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

\+ FAO(OS)(COMM) 210/2022 & CM APPL. 36624/2022

Judgment reserved on: 08.12.2025
Judgment pronounced on: 12.01.2026

DELHI JAL BOARD .....Appellant
Through: Mr. Sanjay Jain, Sr. Adv. with Ms. Sangeeta Bharti, SC for DJB with Ms. Malvi Balyan, Adv.

versus

M/S MOHINI ELECTRICALS LTD .....Respondent
Through: Mr. Amit Sibal, Sr. Adv. with Ms. Anusuya Salwan, Mr. Bankim Garg, Mr. Rachit Wadhwa and Mr. Ankit Handa, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 12.01.2026

OM PRAKASH SHUKLA, J.

1. The appellant has filed the present intra-court appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996[1], read with Section 13 of the Commercial Courts Act, 2015 and Section 151 of Civil Procedure Code, 1908, assailing the impugned judgment dated 04.07.2022 passed by the learned Single Judge in O.M.P. (COMM) No. 22/2020 titled as "***Delhi Jal Board (DJB) v. M/s Mohini Electricals Ltd.***". The appellant had earlier filed the petition under Section 34 of the A&C Act before the learned Single Judge seeking setting aside of

[1] "A&C Act", hereinafter

the arbitral award dated 02.09.2019[2] rendered by the learned Sole Arbitrator.

2. By the said impugned award, the learned Arbitral Tribunal allowed the majority of the claims preferred by the respondent (claimant before the Arbitral Tribunal) while rejecting certain claim 3, 6A, 7, 11 and 14. The arbitral proceedings emanate from disputes arising out of the contract dated 28.11.2003, executed between the parties for the *"Construction of various reservoirs at different location in TYA Areas, Delhi of Delhi Jal Board[3]"*.

FACTS

3. The brief factual matrix necessary for the purposes of adjudication of the present appeal is delineated below.

4. The Delhi Jal Board[4] (appellant hereinafter) invited tenders *vide* NIT No.8(2002-2003) for construction of Underground Reservoirs[5] and Booster Pump Stations[6] across multiple sites in the Trans Yamuna Area, Delhi[7]. The work was to be executed on a turnkey basis covering civil construction and supply, installation, testing and commissioning of Electrical and Mechanical[8] systems. Construction of UGRs with associated BPSs was required at five specified locations within the TYA area. At the sixth location, Tahirpur (Nand Nagri), the scope was

[2] "Impugned Award", hereinafter
[3] "the Project", hereinafter
[4] "DJB", hereinafter
[5] "UGR", hereinafter
[6] "BPS", hereinafter
[7] "TYA", hereinafter
[8] "E&M", hereinafter

limited to the construction of a UGR only.

5. For the aforesaid project, M/s Mohini Electrical Ltd. (respondent hereinafter) entered into a consortium arrangement dated 20.01.2003 with M/s Jes Engineering Co. Pvt. Ltd. and M/s GSJ Envo Ltd., with the respondent designated as the Consortium Leader.

6. Upon completion of the pre-qualification process, the respondent submitted its technical and financial bids. A Work Order dated 30.09.2003[9] was thereafter issued for a total value of Rs. 28,49,72,521/- comprising civil works of Rs. 18,63,11,936/- and E&M works of Rs. 9,86,60,583/-. The scope of the E&M works further envisaged an Operation and Maintenance[10] obligation for five years following the completion of the trial run.

7. The Work Order stipulated commencement of work on the 14th day from the issuance of the Work Order and completion within 18 months, including 15 months for execution and 3 months for the trial, fixing 14.10.2003 as the commencement date and 13.04.2005 as the scheduled completion date.

8. Thereafter, the parties executed a formal contract on 28.11.2003[11], incorporating the FIDIC Conditions of Contract for Construction for Building and Engineering Works, First Edition 1999, as modified by Part II – Conditions of Particular Application.

[9] "Work Order", hereinafter
[10] "O&M", hereinafter
[11] "contract", hereinafter

9. Disputes arose soon thereafter concerning commencement and pace of work. According to the appellant, the respondent started work only on 19.11.2003, and even then, at only one site, with negligible progress, despite the clear stipulation of 14.10.2003 as the effective commencement date. Dissatisfaction over delayed commencement was recorded *vide* letter dated 03.12.2003.

10. The respondent, however, *vide* letter dated 19.01.2004, contended that commencement was delayed only because the mobilization advance of 10% was withheld despite furnishing of a performance bank guarantee dated 28.10.2003 for Rs.1,86,31,194/-. The respondent alleged expenditure exceeding Rs.1 crore and attributed delay to financial hardship caused by the non-release of the advance.

11. The appellant refuted the allegation by its communication dated 01.04.2004, pointing out that the bank guarantee securing the mobilization advance had itself been furnished belatedly on 10.12.2003 and, therefore, the respondent could not shift the burden of delay on the appellant.

12. As progress continued to lag, a delay notice dated 15.07.2004 was issued, recording that only about 21% of the work had been completed in nine months, whereas contractual expectations required nearly 60% progress by that stage. The respondent was called upon to show cause as to why, in terms of the contract, compensation should not be levied for the delay and slow progress of the work solely attributable to the respondent.

13. Between April 2004 and March 2006, the appellant and respondent exchanged a series of communications recording deficiencies and delays in execution. The respondent sought extensions on grounds of escalation and financial constraints. The appellant granted extensions though expressly reserving its right to impose liquidated damages and penalties.

14. Due to persistent disputes regarding delay, mobilization advance recovery, and release of payments, the respondent invoked Clause 20 of the contract and sought the constitution of a Dispute Adjudication Board[12] on 29.08.2005.

15. Initially, the appellant appointed Mr. Rakesh Seth, former Member (Drainage), DJB, as DAB member on 03.03.2006. However, the respondent objected to the said unilateral appointment, and requested that a panel of three names be proposed for consideration for appointment of a single-member DAB.

16. Subsequently, the appellant appointed Mr. I.M. Singh as the single-member DAB, and the respondent conveyed its consent to the said appointment. On 07.01.2009, Mr. Singh requested both parties to attend his office for execution of the Dispute Adjudication Agreement[13]. However, the respondent did not participate in the signing of the DAA.

[12] "DAB", hereinafter.
[13] "DAA", hereinafter.

17. By its letter dated 28.01.2009, the respondent stated that both parties had agreed to explore an amicable resolution of the disputes and, in that context, had mutually decided to defer execution of the DAA.

18. According to the appellant, no effective progress took place thereafter until 10.10.2013, when the respondent sought to revive the DAB process seeking execution of the DAA.

19. Meanwhile, the timeline for completing the project was extended on multiple occasions and the final extension was granted up to 31.10.2008 by the letter dated 08.02.2013, subject to a token penalty of Rs.40,000/- for the delay. Also, the performance certificates dated 11.08.2008 recorded that execution of the works had been completed by August 2008.

20. Alleging continued inaction regarding the DAB, Jes Engineering Co. Pvt. Ltd. (a member of the consortium) filed W.P.(C) 5337/2015 before this Court seeking directions for execution of the DAA. Pursuant to order dated 27.05.2015, a single member DAB was constituted with the consent of both the parties, and Mr. Anand Kumar was appointed on 05.09.2016.

21. In a joint meeting held on 27.10.2017, the parties agreed to close the DAB process and refer the disputes to arbitration. By mutual consent, Mr. Anand Kumar was appointed as the Sole Arbitrator, and DAB proceedings were terminated on 05.03.2018.

PROCEEDINGS BEFORE ARBITRAL TRIBUNAL AND IMPUGNED AWARD

22. The respondent had raised as many as twenty distinct claims before the learned Arbitral Tribunal. Upon a detailed consideration of the pleadings, documentary evidence, and submissions advanced by both parties, the learned Arbitral Tribunal proceeded to allow a substantial majority of the said claims. In addition, it also awarded financing charges on the amounts found due and payable.

23. The respondent in its Statement of Claim, categorically asserted that during execution of the contract works, various hindrances were caused by the appellant, which materially impeded timely performance. According to the respondent, although it was ready and willing to execute the work in accordance with the contractual schedule, persistent delays attributable to the appellant resulted in prolongation of the project and eventual completion only in the year 2008. The respondent, therefore, pleaded that it had incurred substantial financial losses, overheads, and escalation costs due to prolongation, which were wholly attributable to the defaults of the appellant.

24. Upon appreciation of the contemporaneous correspondence and record, the learned Arbitral Tribunal recorded a categorical finding that the primary cause of delay was attributable to the appellant. The Tribunal noted that there was considerable delay in handing over clear and encumbrance free site, in issuance and approval of designs and drawings, in release of payments legitimately due, and in appointment of the third-party inspection agency. Each of these lapses had a

cumulative and cascading effect on the progress of work, rendering adherence to the original timeline impossible. The learned Arbitral Tribunal, therefore, rejected the appellant's attempt to attribute delay to the respondent.

25. The learned Arbitral Tribunal thereafter, considered the preliminary objection raised by the appellant regarding limitation. In its Statement of Defense, the appellant submitted that the claims were barred by limitation as they were filed beyond three years from the alleged accrual of cause of action. It was contended that the respondent was aware of the alleged disputes at least from 2004, yet chose not to initiate proceedings within the prescribed period. According to the appellant, though the respondent attempted to invoke the DAB mechanism, it failed to meaningfully pursue the same, despite repeated reminders from the appellant.

26. The appellant further argued that the respondent sought constitution of the DAB only in 2016, which was far beyond the contractual period of 42 days contemplated under the dispute resolution clause for raising disputes. On this basis, it was contended that the arbitral proceedings themselves were not maintainable, being *ex facie* barred by limitation.

27. The learned Arbitral Tribunal, however, rejected the plea of limitation. It held that the limitation period does not commence merely on occurrence of a dispute in abstract, but only when the right to invoke arbitration effectively accrues. It was noted that the parties were continuously engaged in discussions, negotiations and attempts at

amicable settlement from the inception of the dispute until 2018. Reliance was placed on the principle laid down in ***Hari Shankar Singhania v. Gaur Hari Singhania***[14], wherein it was held that limitation begins to run only from the date when assertion of claim by one party is clearly denied by the other.

28. Applying the above principle, the learned Arbitral Tribunal concluded that the right to seek arbitration accrued only on 05.03.2018, when both parties mutually agreed to close the DAB process, in terms of Clause 20 of the contract, and proceed to arbitration. Accordingly, the learned Arbitral Tribunal held that the claims were well within limitation.

29. With respect to financing charges, the learned Arbitral Tribunal undertook an exhaustive examination of the contractual framework relating to payments and delayed payments, particularly sub-Clauses 14.3, 14.6, 14.7, 14.8, and 20.1 of the contract. The learned Arbitral Tribunal emphasized that the contractual provisions clearly delineated the rights and obligations of the parties in relation to interim payments and the consequences of delayed release.

30. The learned Arbitral Tribunal found that under clause 14.3(b)–(f), all additions, deductions and claims were required to be incorporated in the running bills. Since the appellant failed to honour payments due under these running bills, it became liable, by operation of clause 14.8, to pay financing charges on delayed amounts. Upon

[14] **(2006) 4 SCC 658**

examining the pleadings, supporting statements, and Chartered Accountant certified documents filed on 07.08.2019, the learned Arbitral Tribunal concluded that the appellant had failed to abide by the contractual stipulations governing financing charges. Consequently, it was held that the respondent was entitled to financing charges on all amounts wrongfully withheld.

31. A detailed tabular statement setting out each claim, the amount awarded, together with the computation of financing charges payable, thereby formed an integral part of the impugned award, as below:

Claim	Principal Awarded	Finance Charge (FC) Awarded	Total Amount Awarded
CNo.1: Addition to contract price due to intro of VAT Tax in place of Work Contract Tax for Rs.1,20,54,368/-.	Rs. 63,81,699/-	Rs. 2,39,19,679/-	Rs. 3,03,01,378/-
CNo.2: Addition To Contract Price Due to Intro of Service Tax on Erection & Commissioning (E&C) Works and Operation and Maintenance (O&M) Works for Rs.6,04,384/-	Rs. 6,04,384/-	Rs. 19,11,312/-	Rs. 25,15,696/-
CNo.3: Addition to Contract Price on Account of Levy of Labour Cess for Rs.10,42,930/-	NIL	NIL	NIL
CNo.4(A): Excess Amount Retained from RA Bills amounting to Rs.23,53,806/-	Rs. 23,53,806/-	Rs. 75,32,918/-	Rs. 98,86,724/-
CNo.4(B): Excess Retention on pretext of Extension of Time	Rs. 1,95,924/-	Rs. 59,28,146/-	Rs. 61,24,070/-
CNo.4(C): Excess Recovery of Mobilization Advance beyond the Provision of the Contract.	—	Rs. 1,78,12,198/-	Rs. 1,78,12,198/-
CNo.5: Refund of	Rs. 41,55,780/-	Rs. 17,21,552/-	Rs. 58,77,332/-

Amount wrongly recovered on the excuse of use of different Brand of Steel, Though 'ISI' Marked for Rs.41,55,780/-			
CNo.6(A): Addition to Contract Price in Wages for the Labour deployed for Civil Works & Installation Works of F&M for Rs.97,47,230/-	NIL	NIL	NIL
CNo.6(B): Addition to Contract Price in Wages for the Manpower deployed for O&M Works for Rs.64,41,467/-	Rs. 64,41,467/-	Rs. 98,15,574/-	Rs. 1,62,57,041/-
CNo.7: Addition to Contract Price on account of Increased Prices of Input Materials during the Stipulated Period of Completion for Rs.81,56,564/-	NIL	NIL	NIL
CNo.8: Addition to Contract Price on Account of Increased Prices of Cement, Steel and Other input Materials after the Stipulated Date Of Completion for Rs.2,98,73,338/-	Rs. 2,66,72,624/-	NIL	Rs. 2,66,72,624/-
CNo.9A:AmountPayable on Account of Non-Payment of Work Done / Final Bill as per the terms of the Contract For Rs.5,56,95,810/-	Rs. 4,97,28,402/-	—	Rs. 4,97,28,402/-
CNo.9B: Amount Payable by way of FC under Clause 14.8 on Delayed Payments as per the Terms of the Contract.	—	Rs. 10,98,93,606/-	Rs. 10,98,93,606/-
CNo.9C: Amount Payable on Account of FC Due to Delay in Release of Mobilization Advance	—	Rs. 13,12,205/-	Rs. 13,12,205/-
CNo.10: Addition to Contract Price on Account of Delay in Appointment of Third-Party Inspection Agency (TPJA)	Rs. 2,67,192/-	Rs. 11,59,371/-	Rs. 14,26,563/-
CNo.11: On Account of	NIL	NIL	NIL

Deferred Profitability			
CNo.12A: Manpower costs and plant and machineries during overrun period	Rs. 3,68,43,750/-	—	Rs. 3,68,43,750/-
CNo.12B: Overhead/Head Office Profits	Rs. 1,06,03,186/-	—	Rs. 1,06,03,186/-
CNo.13: On Account of FC beyond the Dates as stated against each Dispute	—	Rs. 5,48,43,184/-	Rs. 5,48,43,184/-
CNo.14 : Costs towards Arbitration Proceedings Rs.29,00,000/-	NIL	NIL	NIL
TOTAL	**Rs. 15,40,63,788/-**	**Rs. 22,60,34,141/-**	**Rs. 38,00,97,929/-**

IMPUGNED JUDGMENT

32. Aggrieved by the impugned award, the appellant filed a petition under Section 34 of the A&C Act. The challenge to the impugned award was primarily premised on the following grounds: i) the claims were barred by limitation; (ii) the delay in execution of the project was not attributable to the petitioner/appellant; (iii) the learned Arbitral Tribunal erred in awarding financing charges/interest on the claims; and iv) the impugned award was contrary to the express terms of the contract and therefore liable to be set aside.

33. The learned Single Judge, upon consideration of the rival contentions and the material on record, dismissed the petition and found no ground to interfere with the impugned award within the limited scope of Section 34 of the A&C Act.

34. On the issue of limitation, the learned Single Judge held that Clause 20 of the contract envisaged a mandatory multi-tier dispute

resolution mechanism, requiring disputes to be placed, in the first instance, before the DAB. It was found that the respondent had invoked the DAB mechanism as early as 29.08.2005 and had thereafter consistently pursued the constitution and functioning of the DAB.

35. However, the learned Single Judge noted, that the DAB remained non-functional for a prolonged period, constraining one of the consortium partners to approach this Court by way of a writ petition in May 2015. By order dated 25.05.2015, this Court directed the parties to execute DAA within stipulated timelines and further permitted substitution of the DAB member, if necessary, in order to operationalize the mechanism contemplated under the contract.

36. Although the DAB ultimately came to be constituted, the learned Single Judge recorded that it failed to render any decision. The DAB proceedings were mutually closed on 05.03.2018, whereafter the parties proceeded to arbitration in terms of the contract. In view of Clause 20, the learned Single Judge held that the cause of action to invoke arbitration accrued only upon the closure of the DAB in 2018, and not at any prior point of time. Consequently, the arbitral claims could not be said to be barred by limitation.

37. The learned Single Judge also took note of the fact that the appellant itself had, on 08.02.2013, granted an extension of time for completion of the project, thereby acknowledging that disputes between the parties were live and subsisting. In these circumstances, it was concluded that the view taken by the learned Arbitral Tribunal on limitation was both plausible and consistent with the contractual

scheme, and therefore did not disclose any patent illegality warranting interference.

38. With regard to delay, the learned Single Judge observed that the learned Arbitral Tribunal, on a comprehensive appraisal of the evidence, found that several factors leading to delay were attributable to the appellant. The learned Arbitral Tribunal also noticed that the extensions of time granted were accompanied only by nominal penalties of Rs.20,000/- and Rs.40,000/-, despite the contract providing for significantly higher liquidated damages. This conduct in view of the Court indicated that the appellant itself did not treat the delay as being attributable to the respondent. The Court held that such findings were factual in nature, and fell squarely within the domain of the Arbitral Tribunal as the final adjudicator of facts, and therefore could not be re-appreciated under Section 34 of the A&C Act.

39. On the question of financing charges/interest, the learned Single Judge rejected the contention of the appellant that the contract imposed a blanket prohibition on the award of interest. Upon a plain reading of Clauses 14.7 and 14.8, the Court held that there was no proscription against interest; rather, Clause 14.8 positively conferred upon the contractor an entitlement to financing charges, compounded monthly, in the event of delayed payments. The argument that the contract barred interest was therefore held to be misconceived.

40. The learned Single Judge further recorded that the Arbitral Tribunal had found certain amounts payable to the respondent, to have remained unpaid. In respect of such delayed payments, the entitlement

to financing charges flowed directly from Clause 14.8 as per the learned Arbitral Tribunal. The learned Single Judge found merit in the contention of the respondent that financing charges are payable only in respect of admitted/certified payments that remained unpaid. However, the learned Arbitral Tribunal's decision to award interest even on amounts that ought properly to have been included in Interim Payment Certificates[15] was held to be a possible interpretation based on the contractual provisions and could not be characterized as perverse or irrational.

41. The plea that the learned Arbitral Tribunal was legally prohibited from awarding compound interest was also repelled. The Court observed that not only did the contractual framework itself envisage compound financing charges, but the respondent had also produced material demonstrating that it had incurred compound interest on its borrowings. In this background, the award of compound interest could not be said to suffer from patent illegality.

42. The reliance placed by the appellant on ***M/s Hyder Consulting (UK) Ltd. v. Governor, State of Orissa***[16] was held to be misplaced. The learned Single Judge observed that the said decision, in fact, recognized that arbitral tribunals may grant interest on interest under Section 31(7) of the Act. Reference was made to ***UHL Power Company Ltd. v. State of Himachal Pradesh with State of Himachal Pradesh v. UHL Power Company Ltd***[17], wherein the Hon'ble Supreme Court clarified that there

[15] "IPCs", hereinafter
[16] **(2015) 2 SCC 189**
[17] **(2022) 4 SCC 116**

is no absolute bar on the grant of compound interest by arbitral tribunal where the contract so provides or where circumstances justify such award.

43. In light of the above discussion, the learned Single Judge concluded that the impugned award did not disclose any infirmity within the narrow grounds of interference under Section 34 of the Act. The petition was accordingly dismissed.

RIVAL CONTENTIONS BEFORE THIS COURT

44. Mr. Sanjay Jain, learned Senior Counsel appearing for the appellant, submitted that the award in respect of claims 12A and 12B suffers from patent illegality and is liable to be set aside. It was contended that both claims were allowed in the absence of any primary or contemporaneous evidence establishing that the expenditure claimed was in actual incurred by the respondent. The award, therefore, travels beyond the record and warrants interference by this Court.

45. Learned Senior Counsel submitted that claim 12A was allowed solely on the basis of Annexure 12A appended to the Statement of Claims, which was merely a self-prepared document based entirely on unilateral calculations. In the absence of supporting material such as bank statements, payment records or vouchers, etc., such a document could not constitute proof of expenditure incurred. Reliance was placed on ***SJVN v. Jaiprakash Hyundai Consortium and Others***[18], wherein it

[18] **2023 SCC OnLine Del 4039**

was held that arbitral awards founded merely on mathematical assumptions or theoretical models without supporting pleadings or cogent evidence are unsustainable.

46. With respect to claim 12B, learned Senior Counsel submitted that the award proceeds purely on the application of the *Emden* Formula to charts appended as Annexures 12B and 12C, which were again prepared unilaterally by the respondent to demonstrate actual loss suffered on account of delay attributable to the appellant. Reliance was placed on ***Unibros v. All India Radio***[19]***, Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation. Ltd.***[20], ***K.R. Builders Pvt. Ltd. v. DDA***[21], to contend that formulae such as *Hudson or Emden* cannot be applied in vacuum, and that the contractor must prove availability of alternative business opportunities and actual diversion of resources.

47. It was further submitted that the award of financing charges in respect of claims 1, 2, 4A, 4B, 4C, 5, 6B, 9C 10 and 13 is patently illegal, contrary to the contract terms and amounts to re-writing its terms. Clause 14.8 cannot be read in isolation; it must be read along with clauses 14.3, 14.6 and 14.7 forming part of the payment mechanism under clause 14.

48. Upon a holistic reading of the clauses14.3, 14.6, 14.7 and 14.8, it was submitted that the contractor becomes entitled to financing charges only where, (i) an application for payment is submitted under Clause

[19] 2023 SCC OnLine SC 1366
[20] (2024) 2 SCC 375
[21] 2012 SCC OnLine Del 1625

14.3, (ii) the engineer issues an IPCs under Clause 14.6, and (iii) despite such certification, payment is delayed beyond the stipulated period under Clause 14.7. Reliance was placed on ***South East Asia Marine Engg. & Constructions Ltd. (SEAMEC LTD.) v. Oil India Ltd.***[22]**,** to contend that contractual clauses must be construed in their entirety, and no term may be applied divorced from its contractual context.

49. It was argued that the respondent produced neither applications for IPCs under clause 14.3 nor any payment certificates under clause 14.6. The claims rested solely on self-generated annexures reflecting hypothetical calculations. It was contended that the learned Arbitrator ignored the absence of these foundational documents, thereby overlooking essential contractual requirements and granted financing charges as if they were interest on disputed claims. Learned Senior Counsel relied on ***Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd***[23]**,** to submit that an award ignoring vital evidence or contractual stipulations amounts to perversity.

50. He further emphasized that the cascading effect of such erroneous computation is manifest as financing charges alone constitute to Rs.22,60,34,141/- out of a total arbitral award of Rs.38,00,97,929/-, far exceeding the principal sum of Rs.15,40,63,788/-, thereby demonstrating gross arbitrariness.

51. It was further argued that though the learned Single Judge recorded that financing charges were confined to admitted or certified

[22] **(2020) 5 SCC 164.**
[23] **2024 SCC OnLine SC 522**

dues, the award was nevertheless upheld. This, it was argued, amounted to re-writing the contract by converting financing charges into interest, despite lack of contractual sanction, which is impermissible.

52. Reliance was placed on ***Union of India and Others v. Bharat Enterprise***[24], ***Union of India v. Manraj Enterprises***[25], ***State of Chhattisgarh and another v. SAL Udyog (P) Ltd.,***[26], ***Indian Oil Corporation. Limited v. Shree Ganesh Petroleum Rajgurunagar***[27], *and* ***Bharat Coking Coal Ltd. v. Annapurna Construction***[28], to assert that where the contract expressly regulates financial liability, deviation from its terms renders the award unsustainable.

53. Learned Senior Counsel further contended that all claims were *ex facie* time-barred. The cause of action arose on 28.01.2009 and expired on 27.01.2012. Therefore, the learned Single Judge erred in treating the disputes as live until 08.02.2013.

54. Relying on ***Geo Miller & Co. (P) Ltd. v. Chairman, Rajasthan Vidyut Utpadan Nigam Ltd.***[29], it was argued that negotiations or settlement discussions cannot continue indefinitely and that a "breaking point" occurred when execution of the DAA was deferred at respondent's request vide letter dated 28.01.2009, thereby triggering the commencement of limitation.

55. It was further submitted that the subsequent letters dated

[24] **2023 SCC OnLine SC 369.**
[25] **(2022) 2 SCC 311.**
[26] **(2022) 2 SCC 275**
[27] **(2022) 4 SCC 463.**
[28] **(2003) 8 SCC 154.**
[29] **(2020) 14 SCC 643.**

01.09.2011, 20.06.2012 and 08.10.2013, were unrelated to the contractual disputes and pertained to O&M, thus incapable of reviving limitation. Once limitation expired on 27.01.2012, it could not be revived by subsequent consent, as held in ***Extramarks Education India Private Limited v. Shri Ram School and Another***[30] that the consent of parties cannot revive an already time barred claim.

56. Learned Senior Counsel further assailed the impugned award in respect of claims 4C, 9A, 9B and 9C, contending that the claims were allowed without due application of mind and are therefore perverse and irrational. It was contended that, with respect to claim 4C, Annexure E itself records that the entire mobilisation advance stood fully adjusted by the 23rd RA Bill. Despite this admitted position, financing charges continued to be awarded, which is contrary both to the factual record and the express terms of the contract.

57. As regards claim 9C, it was also submitted that, even assuming there was a delay in the release of the mobilisation advance, such delay was limited to a period of one month. Nonetheless, financing charges were awarded up to 05.03.2018, i.e., up to the date of the Award, and thereafter until payment, which is contrary to the contractual framework and wholly unjustified.

58. *Per contra*, Mr. Amit Sibal, learned Senior Counsel for the respondent, at the very threshold, objected to the appellant raising fresh challenge to the claims 12A and 12B, contending that no specific grounds in respect thereof were pleaded under Section 34 of the A&C

[30] **2022 SCC Online Del 3123.**

Act, and therefore such a challenge cannot be permitted to be raised for the first time in appellate proceedings. It was submitted that proceedings under Section 34, being summary in nature, permit examination only of grounds specifically pleaded therein. Reliance was placed on ***Sidhi Industries and Ors. v. Religare Finvest Limited and Ors.***[31] ***and Media Asia (P) Ltd. v. Prasar Bharti***[32], where as per the learned Senior Counsel, the Co-ordinate benches of this Court have held that the limited scope of Section 37 does not permit re-agitation of unpleaded challenges. Thus, having failed to raise these grounds at the appropriate stage, the appellant cannot now be allowed to raise them for the first time in an appeal under Section 37. Such an attempt would amount to permitting a party to improve its case at the appellate stage, which is contrary to settled principles governing proceedings under Section 37.

59. Reliance was further placed on ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and Another***[33] ***and Punjab State Civil Supplies Corporation Limited and Another v. Sanman Rice Mills and Others***[34]**,** to submit that the scope under Section 37 is even narrower than Section 34, and is akin to supervisory or revisionary jurisdiction, limited to examining whether the Court below exceeded or failed to exercise jurisdiction. Therefore, it was submitted that re-appreciation of facts or substitution of conclusions is impermissible at this stage.

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[31] **2017 SCC OnLine Del 12685**
[32] **2012 SCC OnLine Del 2739**
[33] **(2025) 2 SCC 417**
[34] **2024 SCC OnLine SC 2632**

60. On merits, learned Senior Counsel submitted that claim 12A was duly supported by Annexure 12A, which comprised extracts from audited accounts, duly certified by a Chartered Accountant, and drawn from, as well as reconcilable with, the audited books of account, which were never disputed by the appellant. The learned Arbitrator, in paragraph 39.4.2, expressly noted this aspect. It was further submitted that the appellant never challenged the authenticity of these documents in its Statement of Defence and is, therefore, estopped from doing so at this stage.

61. It was further submitted that Annexure 12A constitutes admissible secondary evidence under Section 65(g) of the Indian Evidence Act, 1872[35] (now Section 60(g) of Bharatiya Sakshya Adhiniyam, 2023). It was premised on the fact that the said annexure consolidates voluminous data such as manpower deployment, machinery utilization, and monthly expenditure incurred during the overrun period, and has consistently been recognized in construction arbitrations as a valid evidentiary method. Reliance was placed on ***NHAI v. CEC-HCC Joint Venture***[36] **and** ***NHAI v. Hindustan Construction Company Ltd.***[37]**,** where the claims were ultimately allowed by the learned Arbitral Tribunal by relying *inter alia*, on the Chartered Accountant's certificate produced by the contractor.

62. It was further emphasised that the learned Arbitrator did not mechanically accept the figures, but applied contractual and statutory

[35] "IE Act", hereinafter
[36] **2017 SCC OnLine Del 7593**
[37] **2016 SCC OnLine Del 1144**

filters, restricting manpower costs to one Graduate Engineer and three Watchmen under Clauses 4.3 and 4.22, restricting machinery costs to the batching plant under Clause 2.3, applying the relevant DSR rates, and finally reducing the entire assessed amount by 50% towards idling. Thus, against a claim exceeding Rs. 10.56 crores, only Rs. 3.68 crores stood awarded, thereby demonstrating a reasoned and conservative assessment

63. As regards claim 12B, it was submitted that the award relates not to loss of profits but to overhead and head-office expenses attributable to delays caused by the appellant. The learned Arbitrator expressly declined to adopt the *Emden* Formula and instead awarded only 5% of the work value executed beyond stipulated completion, consistent with Central Public Works Department[38] circulars under clause 12.3. Reliance was placed on ***National Highways Authority of India v. M/s Prakash Atlanta (JV)***[39]***; and Union of India v. Rama Construction Company***[40]***, and OPG Power (supra)***, to submit that once the arbitrator adopts a plausible view grounded in contractual terms, interference is unwarranted.

64. On Financing charges, learned Senior Counsel submitted that the award has been passed strictly within the contractual framework, and such charges are not interest on unliquidated damages, but contractual compensation for delayed payment. Clauses 14.3, 14.6, 14.7 and 14.8 constitute mechanism for valuation, certification and timing of payments. Clause 14.8 operates when payments falling under Clause

[38] "CPWD", hereinafter
[39] **2018 SCC OnLine Del 8327**
[40] **2022 SCC OnLine Del 1016**

14.3 remain unpaid beyond stipulated time. Financing charges accrue even if IPCs are not issued by the appellant, and the appellant cannot benefit from its failure to certify when the learned Arbitrator awarded such claim exercising its power under clause 20 of the contract.

65. Reliance was placed on ***Nabha Power Limited v. Punjab State Power Corporation Limited and Another***[41] ***and Adani Power (Mundra) Limited v. Gujarat Electricity Regulatory Commission and Others***[42]***and Municipal Committee Katra and Others v. Ashwani Kumar***[43] to reinforce the principle that contracts must be enforced as written and no party may take advantage of its own wrong. Therefore, both the learned Arbitrator and the learned Single Judge, rightly upheld the award of financing charges in terms of the contract.

66. On limitation, it was urged that the cause of action for invoking arbitration does not accrue until pre-arbitral procedures under Clause 20 of the contract stand exhausted. It was contended that the DAB process could not be unilaterally terminated and came to an end only on 05.03.2018 by mutual closure, whereafter the period of limitation commenced. In this regard, reliance was placed on a judgment of this Court in ***Welspun Enterprises Ltd. v. NCC Ltd.***[44]***and B and T AG v. Ministry of Defence***[45].

67. Learned Senior Counsel further submitted that no "breaking point" arose in 2009. The parties continued sincere negotiations,

[41] **(2018) 11 SCC 508**
[42] **(2019) 19 SCC 9**
[43] **2024 SCC OnLine SC 840**
[44] **2022 SCC OnLine Del 3296**
[45] **(2024) 5 SCC 358**

reflected in letters dated 01.09.2011 and 20.06.2012 repeatedly urging execution of the DAA. Reliance was placed on ***Geo Miller (supra)***, which recognizes exclusion of time spent in *bona fide* negotiations.

68. The appellant's contention that the aforesaid letters relate only to O&M was specifically denied, it being pointed out that the work order was on a turnkey basis, encompassing civil works, E&M and O&M, and that there was no separate or independent O&M contract.

69. Learned Senior Counsel further argued that challenges to claims 4C, 9A, 9B, and 9C cannot now be entertained, as such objections were neither pleaded nor urged before the Court under the Section 34 petition. It was submitted that, having elected not to contest these claims at the earlier stage, the appellant is barred from reopening such issues at the appellate stage.

70. With respect to claim 4C, learned Senior Counsel contended that the mobilization advance was contractually required to be recovered at the rate of 10% on a pro-rata basis, whereas the appellant made excess and premature deductions. Accordingly, the award of financing charges was confined only to amounts prematurely withheld and was strictly in accordance with the contractual stipulations.

71. It was further submitted that in respect of claims 9A, 9B and 9C, the learned Arbitrator, upon appreciation of evidence, rightly awarded the unpaid contractual dues and the corresponding financing charges under Clause 14.8, and such findings, being factual and plausible, warrant no interference.

72. In rebuttal, learned Senior Counsel for the appellant submitted that the objection regarding the absence of any challenge to claims 12A and 12B is misconceived. It was contended that specific challenges were, in fact, raised in Grounds H and FF of the Section 34 petition, alleging lack of evidence and arbitrary assessment. The appellant, therefore, cannot be faulted on this count.

73. Without prejudice, learned Senior Counsel submitted that Section 34(2) of the A&C Act confers statutory power upon the Court to set aside an arbitral award where it suffers from patent illegality and violates fundamental policy of Indian law, irrespective of the manner in which such grounds are pleaded. It was further submitted that the Court is duty-bound to strike down awards that are *ex facie* contrary to law. Reliance was placed on ***Sal Udyog (supra)***.

74. It was further submitted that the Chartered Accountant certificates relied upon by the respondent do not establish actual expenditure, as they merely certify tax computations without verifying supporting vouchers, invoices, wage registers or deployment records. The respondent's reliance on ***CEC-HCC Joint Venture (supra)*** **and** ***Hindustan Construction Co. Ltd (supra)*** was distinguished, on the ground that in those cases the certifications were tied to contemporaneous account records and jointly verified site registers, which are conspicuously absent in the present case.

75. Learned Senior Counsel argued that alleged compliance with clause 14 was shown, if at all, only in relation to claim 9A and 9B. For

all other claims where financing charges were awarded, there was no demonstration of compliance of Clause 14 of the contract. Further, it was submitted that learned Single Judge had re-written the contract by upholding financing charges as "interest", which was alleged to be alien to the contract and hence it was contended that Clause 14.8 could not be invoked to grant the Financing charges. The above position was argued even for claim 9A and 9B.

76. Learned Senior Counsel submitted that the letters dated 01.09.2011 and 20.06.2012 primarily concern non-payment of O&M dues and contain unilateral request for execution of the DAA, with no response. Even the respondent, while invoking DAB, referred back to the letter dated 28.01.2009, thereby acknowledging that subsequent correspondence was unrelated and incapable of extending limitation.

77. Finally, it was submitted that Clause 20 does not envisage perpetual continuation of the DAB process. By seeking deferment on 28.01.2009, the respondent effectively abandoned the contractual mechanism, bringing it to an end and triggering limitation. Permitting otherwise would defeat settled law governing limitation and finality in commercial transactions.

ANALYSIS AND CONCLUSION

78. We have carefully considered the submissions advanced by learned Senior counsel for parties and have meticulously examined the material placed on record.

79. Before entering into the merits of the controversy, it is necessary to first delineate the scope and contours of judicial interference in proceedings arising under Section 34 and 37 of the A&C Act:

> *"**34. Application for setting aside arbitral award.** -(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with subsection (2) and sub-section (3).*
> *(2) An arbitral award may be set aside by the Court only if-*
> *(a) the party making the application establishes on the basis of the record of the arbitral tribunal that-*
> *(i) a party was under some incapacity; or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*
> *Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*
> *(v.) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*
> *(b) the Court finds that—*
> *(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or*
> *(ii) the arbitral award is in conflict with the public policy of India.*
>
> ***37. Appealable orders.**—(1) (Notwithstanding anything contained in any other law for the time being in force, an appeal) shall lie from the following orders (and from no others) to the court authorised by*

law to hear appeals from original decrees of the Court passing the order, namely:

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under Section 9;

(c) setting aside or refusing to set aside an arbitral award under Section 34.)

(2) An appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under Section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

80. A plain reading of Section 34 of the A&C Act makes it evident that the power of the Court to interfere with an arbitral award is extremely limited. Section 34 does not permit the Court to sit in appeal over the findings of the Arbitral Tribunal. The Court is not expected to re-appreciate evidence, reassess factual findings, or substitute its own view merely because an alternative view is possible. Even if the award appears unreasoned or partially non-speaking, that by itself, does not furnish a ground for interference unless the award is shown to fall within one of the narrowly defined statutory grounds. Thus, the correctness or reasonableness of the conclusions reached by the Arbitrator is ordinarily beyond the scope of judicial scrutiny under Section 34.

81. It is now well-settled that the jurisdiction exercised under Section 34 of the A&C Act is neither appellate nor revisional in nature. The arbitral award may be challenged only within the narrow confines expressly stipulated in sub-sections (2), (2A) and (3) of Section 34,

including grounds such as incapacity of parties, lack of jurisdiction, conflict with public policy, or patent illegality appearing on the face of the award (in a domestic arbitration). The merits of the dispute are, therefore, insulated from judicial review. Correspondingly, the appellate jurisdiction under Section 37 is even more restricted, being confined only to examining whether the Court deciding the Section 34 petition acted within the limits prescribed by law. The Appellate Court, while exercising powers under Section 37, cannot re-evaluate evidence, revisit factual determinations, or decide whether the Arbitral Tribunal's conclusions were right or wrong, as permissible in a regular appeal.

82. In ***Haryana Tourism Limited v. M/s. Kandhari Beverages Ltd***[46]**,** the Hon'ble Supreme Court reaffirmed that a Court exercising power under Section 37 cannot travel into the merits of the dispute. An arbitral award can be interfered with only if it is shown to be contrary to the fundamental policy of Indian law, the interests of India, justice or morality, or if it suffers from patent illegality going to the root of the matter. Mere errors of fact or appreciation of evidence do not justify judicial intervention.

83. In light of the settled legal position, this Court is of the considered view that the scope of review under Section 37(1)(c) of the A&C Act, while examining an order passed under Section 34, is extremely circumscribed. The appellant, therefore, carries a very heavy burden and must demonstrate a clear case of jurisdictional error, violation of statutory mandate, or patent illegality apparent on the face of the record,

[46] **(2022) 3 SCC 237**

in order to justify interference. Within this narrowly confined framework, the present appeal calls for consideration of the following issues-

i. Whether claims 12A and 12B were awarded in the impugned award without any supporting evidence, and if so, whether such findings constitute patent illegality warranting interference by this Court.

ii. Whether the award of 'Financing Charges' in respect of claims 1, 2, 4A, 4B, 4C, 5, 6B, 9B, 9C, 10 and 13 is patently illegal, contrary to contractual provisions, or inconsistent with the fundamental policy of Indian law.

iii. Whether the claims allowed by the arbitral tribunal were *ex-facie* barred by limitation and, if so, whether the learned Arbitral Tribunal committed a manifest error in law in entertaining and awarding such time-barred claims?

Issue 1- CLAIM 12A AND 12B

84. Claim 12A pertains to the alleged additional expenditure incurred during the period of overrun/prolongation of the contract, consisting of (i) manpower expenses at site and (ii) hire/idling charges of plant and machinery. In substance, the claim represents compensation for site overheads and idling costs allegedly suffered on account of prolongation of works beyond the stipulated completion period.

85. Claim 12B, on the other hand, pertains to the alleged loss of off-site/Head Office overheads and profit during the prolongation period. The claim proceeds on the premise that the project delay resulted in

continued deployment of head office establishment and blocking of the contractor's profit element, thereby giving rise to an entitlement for compensation under this head.

86. The learned arbitrator allowed claim 12A primarily on the basis of Annexure 12A appended to the Statement of Claims. It was asserted that the said Annexure had been authenticated by a Chartered Accountant, and proceeding on that premise, the learned sole Arbitrator accepted it as reliable evidence and accordingly granted the claim 12A in favour of the respondent.

87. Learned Senior Counsel for the appellant argued that the Court exercising jurisdiction under Section 34, while upholding the impugned Award on claims 12A and 12B, failed to assign any reasons or to examine the specific challenges raised by the appellant, notwithstanding the fact that the impugned award itself contains a detailed and reasoned analysis. According to the appellant, such an approach amounts to failure on the part of the Section 34 Court to exercise the jurisdiction, thereby rendering the order vulnerable on the ground of patent illegality.

88. It was further contended that both claim 12A and 12B were allowed in the absence of any substantive evidence and therefore suffer from patent illegality.

89. Before examining whether the impugned award is vitiated, it is apposite to recapitulate and delineate the scope of "patent illegality" under Section 37 read with Section 34 of the A&C Act.

90. It is now settled that patent illegality constitutes a ground for setting aside an award under Section 34(2A) of the A&C Act. However, such illegality must be apparent on the face of the award, and not one that requires reappreciation of evidence or a merit based review.

91. In ***Delhi Airport Metro Express (P) Ltd. (supra),*** the Hon'ble Supreme court made the following observations. The same reads as follows:

> *"39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A "finding" based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An Award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within his jurisdiction or violating a fundamental principle of natural justice."*
>
> (Emphasis supplied)

92. Thus, it could be understood that patent illegality refers to such an error that is obvious, self-evident and goes to the root of the matter, offending substantive provisions of law, principles of natural justice, or reflecting a decision based on "no evidence", thereby warranting judicial interference.

93. In ***Ssangyong Engineering & Construction Co. Ltd. v. NHAI***[47], it was held that "*Thus, a finding based on no evidence at all or an award*

[47] **(2019) 15 SCC 131**

which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality".

94. Further, on perversity of an arbitral award, the Hon'ble Supreme Court in its decision *in* ***Associate Builders v. Delhi Development Authority***[48] held as follows:

> *"31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*
>
> *(i) a finding is based on no evidence, or*
>
> *(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
>
> *(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse."*

95. The Hon'ble Supreme Court has consistently held that where an arbitral award is based on no evidence or ignores vital evidence, such illegality goes to the foundation of the Award and amounts to patent illegality. However, a mere erroneous application of law or re-appreciation of evidence is impermissible within the limited scope of interference under Section 34 or Section 37 of the A&C Act.

96. The primary grievance of the appellant, therefore, is that claim 12A was awarded merely on the basis of a "*put up calculation*", without any supporting evidence.

[48] **(2015) 3 SCC 49**

97. The learned Arbitral Tribunal attached significant weight to the Chartered Accountant's certificate. Hence, we deem it relevant to reproduce the Chartered Accountant certificates relied on by the learned arbitrator:

> "TO WHOMSOEVER IT MAY CONCERN
>
> This is to certify that M/s Mohini Electricals Ltd., WZ-263, Railway Road, Srinagar, Delhi-110034 discharged their tax liability with respect to DVAT as well as Service Tax as per its applicability during the Financial Year period 2004-05 to 2012-13 víz. 12.5% under DVAT for the entire corresponding period & Service Tax 12.24% w.e.f. 18/04/2006 to 10/05/2007, 12.36% w.e.f. 11/05/2007 to 23/02/2009 and 10.3% w.e.f. 24/02/2009 to 31/03/2012 including the payments pertaining to Delhi Jal Board works of Contract of UGR & BPS at various location in Trans-Yamuna Area. It is further confirmed that M/s Mohini Electricals Ltd. has declared the entire receipts of payments for the Project.
>
> For V.D. BISHAMBHU & CO.
> CHARTERED ACCOUNTANTS
>
> (F.C.A. V.D. BISHAMBHU)
> (PROP.)
> M.No. F-004303
> Place: New Delhi
> Date: 31.03.2016"

98. Upon scrutiny, it is evident that the certificates attached in Annexure 1D and 2B only certify payment of taxes and receipts of amounts. They neither certify, authenticate, audit, nor verify the expenditure allegedly incurred during the period of prolongation, which forms the very basis of claim 12A.

99. It is thus evident that there is no material before the learned Arbitrator to show that the Chartered Accountant even certified or examined the underlying books of accounts, vouchers, muster rolls, utilization statements or any contemporaneous documents in support of

Annexure 12A. Annexure 12A appears to be nothing more than a self-prepared statement of the contractor, unsupported by any independent verification. Self-serving documents, unsupported by corroborative proof, cannot be treated as evidence of actual expenditure. Reliance on such material renders the impugned award unsupported by evidence and squarely places it within the category of a finding based on "no evidence".

100. The learned Senior Counsel for the respondent sought to justify reliance on Annexure 12A by invoking Section 65(g) of the IEA, contending that secondary evidence is admissible where original records are voluminous. They also relied on precedents such as ***CEC-HCC Joint Venture (supra)*** **and** ***Hindustan Construction Co. Ltd (supra).***

101. However, the said judgments are clearly distinguishable on facts. In those cases, the Chartered Accountant's certificates were accepted only after it was demonstrated that the Chartered Accountant had conducted an independent examination of account books, stock registers, and jointly verified site records. No such verification exists or foundational exercise is evident in the present case, nor is there any material to indicate that certificates relied upon were based on an examination of primary records.

102. Accordingly, the learned Arbitrator's approach of treating Annexure 12A as conclusive proof of expenditure, without examining its foundation on which it rested, is legally unsustainable. The grant of compensation in the absence of proof of actual expenditure amounts to

reliance on "no evidence", and therefore, squarely attracts the ground of patent illegality.

103. Therefore, the Award granting claim 12A is liable to be set aside.

104. With respect to claim 12B, learned Senior Counsel for the appellant argued that the claim was purportedly founded on the *Emden* Formula and was supported only by unsubstantiated statements of Head Office Overheads and Profit contained in Annexures 12B and 12C.

105. However, a reading of paragraph 39.4.16 of the impugned award, reproduced below, clearly establishes that the learned Arbitrator did not, in fact, apply any formula. Instead, claim 12B was awarded on the basis of 5% of the value of work remaining beyond the stipulate date of completion, quantified *viz.* Rs. 21,20,63,711/-.

> *"In view of the aforesaid discussions and findings including the issue or delays I hold that the Claimant is entitled for this claim. However. the use of overhead %age as 10% in Emden formulae results in hugely exaggerated amounts. In my opinion this has resulted due to hugely disproportionate period of prolongation of work beyond the stipulated completion date. Thus, to be realistic, under this claim I award 5% of the amount of work remaining beyond the stipulate date of completion viz. Rs. 21.20,63, 711."*

106. Although the respondent referred to circulars issued by the CPWD, which prescribe a range of 10-15%, the learned Arbitrator did not expressly place reliance upon such circulars. Nonetheless, having determined that delay was attributable to the appellant, and that the respondent was required to remain mobilized during the extended period, the learned Arbitrator considered 5% to be a reasonable measure

of compensation in the facts of the case.

107. At this juncture, we deem it relevant to refer to the decision of division bench of this court in ***National Highways Authority of India v. M/s Prakash Atlanta (JV) (supra),*** where the application of a standard percentage towards overhead was upheld, recognizing the technical expertise of arbitral tribunals in adjudicating construction-related disputes.

108. Further, the Apex court in its decision of ***McDermott international INC. v. Burn Standard Co. Ltd and others*** [49], held that selection of a formula or method for calculating damages lies within the discretion of the Arbitral Tribunal, so long as such discretion is not exercised arbitrarily. The relevant observation reads as follows:

> "106. *We do not intend to delve deep into the matter as it is an accepted position that different formulae can be applied in different circumstances and the question as to whether damages should be computed by taking recourse to one of the other formula, having regard to the facts and circumstances of a particular case, would eminently fall within the domain of the arbitrator".*

109. In the present case, the learned Arbitrator's reasoning does not appear perverse or irrational in our opinion. The impugned award reflects due consideration of the factual matrix, the nature of delay, and the entitlement to overheads during the period of prolongation. Thus, claim 12B does not warrant interference.

110. Learned Senior Counsel for the respondent argued that claims

[49] **(2006) 11 SCC 181**

12A and 12B cannot be assailed, as no specific challenge in respect thereof was raised before the Court exercising jurisdiction under Section 34 of the A&C Act.

111. *Per contra*, the learned Senior Counsel for the appellant pointed out that they had challenged the finding on claims 12A and 12B in ground H and FF of the Section 34 petition, which are reproduced below-

> *"H. For that the Ld. Arbitrator ignored the relevant terms of the Contract and went beyond the same while awarding various claims. Likewise, the assessment of evidence was wholly perverse such that no reasonable adjudicator exercising a judicial function would have reached.*
>
> *FF. For that the primary onus to prove the claims was that of the Respondent. The Respondent miserably failed to produce any single document in support of their claim and therefore the impugned award is bad in the eyes of law and is liable to be set aside."*

112. In this context, it is apposite to refer to the decision of the Apex Court in ***Sal Udyog (supra)***, wherein the following was held-

> *24. We are afraid, the plea of waiver taken against the appellant-State on the ground that it did not raise such an objection in the grounds spelt out in the Section 34 petition and is, therefore, estopped from taking the same in the appeal preferred under Section 37 or before this Court, would also not be available to the respondent-Company having regard to the language used in Section 34(2A) of the 1996 Act that empowers the Court to set aside an award if it finds that the same is vitiated by patent illegality appearing on the face of the same. Once the appellant-State had taken such a ground in the Section 37 petition and it was duly noted in the impugned judgment, the High Court ought to have interfered by resorting to Section 34(2A) of the 1996 Act, a provision which would be equally available for application to an appealable order under Section 37 as it is to a petition filed under Section 34 of the 1996 Act. In other words, the respondent-Company cannot be heard to state that the grounds available for setting aside an award under sub-section (2A) of Section 34 of the 1996 Act could not have been invoked by the Court on its own, in exercise of the jurisdiction vested*

in it under Section 37 of the 1996 Act. Notably, the expression used in the sub-rule is "the Court finds that". Therefore, it does not stand to reason that a provision that enables a Court acting on its own in deciding a petition under Section 34 for setting aside an Award, would not be available in an appeal preferred under Section 37 of the 1996 Act.

25. Reliance placed by learned counsel for the respondent-Company on the ruling in the case of Hindustan Construction Company Limited(Supra) is found to be misplaced. In the aforesaid case, the Court was required to examine whether in an appeal preferred under Section 37 of the 1996 Act against an order refusing to set aside an Award, permission could be granted to amend the Memo of Appeal to raise additional/new grounds. Answering the said question, it was held that though an application for setting aside the Arbitral Award under Section 34 of the 1996 Act had to be moved within the time prescribed in the Statute, it cannot be held that incorporation of additional grounds by way of amendment in the Section 34 petition would amount to filing a fresh application in all situations and circumstances, thereby barring any amendment, however material or relevant it may be for the consideration of a Court, after expiry of the prescribed period of limitation. In fact, laying emphasis on the very expression "the Courts find that" applied in Section 34(2)(b) of the 1996 Act, it has been held that the said provision empowers the Court to grant leave to amend the Section 34 application if the circumstances of the case so warrant and it is required in the interest of justice. This is what has been observed in the preceding paragraph with reference to Section 34(2A) of the 1996 Act.

(Emphasis supplied)

113. Thus, although the pleadings were general, the settled legal position remains that patent illegality, when apparent on the face of the award, can be examined even if not specifically pleaded. Section 34(2A) confers power upon the Court to *suo moto* consider such illegality, and this jurisdiction extends equally to proceedings under Section 37, as authoritatively held in ***Sal Udyog (supra)***. Therefore, the absence of a specific plea cannot defeat the Court's duty to intervene where the Award is *ex facie* vitiated by patent illegality.

114. In light of the above discussion, in our considered view, claim 12A has been awarded without any cogent evidence and, therefore, suffers from patent illegality. The Award, to that extent, is liable to be set aside.

115. However, the reasoning adopted by the learned Arbitrator in relation to claim No. 12B does not disclose any perversity, arbitrariness, or illegality warranting interference. The challenge to claim 12B is, therefore, rejected.

LIMITATION

116. The next contention urged by the learned Senior Counsel for the appellant relates to limitation. It was submitted that the impugned award is *ex-facie* time barred and therefore, liable to be set aside. According to the appellant, negotiations between the parties cannot be permitted to continue indefinitely and there must necessarily be a "breaking point", after which the aggrieved party is required to invoke arbitration. It was argued that, in the present case, such breaking point arose immediately after 28.01.2009, when the signing of DAA/DAB was deferred, and that there is no material to show that negotiations continued, thereafter, until 10.10.2013.

117. In support of this submission, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Geo Miller (supra).*** The Hon'ble Supreme Court held that, while computing limitation for invoking arbitration under the A&C Act, the period spent by parties in *bona fide* negotiations may be excluded, provided that such

negotiations are real and demonstrable. Importantly, the Court emphasized that the adjudicating forum may identify the "breaking point" i.e., the stage at which any reasonable party would conclude that amicable settlement is no longer possible and would instead proceed to arbitration. Thus, such breaking point constitutes the date from which limitation commences.

118. Proceeding on this basis, the appellant contended that after the DAA/DAB signing was deferred *vide* letter dated 28.01.2009, there was no substantive correspondence concerning adjudication of disputes until the respondent's letter dated 10.10.2013, whereby execution of the DAB/DAA was requested. It was, therefore, urged that the limitation period commenced on 28.01.2009 and expires three years thereafter. According to the appellant, the respondent, by its conduct, permitted the claims to become time-barred, remained in prolonged inaction, and could not thereafter revive limitation by issuing subsequent correspondence dated 10.10.2013.

119. The learned Senior Counsel for the respondent, however, controverted this submission and drew our attention to several communications exchanged between the parties, namely, (i) letter dated 01.09.2011, whereby a formal notice for payment was issued and the request to proceed with the DAA was reiterated; (ii) letter dated 20.06.2012, intimating a change in staff and operational deployment, while once again referring to the execution of the DAA; and (iii) the earlier letter dated 28.01.2009, deferring signing of the DAA. It was submitted that these communications clearly demonstrate that negotiations and engagement between the parties were ongoing, and

that there was no definitive "breaking point" as alleged by the appellant.

120. The learned Senior Counsel for the appellant contended that the aforesaid communications were unrelated to the present dispute and pertained instead to a separate O&M contract. This submission was, however, controverted by the learned Senior Counsel for the respondent, who pointed out that each of the said letters expressly referred to the same turnkey project and repeatedly requested execution of the DAA/DAB under that very contract.

121. Upon a careful perusal of the above letters, we find merit in the respondent's submission. The letter dated 01.09.2011 specifically urges the appellant to "*At least proceed with signing of DAA*", and is addressed to the CEO, DJB, with a clear reference to the work order governing the turnkey project. The scope of the said project itself encompassed O&M obligations. Hence, said communication cannot be dissociated or segregated from the disputes forming the subject matter of the present arbitration.

122. Thus, it is not possible to accept the argument that the letter dated 01.09.2011 pertains to an entirely different contractual arrangement. On the contrary, it appears to constitute a continuing part of the negotiations and efforts undertaken by the respondent either to secure payment or to advance adjudication of disputes through the contractually agreed DAA/DAB mechanism.

123. Further, the letter dated 28.01.2009 indicates that both parties remained inclined to resolve the disputes amicably. It records detailed

discussions and a mutual decision to defer execution of the DAA, so as to enable the issues to be reviewed at an appropriate level. This communication clearly reflects a continuation of dialogue between the parties, rather than cessation or termination of negotiations.

124. The subsequent letters dated 01.09.2011 and 20.06.2012 further reinforce this narrative. Both make reference to the same work order dated 30.09.2003 and repeatedly call upon the appellant to proceed with DAA execution. These communications, taken together, demonstrate a sustained and consistent effort on the part of the respondent to invoke and operationalise the contractual dispute resolution mechanism, and cannot be characterised either as isolated demands or as relating to a distinct or independent contractual arrangement.

125. Equally significantly is the absence of any categorical rejection by the appellant. There is no material indicating that the appellant refused to sign the DAA or conclusively denied its liability in respect of the disputes raised. In the absence of such an unequivocal repudiation, the correspondence demonstrates that the parties continued negotiations and remained engaged in addressing disputes. Consequently, no clear or identifiable "breaking point" emerges from the record so as to trigger the commencement of limitation.

126. Moreover, under the contractual framework, the parties had expressly agreed that disputes would first be addressed through the DAB mechanism before arbitration could be invoked. Where parties consciously adopt such a tiered or staged dispute resolution, the cause of action to invoke arbitration ordinarily arises only upon exhaustion,

or failure of the stipulated pre-conditions. The contractual intent, therefore, was that limitation would commence only upon the breakdown, dissolution, or failure of the DAB process, and not prior thereto.

127. The learned Single Judge has rightly observed that the award is not vitiated by patent illegality on the question of limitation. The respondent was consistently pursuing the agreed dispute resolution process, and the right to seek arbitration arose only upon fulfilment of contractual pre-conditions.

128. In light of the above discussion, and applying the principles enunciated by the Hon'ble Supreme Court in ***Geo Miller (supra)*** and other binding precedents, we find no perversity or illegality in the view taken by the learned Single Judge. Accordingly, no ground is made out to interfere with the finding on limitation.

FINANCING CHARGES

129. The learned Senior Counsel for the appellant contended that the Contract envisages "Financing Charges" strictly within the limited contingency contemplated under Clause 14.8, namely delayed payment of amounts duly certified under the contractual mechanism. It was urged that clause 14.8 cannot be read in isolation, but must necessarily be construed in conjunction with Clauses 14.3, 14.6 and 14.7, which together prescribe a mandatory sequence for submission of monthly Statements by the Contractor, examination by the Engineer, and

issuance of IPCs. In the absence of this contractual process, no crystallised liability can be said to arise, and therefore, no financing charges can be fastened upon the Employer.

130. It was further argued that, in the present case, the respondent neither pleaded nor proved compliance with Clause 14.3, nor produced any Applications for IPCs or the IPCs themselves as contemplated under Clause 14.6. Instead reliance was placed on self-generated charts and unilateral computations. In the absence of proof of certification, it was urged that the learned Arbitral Tribunal erred in awarding financing charges across multiple claims, thereby travelling beyond the four corners of the Contract and granting amounts unsupported by evidence, resulting in a manifest miscarriage of justice.

131. Before considering this contention, reference may be made to the judgment of the Hon'ble Supreme Court in ***M/s. Hindustan Construction Company Ltd. v. M/s NHAI***[50]**,** which underscores the settled principles that courts ordinarily refrain from re-examining contractual interpretation by an arbitrator. While reiterating this position, the Hon'ble Supreme Court referred to the judgment of ***Associate Builders (supra)***, wherein it was held that the construction of contractual terms is primarily for the arbitral tribunal, and that if the arbitrator adopts a reasonable interpretation of the contract, the award cannot be set aside merely because another view is possible. It was further observed that interference is warranted where the interpretation is so irrational or implausible that no fair-minded or reasonable person

[50] **(2024) 2 SCC 613**

could have arrived at such a conclusion.

132. Further, in ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust***[51], the Hon'ble Supreme Court emphasised that an arbitral tribunal is bound by the contractual framework agreed upon by the parties. The Court held that where an award proceeds on a basis that effectively alters or rewrites the contract, such an exercise violates fundamental principles of justice. Interference by the Court is warranted in such cases, as the award would fall within the exceptional category of decisions that shock the judicial conscience and thereby attract scrutiny under the limited grounds available for setting aside an arbitral award.

133. Bearing this position in mind, the relevant contractual provisions regarding financing charges merit close scrutiny, and are accordingly reproduced hereinafter:

> "***14.3 Application for Interim Payment Certificate:***
>
> *The Contractor shall submit a statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub- Clause 4.21 [Progress Reports].*
>
> *The statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:*
> *a) the estimated contract value of the works executed and the Contractor's documents produced up to the end of the month (including variations but excluding items described in subparagraphs (b) to (g) below);*

[51] **(2023) 15 SCC 781**

b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub- Clause 13.7 [Adjustments for changes in Legislation] and Sub-Clause 13.8 [Adjustments for changes in Cost];

c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Appendix to Tender to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Appendix to Tender;

d) any amounts to be added and deducted for the advance payment and repayments in accordance with Sub-Clause 14.2 [Advance Payment];

e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];

f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration];

Sub-Clause 14.6:Issue of Interim Payment Certificates: *.....The Engineer may in any Payment certificate make any correction or modification that should properly be made to any previous Payment Certificate....*

"14.7 Payment:

The Employer shall pay to the Contractor:

a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub- Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;

b) the amount certified in each interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; and

c) the amount certified in the Final payment Certificate within 56 days after the Employer receives this Payment Certificate.

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract. "

"14.8: Delayed Payment:

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification and without prejudice to any other right or remedy. "

134. The learned Arbitral Tribunal proceeded on the premise that entitlement to financing charges under clause 14.8 extends beyond admitted or certified amounts and may include all sums that could notionally fall within clause 14.3(a) to (g). On this basis, it held that once an amount is said to fall within clauses 14.3, any delay in payment beyond the period stipulated under clause 14.7 would automatically attracts financing charges.

135. Such an approach, however, overlooks the plain structure and scheme of the contract. Clauses 14.3, 14.6 and 14.7, when read together, establish a clear and sequential framework: (i) submission of a

Statement by the Contractor, (ii) examination and determination by the Engineer, and (iii) certification of the determined amount through an IPCs. It is only upon such certification that the Employer's obligation to make payment crystallises, and clause 14.7 merely governs the time frame for discharge of this crystallised obligation.

136. Clause 14.3, properly construed, serves only to identify the categories or heads of claims that may be included in a Statement submitted for scrutiny; it does not, by itself, render any amount due or payable. To construe clause 14.3 as creating an automatic entitlement to payment would convert tentative and unverified claims into enforceable liabilities, thereby undermining the very purpose of examination and certification by the appellant mandated under clause 14.6.

137. Even in respect to the release of advance payment, there is a contractual pre-condition for compliance under clause 14.2 which mandates the submission of a statement and the issuance of an IPCs. The clause provides that only after the contractor submits a statement under clause 14.3 and after the employer receives both the performance security and the advance payment guarantee, the Engineer "*shall issue an interim payment certificate for the first instalment*" after which such amount becomes due.

138. Further, the concluding words of clause 14.8, referring to the levy of financing charges "*without formal notice or certification*", cannot be read as dispensing with the requirement of certification altogether. The said phrase operates only after the underlying sum has already attained

the status of an amount lawfully payable under the contract. It merely obviates the need of issuing further procedural notices once liability has stood crystallised. To construe this phrase as creating an independent or substantive entitlement to financing charges would amount to a re-writing of the Contract, which is impermissible at this stage.

139. Consequently, in the absence of certification or determination by the Engineer, there can be no concluded or crystallised liability, and therefore, no legal basis for imposition of financing charges in the impugned award. The expression "*irrespective of the date on which any Interim Payment Certificate is issued*", cannot be construed as legitimising claims that were never subjected to the certification process. Its true purpose is only to guard against deliberate or undue administrative delay in issuing certificates after the entitlement has otherwise been determined.

140. Therefore, award of financing charges provided under clauses 14.7 and 14.8 apply only to amounts actually admitted or certified in accordance with the Contract by the appellant and not to the disputed/ revised claims on which liability was affixed on the appellant at the later stage by the learned Arbitrator in exercise of its power provided under clause 20.6. The absence of certification is fatal to any claim for financing charges. Any broader interpretation would expose the Employer to financing charges revised, unverified or disputed claims later affixed on the appellant, a consequence clearly not contemplated by the parties at the time of contract.

141. Having accepted the principle that financing charges under

clause 14.8 are payable only in respect of admitted or certified amounts, the learned Single Judge could not have upheld the award of financing charges on amounts which admittedly stood not certified under the contractual mechanism. As per the contract, financing charges are triggered by delay in payment of certified dues, not by delay in processing of the claims that were never certified.

142. The learned Single Judge permits the levy of financing charges in circumstances not contemplated by clause 14, and thereby extends the contractual obligation of the employer on the payments that ought to be paid. Such an approach is not protected by the principle of judicial restraint under Section 34, as it results in enforcement of a liability outside the four corners of the contract.

143. Viewed in this backdrop, the interpretation adopted by the learned Arbitral Tribunal disregards the mandatory certification requirement, impermissibly expands clause 14.8 beyond its legitimate scope, and results in awarding financing charges on amounts that never crystallised into payable sums. Such an interpretation runs contrary to the plain contractual text and offends the settled principle that an arbitrator cannot rewrite the commercial bargain between the parties.

144. The impugned award, therefore, suffers from patent illegality going to the root of the matter. By granting financing charges without proof of certification or crystallised liability, the learned Arbitral Tribunal has effectively dispensed with a mandatory contractual pre-conditions of submission of application and certification provided in the contract for the purpose of financing charges. Such an approach does

not amount to a mere erroneous interpretation but adopting an interpretation that specifically disregards the mandatory pre-conditions provided in the contract. The impugned award, to that extent, warrants interference of this Court, and the financing charges so awarded are liable to be set aside.

145. Claim 9B pertains to financing charges on delayed payments. The requisite bills were shown to be submitted, and the appellant raised objections only with respect to the dates of submission of the bills. The learned Arbitrator examined both the dates of submission of the bills and the dates on which payments were released and found that payments were not made within the timelines stipulated under the contract, which timelines were not themselves in dispute. Since the amounts were admittedly paid, the underline liability stood accepted, leaving only a factual dispute regarding the relevant dates of procedural compliance. In these circumstances, the learned Arbitrator rightly awarded financing charges in accordance with the contract after verifying the relevant dates, which warrants no interference by this Court.

CONCLUSION

146. Insofar as claim 12A is concerned, this Court finds that the conclusions returned by the learned Arbitral Tribunal are not founded on any reliable or cogent evidence. The respondent has rested its claim entirely on certain certificates purportedly issued by a Chartered Accountant. A bare perusal of these certificates reveals that they merely acknowledge the discharge of tax liabilities by the respondent and record receipt of payments. They neither disclose the factual substratum

of the claim nor explain the methodology adopted for computing the amounts so certified.

147. The said certificates do not reveal the source data, underlying books of accounts, ledgers, vouchers or any contemporaneous records from which the figures were derived. Significantly, the Chartered Accountant who issued the certificates was also not examined as a witness, thereby depriving the appellant of an opportunity to test the veracity and correctness of the contents through cross-examination. In the absence of production of primary documentary material, the learned Arbitral Tribunal's implicit presumption that such certificates constituted reliable proof of expenditure amounts, in law, to treating "no evidence" as evidence.

148. In these circumstances, the learned Arbitral Tribunal's acceptance of such untested, unreasoned and unsupported certificates is clearly unsustainable. The finding rendered in respect of Claim 12A, therefore, stands vitiated as perverse, being based on no admissible or legally acceptable evidence, and falls foul of the test of patent illegality as elucidated by the Hon'ble Supreme Court in a catena of decisions. Accordingly, the award, to that extent, warrants interference and is liable to be set aside.

149. Turning to claim 12B, this Court finds no infirmity warranting interference. The learned Arbitral Tribunal has recorded a clear finding, based on the material on record, that the contract period stood extended and that the respondent suffered consequential prolongation costs, including extended overheads. The learned sole Arbitrator adopted a

pragmatic approach by granting compensation calculated at 5% of the value of work remaining beyond the stipulated date of completion, which constitutes a rational and permissible method of quantification in the facts of the case.

150. It is settled law that the arbitral forum is the final judge of the quality and quantity of evidence, as well as the methodology adopted for computation, and that courts exercising jurisdiction under Section 37 do not sit in appeal so as to substitute their own assessment merely because another view is possible. Unless the quantification adopted is demonstrated to be patently arbitrary, irrational or shocking to judicial conscience, interference is impermissible. The impugned award insofar as claim no. 12B is concerned is reasoned, proportionate, and firmly anchored in the material placed before the learned Arbitral Tribunal, and therefore merits affirmation.

151. The objection based on limitation is equally devoid of merit. The record reveals continuous correspondence and ongoing engagement between the parties, evidencing a clear intent to resolve the outstanding issues, rather than to treat them as finally repudiated. In particular, the letters dated 01.09.2011 and 20.06.2012 demonstrate that the disputes remained alive and under active consideration. In the absence of a clear and unequivocal repudiation, the limitation period cannot be said to have commenced in the manner urged by the appellant. The plea of limitation is, accordingly, rejected.

152. Lastly, with respect to financing charges, this Court finds that the learned Arbitral Tribunal has failed to appreciate the contractual

framework and the evidence on record in its proper perspective. The award proceeds on an erroneous assumption that financing charges were recoverable as matter of course, despite the absence of any express contractual provision permitting such recovery in the circumstances obtaining in the present case. By treating such charges as a natural or consequential component of compensation, the learned Arbitral Tribunal has, in effect, re-written the commercial bargain between the parties, which is impermissible in law. Further, the learned Single Judge, despite recording that financing charges were payable only in respect of admitted or certified amounts, erred in upholding the award of such charges.

153. Under Section 37, although the jurisdiction of this Court is supervisory, interference is warranted where the award suffers from perversity or patent illegality apparent on the face of the record. In the present case, the learned Arbitral Tribunal's conclusion on financing charges is contrary to the express terms of the Contract and is unsupported by any evidence demonstrating an agreed entitlement to such charges. Where the learned Arbitral Tribunal travels outside the four corners of the contract and awards sums not legally due, the error amounts to patent illegality and a jurisdictional transgression. In such circumstances, the limited supervisory jurisdiction of this Court stands squarely attracted.

154. The grant of financing charges, therefore, cannot be sustained and is liable to be set aside.

155. In view of the foregoing discussion, the portion of the award

insofar as it relates to claim 12A and financing charges is held to be unsustainable and is accordingly set aside.

156. Save and except the above interference, the remaining findings and directions contained in the award are found to be lawful, reasoned and within the jurisdiction of the learned Arbitral Tribunal, and therefore call for no interference.

157. The appeal is, therefore, partly allowed in the aforesaid terms. No order as to costs.

OM PRAKASH SHUKLA, J.

C. HARI SHANKAR, J.

JANUARY 12, 2026/rjd/*gunn*/pa