous.

58. I now turn to Claim No.8. This claim needs closer examination because it stands on a different footing, it is not merely a question of choosing two possible interpretations of a payment clause. This is a claim for damages or expenditure said to have suffered because the contract continued beyond the stipulated period.

59. The respondent claimed Rs.15,00,000/- towards staff, tools and plant, machinery and labour. The learned Arbitrator awarded Rs.9,45,000/-, calculated at Rs.1,05,000/- per month for nine months, principally by taking into account two engineers and two chowkidars.

60. DDA raises three objections. First, it relies upon the respondent's undertaking dated 23.03.2012, reiterated by communication dated 07.06.2012, to the effect that no damages on account of prolongation would be claimed except escalation admissible under the agreement. Secondly, it submits that the award does not identify, in any clear manner, what part of the delay was caused by DDA and what part, if any, was attributable to the respondent. Thirdly, it is contended that no evidence of actual salary or expenditure corresponding to Rs.1,05,000/- per month was produced.

61. The Respondent's case is that the undertaking dated 23.03.20212 was not voluntary. According to it, the work had already been completed, the final bill and extension papers remained pending and

substantial amounts were being withheld. The respondent says that DDA would not process the extension and payments unless such an undertaking was furnished. It relies upon the subsequent withdrawal of the undertaking by letter dated 24.06.2013 and upon the extension of time recommendation and hindrance record to contend that the delay was, in any event, attributable to DDA.

62. The learned Arbitrator accepted the respondent's explanation and observed that the contract did not require the contractor to furnish any no-claim undertaking, that substantial payments were pending and that the subsequent withdrawal of the undertaking supported the respondent's case that it had not been furnished voluntarily.

63. On that basis, the undertaking was treated as having no legal effect. It is true that the mere existence of a no-claim certificate or undertaking is not always conclusive and if it is established that such a document was obtained by coercion, undue influence or economic duress, the underlying dispute may still survive.

64. At the same time, the document cannot be discarded merely on a bare assertion of financial pressure. In ***Union of India v. Master Construction Co***.[7], the Supreme Court held that an allegation that a no-claim document was obtained by coercion or duress must have a credible factual foundation and cannot rest on a bald plea.

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[7] **(2011) 12 SCC 349**

65. The fact that the agreement did not require such an undertaking is undoubtedly relevant, but it does not follow that an undertaking voluntarily given would be without effect. Likewise, a later withdrawal may have some evidentiary value, but it does not by itself establish the circumstances in which the earlier undertaking was executed. What was required was a finding, based on identifiable material, that DDA had made processing of the extension or release of payment conditional upon furnishing the undertaking, or had otherwise exercised pressure of such a nature as to vitiate consent.

66. The sequence of events relied upon by the respondent could certainly raise a suspicion of commercial pressure, particularly because the undertaking preceded the final processing of the extension of time case. The difficulty is that the award does not identify any demand, instruction, correspondence or other material by which that suspicion is converted into a finding of coercion. The conclusion is drawn substantially from the pendency of payments and the later withdrawal of the undertaking. In my view, that reasoning is not sufficient to deprive the undertaking of its legal effect.

67. There is a second difficulty, one of causation. The respondent relies upon the hindrance record and the extension recommendation to show hindrances attributable to DDA. DDA, on the other hand, relied upon its letters dated 06.01.2010 and 09.06.2010 alleging shortcomings and slow progress on the contractor's part. The fact that extension of time was granted without levy of compensation is certainly relevant, but it does not by itself establish that the whole of the extended period amounted to a compensable breach by DDA. For an award of

prolongation damages, the Arbitrator was required, at least broadly, to identify the delay for which DDA was contractually responsible and to connect the period for which damages were awarded to that delay.

68. Though the award refers elsewhere to hindrances and extension papers, while deciding Claim No.8 but it does not reconcile the competing causes of delay or explain why the entire nine-month period adopted for damages was attributable to DDA. The basis of liability is, therefore, left incomplete.

69. The third and more fundamental difficulty concerns proof of loss. The respondent's claim was for expenditure actually incurred on staff, tools and plant, machinery and labour. The learned Arbitrator did not award any contractual lump sum or agreed rate. He selected a limited component of the claim and proceeded on the footing that a prudent contractor would reasonably have retained two engineers and two chowkidars. On that basis, he adopted a figure of Rs.1,05,000/- per month. The respondent points out that the contract itself required deployment of engineering and watch and ward staff and submits that the learned Arbitrator deliberately confined the award to a minimum deployment. Even if that submission is accepted, the requirement to maintain personnel does not, by itself, establish that the respondent actually incurred expenditure of Rs.1,05,000/- per month for nine months. The award does not identify salary sheets, wage registers, bank payments, vouchers, accounts, attendance records or any other contemporaneous material which supports the monthly figure actually awarded.

70. This is not merely a case where loss has otherwise been proved and the Court disagrees with the Arbitrator's assessment of its quantum. Here, the assumption as to reasonable minimum deployment has been used both to establish that expenditure was incurred and to quantify that expenditure.

71. There is a clear distinction between estimating the amount of a loss which has first been proved and assuming the existence of the loss because the estimate appears reasonable. The Supreme Court in ***Unibros v. All India Radio***[8], while considering prolongation and loss of profit claims, reiterated that damages cannot be awarded merely because delay has occurred and that there must first be credible evidence of loss before a formula or estimate is employed.

72. ***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd***.[9] similarly emphasizes, in the context of delay related damages, that the computation must be linked to an established loss and cannot rest upon an unsupported assumption. These decisions do not enlarge the scope of Section 34. They explain the factual basis which an award of damages must possess.

73. This Court is mindful that the Arbitrator is ordinarily the final judge of the quality and quantity of evidence and that a Court under Section 34 cannot insist upon the evidentiary standards of a civil trial in every commercial arbitration. But where the claim itself is for actual expenditure and the award does not identify material from which either

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[8] **2023 INSC 931**
[9] **2023 INSC 850**

the expenditure or the rate adopted can reasonably be found, the defect is not merely one of weight, it goes to the existence of the loss for which damages have been granted.

74. Read cumulatively, the treatment of the no-claim undertaking, the absence of a sufficiently reasoned casual allocation of the period of delay and the lack of evidentiary support for the figure of Rs.1,05,000/- per month, place Claim No.8 on a footing materially different from Claim Nos.1, 2, 4 and 5.

75. Interference is not called for because this Court would have assessed a different amount, it is called for because the essential foundations of entitlement, causation and loss have not been established in a legally sustainable manner. Therefore, the award of Rs.9,45,000/- under Claim No.8 is accordingly set aside.

76. Claim No.9 concerns Rs.50,000/- withheld towards quality control parameters. DDA had specifically pleaded before the learned Arbitrator that Rs.30,647/- had been adjusted under Reduction Item Statement No.1 and that the balance amount of Rs.19,353/- was liable to be retained on account of non-rectification of defects and non-settlement of quality control. DDA expressly invoked Clause 25-B and contended that the decision of the Engineer-in-Charge in relation to sub-standard work was final and was not open to arbitration. The learned Arbitrator accepted the adjustment of Rs.30,647/-. The award also records, in substance, that withholding in relation to the quality control was justified. Yet, the balance amount of Rs.19,353/- was

directed to be paid on the ground that no justification had been shown for withholding that amount.

77. The difficulty here is not merely that DDA disagrees with the factual conclusion. The specific plea under Clause 25-B went to the Arbitrator's authority to adjudicate the underlying departmental determination. If the balance amount of Rs.19,353/- formed part of, or depended upon, a decision which the contract had made final and excepted, the Arbitrator could not direct release of that amount without first deciding whether the balance was independent of the excepted determination.

78. The respondent has taken a general plea that no jurisdictional objection was raised before the Arbitrator. Insofar as Claim No.9 is concerned, that submission cannot be accepted in the face of DDA's pleaded case that Clause 25-B was specifically invoked in the counter statement before the learned Arbitrator. The objection was, therefore, not raised for the first time in these proceedings.

79. ***Vishwanath Sood v. Union of India***[10] and ***Mitra Guha Builders (India) Co. v. ONGC***[11]**,** recognize that where the contract consciously excludes a particular determination from arbitration and gives finality to the decision of a named Authority, the Arbitrator cannot assume jurisdiction over that excepted matter. The precise scope of the exclusion must, of course, be found from the contract and from the nature of the claim.

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[10] (1989) 1 SCC 657
[11] (2020) 3 SCC 222

80. In the present case, the award neither rejects the DDA's objection under Clause 25-B nor records a finding that the balance amount of Rs.19,353/- was wholly independent of the quality control or sub-standard work determination. This omission assumes significance because the learned Arbitrator himself accepted the principal quality control adjustment. The direction to pay the balance amount was thus made without first resolving the jurisdictional objection on which the entitlement depended.

81. This is not a re-appreciation of the quality of the work. It is an objection to the Tribunal deciding a consequential monetary claim without determining whether the subject from which that claim arose had been contractually excluded from arbitration. Thus, the award of Rs.19,353/- under Claim No.9 is, therefore, unsustainable and is set aside.

82. Claim No.10 relates to interest. The respondent had claimed interest at the rate of 18% per annum. The learned Arbitrator awarded simple interest at 10% per annum on the amount under Claim No.1 from 01.04.2012 to 22.05.2013 and simple interest at 10% per annum on Claim Nos.1, 2, 4, 5, 8 and 9 from 23.05.2013 till the date of payment or decree, whichever was earlier, subject to the condition regarding payment within sixty days as recorded in the award.

83. Regarding this claim, DDA submits that the agreement itself contains restrictions on payment of interest and that Section 31(7)(a) makes the Arbitrator's power subject to the agreement between the

parties. Reliance is placed particularly upon Clause 2, which according to DDA bars interest on amounts withheld for failure to achieve contractual milestones, and Clause 29, which is stated to bar interest on security deposit or sums withheld against claims under the contract. It relies upon ***Sri Chittaranjan Maity v. Union of India***[12] and ***Garg Builders v. Bharat Heavy Electricals Ltd.***[13]**.**

84. There is no quarrel with the legal proposition advanced by DDA. Where the contract expressly prohibits interest in respect of a particular amount or for a particular period, an Arbitrator cannot award pre-reference or pendente-lite interest contrary to that stipulation.

85. Section 31(7)(a) itself recognizes the primacy of the parties' agreement. The difficulty for DDA lies in applying that proposition to the claims which survive. The clauses referred to are not shown to constitute an across-the-board prohibition against interest on every monetary entitlement under the contract.

86. Clause 2, on DDA's own case, concerns money withheld for failure to achieve a milestone, while Clause 29 concerns security deposit or sums withheld against claims. DDA has not shown that the final bill rate dues under Claim No.1, the price of additional work under Claim No.2 or escalation under Claim No.4 fall within those descriptions.

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[12] **(2017) 9 SCC 611**
[13] **(2022) 11 SCC 697**

87. As regards Claim No.5, the amount of Rs.1,00,000/- had been withheld for sanction of the extension of time. The learned Arbitrator found that the basis for withholding the amount ceased to exist once extension was sanctioned. DDA has not shown that this particular amount of Rs.1,00,000/- was withheld under Clause 2 for failure to achieve a milestone or under Clause 29 against any identified claim of DDA. A general reference to the power of adjustment under Clause 29 does not establish an express contractual bar to interest on the amount after the Arbitrator found it payable.

88. The learned Arbitrator awarded simple interest at the rate of 10% per annum. No separate ground has been made out to show that the rate is unreasonable or contrary to the contract as to justify interference under Section 34. The challenge to interest on the surviving principal awards under Claim Nos.1, 2, 4 and 5, therefore, fails.

89. The position is necessarily different in relation to Claim Nos.8 and 9. Once the principal awards under those claims are set aside, the interest awarded on those amounts cannot survive independently. Claim No.10 is, therefore, set aside only to the extent that it grants interest on the amounts awarded under Claim Nos.8 and 9. The award of interest on Claim Nos.1, 2, 4 and 5 remains undisturbed.

90. Before concluding, it is necessary to deal with the principle of severability. The learned Arbitrator dealt with the claims separately and quantified each claim independently.

91. The awards under Claim Nos.8 and 9, together with the interest attributable to those claims, can plainly be severed without affecting the reasoning or quantification relating to Claim Nos.1, 2, 4 and 5.

92. In ***J.G. Engineers (P) Ltd. v. Union of India***[14], the Supreme Court recognized that where an award deals with several claims, separately and distinctly, the invalid part may be severed while preserving the unaffected part.

93. The Constitution Bench in ***Gayatri Balasamy v. M/s ISG Novasoft Technologies Ltd.***[15]**,** has since reaffirmed the principle that an invalid portion which is legally and practically severable may be set aside while the independent valid portion is preserved. The present award is capable of such severance.

94. The respondent has relied upon ***Sutlej Construction, ITD Cementation, MMTC Ltd. v. Vedanta Ltd***.[16] and other authorities to submit that a plausible contractual and factual view taken by the Arbitrator is final and not open to substitution by the Court. That principle has been kept in view throughout and is precisely why the Court has declined to interfere with Claim Nos.1, 2, 4 and 5 notwithstanding the detailed criticism of the reasoning, advanced by DDA.

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[14] (2011) 5 SCC 758
[15] 2025 INSC 605
[16] (2019) 4 SCC 163

95. The respondent has also relied upon decisions concerning damages during an extended contractual period, including ***McDermott International Inc. v. Burn Standard Co. Ltd.***[17] and decisions of this Court dealing with prolongation claims.

96. There can be no dispute that the mere existence of an escalation clause does not altogether bar a contractor from proving a distinct claim for damages caused by the employer's breach.

97. Claim No.8 is not being set aside on the ground that prolongation damages are impermissible in law. It is being set aside because, on the material presently available, the award does not satisfactorily establish that the no-claim undertaking was involuntary, does not sufficiently identify the period of delay attributable to DDA and does not identify evidence of the actual expenditure on which the awarded amount is founded.

98. Conversely, DDA's reliance upon the principle that the Arbitrator is bound by the contract cannot be carried to the extent of treating every contractual disagreement as a ground for setting aside the award. Where the Arbitrator has interpreted a payment provision in a manner which the contractual language can reasonably bear and has founded the conclusion on material before him, Section 34 does not permit the Court to substitute DDA's preferred interpretation. It is this distinction which explains the different result in relation to Claim Nos.1, 2 and 4 on the one hand and Claim No.9 on the other.

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[17] **(2006) 11 SCC 181**

99. The result of the above discussion is that the challenge to the award under Claim No.1 for Rs.25,20,573/- fails and the award is upheld. The challenge to the award of Rs.6,67,920/- under Claim No.2 is also upheld. The award of Rs.20,63,543/- under Claim No.4 and the award of Rs.1,00,000/- under Claim No.5 is likewise upheld.

100. Claim No.6 has become infructuous since the amount of Rs.43,81,836/- has already been released to the respondent. The award of Rs.9,45,000/- under Claim No.8 and the award of Rs.19,353/- under Claim No.9 is set aside. Claim No.10 is set aside only to the extent of interest awarded on the amounts under Claim Nos.8 and 9. Interest on the surviving amounts under Claim Nos.1, 2, 4 and 5 shall remain operative in accordance with the terms of the award.

101. The petition is accordingly partly allowed in the above terms. The impugned award dated 30.05.2014 is set aside only to the extent indicated above. The remaining portions of the award which are the subject matter of the present challenge are upheld.

102. Pending applications, if any, also stand disposed of. There shall be no order as to costs.

OM PRAKASH SHUKLA, J

SEPTEMBER 02, 2026/*at*