2026:DHC:8005

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 04.08.2026

Judgment pronounced on: 18.09.2026

\# **CNR No. DLHC013761952017**

\+ O.M.P. (COMM) 331/2017, I.A. 2575/2021 & I.A. 12534/2023

UNION OF INDIA .....Petitioner

Through: Mr. Vedansh Anand (SPC) with Mr. Shivam Kumar, Adv. Ms. Vaishali Gupta (Panel Counsel).

versus

AFCONS INFRASTRUCTURE LIMITED .....Respondent

Through: Mr. Manu Seshadri, Mr. Siddharth Shekhar, Mr. Sahil Mangalani, Ms. Prachi Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% **18.09.2026**

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996[1] assails the arbitral award dated 22.05.2017 passed by the learned Sole Arbitrator, Shri K. K. Varma, together with the modification award dated 09.06.2017 made under Section 33(3) of the Act.

2. The dispute arises out of Agreement No. 01/EE/PWD F-121/08-09 dated 09.04.2008, whereby Afcons Infrastructure Limited[2] was entrusted with the construction of the main flyover, underpass, slip

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[1] "the Act" hereinafter
[2] "Afcons" hereinafter

roads, widening of the bridge over the drain, foot over bridges[3], bus bays, cycle track, drainage, electrical and landscaping work and allied works at Ghazipur Crossing of NH-24 and Road No.56, Delhi. Afcons was the Claimant before the learned Arbitrator and the Union of India, acting through the Public Works Department (PWD) was the Respondent in the arbitral proceedings.

3. For the sake of clarity, it is noted that, throughout the present judgment, the parties shall be referred to by the status assigned to them in the impugned award, namely, Afcons as the Claimant and the Union of India/PWD as the Respondent

4. The stipulated date of commencement of the work was 01.05.2008 and the stipulated period of completion was 24 months, expiring on 30.04.2010. The agreement amount was Rs.199,79,38,503/. The work was ultimately completed on 14.05.2012. The 37th and final bill showing a gross value of Rs.188,22,87,051/-, was paid on 07.09.2012.

5. The Claimant attributed the prolongation of the work principally to delay in availability of hindrance free work fronts, shifting of utilities and services, and issuance of drawings, including drawings relating to the FOB. The Respondent, on the other hand, attributed the delay to the Claimant, alleging *inter alia*, inadequate mobilisation, shortage of plant and equipment, delay in enabling works and pile load testing, inability to work simultaneously on available fronts and insufficient deployment

[3] "FOB" hereinafter

of manpower and resources.

6. Claimant has filed seven applications for extension of time[4] which was granted up to the actual date of completion, namely 14.05.2012, without levy of compensation or liquidated damages. The significance and legal effect of those extensions is one of the matters which arises while considering Claim Nos. 1 to 5.

7. The Claimant invoked the arbitration *vide* its letter dated 21.03.2013. Shri K.K.Varma was appointed as the Sole Arbitrator on 12.04.2013.

8. Before the learned Sole Arbitrator, the Claimant raised 13 substantive claims including the claim for interest. The claims were initially quantified at Rs.1,15,59,74,254/-, apart from interest and costs, and were subsequently revised to Rs.26,77,25,228/-. The Respondent raised two counter-claims aggregating to Rs.21,37,216/-.

9. The learned Sole Arbitrator passed the arbitral award on 22.05.2017, awarding a total sum of Rs. 8,85,89,316/- in favour of the Claimant. In paragraph 14.2 of the award, interest was awarded on Rs.8,83,75,316/-, being the amount awarded under Claim Nos. 1 to 12 excluding Claim No.6, from 21.03.2013 up to the date of the award. Subsequently, by the correction order dated 09.06.2017, the rate of such interest was expressly fixed at simple interest of 9% per annum. The award further provided that if payment was not made within three

[4] "EOT" hereinafter

months, the awarded sum as well as the interest under paragraph 14.2 would carry simple interest at 10% per annum from the date of the award until payment.

10. Aggrieved by the findings returned by the Arbitrator the Respondent instituted the present petition under Section 34 of the Act challenging the impugned award.

11. Learned Counsel for the Respondent on 20.09.2023 submitted that it assailed the award only *qua* Nos. 1 to 5, 8 and 10. However, the Claimant's submissions described the matters surviving for consideration as Claim Nos. 1 to 5, Claim No. 8 and the rejection of Counter-Claim No.2, and also record that a part-payment had been made towards, *inter-alia*, Claim No. 10. The Respondent's submissions, however, expressly show Rs.15,05,296/- out of Claim No. 10 as still under challenge, being the amounts awarded in respect of EI-II/1 and EI-II/2. In view of the express challenge to this amount in the Respondent's submissions, the limited challenge to EI-II/1 and EI-II/2, amounting to Rs.15,05,296/-, is also considered herein.

PROCEEDINGS BEFORE THE LEARNED SOLE ARBITRATOR

12. The learned Arbitrator first dealt with the Respondent's preliminary objections. The objection that the claims stood settled by payment of the final bill was rejected on the ground that the 37th and final bill had been accepted by the Claimant under protest. The objection founded on Clause 9, requiring claims to be included in the final bill, was also rejected on the finding that the Claimant's final bill dated 20.06.2012 contained the claims and that its submission stood acknowledged by the Respondent.

13. Claim Nos. 1 to 5 were clubbed by the Claimant and ultimately pressed as one claim for considering additional expenditure incurred due to prolongation of contract. The revised claim was Rs.17,89,77,755/-, comprising additional site establishment and site management costs, head office costs and equipment charges**.** An alternative computation of Rs.13,30,14,928/- based on 7.5% overheads was also placed before the learned Arbitrator. The amount finally awarded under these five claims was Rs.6,59,64,546/-.

14. Claim No.6 was towards litigation costs. The learned Arbitrator did not allow the Claimant's litigation expenses, but awarded Rs. 2,14,000/- towards the share of fees of the Arbitrator, because the Claimant had deposited the Respondent's share of the arbitral fee under section 38(2) of the Act.

15. Claim No.7 was a claim for interest and was dealt with under Claim No.13.

16. Claim No.8 concerned quantities of ten agreement items which exceeded the stipulated deviation limit. The Respondent had determined market rates for the deviated quantities, but subsequently reduced the rates after an audit objection. The rates ultimately paid in the final bill were below the agreement rates. The Claimant sought the difference on the footing that the contractual requirement under Clause

12.3 had not been complied with, under which notice was required before reduction of the agreement rates. The learned Arbitrator accepted the claim and awarded Rs 1,50,28,399/-.

17. Claim No.9 concerned alleged short payment for quantities beyond the deviation limit and is relevant because it bears directly upon Counter-Claim No.2. Of the two items ultimately pressed, one was Agreement Item No. 6.4.6 relating to bituminous mastic. The Claimant pressed for Rs.779.12 per sqm. The Respondent had paid Rs.597.30 per sqm. The learned Arbitrator examined the Respondent's rate analysis and held the rate of Rs 597.30 per sqm to be in order. Claim No.9 was accordingly rejected.

18. Claim No. 10 relates to payment for to extra, additional and substituted items of works executed. The amount originally claimed was Rs. 7,11,45,360/- and the revised claim for the eight items ultimately pressed was Rs. 5,31,88,445/-. The learned Arbitrator awarded Rs. 16,43,363/-. Of that amount, Rs. 9,12,878/- was awarded for EI-II/1 relating to permanent MS liners for 1500 mm diameter piles and Rs. 5,92,418/- for EI-II/2 relating to Yamuna sand used for backfilling. These two items aggregate to Rs. 15,05,296/- and constitute the limited challenge now asserted by the Respondent. In respect of three Macalloy Anchor Bolts items, the learned Arbitrator considered the revised rate analyses submitted by both sides and awarded Rs 53,858/-, Rs 30,641/- and Rs 53,558/-. The remaining extra item claims were rejected. Thus a total sum of Rs. 16,43,363/- was accordingly awarded under Claim No. 10.

19. Claim No. 11 was ultimately confined to Rs. 57,39,008/- withheld for non-return of temporary barricading material. The learned Arbitrator, held that the barricading arrangement was a temporary safety and traffic-regulation service, analogous in material respect to centring and shuttering, and that no contractual provision required the material to be handed over to the Respondent after completion. The recovery was therefore held wrongful and the amount was awarded to the Claimant. Claim No. 12, relating to balance escalation under Clause 10CCA of the Agreement, was rejected by the learned Arbitrator for want of sufficient justification. These findings are not part of the surviving controversy.

20. Claim No. 13 was towards pre-suit, pendente-lite and future interest at the rate of 18% per annum. The learned Arbitrator found that there was no contractual bar to the grant of interest and accordingly awarded simple interest on a sum of Rs. 8,83,75,316/-, being the aggregate amount awarded under Claims Nos. 1 to 12 excluding Claim No. 6, from 21.03.2013, i.e., the date of invocation of arbitration, until the date of the award.

21. The Respondent raised two Counter-Claims. Counter-Claim No. 1 for arbitration costs was rejected. Counter-Claim No. 2 sought recovery of Rs.11,37,216/- on the allegation that the rate of Rs. 597.30 per sqm paid for the deviated quantity under Agreement Item No. 6.4.6 for bituminous mastic was excessive and ought, after audit, to have been reduced to Rs. 553.07 per sqm. The learned Arbitrator rejected the counter-claim because he had already, while deciding Claim no. 9, examined and upheld Rs.597.30 per sqm as the proper rate.

SUBMISSIONS BEFORE THIS COURT

22. Mr. Vedansh Anand learned SPC for Respondent submits that the impugned award dated 22.05.2017, as modified on 09.06.2017, to the extent now challenged, is liable to be set aside because the learned Arbitrator did not properly deal with the Respondent's case on attribution of delay and did not give legally sustainable reasons for the quantification under Claim Nos. 1 to 5.

23. The principal submission of the Respondent in respect of Claim Nos. 1 to 5 is that a substantial amount has been awarded without legally acceptable proof of the additional expenditure said to have been incurred. According to the Respondent, mere tables, accounting summaries or references to pages cannot prove actual expenditure unless supported by primary material such as certified accounts, vouchers, bank statements or comparable evidence. The award merely refers to pages of the claimant's pleadings and thereafter applies a percentage formula without showing how the actual loss was proved.

24. Learned Counsel for the Respondent also relies heavily on Special condition 3.52, which bars a claim for idle establishment, labour, machinery, equipment, tools and plant and the like. It is urged that the Claimant's case, whatever label may be put upon it, is in substance a claim for resources remaining tied up during the extended period. The Respondent has drawn attention to its final EOT material to submit that, within the period for which compensation has been awarded, there were periods when work was wholly or substantially unavailable and another period when work on FOB could be carried out only during restricted weekend night hours. On that basis it is submitted that the learned Arbitrator could not avoid Clause 3.52 merely by describing the claim as one for additional expenditure rather than idling.

25. On quantum, learned counsel for the Respondent submits that Clause 2(xi) of Schedule F made DSR-2002 applicable to the contract, under which the overhead component was 2.5% and the remaining 7.5% represented the contractor's profit. It is contended that the learned Arbitrator erred in adopting 7.5% as the overhead component on the basis of DSR-2007, which was not applicable to the contract. On the balance work of approximately Rs17.93 crore of work executed beyond the stipulated date, which would bring the amount to approximately Rs.44.8 lakh, instead of Rs.6,59,64,546/- awarded by the learned Arbitrator.

26. In support of the aforesaid submissions, learned counsel relies upon the decisions of ***Unibros v. All India Radio***[5], ***Union of India v. M/s Pragati Construction Consultants***[6], *and* ***NHPC Limited v. Hindustan Construction Company Limited & Ors***[7].

27. Learned counsel for the Respondent next challenges Claim No. 8 and submits that the rates for deviated quantities were determined through statements and were reflected in running account bills , thereby placing the Claimant on notice as per Clause 12.3 of the rates at which

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[5] **2023 SCC OnLine SC 1366**
[6] **OMP (COMM) 153/2025**
[7] **OMP 1/2018**

payment was being made. It is further submitted that an audit conducted under Clause 29(ii) disclosed that overheads and profit had been taken at a level higher than that permitted by Clause 2(x) of Schedule F and that the Government was contractually entitled to recover the resultant overpayment. It is urged that Clause 29(ii) expressly permits audit and recovery of an overpayment and that Clauses 2(x) and 2(xi) of Schedule F have to be read conjointly. While Clause 2(xi) refers to CPWD DSR-2002 and the MORTH Standard Data Book for analysis of rates, Clause 2(x), according to the Respondent, limits the aggregate component of overheads and profit to 10%. The audit therefore treated the earlier adoption of a higher percentage as an overpayment and required revision of the rates.

28. A similar audit-based submission is advanced in respect of EI-II/1 and EI-II/2 under Claim No. 10 by the learned Counsel for the Respondent. It is urged that the rates originally determined on 22.12.2010 were later revised on 03.08.2012 pursuant to the audit objection and that the learned Arbitrator could not have awarded the amounts claimed by the Claimant contrary to the recovery mechanism contemplated under Clause 29(ii).

29. In respect of Counter-Claim No. 2, learned counsel for the Respondent contends that the rate of Rs 597.30 per sq. m. for Agreement Item No. 6.4.6 had resulted in excess payment and that the amount of Rs.11,37,216/- was consequently recoverable. It is submitted that the learned Arbitrator, having accepted the said rate while adjudicating Claim No. 9, nevertheless erred in rejecting the Counter-Claim seeking recovery of the alleged excess payment. The rejection of the Counter-Claim is, therefore, assailed.

30. Learned counsel accordingly submits that the findings recorded and the amounts awarded under Claims Nos. 1 to 5, 8 and 10 are vitiated by the aforesaid defects and, consequently, the impugned award, to that extent, is liable to be set aside.

31. *Per Contra*, Mr. Manu Seshadri learned Counsel for the Claimant submits that the present petition in substance seeks a fresh appraisal of the evidence and a fresh construction of the contract, which is outside the limited supervisory jurisdiction under Section 34.

32. Learned Counsel submitted that the total value of the claims raised before the learned Tribunal was Rs. 1,15,59,74,254/-, whereas the learned Tribunal ultimately awarded a sum of Rs. 8,85,89,316/- along with interest at the rate of 10% per annum. It was further submitted that the Respondent had already made part-payment of Rs. 82,44,205/- towards Claim Nos. 6, 10 and 11, which remain unchallenged. The surviving challenge, according to learned counsel, pertains principally to Claim Nos. 1 to 5, Claim No. 8 and the rejection of Counter Claim No. 2.

33. In respect of Claims Nos. 1 to 5, learned counsel points out that seven extensions of time were granted up to the actual date of completion.

34. It was submitted that the delay in completion of the works was not attributable to the Claimant. Learned Counsel emphasised that the

Respondent had itself granted seven extensions of time up to the actual date of completion without levy of liquidated damages. The extensions were granted in circumstances involving delay in handing over the site, shifting of services and issuance of drawings. It was submitted that the Respondent had failed to quantify the period of delay, if any, attributable to the Claimant.

35. Learned Counsel placed reliance upon ***J.G. Engineers Pvt. Ltd. v. Union of India***[8], to submit that grant of EOT without levy of liquidated damages constituted a material circumstance indicating that the delay was not attributable to the contractor. It was further submitted that the question of delay was essentially a question of fact and that the findings returned by the learned Tribunal on this aspect could not be reopened in a petition under Section 34.

36. Learned Counsel further says that month wise books of account and supporting documents were placed before the learned Arbitrator, that no objection to the evidentiary sufficiency of such material was taken before the learned Arbitrator; and that the material was neither displaced in cross-examination nor met by rebuttal evidence. The record, according to the Claimant, therefore cannot be characterised as a case of "no evidence".

37. It was further submitted that the learned Tribunal had duly considered the Respondent's reliance upon Clauses 3.18, 3.27, 3.28 and 3.52 of the Special Conditions and had found the same to be

[8] **(2011) 5 SCC 758**

inapplicable in the facts of the case. According to learned counsel, the interpretation of the contractual provisions was within the jurisdiction of the learned Tribunal and no ground for interference was made out merely because the Respondent sought a different interpretation of the contract.

38. On quantification, the learned Counsel points out that the learned Arbitrator did not award the revised actual cost figure of Rs.17.89 crore. Instead, he adopted a substantially lower alternative computation using 7.5% overheads, confined to 13.5 months period actually claimed by the Claimant, and thereafter awarded 90% of the amount so computed.

39. In respect of Claim No. 8, learned Counsel submits Clause 12.3 of the GCC required the Respondent to issue to notice to the Claimant before determining rates below the agreement rate. It was submitted that the mere fact that payments had been made at lower rates in the running account bills did not constitute the notice contemplated under Clause 12.3. The learned Arbitrator's finding that no such notice was on record is said to be a pure finding of fact.

40. Learned Counsel for the Claimant relies particularly upon the Respondent's own letter dated 14.11.2011 replying to Audit Memo No.5. In that letter, the Executive Engineer stated, in substance, that market rates had been analysed in accordance with paragraph 24.3 of the CPWD Works Manual, DSR items were analysed with 10% Contractor's profit and overhead, MORTH bridge items with 25% overhead and 10% profit, and MORTH road items with 8% overhead and 10% profit. The letter concluded that there was no violation of the agreement or CPDW Works Manual and no excess payment to the Contractor. The Claimant submits that this contemporaneous stand fully supports the learned Arbitrator's conclusion that the issue was one of competing interpretations and not an obvious case of overpayment.

41. The Claimant's Counsel further contends that the finding of absence of no prior notice under Clause 12.3 is a finding on the record and that the construction placed upon Clauses 12.3 and 29(ii) does not warrant interference under Section 34.

42. Respondent and communicated to the Claimant on 22.12.2010 and were thereafter revised on 03.08.2012 pursuant to the audit objection. It is submitted that the learned Arbitrator was entitled to construe Clause 29(ii) and its proviso and to hold that the subsequent audit objection, arising from a difference regarding the applicable method of rate analysis, did not by itself justify reopening the rates that had earlier been determined and accepted

43. In respect of Counter-Claim No. 2, learned Counsel submits that the Respondent itself had originally determined Rs.597.30 per sqm using the MORTH Standard Data Book with 8% overheads and 10% Contractor's profit. When the Claimant sought Rs.779.12 per sqm under Claim No. 9, the learned Arbitrator examined the Respondent's analysis and rejected the Claimant's higher claim, expressly holding Rs597.30 per sqm to be the correct rate. The Counter-Claim seeking to treat that same rate as excessive was therefore rejected consistently with the earlier finding.

44. Learned Counsel for the Claimant further submits that the judgments relied upon by the Respondent are distinguishable. ***Unibros (supra)*** concerned loss of profit and loss of opportunities, whereas Claim Nos. 1 to 5, as ultimately dealt with by the learned Arbitrator, concerned additional expenditure during prolongation. Likewise, ***NHPC Ltd.(supra)*** concerned a case where the Learned Arbitrator had dispensed with proof and adopted a formula despite absence of evidence, while, according to the Claimant, the pressed record contained books of account and supporting material.

45. Accordingly, the Claimant submits that the petition ought to be dismissed, as the Respondent has failed to establish any ground warranting interference.

ANALYSIS AND CONCLUSION

46. I have considered the award, the correction dated 09.06.2017, the pleadings placed on record and the written submissions filed by both parties. The controversy must be approached with the statutory limits of Section 34 constantly in view.

47. Section 34 does not confer appellate jurisdiction over an arbitral award. A Court exercising that jurisdiction does not re-hear the dispute, choose between competing factual inferences merely because one appears preferable, or substitute its own construction of a contractual clause simple because another interpretation is possible.

48. In the case of a domestic award, Section 34(2A) further permits judicial interference where the award is vitiated by patent illegality apparent on the face of the award. The provision, however, expressly clarifies that an award shall not be set aside merely on the ground of an erroneous application of law or on the basis that, upon re-appreciation of the evidence, the Court may have arrived at a different conclusion.

49. This position has been reaffirmed in recent decisions of the Supreme Court. Time and again it has been reiterated and reaffirmed that patent illegality must appear on the face of a domestic award and must go to the root of the matter. A mere erroneous application of law is not enough. ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[9] *and* ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.,***[10] makes it clear that re-appreciation of evidence is impermissible, that construction of the terms of the contract is primarily for the Arbitrator unless the construction is one which no fair minded or reasonable person could adopt, and that a finding based on no evidence or one which ignores vital evidence may amount to perversity. ***MMTC Ltd. v. Vedanta Ltd.***[11]*.*, similarly reiterates that where the Arbitrator has taken a possible view, the Court does not sit in appeal over that view.

50. At the same time, judicial restraint does not mean that contractual terms or evidence may simply be ignored. An award may be vulnerable where a material finding is truly unsupported by evidence, where a vital contractual prohibition is disregarded, or where the reasoning is so irrational that no reasonable decision-maker could have reached it. The

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[9] **(2019) 15 SCC 131**
[10] **(2019) 20 SCC 1**
[11] **(2019) 4 SCC 163**

distinction is between an error within jurisdiction and a conclusion which falls outside the range of permissible arbitral decision making.

51. ***Associate Builders v. DDA***[12], though decided in the pre-amendment setting, remains instructive on the limited judicial role in examining factual evaluation, contractual construction and, importantly for the present case, the method adopted for assessing construction-contract overheads. ***McDermott International Inc. v. Burn Standard Co. Ltd.***[13]**,** recognized the use of formulae such as Hudson, Emden and Eichleay in appropriate cases and treated the selection of the method, on the facts of a particular dispute, as lying essentially within the Arbitrator's domain. This, however, does not mean that a formula can be used in a vacuum.

52. ***Unibros (supra)*** holds, in the context of loss of profit and lost opportunities, that credible evidence of the loss is necessary and a formula cannot itself prove the existence of the loss. ***NHPC*** (supra) likewise interfered where a tribunal, dealing with reimbursement of actual enhanced labour cost, expressly treated proof as impractical and resorted to a formula despite absence of evidence of the actual additional wages paid.

53. ***Pragati Construction Consultants(supra)*** illustrates the limits of awarding damages for prolongation where the claimant has adduced no evidence of actual loss and has not established that such loss was difficult or impossible to prove. The Court, relying inter alia on ***State***

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[12] (2015) 3 SCC 49
[13] (2006) 11 SCC 181.

of Rajasthan v. Ferro Concrete Construction (P) Ltd[14] , held that where there is no evidence at all and the award is based merely on the claim statement, without anything more, the award cannot be sustained.

54. These authorities do not lay down that a recognized formula is impermissible. Read together, they draw a distinction between using a formula to quantify a loss which has a proved factual basis and using the formula as a substitute for establishing that any loss was suffered at all. It is in that setting that the present award has to be examined.

55. In a recent judgment of ***Ramesh Kumar Jain v. Bharat Aluminium Company Ltd.***[15], the Supreme Court reiterated that a Court exercising jurisdiction under Section 34 does not sit in appeal over an arbitral award and cannot re-assess the correctness of the Arbitrator's findings of fact or law unless a specific statutory ground for interference is made out. The Court further emphasized that re-appreciation of evidence lies outside the permissible scope of judicial review under Section 34. Further, the Court also explained that patent illegality may arise where the Arbitrator disregards an express prohibition contained in the contract, renders an award contrary to the contractual terms, or arrives at a finding unsupported by any relevant evidence. Conversely, where the conclusion reached by the Arbitrator is founded on some evidence and represents a reasonably possible view of the material on record, the Court cannot substitute its own view merely because another interpretation or conclusion may also be possible. Relevant paragraphs are reproduced herewith:

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[14] **(2009) 12 SCC 1**

[15] **2025 INSC 1457**

27. The Arbitration and Conciliation Act, 1996 avows to provide a speedy, cost effective & efficacious mode of alternative dispute resolution with a policy of minimal judicial intervention. The same is apparent from the legislative intent explicitly mandated under section 5 of A&C Act which envisages an embargo upon the judiciary to interfere in arbitral proceedings save in circumstance expressly stipulated under Part I of the Act. Hence, it is clear that judicial interference is circumscribed with only exception being the statutorily mandated remedies which we find under section(s) 34 and 37 of the A&C Act.

28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited14 , this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

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31. Prior to 2015 amendment, the ground of "patent illegality" emerged as result of judicial interpretation in ONGC Ltd. (supra) while interpreting "public policy" mandated under section 34(2)(b)(ii) of A&C Act wherein this court for the first time read patent illegality as a sub-ground to set aside the award on the broader purport of "public policy". In Paragraph 22 of the decision this court observed: Therefore, in a case where the validity of award is challenged, there is no necessity of giving a narrower meaning to the term "public policy of India". On the contrary, wider meaning is required to be given so that the "patently illegal award" passed by the arbitral tribunal could be set aside." This court went on to illustrate what would constitute patent illegality at Paragraph 22 and we extract the same for easy reference:

"……Take for illustration a case wherein there is a specific provision in the contract that for delayed payment of the amount due

and payable, no interest would be payable, still however, if the arbitrator has passed an award granting interest, it would be against the terms of the contract and thereby against the provision of Section 28(3) of the Act which specifically provides that "Arbitral Tribunal shall decide in accordance with the terms of the contract". Further, where there is a specific usage of the trade that if the payment is made beyond a period of one month, then the party would be required to pay the said amount with interest at the rate of 15 per cent. Despite the evidence being produced on record for such usage, if the arbitrator refuses to grant such interest on the ground of equity, such award would also be in violation of sub-sections (2) and (3) of Section 28. Section 28(2) specifically provides that the arbitrator shall decide ex aequo et bono (according to what is just and good) only if the parties have expressly authorised him to do so. Similarly, if the award is patently against the statutory provisions of substantive law which is in force in India or is passed without giving an opportunity of hearing to the parties as provided under Section 24 or without giving any reason in a case where parties have not agreed that no reasons are to be recorded, it would be against the statutory provisions. In all such cases, the award is required to be set aside on the ground of "patent illegality"."

32. In Associate Builders v. Delhi Development Authority21 , this court attempted to filter out what contemplated patent illegality in paras 42.1 to 42.3 under the following three subheads: firstly, contravention of the substantive law of India; secondly, contravention of the Arbitration Act itself and thirdly, contravention of Section 28(3) of the Arbitration Act which mandates the Arbitral Tribunal to decide the case in accordance with the terms of the contract, taking into account the usages of the trade applicable to the transaction. With regard to the third sub-head Justice R.F. Nariman, observed by stating that: if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of term of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair minded or reasonable person could do.

33. In 2015, by way of the Arbitration and Conciliation (Amendment) Act a new sub-section (2A) to section 34 of A&C Act was inserted which in addition to statutorily recognizing the 'patent illegality' ground for setting aside a domestic arbitral award made it an independent and distinct ground from 'public policy' under section 34. The proviso to the newly inserted clause further provided that an award "shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence". The legislative intent behind insertion of this proviso was to avoid excessive intervention to arbitral award by the courts under the ground of 'patent illegality'. However, the Amendment clarified that "an erroneous application of the law" or "reappreciation of *evidence" does not fall under patent illegality. Hence, the courts are not to treat every factual error or every divergent interpretation as an illegality. The illegality must be of a kind that strikes at the heart of the award's validity. For instance, if an arbitrator ignores a binding precedent or a clear prohibition in the contract, that may be patent illegality. Likewise, a finding based on no evidence at all can be said to be perverse and thus patently illegal. But where there is some evidence and a reasonably plausible inference has been drawn by the arbitrators, the courts should ordinarily refrain themselves from supplanting the views arrived by the arbitrator as that would be the true import of the legislative intent inherent in the Amendment Act.*

34. Thereafter, this court elucidated the meaning of the expression 'patent illegality' in Ssangyong Engg. & Construction Co. Ltd. v. NHAI22 while taking into consideration the amendment act of 2015 and held it as a glaring, evident illegality that goes to the root of the award. This includes: (a) an award deciding matters outside the scope of the arbitration (beyond the contract or submission); (b) an award contradicting the substantive law of India or the Arbitration Act itself; (c) an award against the terms of the contract; and (d) an award so unreasoned or irrational that it manifests an error on its face. 35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.

56. Thus, the following three situations must, be clearly distinguished:

i. First, where the Arbitrator's finding is supported by some evidence and the interpretation placed upon the contract is a reasonably possible one, the Court cannot interfere merely because another view is possible.

ii. Second, a mere error in the appreciation of evidence or an erroneous application of law does not, by itself, warrant interference under Section 34. The Court cannot convert the proceedings under Section 34 into an appeal on the merits reassessing the evidence or substituting its own conclusions for those of the Arbitrator.

iii. Third, where the Arbitrator ignores an express contractual term , acts contrary to a clear prohibition contained in the contract, or reaches at a conclusion that is unsupported by the material before him, or is one that no reasonable person could have reached, the award may suffer from patent illegality.

57. This distinction assumes particular significance in the present case, because several of the challenges raised by the Respondent are, in substance, invitations to the Court to revisit the learned Arbitrator's interpretation of the contract, reassess the underlying material, or recalculate the rates determined in the Award.

58. Each challenge must, therefore, be tested within the narrowly circumscribed limits of Section 34, and not by undertaking a fresh examination of the merits of the dispute or substituting the Court's view for that of the learned Arbitrator.

59. The present challenge must therefore be tested issue by issue. It is particularly important not to merge the separate questions arising under Claim Nos. 1 to 5, Claim No. 8, Claim No. 10 and Counter-Claim no. 2 merely because each of them, in one way or another, refers to overheads, profit or the MORTH Data Book. This Court will examine each of the above claims separately.

60. A reading of the impugned award indicates that the learned Arbitrator did not adjudicate Claim Nos. 1 to 5 as five independent monetary heads at the revised stage. The Claimant attributed the prolongation, *inter alia*, to delay in handing over the site, delay in shifting of services and delay in issuance of working drawings, besides delay in execution of the FOBs. The revised claim was Rs. 17,89,77,755/-, representing the actual overhead and equipment charges stated to have been incurred during the extended period. The Claimant also placed an alternative calculation of Rs. 13,30,14,928/-, based on overheads at the rate of 7.5% as per DSR 2007.

61. The learned Arbitrator did not award either of these amounts. Instead, he adopted the alternative methodology, calculated the overhead component for the claimed period of 13.5 months at Rs. 7,32,93,940/-, and thereafter awarded Rs.6,59,64,546/-, being 90% thereof, towards additional expenditure on overheads and plant and machinery.

62. As to entitlement of, the issue of responsibility for the prolongation was expressly contested before the learned Arbitrator. The Respondent contended that the prolongation was attributable to the

Claimant's under-performance/failure, citing, inter alia, delay and shortfall in project establishment, inadequate tools, plants and equipment, delay in completion of enabling works and pile-load testing, delay in providing designs and drawings for centering and shuttering, inability to simultaneously execute work on the available fronts, inadequate staff and coordination, and under-mobilisation of resources. The Respondent also relied upon various contractual provisions and advisories concerning slow progress.

63. The learned Arbitrator considered this contention. However, he found that the Respondent had not quantified the impact of the alleged shortcomings in terms of the number of days of delay attributable to the Claimant. He accordingly held that, in the absence of such quantification, the period for which the Claimant would not be entitled to compensation on account of its own alleged delay could not be determined. Thus, the Tribunal did not ignore the Respondent's case; rather, it found the material placed by the Respondent insufficient to identify a specific period of delay attributable to the Claimant.

64. The learned Arbitrator also considered the delay relating to the FOBs. The award records that the main flyover and underpass became operational on 29.06.2010, but the balance works could not be completed on account of, *inter alia*, delay in handing over a hindrance-free site, shifting of services and the delay relating to the FOBs. The award further records that the work of the FOBs was held up to 26.02.2011 due to non-availability of drawings, which were under review following the collapse of a similar FOB near Nehru Stadium. The Respondent had thereafter considered a period of 306 days, from

27.02.2011 to 29.12.2011, for completion of the FOBs.

65. The learned Arbitrator also took note of the fact that the stipulated period for completion ended on 30.04.2010, whereas the work was actually completed on 14.05.2012. EOT up to the actual date of completion was granted by the Respondent without levy of compensation.

66. The period for which compensation was actually awarded is significant. Although the work continued beyond the stipulated date of completion and was ultimately completed on 14.05.2012, the Claimant had restricted its claim to the period from 09.06.2010 to 25.07.2011, namely 13.5 months. The learned Arbitrator confined the compensation to that period and did not award compensation for the entire period up to actual completion.

67. ***J.G. Engineers (P) Ltd. (supra)***, recognizes that the question as to which party was responsible for delay is an adjudicatory issue and that, once decided by the Arbitrator on the material before him, it is not to be reopened as an appellate exercise.

68. There is, however, a more specific objection founded on Special Condition 3.52. The said condition provides that no claim for idle establishment and labour, machinery and equipment, tools and plants and the like, for any reason whatsoever, shall be admissible during the execution of the work or after its completion. The Respondent specifically relied upon this condition before the learned Arbitrator and contended that the claim, though described as one for additional expenditure, was in substance a claim arising from resources remaining idle during the prolonged period.

69. The learned Arbitrator expressly considered this clause and held that the revised claim before him was not a claim for idle establishment or idle machinery, it was, as he understood it, a claim for the additional expenditure of maintaining the establishment and resources required to continue performance during the extended period. On that basis, the learned Arbitrator held that Special Condition 3.52 was not attracted.

70. The Respondent further contended that the aforesaid distinction was artificial, particularly in view of the periods during which the FOB works could not be undertaken or could only be undertaken in restricted working windows. It relied upon the period during which the FOB works remained held up for want of drawings and further contended that, during the subsequent period, erection work was permitted only during restricted working windows, including Saturday and Sunday nights. The Respondent therefore submitted that the resulting delay was attributable to the Claimant and could not support a claim for compensation.

71. The Respondent contended that, notwithstanding the manner in which the claim was described, the expenditure claimed was in substance attributable to resources remaining tied up during the prolonged period and was therefore barred by Special Condition 3.52. The Respondent also relied upon the period during which the FOB works remained held up for want of drawings and the restricted working windows thereafter to contend that the resulting delay was attributable to the Claimant.

72. The learned Arbitrator considered the objection and held that the revised claim was not a claim for idle establishment, labour, machinery or equipment, but for additional expenditure incurred in executing the work during the extended period. He therefore held that Special Condition 3.52 was not attracted.

73. The Respondent's challenge before this Court, therefore, is whether the learned Arbitrator was justified in drawing this distinction and treating the claim as one for additional expenditure rather than idle resources. The question of responsibility for the prolongation was separately considered by the learned Arbitrator, who found that the Respondent had not quantified the period of delay attributable to the Claimant.

74. The above findings demonstrate that the learned Arbitrator did not proceed on the basis that every period beyond the stipulated completion date was automatically compensable. The Respondent's case on under-performance, the contractual provisions relied upon by it, the circumstances concerning the FOB drawings and the restricted working conditions were all matters before the Tribunal. The Tribunal considered them and nevertheless concluded that the material did not enable it to identify a specific period of delay attributable to the Claimant, while finding the claim maintainable for the limited 13.5-month period claimed.

75. The question before this Court is not whether another view of these facts or of the contractual provisions could be taken. The question under Section 34 is whether the view adopted by the learned Arbitrator is such that it could not reasonably have been adopted on the material before him. The interpretation placed on Special Condition 3.52, and the treatment of Special Conditions 3.27 and 3.28, cannot be said to cross that threshold merely because the Respondent advances a different interpretation.

76. I do not find this approach perverse or irrational and therefore unable to accept the challenge to entitlement. The learned Arbitrator did not assume that every day of delay was attributable to the Respondent. He considered the relevant clauses of delay, the relevant contract clauses, the pre-bid allocation relating to permanent utility shifting, the FOB record and the EOT material. The conclusion that the Claimant was entitled to compensation for the 13.5-month period claimed is a finding reached on material before the Arbitrator and does not disclose patent illegality.

77. The challenge to entitlement under Claim Nos. 1 to 5 therefore does not warrant inference and thereby the finding of entitlement to compensation for prolongation is therefore upheld.

78. The next, and more substantial challenge is to quantification as to the amount of Rs.6,59,64,546/- awarded by the learned Arbitrator towards additional expenditure on overheads and plant and machinery can be sustained.

79. The learned Arbitrator did not simply accept the revised claim of Rs. 17,89,77,755/-. The revised claim had been computed on the basis of actual expenditure under the heads of additional site establishment costs, additional head office costs and additional equipment charges. The Claimant had also placed an alternative computation before the learned Arbitrator.

80. The learned Arbitrator adopted the alternative computation. The calculation recorded in the award may be set out as follows:

> "6.15 As per Clause 2(xl) of Schedule F at page 71 of the agreement, MORTH Standard Data book for Analysis of Rates is applicable and in the Data book 25% overhead has been considered for such type of works. The overhead percentage considered by the Respondent is also 25% as per the letter dated 14.11.2021 (reproduced in para 9.6 infra). However, the claimant has worked out the claim amount of ₹13,30,14,928 on the basis of 7.5% overheads including equipment charges as per page 1599 of submission dated 25.08.2015. Contractor's profit and overhead is 15% out of which 7.5% is for overheads as per the OM No. DGW/MAN/150 dated 14.12.2007 filed at page 1608 of submission dated 25.08.2015. Accordingly the amount payable for the period of 13.5 months as per para 6.14 above works out as under:

a)	Agreement amount including profit and overhead charges	₹ 199,79,38,503/-
b)	Prime cost i.e. cost of work excluding 15% contractor's profit and overhead charges	=(100/115)x1997938503 =₹173,73,37,829/-
c)	Cost of overheads @7.5% of prime cost	=₹13,03,00,337/-
d)	Stipulated time of completion	=24 months
e)	Average monthly overhead charges	=13,03,00,337/24 =₹54,29,180.71
f)	Overhead charges for 13.5 months	=₹7,32,93,940/- (say)

81. The learned Arbitrator thereafter considered the circumstances relevant to mitigation. He recorded that the Claimant was a prudent and specialised contractor, that expenditure on overheads would taper as the work approached completion, particularly where the prolongation was substantial, and that construction rates contain some allowance for hindrances. Keeping these factors in view, the learned Arbitrator treated 90% of Rs.7,32,93,940/- as reasonable compensation and awarded Rs.6,59,64,546/-.

82. The principal objection of the Respondent is to the 7.5% overhead component. The Respondent contends that, under Schedule F, the applicable standard schedule was CPWD DSR-2002 was the applicable standard schedule and that, under the applicable rate structure, the combined component for profit and overhead was 10%, comprising 7.5% profit and 2.5% overhead. On that basis, it submits that overhead should have been calculated at 2.5% on the balance work of approximately Rs.17.93 crore, resulting in compensation of approximately Rs.44.8 lakh.

83. The contractual provisions relied upon by the Respondent require some care. Schedule F records, under Clause 2(x), “Percentage on cost of materials and labour to cover all overheads and profits” as 10%. Clause 2(xi), separately, refers to the CPWD DSR-2002, the MORTH Standard Data Book for Analysis of Rates and market rates.

84. Thus, the contract does not contain a simple stipulation that overheads shall invariably be calculated at 7.5%. Nor does the Respondent’s contention arise merely from a numerical disagreement. The question is how Clauses 2(x) and 2(xi), read with the applicable rate-analysis material, operate in determining the compensation for the prolonged period.

85. The learned Arbitrator considered this issue. The award records that the MORTH Standard Data Book was applicable under Schedule F and that the Data Book contemplated 25% overhead for such work. The award also records that the Respondent itself had considered 25% overhead in its letter dated 14.11.2011. At the same time, the alternative computation advanced by the Claimant adopted 7.5% overhead on the basis of the OM dated 14.12.2007. The learned Arbitrator adopted that alternative computation for the purpose of quantifying the compensation.

86. The Respondent's computation of approximately Rs.44.8 lakh proceeds on a materially different basis. It applies 2.5% to approximately Rs.17.93 crore, which the Respondent says represents the value of the balance work executed after 30.06.2010. The learned Arbitrator did not adopt that approach. He treated the overhead component as a time-related cost, derived an average monthly overhead from the contract amount and applied it to the 13.5-month period for which compensation was held payable. The existence of this alternative method of calculation does not, by itself, establish that the method adopted by the learned Arbitrator was impermissible.

87. The principles laid down in ***McDermott International Inc.(*supra)** reiterated in ***Associate Builders*** **(supra)**, are relevant to this aspect. The assessment of damages and the choice of an appropriate method for their quantification fall primarily within the domain of the learned Arbitral Tribunal. The Court exercising jurisdiction under Section 34 does not substitute its own assessment merely because another method of calculation may also be available. Interference may be warranted where the method adopted is unsupported by the contractual or evidentiary material, or results in a conclusion which is impermissible in law. In the present case, the learned Arbitrator adopted a method based on the agreement amount, the stipulated contract period and the period of prolongation. The mere fact that the Respondent proposes a different method of calculating the overhead component, resulting in a figure of approximately Rs.44.8 lakh, does not by itself furnish a ground for interference under Section 34.

88. This brings me to the Respondent's contention that there was no evidence to support the award. The Claimant has specifically stated that its submission dated 25.08.2015 was accompanied by month-wise books of account and supporting documents relating to the extended period, and that the material was neither tested in cross-examination nor met by rebuttal evidence. The award itself refers to the Claimant's submission dated 25.08.2015 and to the pages on which the revised claim and alternative computation were set out.

89. The recent decision of this Court in ***NHAI v. Oriental Structural Engineers Pvt. Ltd***[16] is also relevant. The challenge there similarly concerned compensation for prolongation of a construction contract, including overheads and machinery costs, and the use of the MORTH Standard Data Book for quantification. The Court held that while damages must be founded on evidence, mathematical precision is not indispensable where exact computation is impracticable. What is

[16] **2026:DHC:6812;O.M.P. (COMM) 206/2016, decided on 18.08.2026**

required is that the methodology adopted by the Arbitral Tribunal be reasonable, non-arbitrary and supported by the material on record. The Court further held that the absence of minute proof of every individual item of expenditure does not, by itself, render a percentage-based method impermissible.

90. The decision is particularly instructive because the Court distinguished a case where there is no material before the Tribunal from a case where material exists but the Tribunal adopts a reasonable method for quantification. It observed that, where entitlement to compensation has been established and the relevant material is available, the choice of methodology lies primarily within the domain of the Arbitral Tribunal and another possible method of assessment does not justify interference under Section 34.

91. The principle applies with greater force where, as in the present case, the record before the learned Arbitrator included the Claimant's revised computation and supporting material relating to the expenditure claimed. The Respondent's objection therefore goes principally to the sufficiency of the material and the methodology adopted for quantification, rather than to a complete absence of evidentiary foundation.

92. The learned Arbitral Tribunal is the master of the quality and sufficiency of the evidence placed before it. The award itself refers to the material and pages relied upon by the Claimant in support of its revised claim and alternative computation. In ***Union of India v. M/s***

Navayuga Engineering Co. Ltd. & Anr[17], this Court observed that an arbitral award is to be read as a whole and that the Tribunal is not required to reiterate every finding while recording its final conclusion. Where the reasoning is intelligible and the conclusion can be understood from the material considered, the award cannot be interfered with merely because the reasoning could have been more elaborate.

93. Thus, I would not, in a Section 34 proceedings, certify the evidentiary quality of every underlying accounting entry as though conducting a trial. The relevant question is narrower: whether the award was based on no material at all. On the material placed before the learned Arbitrator, the answer is clearly in the negative.

94. The present case is not one in which the learned Arbitrator simply accepted the figure of Rs.17,89,77,755/- put forward by the Claimant. He considered the revised claim, adopted the substantially lower alternative computation, confined the period to 13.5 months, and thereafter treated 90% of the resulting figure as reasonable compensation. The record therefore discloses a basis for the quantification, even though the Court may not necessarily have adopted the same methodology.

95. On this aspect, ***Unibros(supra)*** is materially distinguishable. The claim there was for loss of profit and lost business opportunities. The Supreme Court held that a contractor claiming such loss must establish, by credible evidence, the existence of a viable alternative opportunity

[17] **2026:DHC:7270;O.M.P. (COMM) 97/2017, decided on 19.08.2026**

and that Hudson's formula cannot prove such lost opportunity by itself. The award before me does not grant profit which the Claimant says it could have earned on some other contract. It grants a moderated amount towards overhead and plant and machinery expenditure attributed to continued performance of this very contract during prolongation.

96. ***NHPC (supra)***, too, proceeded on a materially different footing. There the claim was reimbursement of actual enhanced wages. The tribunal itself observed that it was not practical to compute the actual differential cost and awarded a substantial amount on a formula without evidence of the enhanced wages actually paid. Here the learned Arbitrator did not say that proof was unnecessary. Material relating to the Claimant's expenditure was before him; he rejected the substantially larger actual-cost computation as the basis for the award and instead adopted the lower alternative computation placed before him, followed by a further 10% moderation.

97. ***Pragati Construction Consultants(supra)*** does not alter this conclusion. In that case the, Court found that no evidence of actual prolongation loss had been adduced and that there was no finding that such loss was difficult or impossible to prove. The Tribunal nevertheless awarded damages by taking a fixed cost component from a price variation clause which did not govern prolongation damages. The present award rests on a different record. The learned Arbitrator found delay attributable on contemporaneous material concerning EOT, had before him the Claimant's material expenditure and its alternative computation, and used a rate analysis basis which he found connected with Schedule F and the MORTH material. The proposition in ***Pragati***

Construction Consultants(supra) that a claim for actual loss cannot be awarded in the absence of evidence of loss, where such loss was capable of proof, is not disputed. The question here is whether the present award was based on no evidentiary material at all. It was not.

98. ***Ferro Concrete Construction (P) Ltd.(supra),*** reinforces the same basic requirement that loss cannot be presumed where proof is possible and that an award cannot rest on a bare claim without evidence. In the present case award under Claim Nos. 1 to 5 does not offend that principle merely because the learned Arbitrator assessed the amount by a recognized time related yardstick rather than by adding up every voucher as a court of first instance might have done.

99. There is some lack of precision in the reasoning of the learned Arbitrator in identifying the source of the 7.5% component. The contractual provisions themselves distinguish between the 10% aggregate provision in Clause 2(x) and the rate schedules referred to in Clause 2(xi). The learned Arbitrator nevertheless had before him the MORTH Standard Data Book referred to in Schedule F, the Claimant's alternative computation based on the OM dated 14.12.2007, and the Respondent's own material concerning the overhead component. The question under Section 34 is whether this reasoning crosses the threshold of patent illegality, not whether the reasoning could have been expressed with greater precision.

100. The method adopted by the learned Arbitrator is consequently not shown to be a method which the contractual and evidentiary material could not reasonably support. The Respondent's proposed computation of approximately Rs.44.8 lakh before me represents an alternative assessment based upon a different understanding of the applicable overhead component and the period to which it should be applied. Acceptance of that computation by this Court would necessarily involve substituting the Court's assessment for that of the learned Arbitrator.

101. The quantification may not be the only possible quantification and the reasoning on the percentage could certainly have been expressed with greater precision. That, however, is not the test under Section 34. The figure is traceable to material and a disclosed method of calculation. The period was confined to 13.5 months, and a further 90% reduction has been made for mitigation. I am unable to characterize the resulting award of Rs.6,59,64,546/- as one based on no evidence or as an impossible construction of the contract. The method adopted may not be the only possible method, and a court exercising appellate jurisdiction might well prefer another. That is not the test here. I am unable to say that the assessment is so devoid of material, or a calculation so irrational, that it falls outside the range of permissible arbitral evaluation and discloses patent illegality.

102. The challenge to the quantum under Claim Nos. 1 to 5, therefore, cannot be sustained. The award of Rs. 6,59,64,546/- has not shown to suffer from any patent illegality of the nature contemplated under Section 34 so as to warrant interference by this Court.

103. Accordingly, the challenge insofar as it pertains to the award of Rs. 6,59,64,546/- under Claim Nos. 1 to 5 is rejected.

104. I now turn to Claim No.8 which deals with reduction in agreement rates.

105. Claim No. 8 raises a distinct contractual issue and must be considered separately from the prolongation claim. It concerns ten agreement items whose quantities exceeded the stipulated deviation limit.

106. The award records that, for such deviated quantities, the Respondent had initially determined market rates and that, following audit objections, certain rates were subsequently revised. As the revised rates were lower than the agreement rates, the Claimant raised a claim for payment at the agreement rates.

107. The challenge to Claim No. 8 principally turns on the interpretation and application of Clause 12.3 as applicable to all ten items and also examined Clause 29(ii) in relation to the audit-based reduction.

108. Under Clause 12.3, the learned Arbitrator held, where the market rate is less than the agreement rate, the Respondent was required to put the Claimant to notice well in time before determining the lower rate. The learned Arbitrator found that there was no material on record showing that the Claimant had been so put to notice before the agreement rates were reduced. He further held that the mere fact that payments had subsequently been made at lower rates in the running account bills did not satisfy the requirement of prior notice contemplated as per Clause 12.3.

109. This construction placed by the learned Arbitrator on Clause 12.3 cannot be said to be an impossible construction. The clause was understood by the learned Arbitrator as requiring notice before a lower market rate was determined. The Respondent's contention that subsequent reflection of the rate in the running account bills was sufficient may constitute an alternative view of the contractual mechanism, but the existence of such an alternative does not, by itself, justify interference under Section 34.

110. The learned Arbitrator also considered Clause 29(ii), on which the Respondent principally relies for its case regarding audit and recovery. The Respondent had relied upon the audit objection to contend that the rates determined for the deviated quantities involved an excessive component towards overheads and profit and that the resultant overpayment could consequently be recovered under Clause 29(ii). The learned Arbitrator considered the audit objection along with the Respondent's contemporaneous letter dated 14.11.2011.

111. The said letter is material. In its letter dated 14.11.2011 replying to Audit Memo No. 5, the Executive Engineer stated that, in accordance with paragraph 24.3 of the CPWD Works Manual, the market-rate analysis for deviated, extra and substituted items had been undertaken on the same lines as the tender justification. The letter further recorded that MORTH-based bridge items had been analysed with 25% overhead and 10% contractor's profit, while DSR items and MORTH-based road items had been analysed on the respective bases stated therein, and expressly maintained that there was no violation of the terms and conditions of the agreement and no excess payment to the Contractor.

112. Having regard to this material, the learned Arbitrator treated the dispute not as a simple arithmetical error of overpayment discovered upon audit, but as a dispute concerning the methodology adopted for determining the market rates of the deviated quantities. He considered the Respondent's reliance on Clause 29(ii), the audit objection and the Respondent's contemporaneous letter dated 14.11.2011. The learned Arbitrator did not hold that Clause 29(ii) conferred no power of recovery; rather, he found that, on the facts of the case, the dispute concerned the methodology of rate determination and the subsequent revision of rates.

113. The learned Arbitrator thereafter examined the individual items forming the subject matter of Claim No. 8 and recorded the relevant quantities, agreement rates, rates determined for the deviated quantities and the resulting differences, before arriving at the aggregate award of Rs.1,50,28,399/-. The award therefore discloses both the contractual basis and the item-wise basis of the determination. The Respondent's challenge would require this Court to adopt a different interpretation of Clauses 12.3 and 29(ii) and reassess the effect of the audit objection and the material relied upon by the Tribunal.

114. The interpretation adopted by the learned Arbitrator may be open to another view, but it cannot be said to be one which no fair-minded or reasonable person could have adopted. The Tribunal considered the contractual provisions, the rival submissions and the material on record, including the Respondent's own contemporaneous explanation of the rate methodology. The mere availability of another interpretation does not justify substitution by this Court under Section 34.

115. Accordingly, no ground for interference under Section 34 having been made out, the challenge to the award under Claim No. 8 is rejected.

116. As to Claim No.10, the challenge is limited before me to Rs. 15,05,296/-, comprising the amounts awarded for EI-II/1 and EI-II/2. The remaining portion of Claim No. 10 is not under challenge.

117. EI-II/1 concerns providing, fabricating and fixing permanent MS liner for 1500 mm diameter piles. The executed quantity of 181.54 metres is undisputed. The Respondent determined the rate at Rs.21,767.48/- per metre in Extra Item Statement No. II and communicated it to the Claimant on 22.12.2010. The said rate was accepted by the Claimant and claimed payment accordingly in the 37th and final bill. Subsequently, by a revised Extra Item Statement dated 03.08.2012, the Respondent reduced the rate to Rs.16,738.96/- per metre. The difference on the quantity executed was consequently calculated at Rs. 9,12,878/-, which was awarded by the Learned Arbitrator.

118. Similarly, EI-II/2 concerns Yamuna sand for backfilling. The executed quantity of 1916.590 cubic metres is undisputed. The rate of Rs.1,545.48/- per cubic metre was determined by the Respondent and communicated to the Claimant on 22.12.2010. The Claimant accepted the rate and claimed payment at the said rate. The rate was later reduced to Rs.1,236.38/- per cubic metre by the revised Extra Item Statement dated 03.08.2012. The difference was calculated at Rs.5,92,418/-, which was also awarded by the Learned Arbitrator.

119. The Respondent says that the original rates used were worked out by applying the MORTH Standard Data Book with overhead and profit components exceeding the 10% aggregate which, according to it, was mandated by Clause 2(x), and that audit therefore required the correction. It relies on Clause 29(ii) as the contractual source of power to recover the resulting overpayment. For these two extra items, however, the award specifically refers back to paragraph 9.7, namely, the learned Arbitrator's treatment of Clause 29(ii). It does not rest upon the separate Clause 12.3 notice finding in paragraph 9.8, and the two issues should not be conflated.

120. A material factual feature is that these were not rates unilaterally asserted by the Claimant. They were rates worked out by the Respondent under the contractual rate analysis mechanism, formally communicated to the Claimant and accepted before being reopened after the audit objection. The same contemporaneous departmental position dated 14.11.2011 had defended the MORTH based methodology as consistent with the detailed estimate, tender justification and CPWD Works Manual.

121. In these circumstances, the learned Arbitrator construed Clause 29(ii) to mean that a subsequent audit disagreement over the methodology did not automatically transform a rate already determined by the department and accepted between the parties into a recoverable overpayment. Whether the audit construction of Clause 2(x) and 2(xi) is preferable is not the question before this Court. The question is whether the construction adopted by the learned Arbitrator is one which the contract could not reasonably bear. In view of the express reference to the MORTH Data Book in Schedule F, the departmental determination of the rates and the contemporaneous letter defending that methodology, I am unable to hold that the interpretation adopted by the learned Arbitrator is an impossible or unreasonable construction of Clause 29(ii)..

122. The interpretation adopted by the Learned Arbitrator is a possible and permissible construction of the Agreement. Such an interpretation is not expressly prohibited either by Clause 2(x) or Clause 2(xi). While Clause 2(x) stipulates the contractual percentage for overheads and profits, Clause 2(xi) incorporates the MORTH Standard Data Book for rate analysis. It was, therefore, open to the learned Arbitrator to consider whether the rates for extra item, initially determined by the Engineer under the contractual mechanism and thereafter accepted and acted upon by the Claimant, could subsequently be reopened and reduced in the manner sought by the Respondent.

123. The mere fact that the audit authorities subsequently adopted a different interpretation of the contractual provisions does not render the interpretation accepted by the learned Arbitrator either perverse or patently illegal.

124. I am conscious that, in exercising appellate jurisdiction, it may be possible to examine whether the original rate analysis was the most appropriate application of Clause 2(x) read with Clause 2(xi). That, however, is not the scope of jurisdiction available under Section 34. The Court cannot substitute its own interpretation of the contractual provisions merely because another interpretation is possible. Interference is warranted only where the interpretation adopted by the arbitrator is impermissible under the contract or is such that no fair-minded or reasonable person could have adopted it.

125. In the present case, the learned Arbitrator duly considered the audit objection, the relevant contractual provisions, the manner in which the extra item rates had original been determined and accepted, and the subsequent attempt by the Respondent to reduce those rates. The conclusion that such subsequent reduction could not be sustained in the facts and circumstances of the case is a plausible interpretation of the contractual arrangement and the material placed on record. The challenge therefore seeks, in substance, a fresh determination of the proper rate analysis methodology.

126. That exercise lies outside Section 34 and as no perversity, finding based on no evidence, or patent illegality going to the root of the matter has been demonstrated to warrant interference under Section 34.

127. Accordingly, to the extent a challenge to Claim No. 10 survives, the award of Rs.9,12,878/- in respect of EI-II/1 and Rs.5,92,418/- in respect of EI-II/2, aggregating to Rs.15,05,296/-, is upheld.

128. Coming to the final challenge concerning Counter- Claim No.2, the Respondent sought recovery of Rs.11,37,216/- on the ground that an excess payment had allegedly been made in respect of Agreement Item No. 6.4.6, relating to 25 mm thick bituminous mastic wearing course.

129. The agreement rate for the said item was Rs.450/- per sqm. Against the stipulated quantity of 9,135 sqm, the executed quantity was 37,586.01 sqm. The deviated quantity relevant for the present dispute was 25,711.40 sqm

130. Before the learned Arbitral Tribunal, the Claimant had initially claimed a rate of Rs.963.50 per sqm by letter dated 15.06.2010 and, during the arbitral proceedings, reduced the claimed rate to Rs.779.12 per sqm. The Respondent, however, had made payment at the rate of Rs.597.30 per sqm in the 37th and final bill. The learned Arbitrator examined the rate analysis and recorded that the said rate had been worked out by the Respondent on the basis of the MORTH Data Book, with overheads and 10% Contractor's profit.

131. On that basis, while adjudicating Claim No.9, the learned Arbitrator rejected the Claimant's claim for payment at the higher rate and upheld the rate of Rs.597.30 per sqm.

132. Subsequently, on the basis of an audit objection, the Respondent recalculated the rate at Rs.553.07 per sqm, by restricting the component towards overheads and profit to an aggregate of 10%. Counter-Claim No. 2 was thereafter raised for recovery of Rs.11,37,216/-, representing the alleged excess payment on the basis of the difference between the rate of Rs.597.30 per sqm and the recalculated rate of Rs.553.07 per sqm.

133. Learned Counsel for the Respondent, in the present proceedings, submitted that the payment at Rs.597.30 per sqm was in excess of the rate that ought to have been determined under the agreement and that the subsequent audit calculation of Rs.553.07 per sqm established the amount recoverable from the Claimant. The Respondent accordingly challenges the rejection of Counter-Claim No. 2.

134. The learned Arbitrator, however, rejected the counter-claim. The rejection cannot be regarded as an independent or unexplained conclusion. It necessarily followed from the finding already returned while deciding Claim No. 9, where, upon consideration of the Respondent's own rate analysis, the rate of Rs.597.30 per sqm had been expressly accepted as proper. Once that rate had been found to be justified, the very foundation of the Respondent's case of excess payment ceased to survive.

135. The rejection of Counter-Claim No. 2 therefore follows directly from the finding returned on Claim No. 9. The learned Arbitrator did not independently determine a different rate for the purpose of the counter-claim. Rather, having upheld the rate of Rs.597.30 per sqm while deciding the corresponding claim for the higher rate, the Tribunal rejected the Respondent's consequential claim for recovery based on a lower rate of Rs.553.07 per sqm.

136. The challenge raised by the Respondent would, in substance, require this Court to undertake a fresh examination of the MORTH based rate analysis *vis-a-vis* the subsequent audit calculation and to substitute the rate of Rs.553.07 per sqm for the rate of Rs.597.30 per sqm accepted by the learned Arbitrator.

137. Such an exercise would require reappreciation of the rate analysis and the material considered by the learned Arbitrator while deciding Claim No. 9. The jurisdiction under Section 34 does not permit the Court to substitute its own assessment of the appropriate rate merely because the Respondent relies upon a subsequent audit calculation.

138. The reasoning of the learned Arbitrator is also internally consistent. The rate of Rs.597.30 per sqm was examined while deciding Claim No. 9 and found to be in order. The rejection of the counter-claim, which proceeded on the basis that payment at that very rate constituted an excess payment, consequently followed from that finding. The award cannot therefore be characterised as having rejected Counter-Claim No. 2 without consideration of the basis on which it was advanced.

139. The Respondent's disagreement is, in substance, with the rate which the learned Arbitrator accepted after examining the material before him. No finding based on no evidence, perversity or patent illegality going to the root of the matter has been demonstrated so as to warrant interference under Section 34.

140. Accordingly, the challenge to the rejection of Counter-Claim No. 2 is rejected, and the finding of the learned Arbitrator in that regard is upheld.

CONCLUSION

141. It is important to emphasise that the challenges considered above arise from different parts of the contract and the award and cannot be treated as one general dispute concerning overhead and profit. Thus, the reasoning for Claim Nos. 1 to 5 is not being imported into Claims 8 or 10. Claim Nos. 1 to 5 concern entitlement to, and assessment of, additional expenditure during prolongation, and quantification of additional expenditure arising from prolongation; Claim No. 8 concerns the determination of rates for deviated quantities and the application of Clauses 12.3 and 29(ii); Claim No. 10 to the extent under challenge, concerns the subsequent reduction of the rates determined for EI-II/1 and EI-II/2; and Counter-Claim No. 2 concerns the alleged excess payment arising from the rate of Rs.597.30 per sqm which the learned Arbitrator had found to be in order while adjudicating Claim No. 9.

142. The fact that several of the claims involve common references to overheads, Claimants' profits and the MORTH Data Book does not render the issues arising in those claims identical. The contractual context and the function performed by those provisions differ from claim to claim. The findings recorded above are, therefore, confined to the particular issue arising under each claim.

143. In each instance, the learned Arbitrator considered the relevant contractual provisions and the material placed before him. At the highest, the Respondent has demonstrated that an alternative interpretation of the contract or a different method of quantification may also be arguable. That, however, is insufficient to justify interference under Section 34 of the Act. The jurisdiction under Section 34 does not extend to reconsidering the matte on merits merely because the Court may have preferred another interpretation or arrived at a different computation.

144. Interference would be warranted only where the award suffers from a defect falling within the limited statutory grounds of challenge, including patent illegality of the kind contemplated by Section 34, perversity, a finding based on no evidence, or an interpretation of the contract which is not even a possible one. No such infirmity has been established in respect of the findings considered above.

145. Accordingly, the present petition is dismissed insofar as it challenges the award in respect of Claim Nos. 1 to 5, Claim No.8, Claim No.10 to the limited extent concerning EI-II/1 and EI-II/2, and the rejection of Counter-Claim No.2.

146. Consequently, the Award dated 22.05.2017, read with the correction dated 09.06.2017, remains undisturbed to the extent considered in this judgment.

147. All pending applications, if any, stands disposed of.

148. There shall be no orders as to costs.

OM PRAKASH SHUKLA, J.

SEPTEMBER 18, 2026/ss/pa