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

\# **CNR No. DLHC010019442017**

\+ O.M.P. (COMM) 97/2017, I.A. 2597/2017, I.A. 2599/2017, I.A. 13968/2019, I.A. 15763/2019 & I.A. 13968/2019

UNION OF INDIA .....Petitioner

Through: Ms. Vaishali Gupta, Adv. Panel Counsel for GNCTD with Ms. Aanchal Rajput, Advs.

versus

M/S. NAVAYUGA ENGINEERING CO. LTD. & ANR. .....Respondents

Through: Mr. Arvind Minocha, Sr.Adv. with Mr. Mukesh Kumar, Ms. Meenakshi Sood, Ms. Muskan Katyayan and Mr. Gaurav Nayak, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% 19.08.2026

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996[1] is filed by the Petitioner challenging the arbitral award dated 14.10.2016[2] passed by the learned Sole Arbitrator, Shri O. P. Bhatia, Former Additional Director General (Works), Special CPWD.

2. The arbitral proceedings arose out of Agreement No. 21/EE/DS & CM/PWD/06-07[3], under which the Petitioner had awarded to the Respondent the work of constructing the flyover at Naraina T-Point,

[1] "the Act" hereinafter
[2] "impugned Award" hereinafter
[3] "contract" hereinafter

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Ring Road, New Delhi.

3. The stipulated period for completion of the work was 21 months, commencing from 14.03.2007, and the work was to be completed by 13.12.2008. During the execution of the work, the Petitioner granted six extensions of time, ultimately extending the date of completion up to 15.01.2013, without levy of any Liquidated Damages.

4. As per the Respondent, the work was delayed due to reasons attributable to the Petitioner, as a result of which the Respondent had to continue with the work during the extended period and incurred additional expenditure and losses. However, the Petitioner disputed this and attributed the delay to the Respondent. Thus, dispute arose between the parties as to who was responsible for the delay and as to whether the Respondent was entitled to recover the additional costs alleged to have been incurred during the prolongation of period. Accordingly, these disputes were referred to the Arbitral Tribunal in terms of Clause 25 of the Contract.

5. After the Arbitral Tribunal was constituted, the Respondent raised almost six claims before the learned Sole Arbitrator, the amounts claimed under each of which are set out in the following tabular chart:

Claim No.	**Brief Description of the Claims**	**Amount of Claim (Rs in Lac)**
1	Claim on account of final bill	184.05
2	Claim on account of arbitrarily deduction on less lead of construction material	24.01

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3	Claim on account of losses/damages due to prolongation of contract.	
3(a)	Claim on account of damages on account of idling of tools & plants	1343.82
3(b)	Claim on account of losses suffered on account of extra expenditure incurred on site establishment	697.18
3(c)	Claim on account of extra expenditure incurred on account of site expenses	160.55
3(d)	Claim on account of expenditure incurred on account of extending the B.G. for performance, security and mobilization advance	54.32
3(e)	Claim on account of expenditure on account performance of Head Office Overheads	97.91
3(f)	Claim on account of extra expenditure for providing inspection vehicle & mobile	21.56
3(g)	Claim on account of extra interest paid on mobilization advance	136.24
3(h)	Claim on account of loss opportunity/profit	566.04
4	Interest on due amount of claim no 1 to 3	To be calculated on award
5	Claim @ 18% on claim no 1 to 4 for date of due to date of payment	To be calculated on award
6	Cost of Arbitration	30.00

6. The learned Arbitrator after considering the pleadings and evidence on record, ultimately awarded Rs.1,07,02,697/- under Claim No. 1, while Claim No. 2 was rejected in its entirety. Under Claim No. 3(a), an amount of Rs.45,51,450/- was awarded and a further sum of

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Rs.1,70,45,681/- was awarded collectively under Claim Nos. 3(b) to 3(g), aggregating to Rs.2,15,97,131/-. Claim No. 3(h), towards loss of profit, was rejected.

7. Under Claim No. 4, interest was awarded only on the amount awarded under Claim No. 1, at the rate of 8% per annum, while a sum of Rs.3,00,000/- was awarded under Claim No. 5. Thus, the total amount awarded in favour of the Respondent was Rs.3,25,99,828/-, together with interest on Claim No. 1 at the rate of 8% per annum.

8. In the present petition, the Petitioner principally assails the impugned Award to the extent it awards amounts under Claim Nos. 3(a) to 3(g).

9. Learned Counsel appearing for the Petitioner submits that the impugned Award, insofar as it allows Claim nos. 3(a) to 3(g), is liable to be set aside as being contrary to the terms of the Contract, unsupported by the evidence on record and vitiated by patent illegality.

10. It is further submitted that Special Conditions 3.18 and 3.52 of the Contract specifically bar any claim for idle establishment, labour, machinery, equipment, tools and the like during or after execution of the work and that the express bar was specifically brought to the notice of the learned Arbitrator. It is contended that despite the same, the Tribunal awarded compensation towards such claims, and thereby acted in direct contravention of the express terms of the Contract warranting interference by this Court.

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11. Learned Counsel pointed out that the learned Arbitrator found that, out of the total prolongation of 1484 days, only 568 days were attributable to the Petitioner, while the remaining delay was attributable to the Respondent, and also found inaccuracies and exaggeration in the expenditure claimed. Therefore, it is contended that the approach of the Tribunal is internally inconsistent, as despite these findings, it awarded compensation without disclosing any basis for the amount finally awarded. According to the Petitioner, the assessment is unsupported by any evidence and, in substance, rests on equitable considerations, in contravention of Section 28(2) of the Act.

12. It is further submitted that, having attributed only 568 days of delay to the Petitioner, the Tribunal erred in awarding compensation for the entire period of prolongation without separately quantifying the loss attributable to those 568 days or taking into account the Respondent's own contribution to the delay.

13. Learned Counsel for the Petitioner also submits that Claim Nos. 3(a) to 3(g) were claims for actual loss and damages and could not have been allowed merely on the basis of estimates furnished by the Respondent. It is contended that the Respondent failed to produce cogent evidence to establish the actual loss suffered and that mere self-serving estimates, by themselves, could not constitute proof of such loss.

14. It is further submitted that the Respondent was required to take reasonable steps to mitigate its loss under Section 73 of the Indian

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Contract Act,1972[4] which it failed to establish that it had done, and that the Tribunal failed to take this aspect into consideration while awarding compensation.

15. *Per contra*, learned Senior Counsel for the Respondents submits that the impugned Award is a reasoned Award, passed after considering the pleadings, documentary evidence and the oral and written submissions of the parties.

16. It is further submitted that the project was prolonged by 1484 days and that the Petitioner granted extensions of time on four occasions without levying any liquidated damages. Such prolonged extensions, according to learned Senior Counsel, could not be treated as an ordinary extension of time and entitled the Respondents to compensation for the losses suffered on account of the prolongation.

17. Learned Senior Counsel further submits that the claims in question were for damages arising from prolongation and were distinct from the ordinary escalation contemplated under the contract and even the clauses relied upon by the Petitioner did not bar the learned Arbitrator from examining a claim for damages arising from breach and delay attributable to the Petitioner. It is, therefore, submitted that the Tribunal acted within the scope of the reference and its jurisdiction in considering and quantifying such claims under Sections 55 and 73 of the ICA.

[4] "ICA" hereinafter

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18. I have heard the learned Counsel for both parties and perused the material on record.

19. At the outset, it is necessary to keep in mind that a petition under Section 34 of the Act is not an appeal against an arbitral Award. This Court does not sit in appeal over the findings of the Arbitral Tribunal, nor can it reappreciate the evidence merely because another view is possible. The scope of interference is limited to the grounds recognised under Section 34 and does not permit this Court to substitute its own view with the Tribunal's view unless it is a view which no reasonable person could have arrived at.

20. Nonetheless, this Court, is only required to examine whether the findings recorded and the conclusions reached by the Tribunal are within the terms of the Contract and are supported by the material placed before it. An Award which proceeds contrary to the contractual terms, suffers from patent illegality appearing on its face, or reaches a conclusion having no basis in the material on record, can be interfered with within the limited grounds available under Section 34 of the Act. The said principles stand recognised in ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd.***[5]***, PSA Sical Terminals (P) Ltd. v. V.O. Chidambaranar Port Trust***[6]***, State of Chhattisgarh v. Sal Udyog Pvt. Ltd.***[7]**,** and ***Associate Builders v. Delhi Development Authority***[8].

21. Adverting to the contentions raised in the present case, the

[5] **(2024) 6 SCC 357**
[6] **2021 SCC OnLine SC 508**
[7] **(2022) 2 SCC 275**
[8] **(2015) 3 SCC 49**

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principle objections raised by the Petitioners in assailing the impugned Award are two-fold. Firstly, it is contended that the Tribunal awarded compensation despite the clear bar given in Special Conditions Clause 3.18 and 3.52 and therefore, the Tribunal acted beyond the four corners of the Contract. Secondly, it is vehemently contended that the Tribunal itself found that only part of the delay was attributable to the Petitioner and that the expenditure claimed by the Respondent was exaggerated and the evidence in support thereof was unreliable, yet the Tribunal awarded overhead compensation without separately linking the amount awarded to the delay attributable to the Petitioner or disclosing a clear basis for the ultimate quantum awarded.

22. In regard to the contention of the Petitioner that Special Condition 3.18 and 3.52 ousted the right of the Respondent to claim overhead compensation and other costs during the period of prolongation, it is relevant to note that the Petitioner had raised similar contention before the Tribunal, which were duly considered and the Tribunal has returned its finding.

23. The Petitioner is now raising the very same contention before this Court, without pointing out any error in the reasoning adopted by the Tribunal. A reading of the impugned Award indicates that the Tribunal examined the said clause in great detail and held it to be void and unlawful, being contrary to Sections 23 of the ICA, as it sought to curtail the substantive right flowing from ICA of the Respondent to claim damages.

24. The Tribunal did not stop at this finding. It also examined the

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Respondent's entitlement under Sections 55 and 73 of the ICA. It noted that the Contract itself provided for extension of time, that the milestones had been shifted on several occasions and that extension had been granted on at least four occasions without levy of any compensation. It further noticed that the Respondent had reserved its rights for compensation and pursue any further remedy available in law. On this basis, the Tribunal held that time was not the essence of the Contract and that the Respondent was entitled to compensation for the delay and breaches attributable to the Petitioner under Sections 55 and 73 of the ICA.

25. Once the Tribunal held that the said clause was void and unlawful, being in violation of Section 23 of the ICA, and that the Respondent was entitled to compensation under Sections 55 and 73 of the ICA, it only thereafter proceeded to consider the Respondent's claims for compensation on their merits. Thus, the Tribunal has not ignored the specific bar. It considered the clause and its legal effect before considering the Respondent's entitlement.

26. The reasoning adopted by the Tribunal cannot also be said to be contrary to the legal position governing clauses which bars the entitlement of the contractor to claim expenditure incurred in the prolongation period. The Hon'ble Supreme Court in ***Asian Techs Ltd. v. Union of India***[9] considered the effect of clauses restricting claims for compensation where the contract is prolonged and held that such clause only prohibits the Department from entertaining the claim but did not

[9] **(2009) 10 SCC 354**

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prohibit the arbitrator from entertaining it.

27. In ***Simplex Concrete Piles (India) Ltd. v. Union of India***[10], a coordinate Bench of this Court held that a contractual clause which takes away the substantive right to claim damages will be hit by Section 23 of the ICA. The same principle was subsequently re-affirmed by this Court in ***MBL Infrastructure Ltd. v. Delhi Metro Rail Corporation Ltd.***[11], where, this Court relying upon ***Simplex (supra)***, held that such a restriction could not operate as an absolute bar to a claim for damages arising from delay attributable to the employer. The relevant observations are as follows-

> "54. In view of the aforesaid judgment, it is settled law that the learned Arbitral Tribunal can award damages when the clause of the contract contemplates that only extension of time can be given as remedy when there is a delay on the part of the employer. Hence, the act of awarding the damages to the aggrieved party does not amount to transgression from the terms of the contract.
>
> 55. Furthermore, as per Section 23 of the Indian Contract Act when there is a Contract which contains clauses that are against the public policy then such consideration or object of an agreement is considered unlawful and void.
>
> **56.** In the instant facts, the impugned award merits interference since the award has shocked the conscience of the court due to the fact that despite holding that there is a delay on the part of the respondent and there has been wrongful termination of the contract by the respondent. The learned Tribunal has not awarded any damages to the petitioner. Learned Arbitral Tribunal has wrongly not awarded any damages to the petitioner.
>
> **57.** The learned Tribunal failed to appreciate the fact that such a clause which restricts the right of the party to claim damages is a prohibitionary clause and is wrongly disentitles the aggrieved party

[10] **2010 SCC OnLine Del 821**
[11] **2023 SCC OnLine Del 8044**

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to claim damages. Such clause is against the public policy since it is contrary to the fundamental policy of Indian law.

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61. This Court is of the opinion that, the learned Tribunal has erred in not awarding the damages to the petitioner despite holding that the delay is attributable to the respondent. Hence, rendering the petitioner remediless.

62. The learned Tribunal should have taken looked into the situation at hand, there is no extension of time which could have been granted to the petitioner since the contract had terminated. Moreover, the petitioner never committed any such delay in execution of the contract as held by the Tribunal itself.

63. In the instant petition, the petitioner has placed on record various damages suffered by him due to the delay caused by the respondent in execution of the contract. Such as the delay in handing over of hindrance free site, delay in delay in issuing goods for construction drawings, delay in providing decisions and instructions, act or omissions of other contractor on whose performance, the performance of the petitioner was dependent, etc.

64. In light of the aforesaid findings, this Court is of the view that rejection of Claim No. 3 in the Impugned Award by relying upon Clause 8.3 is erroneous as the said clause pertains to power of engineer and the nature of claim that can be made before the engineer. Thus, the same cannot be interpreted to exclude Arbitrator from its ambit from granting an award of damages or compensating the petitioner for breach of contract as contemplated by Section 73of Indian Contract Act.

65. The Hon'ble Supreme Court in *Asian* (Supra) and this Court in *Simplex Concrete* (Supra) has cogently enumerated that keeping the sanctity of contracts and its bindingness is a matter of public policy and the same must be given precedence over the entitlement to breach of the said contract vide clauses rendering no remedy of damages to the aggrieved party.

66. Thus, the rejection of Claim No. 3 in Impugned Award is liable to be set aside and the petitioner is entitled for damages due to inaction and delays by the respondent."

28. The said view also finds support from the decisions of this Court

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in ***DMRC Ltd. v. J. Kumar***[12]***, Ministry of Health & Family Welfare v. Nagarjuna Construction Ltd.***[13]***, Union of India v. Chiraj Stock & Security (P) Ltd.***[14] **and** ***Ircon International Ltd. v. DMRC***[15]**.**

29. In view of the above legal position, the Tribunal's finding that Special Conditions 3.18 and 3.52 could not operate as an absolute bar cannot be faulted with and, according to this Court, does not disclose any ground warranting interference under Section 34 of the Act. A perusal of the impugned Award shows that the Tribunal considered the applicable legal position, the authorities relied upon by the parties and the material before it, and thereafter proceeded to examine the claims for compensation on their merits.

30. Apart from the above legal position, a mere reading of the relied upon clauses also indicates that it does not in any manner curtail the power of the Arbitrator to award compensation. The adjudication of such a claim by the Tribunal, therefore, cannot be said to be beyond its jurisdiction.

31. Accordingly, the contention that the Tribunal ignored the contractual bar or acted beyond the four corners of the Contract is rejected.

32. As far as other contention regarding the basis of quantification of the amount awarded and its linkage with the period of delay attributable

[12] **2022 SCC OnLine Del 1210**
[13] **2026 SCC OnLine Del 1558**
[14] **2024 SCC OnLine Del 10170**
[15] **2023 SCC OnLine Del 6368**

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to the Petitioner is concerned, this Court need not go into the reasons for the delay or examine afresh which party was responsible for the delay and for what cause, as there was no specific challenge during the oral arguments to the Tribunal's finding as to the period of delay attributable to either party.

33. The Petitioner also does not dispute that the Tribunal had examined the evidence in detail and considered the respective causes due to which project got prolonged. The grievance is restricted to the fact that, although only 568 days out of the total 1484 days of prolongation were attributed to the Petitioner, the Tribunal, in the same breath, awarded compensation without specifically quantifying the loss referable to those 568 days or taking into account the delay attributable to the Respondent itself.

34. The Petitioner has also contended that the amount ultimately awarded was not supported by any reliable evidence. In substance, according to the Petitioner, once the Tribunal had found the expenditure claimed by the Respondent to be inaccurate and exaggerated, it could not have proceeded to award compensation by simply adopting a random figure as a percentage without disclosing any basis for it. The adoption of such a percentage, in the absence of supporting material or reasons, is therefore contended to be a matter of guesswork, rendering the finding perverse and patently illegal.

35. In the view of this Court, the Petitioner may be correct to some extent that the Tribunal could have separately considered the period of delay attributable to each party and quantified the claim with reference

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to the respective periods while assessing the compensation. However, the endeavour of this Court is not to determine the method which the Tribunal ought to have adopted. The question is whether the method actually adopted by the Tribunal was so unreasonable or unsupported by the material placed on record before the Tribunal so as to render the impugned Award perverse or patently illegal.

36. On a reading of the impugned Award, this Court does not find any perversity or patent illegality going to the root of the matter in the approach adopted by the Tribunal while awarding the Claim 3(a) to (g) in favour of the Respondent.

37. In para 8.5.7, while assessing the quantum of compensation for Claim Nos. 3(a) to 3(g), the Tribunal was conscious and specifically noted the fact that the entire period of prolongation was not attributable to the Petitioner and that there were delays on the part of the Respondent as well. Although not couched in so many words, the Tribunal also took note of the Respondent's duty to mitigate its loss. Thus, the Tribunal did not proceed on the footing that every expenditure incurred during the extended period was recoverable from the Petitioner and did take into account the Respondent's own responsibility and obligations.

38. The evidence produced by the Respondent was also examined in detail by the Tribunal and the amounts claimed were found to be excessive or exaggerated for several reasons. In relation to site establishment, it noted that the Respondent had claimed expenses for 235 personnel, although the licence was only for 150 labourers, and found the claim of Rs.26.77 lakhs to be on the higher side. Similar

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considerations weighed with the Tribunal while dealing with site expenses and head-office overheads. As regards interest on the mobilisation advance, the Tribunal did not accept the assumption that 80% progress would have been achieved within 12 months and also noted that the Respondent could have repaid the advance earlier to reduce the interest burden.

39. At the same time, the Tribunal was satisfied that, although the amounts claimed by the Respondent were exaggerated, the prolongation of the Contract had nevertheless resulted in some additional expenditure. It noted that the work had been prolonged due to the hindrances in its execution and that some additional expenditure by the Respondent on account of such prolongation was, therefore, inevitable.

40. Only after rejecting the quantification of the claim given by the Respondent and satisfying itself that Respondent incurred additional expenditure, the Tribunal adopted its own method of quantification of the compensation. In ***NHAI v. Oriental Pathways***[16]**,** and ***DMRC v. GYT TPL Joint Venture***[17], it was held that the choice of the method of quantification lies within the domain of the Arbitral Tribunal and that merely because another method could have been adopted is no ground for interference under Section 34, so long as the method adopted by the Tribunal is reasonable.

41. In ***Airports Authority of India v. URC Construction (P) Ltd.***[18],

[16] **2016 SCC OnLine Del 3163**
[17] **2026 SCC OnLine Del 3540**
[18] **2026 SCC OnLine Del 534**

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this Court recognised that where a project is prolonged due to reasons attributable to the employer, the contractor has to keep its resources and establishment deployed for the extended period, which results in the contractor incurring additional overhead costs without corresponding revenue. The Court further observed that such overheads may not always be capable of precise calculation and may have to be reasonably assessed by adopting an appropriate method or yardstick, the choice of which lies within the domain of the Arbitral Tribunal. The relevant observations are as follows:

> ***Claim No. 4: Compensation for Overheads:***
>
> **"129.** The Petitioner has challenged the award of **Rs. 89,18,765/-** towards **Overhead expenses,** on the ground that the Respondent failed to lead specific evidence, such as salary registers, vouchers, or books of account, to prove that it incurred actual expenditure during the extended period. The Petitioner relies on the principle that *damages must be proved* and contends that the Arbitrator's reliance on the **CPWD Circular dated 14.12.2007** acts as a substitute for evidence, which is impermissible.
>
> **130.** To adjudicate this challenge, it is necessary to appreciate the commercial nature of construction contracts.
>
> **131. *Overheads* refer to the indirect costs incurred by a contractor which cannot be directly allocated to a specific physical item of work, but are necessary for the sustenance of the business and the project. These include Head Office administrative costs and Site Office expenses like staff salaries, rent, electricity, stationary, etc.**
>
> **132. It is a judicially recognized fact that when a Project is delayed due to the fault of the Employer, the Contractor is forced to keep its resources and establishment deployed for a period longer than anticipated. This inevitably results in the consumption of overheads without corresponding revenue generation from the project. As observed by the Supreme Court in *McDermott International Inc.* (supra), in the absence of direct proof of every minute expenditure, the *use of standard formulae is a permissible method* to compute these damages.**

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133. In the present case, the Arbitrator was faced with the task of quantifying the loss after having already established the *factum* of delay attributable to the Petitioner. Instead of applying a complex international formula, the Arbitrator adopted the CPWD Circular, which specifically quantifies overheads at 7.5%.

134. This Court finds that the approach of the Arbitrator is neither arbitrary nor perverse as the CPWD Manual and Circulars are standard reference documents, in government infrastructure contracts. Adopting a percentage fixed by the CPWD as a *reasonable estimate* of overheads, is a plausible method of quantification.

135. As held in *A.T. Brij Paul Singh* v. *State of Gujarat*, (1984) 4 SCC 59, it is not always possible for a contractor to produce minute proof of every rupee lost due to the prolongation of the contract. In such cases, a broad evaluation based on industry norms, is legally sustainable.

136. The award of 7.5% towards overheads is not an exaggerated figure that would shock the conscience of the Court. It is a conservative estimate of the administrative costs required to maintain a construction setup for an additional 477 days.

137. The Petitioner's argument that there was no evidence is, therefore, misconceived. The *evidence was the prolongation of the contract itself* and the industry standard evident from the CPWD Circular establishing the norm for such costs. The Arbitrator applied the law of damages by using a reasonable yardstick for quantification. This falls squarely within the domain of the Arbitral Tribunal, as the master of facts.

138. Consequently, this Court finds no patent illegality in the Arbitrator's order to award overhead charges based on the CPWD Circular."

42. In the present case also, the Tribunal found that the quantum claimed by the Respondent was exaggerated and did not reflect the actual expenditure. It therefore did not accept the figures claimed by the Respondent and, instead, considered the percentages prescribed under

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the Ministry of Road Transport & Highways Standard Data Book[19] and CPWD schedules for Claim Nos. 3(b) to (g), which have also been recognised as a basis for assessment in ***National Highways Authority of India v. IJM-Gayatri Joint Venture[20], National Highways Authority of India v. DIC-NCC (JV)[21] and Public Works Department (NH Wing) v. GVR Infra Projects Ltd[22]***.

43. However, the Tribunal found that the overhead percentages under the CPWD and MORTH schedules varied for different items and, therefore, directed the Petitioner to furnish the weighted average of the overheads. Only when the Petitioner failed to furnish those details, the Tribunal made its own assessment of quantification. In doing so, it gave regard to its earlier findings and the material placed before it and the amount ultimately awarded was worked out to be only 5% for Claim 3(a) and 15% of the aggregate claim and about 1.74% of the tendered amount for Claim 3 (b) to 3 (g). The relevant reasoning of the Tribunal is reproduced below-

> **"Award :** Facts of the case do not reveal any major idling of the Plant-Machinery. Clause 4.7 of the agreement quoted above also provides for deployment of the P & Mat appropri~te time. Ideally if this can be achieved, there would be no idling of the machinery and no losses. However, due to hindrances in execution of the works resulting into prolongation of the contracts, certain idling of the P & M resources becomes inevitable. Moreover shifting of the machinery during the idle/hindrance periods also involves certain extra expenses. The Claimant needs to be compensated for such contingencies. As explained above, the claim has been highly exaggerated and not based on realistic grounds . . Considering the explanations given under paras (i)to (xi) above and all other facts of the case as well as various pleadings/submissions made by both the

[19] "MORTH" hereinafter
[20] **2020 SCC OnLine Del 2498**
[21] **2018 SCC OnLine Del 11931**
[22] **2026 SCC OnLine Del 5087**

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parties, amount of the compensation is hereby assessed by me @ 5.0% of the amount claimed i.e. 5.0% of Rs 9,10,29,000/00 =Rs. 45,51,450/00 which is felt to be very fair and reasonable. Therefore, I hereby award an amount of Rs 45,51,450/00 in favor of the Claimant against this part of the claim.

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Award: Overhead expenses are included in analysis of rates of all the items incorporated in the tenders. The schedule of quantities of the present contract includes items based on CPWD schedule as well as MORTH data book. Percentage of the O.H. expenses are different in both cases. Even in the case of MORTH data book, different items have provisions for different percentage of over heads. The percentage of overhead expenses on the cost of materials & labor for the schedule items varies from 2.5% to 25.0%. In my order sheet dtd 20.5.2016 I had directed the Respondent to work out weighted average of the overheads for all items included in the agreement. The Respondent however could not provide these details. In the absence of these details, I have assessed amount of compensation against these sub claims considering a reasonable percentage of the amounts claimed. While assessing this compensation, I have duly considered my observations/comments given in the fore-going paras (i) to (vii) besides all other facts of the case.

As explained above, the claims have been exaggerated and not based on realistic grounds. With careful consideration of all facts of the case as well as various pleadings/submissions made by both the parties, the amount of compensation for these sub claims 3(b), (c), (d), (e), (n and (g) is hereby assessed by me@ 15.0%(on average basis for all these sub claims) of the amount of these sub claims as shown above. The amount @ 15.0% of Rs. 11,36,37,871/00 works out to Rs 1,70,45,681/00 which is about 1.74% of the tendered amount of Rs. 97,91,42,871/00. This amount of compensation thus assessed is felt to be very fair and reasonable. Therefore, I hereby award an amount of Rs 1,70,45,681/00 in favor of the claimant against these sub claims."

44. After a perusal of the reasoning of the Tribunal, this Court is of the view that the adoption of 5% or 15% cannot be said to be mere guesswork in dark. The Tribunal rejected the figures claimed by the Respondent for all Claims, considered the percentages for overhead items given under the MORTH and CPWD schedules for Claim Nos. 3(b) to (g) and, after taking into account its earlier findings and the material on record, adopted a figure of 5% or 15% as a reasonable

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overall percentage. The Petitioner, having failed to furnish the weighted average sought by the Tribunal, cannot now contend that there was no basis for the calculation. In these circumstances, the percentages adopted by the Tribunal cannot be said to be either unreasonable or arbitrary, nor does the figures so adopted shock the conscience of this Court. It is also recognised in ***McDermott International Inc. v. Burn Standard Co. Ltd*** [23]***and M/s Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solution Pvt. Ltd. (JV) v. Haryana Vidyut Prasaran Nigam Ltd.***[24], that some degree of estimation is permissible in assessing damages where exact computation is not feasible.

45. The same reasoning also addresses the Petitioner's objection regarding the absence of a separate day-wise calculation. The Tribunal had found the claims as presented to be exaggerated and not based on realistic figures and, therefore, the question of separately calculating the expenditure for the period attributable to the Petitioner never arose.

46. The Tribunal in its reasoning specifically noted that it arrived at a figure after considering its earlier finding in regard to delay and obligation of the respective parties. In these circumstances, this Court is of the view that the mere absence of a separate calculation of expenditure for each day of delay cannot, by itself, mean that the Tribunal awarded compensation for the entire period of prolongation ignoring that the Respondent was also responsible for prolongation of the project.

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[23] **(2006) 11 SCC 181**
[24] **2024:DHC:2880-DB**

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47. In view of this Court, the reasoning of the Tribunal also satisfies the settled principles governing the adequacy of reasoning in an arbitral Award. The principles in this regard have been laid down in ***Dyna Technology Private Limited v. Crompton Greaves Limited***[25] and reiterated in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[26]. It was held that where the objection is one of inadequacy of reasons, the Award has to be read as a whole, keeping in view the nature of the issues before the Tribunal. If the reasoning is intelligible and the conclusion can be understood from the Award and the material considered by the Tribunal, the Award cannot be set aside merely because the reasoning could have been more elaborate.

48. It is also well settled that an arbitral award is also not required to follow the form of a judgment or set out every step of the Tribunal's reasoning, particularly where the Tribunal comprises persons of technical expertise.[27]

49. Applying these principles, the reasoning of the Tribunal, when read as a whole, is sufficiently clear. It examined the claims, considered the deficiencies in the evidence, took note of the respective obligations of the parties during the prolongation period and adopted a reasonable basis for quantifying the compensation. The conclusion reached by the Tribunal can, therefore, be understood from the reasons recorded and the material before it. There is no such gap in reasoning as would render the conclusion unintelligible or warrant interference under Section 34.

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[25] **(2019) 20 SCC 1**
[26] **(2025) 2 SCC 417**
[27] **Rakesh Kumar & Co. v. Union of India, 2015 SCC OnLine Del 14673**

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50. In view of the aforesaid findings, this Court finds no merit in the Petitioner's challenge to Claim Nos. 3(a) to 3(g). The Tribunal did not accept the Respondent's claim as presented but made its own assessment based on the material available before it and adopted reasonable figures. Merely because the Tribunal did not reiterate each of its earlier findings while recording its final conclusion, that by itself cannot render the impugned Award perverse or patently illegal. No ground for interference under Section 34 is, therefore, made out.

51. The challenge to Claims 3(a) to 3(g) is, accordingly, rejected.

52. The present petition is dismissed.

53. Pending application(s), if any, also stand disposed of.

OM PRAKASH SHUKLA, J

AUGUST 19, 2026/*ss*

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