$~

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

Judgment reserved on: 03.09.2026
Judgment pronounced on: 23.11.2026

\# **CNR No. DLHC011250152016**

\+ O.M.P. (COMM) 168/2016

NATIONAL HIGHWAYS AUTHORITY OF INDIA
.....Petitioner

Through: Mr. Ankur Mittal, Sr. Adv. with Mr. Abhay Gupta, Mr. Ankur Saboo, Mr. Aviraj Pandey, Ms. Rabaica Jaiswal, Ms. Simran Goel and Ms. Allaka Melikeril, Advs.

versus

BSCPL INFRASTRUCTURE LIMITED .....Respondent

Through: Mr. Ajay Kumar Jha, Adv.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 23.11.2026

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996[1] is being preferred by National Highways Authority of India[2], challenging the impugned award dated 13.05.2015 passed by the learned Arbitral Tribunal in the arbitration between the parties. The impugned award was rendered by a majority of 2:1 and allowed claims No.1, 2, 4 and 5 of the Respondent/Claimant, along with interest.

[1] "Act" hereinafter
[2] "NHAI" hereinafter

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

2. The dispute arises of the Contract Agreement dated 12.04.2006 entered into between NHAI and the Contractor for widening to four lanes and strengthening of existing two-lane carriageway of NH-26 of Madhya Pradesh of package ADB-II/C-7 from km: 255 to km: 297 (Sagar to Rajmarg Chouraha). The contract price was Rs.189.63 crores.

3. The work commenced on 27.05.2006, with scheduled completion in 26.11.2008. The work was actually completed on 05.12.2009, resulting in an extension of time[3] of 374 days. The Engineer recommended the extension, which was approved by NHAI without imposition of penalty or liquidated damages.

4. The Respondent thereafter referred the matter to the Dispute Adjudication Board[4] under sub-Clause 67.1 of COPA. The DAB held that the Respondent was entitled to its claim and directed submission of detailed calculation to the Engineer for assessment. The details were furnished to the Engineer, but the claim was thereafter denied. The Respondent again approached the DAB, however no decision could be obtained as the constitution of the DAB stood terminated after expiry of the defect liability period. Thereafter, arbitration was invoked.

5. The Respondent raised claims under several heads being Claim Nos. 1A to 1D concerned additional cost of POL, cement, steel and bitumen during the extended period. Claim No.2 concerned additional cost on account of extended stay of plant and equipment at site. Claim

[3] "EOT" hereinafter
[4] "DAB" hereinafter

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

No.3 concerned financing charges. Claim Nos.4 and 5 concerned additional expenditure at site and head office overheads. Claim Nos.6 and 7 concerned loss of promised bonus and loss of profit earning capacity on account of prolongation of the contract.

6. Against the total claim of Rs.40,33,65,879/-, the Arbitral Tribunal awarded approximately Rs.15.80 crores. Claim Nos. 1A to 1D, 2, 4 and 5 were allowed, whereas Claim Nos.3, 6 and 7 were rejected.

7. The Tribunal further awarded interest @10% p.a. compounded monthly in accordance with sub-Clause 60.8 of the contract from the date of invocation of arbitration to the date of award, and future interest @10% p.a. on the amounts awarded, including *pendente lite* interest from the date of the award till the date of realisation.

PROCEEDINGS BEFORE ARBITRAL TRIBUNAL

8. The Claimant invoked arbitration *vide* its letter dated 05.02.2011. Mr. A.C. Mittal was nominated as the Arbitrator by the Claimant and Mr. K.B. Lal Singal was nominated by NHAI. The two nominated Arbitrators appointed Mr. Surjeet Singh as the Presiding Arbitrator, who accepted the appointment, whereupon the Arbitral Tribunal stood duly constituted.

9. Before the learned Arbitral Tribunal, the Claimant raised a composite claim for Rs.40,33,65,879/- towards additional expenditure and losses allegedly suffered on account of the prolongation of the contract. The claim was divided into seven sub-heads, namely: (i)

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

additional cost of POL, cement, steel and bitumen during the extended period; (ii) additional cost on account of extended stay of plant and equipment at site; (iii) financing charges towards delayed recovery of profit; (iv) additional expenditure towards maintenance of site office and residential accommodation; (v) additional head-office overheads; (vi) loss of promised bonus; and (vii) loss of profit-earning capacity on account of prolongation of the contract.

10. The individual claims were quantified as follows: Claims 1A to 1D towards POL, cement, steel and bitumen were quantified at Rs.36,50,454/-, Rs.64,19,730/-, Rs.60,07,070/- and Rs.2,77,59,388/-, respectively. Claim No.2 towards extended deployment of plant and equipment was Rs.4,55,10,280/-; Claim No.3 towards financing charges was Rs.47,07,166/-; Claim No.4 towards site office and residential accommodation was Rs.10,18,59,600/-; Claim No.5 towards head-office overheads was Rs.1,78,15,097/-; Claim No.6 towards loss of promised bonus was Rs.11,37,82,238/-; and Claim No.7 towards loss of profit-earning capacity was Rs.7,58,54,826/-.

11. NHAI opposed the claims, principally contending that price escalation had already been paid under Clause 70, that the delay was not attributable to NHAI, and that Claims 6 and 7 had not been raised before the Engineer/DAB.

12. The learned Tribunal rejected the preliminary objection to Claims 6 and 7, holding that the dispute and cause of action, namely the prolongation of the contract, remained the same, and that Sub-Clause 67.4(ii) of the contract and Section 23(3) of the Act permitted the claim

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

to be updated. On the objection of non-compliance with Sub-Clauses 53.1 to 53.3, the Tribunal held that the Claimant had all along claimed costs in its applications for extension of time, and that Sub-Clause 53.4 permitted adjudication of claims substantiated by contemporary records.

13. The Tribunal held that the stipulated completion date of 26.11.2008 was extended by 374 days, with completion ultimately on 05.12.2009, and attributed the relevant delay to NHAI. The Tribunal consequently held the Claimant entitled to additional costs arising from the prolongation.

14. In respect of Claims 1A to 1D, concerning POL, cement, steel and bitumen, the Tribunal rejected NHAI's reliance on Clause 70.2 and awarded Rs.4,38,36,642/-, with interest at 10% per annum, compounded monthly.

15. Claim No.2, towards extended deployment of plant and equipment, was allowed to the extent of Rs.4,55,10,280/-, with interest at 10% per annum, compounded monthly.

16. Claim No.3, towards financing charges of Rs.47,07,166/-, was rejected for want of proof of actual loss.

17. Claims 4 and 5, towards site and head-office overheads, were allowed to the extent of Rs.6,86,95,108/-, with interest at 10% per annum, compounded monthly.

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

18. Claims 6 and 7, relating to loss of promised bonus and loss of profit-earning capacity, were rejected for want of sufficient contractual and evidentiary basis.

19. By majority, the Tribunal awarded the Claimant a total principal sum of Rs.15,80,42,030/-, comprising the amounts awarded under Claims 1A-1D, Claim No.2 and Claims 4 and 5. The award further directed payment of interest at 10% per annum, compounded monthly, from 05.02.2011 till the date of the Award and thereafter till realization. The remaining claims were dismissed.

20. The Arbitral Award is summarised herein:

Claim	***Particulars***	***Amount Claimed***	***Amount Awarded***
1A	*Additional cost of POL*	*Rs.36,50,454/-*	*Rs.4,38,36,642/- along with interest of 10% p.a. compounded monthly from the date of invocation i.e. 05.02.2011.*
1B	*Additional cost of cement*	*Rs.64,19,730/-*	
1C	*Additional cost of steel*	*Rs.60,07,070/-*	
1D	*Additional cost of bitumen*	*Rs.2,77,59,388/-*	
2	*Extended stay of plant and equipment*	*Rs.4,55,10,280/-*	*Rs 4,55,10,280/- along with interest of 10% p.a. compounded monthly from the date of invocation i.e. 05.02.2011*
3	*Financing charges/interest*	*Rs.47,07,166/-*	*NIL*
4	*Site office and residential accommodation*	*Rs.10,18,59,600/-*	*Rs 6,86,95,108/- along with interest of 10% p.a. compounded monthly from the date of invocation i.e. 05.02.2011.*
5	*Head office overheads*	*Rs.1,78,15,097/-*	
6	*Loss of promised bonus*	*Rs,11,37,82,238/-*	*NIL*
7	*Loss of profit-earning capacity*	*Rs.7,58,54,826/-*	*NIL*
	Total	*Rs,40,33,65,879/-*	*Rs. 15,80,42,030/- excluding interest*

PROCEEDINGS BEFORE THIS COURT

21. The principal contention of the Petitioner is that the impugned

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

award is beyond the terms of the contract and against the public policy of India. It is submitted that the Arbitral Tribunal proceeded on assumption and presumptions without looking into or discussing the contemporary records and without carrying out the verification exercise contemplated by the contract.

22. Learned Counsel for the Petitioner submits that, under Clause 53.4 of the Conditions of Particular Application[5] the Arbitral Tribunal could award only such amounts as it considered capable of being verified by contemporary records. It is contended that the Contract required the Contractor to notify the Engineer and the Employer of the event giving rise to the claim, maintain the requisite contemporary records, make such records available for inspection and submit detailed particulars of the amounts claimed, together with the grounds supporting the claim.

23. It is the further contended that there was no compliance by the Contractor with the requirement of giving notice upon the happening of the event duly obliged to claim for extension of time or additional costs and that no contemporary records were made available to the Engineer for appropriate inspection and verification. According to the Petitioner, the claim for additional cost surfaced only after EOT had been granted.

24. The Petitioner has also relied on the fact that the Engineer had repeatedly recorded slow progress, lack of planning, deficient deployment of resources and improper execution of the works. It is

[5] "COPA" hereinafter

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

submitted that the progress achieved by the Claimant upto July 2007 was less than 2% per month and that such matters were repeatedly pointed out by the Engineer.

25. It is also stated that the first application by the Claimant for EOT did not set out the additional costs subsequently claimed. The Engineer had recommended an extension of time without any additional payment to the Contractor, and the Petitioner approved the extension on that basis. It is further contended that certain periods of extension related to bridge design and redesign, execution of extra work and land-related hindrances, which did not, by themselves, establish the Contractor's entitlement to additional compensation.

26. As regards Claim No. 1A to 1D, relating to the additional costs of petroleum, oil and lubricants (POL), cement, steel and bitumen, the Petitioner contends that the Contractor was already entitled to price adjustment under Clause 70 of COPA and that no additional compensation was admissible beyond the contractual mechanism. It is submitted that the Tribunal failed to appreciate the effect of Sub-Clauses 70.2 and 70.3 of COPA and erroneously awarded additional compensation beyond the contractual price-adjustment mechanism.

27. With respect to Claim No.2, concerning the extended deployment of plant and equipment, the Petitioner contends that the Tribunal adopted an incorrect pro-rata principle for determining the additional costs. It is submitted that the cost of machinery is to be arrived at with reference to the total cost of the project and is not directly proportionately related to the number of days for which machinery is

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

used.

28. The Petitioner further submits that the Contractor had relied upon machinery more than five years old and included equipment that was allegedly not relevant to the execution of the works under the Contract. It is also contended that the claimed hourly use and interest calculation were incorrect.

29. In respect of Claim Nos.4 and 5, concerning site and head-office overheads, the Petitioner submits that no timely notice of the Contractor's intention to claim such costs was issued, thereby depriving the Engineer of an opportunity to inspect and verify the alleged expenditure. It is further contended that the Contractor failed to produce verifiable contemporary records and that the Arbitral Tribunal did not undertake the verification contemplated under Clause 53.4.

30. The Petitioner also questions the quantum awarded towards overheads as excessive and disproportionate, particularly in view of its submission that the value of the work in the hindered reaches was approximately Rs.6.40 crores, whereas the claim towards site overheads alone was Rs.10,18,59,600/-. Reliance is also placed on the profit and loss account of the Contractor, which, according to the Petitioner, reflected overhead expenses of approximately 28.5%.

31. Finally, the Petitioner challenges the award of interest at the rate of 10% per annum, compounded monthly. It is submitted that Sub-Clause 60.8 of COPA was not applicable to the compensation awarded by the Arbitral Tribunal and that, in any event, the rate and manner of

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

computation of interest are excessive.

32. On the contrary, learned Counsel for the Respondent submits that the petition is devoid of merits and that no grounds, factual or legal, have been made out for interference with the award. It is contended that the Arbitral Tribunal considered the submissions advanced by both parties, examined the material placed on record and rendered a reasoned award.

33. The Respondent relies upon the settled position that proceedings under Section 34 of the Act, do not constitute an appeal against an arbitral award. It is submitted that this Court cannot reappreciate the evidence or substitute its own findings for those of the Arbitral Tribunal merely because another view may be possible or because the award is alleged to be erroneous on facts.

34. It is submitted that the work was completed on 05.12.2009, after a delay of 374 days, and that the EOT was recommended by the Engineer and granted by NHAI because the delays were caused by NHAI's defaults. The Engineer assessed the various causes of delay and allowed for overlapping delays, recommended a net extension of 374 days. NHAI granted it without imposing any penalty or liquidated damages.

35. The Respondent relies upon the findings of the Arbitral Tribunal that the delay arose from delay in handing over the sites, hindrance and obstructions, realignment at Bijora, shifting of electric poles consequent upon land-acquisition issues, stoppage of work at Maharajpur, redesign

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

of bridges, revision of the DPR data, lateral shifts for installation of traffic signs and appurtenances, variations in bridge works and execution of extra work. The Tribunal was therefore justified, it is submitted, in holding the Contractor entitled to the additional costs incurred during the extended period.

36. On the issue of contractual notices and contemporary records, the Respondent submits that it had communicated its intention to claim additional costs in its application for extension of time and had issued other notices in relation to the delays encountered during execution of the works. Reliance is placed on Clauses 6.4, 12.2, 42.2 and 44.2 of the Contract.

37. The Respondent further relies upon Clause 53.4 of COPA, submitting that non-compliance with the notice and record-keeping requirements under Sub-Clauses 53.1, 53.2 and 53.3 does not, by itself, preclude consideration of a claim where the amount claimed can be substantiated by contemporary records. It is contended that the Arbitral Tribunal specifically considered the contractual objections and rendered its findings upon examination of the material available on record.

38. As regards the contemporary records, the Respondent submits that the claims were passed upon actually incurred costs and were supported by contemporary records, vouchers and documents duly verified and certified by the Chartered Accountant. It is contended that the Arbitral Tribunal considered the supporting material and that the Petitioner's objections essentially seek a reappreciation of the evidence,

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

which is impermissible in proceedings under Section 34 of the Act.

39. In respect of Claim No. 1A to 1D, the Respondent submits that the Arbitral Tribunal correctly interpreted Sub-Clause 70.2 of COPA harmoniously with Sub-Clauses 6.4, 12.2 and 42.2. According to the Respondent, the limitation prescribed under Clause 70 governed the contractual price-adjustment mechanism, whereas additional costs incurred during the extended period, arising from the defaults attributable to NHAI, were independently compensable under the other contractual provisions. It is further submitted that the Contractor furnished details of the purchase and consumption of the relevant materials and deducted the price adjustment already received under Clause 70 while computing its additional-cost claims.

40. With respect to Claim No. 2, the Respondent submits that the deployment of plant and equipment was supported by monthly progress reports, invoices, inspection records and other documents. It was further submitted that the plant and machinery deployed during the extended period were jointly verified by the Engineer on 14.03.2009.

41. It is also submitted that the Tribunal found that sufficient plant and equipment had actually been mobilised, that the contract required the Engineer's permission before removal from site and that the plant and equipment mentioned in the monthly reports therefore remained at site. It is also pointed out that the Arbitral Tribunal further found that the plant and equipment remained underutilised and to an extent idle.

42. As regards Claim Nos.4 and 5, relating to site and head-office

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

overheads, the Respondent places reliance upon the Arbitral Tribunal's findings that the entire EOT was on account of defaults of NHAI and that compensation for site and head office, overheads to the extended period was therefore justified. The Arbitral Tribunal adopted the Ministry of Road Transport & Highways[6] data book rates of 8% for the road work and 25% of the bridge work, arriving at a weighted average of 11.64%, and further reduced the compensation by 15% towards mitigation and restricted the award to Rs.6,86,95,108/-.

43. The Respondent further submits that the Arbitral Tribunal did not allow all the claims. Claim No.3 relating to financing charge, Claim No.6 relating to loss of promised bonus, and Claim No. 7, relating to loss of profit-earning capacity, were rejected. It is therefore contended that the Arbitral Tribunal considered the nature of the claims and the material on record and awarded only Rs.15,80,42,030/- against the total claim of Rs.40,33,65,879/-.

44. The Respondent submits that the award, being a reasoned determination by the Arbitral Tribunal, does not warrant interference under Section 34 of the Act.

ANALYSIS & CONCLUSION

45. Having considered the pleadings, the award and the submissions of the parties, the following questions arise for determination:

(i) Whether the impugned award goes beyond the terms of the

[6] "MoRTH" hereinafter

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

contract or otherwise falls within a ground for setting aside under Section 34 of the Act?

(ii) Whether the Arbitral Tribunal was justified in allowing additional costs for the 374-day extended period?

(iii) Whether Claim Nos. 1A to 1D were barred by the price-adjustment provisions in Clause 70 of COPA?

(iv) Whether Claim No.2 for towards the extended stay of plant and equipment, lacks sufficient evidentiary or contractual support?

(v) Whether Claims Nos.4 and 5, for site and head office overheads, fail for want of notice, contemporary records and verifications?

(vi) Whether the award of interest under sub-Clause 60.8 warrants interference?

46. This challenge principally concerns the award of Rs.4,38,36,642/- towards additional costs of POL, cement, steel and bitumen under Claims 1A-D; Rs.4,55,10,280/- towards extended deployment of plant and equipment under Claim No. 2; and Rs.6,86,95,108/- towards site and head-office overheads under Claims 4 and 5. The learned Arbitral Tribunal rejected the claims for financing charges, loss of promised bonus and loss of profit-earning capacity. The total principal amount awarded by the majority was Rs.15,80,42,030/-,

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

excluding interest.

47. At the outset, the Court must keep in view the limited scope of review under Section 34 of the Act. A petition under Section 34 is not an appeal, and the Court cannot reassess the evidence merely because it might prefer a different view of the contract or the facts. Interference is permissible only if a ground recognised by Section 34, as applicable to the present proceedings, is established.

48. In ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India***[7], the Supreme Court explained the restricted scope of review under the amended Section 34, including the requirement that patent illegality under Section 34(2A) must go to the root of the matter. An erroneous application of law or a disagreement with the appreciation of evidence does not, by itself, warrant setting aside an award.

49. Similarly, in ***Sumitomo Heavy Industries Ltd. v. Oil and Natural Gas Commission***[8], the Supreme Court recognised that where the construction placed upon the contract by the arbitral tribunal is a plausible one, the Court ought not to substitute its own interpretation merely because it considers another construction preferable. The Court must, therefore, examine whether the majority tribunal's conclusions fall within the range of permissible contractual interpretation and whether the Petitioner has established a ground for interference under Section 34.

---

[7] **(2019) 15 SCC 131**
[8] **(2010) 11 SCC 296**

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

50. The scheduled completion date was 26.11.2008, while the work was completed on 05.12.2009, resulting in a delay of 374 days. The Engineer recommended an EOT for that period, and NHAI approved it without imposing a penalty or liquidated damages. These circumstances are relevant to the Tribunal's assessment of responsibility for delay, although the grant of an EOT, by itself, does not automatically establish an entitlement to every cost claimed for the extended period.

51. NHAI relies on earlier observations by the Engineer concerning slow progress and deployment of resources. Those observations must be read with the later assessment of the causes of delay and the formal decision to grant the EOT. The absence of liquidated damages is not conclusive on its own; however, it is a relevant circumstance when considered with the Engineer's reasons and the contemporary record as a whole.

52. The Tribunal considered the causes of delay, including late handover of sites, hindrances and obstructions, realignment at Bijora, shifting of electric poles arising from land-acquisition issues, stoppage of work at Maharajpur, redesign of bridges at km 264+640 and km 276+628, revision of DPR data for Rajmarg Chouraha, lateral shifts for traffic signs, and variations and extra work relating to bridges.

53. The Tribunal also noted that the Engineer considered an extension of 185 days reasonable in relation to bridge works and recommended a total EOT of 374 days, which NHAI granted. The Tribunal treated the extension and the absence of liquidated damages as part of the overall evidence; its finding of entitlement rests on the

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

identified delay events and the contractual provisions, not on the EOT alone.

54. NHAI asks the Court to examine each hindrance separately and reassess its individual effect on the additional costs. That submission would require the Court to reconsider the factual assessment already made by the Tribunal. Such reconsideration is not permitted under Section 34 unless the finding is shown to be unsupported by evidence, perverse, or contrary to an express contractual term.

55. The Court cannot isolate each hindrance and independently recalculate its effect on the extended period. The majority's finding that the delay was attributable to NHAI was based on the contemporary record, including NHAI Headquarters' internal communication dated 25.01.2010. NHAI has not shown that the Tribunal ignored a material document that would make its conclusion untenable.

56. In these circumstances, the finding that the Contractor was entitled to additional cost for the extended period is one arising from the contractual provisions and the evidence considered by the Tribunal. A different view of the delay events is not, by itself, a ground to set aside the award.

57. The majority did not rely solely on the fact that an EOT had been granted. It considered the circumstances relating to site handover, hindrances, realignment, shifting of electric poles, stoppage of work, bridge redesign, revision of data, and additional or varied work. It also considered the Engineer's assessment, including the period of 185 days

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

considered reasonable for bridge-related work.

58. The Tribunal then considered NHAI's objections and concluded that the additional costs were recoverable under the relevant provisions of the contract. NHAI's challenge asks the Court to reallocate responsibility for individual events and reassess their effect on the extended period. Unless the Tribunal's finding is shown to be perverse, unsupported by evidence or contrary to the contract, Section 34 does not permit that exercise.

59. In ***NHAI v. M/s Oriental Structural Engineers Pvt. Ltd.***[9], this Court considered objections to prolongation costs under a highway construction contract, including the interpretation of Clauses 6.4, 12.2 and 42.2 and the use of industry-based methodologies for quantification. The Court reiterated that where the tribunal has examined the contractual provisions and the evidence concerning the causes of delay, a challenge seeking a fresh assessment of attribution and quantification cannot succeed merely because the employer proposes a different view.

60. For these reasons, Petitioner has not established that the Tribunal's finding on the 374-day extended period is so unreasonable, unsupported or contrary to the contract as to warrant interference under Section 34.

61. The Petitioner has also challenged the award of additional amounts towards POL, cement, steel and bitumen, contending that

[9] **2026 SCC OnLine Del 3540**

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

Clause 70 of the COPA prescribes the contractual mechanism for price adjustment and that the contractor could not claim additional amounts outside that mechanism.

62. The objection requires consideration of the relationship between Clause 70 and Clauses 6.4, 12.2 and 42.2. The former provides a contractual mechanism for price adjustment in respect of specified components, whereas the latter provisions address, in their respective circumstances, the consequences of delay, physical conditions or failure attributable to the employer, including the determination of additional costs.

63. The interpretation of Clause 70, however, requires careful consideration in the light of the decision of the Supreme Court in ***National Highways Authority of India v. Progressive-MVR (JV)***[10]. The Supreme Court considered the operation of Sub-Clauses 70.2 and 70.3 and recognised that the contractual price-adjustment mechanism is governed by the components and formulae stipulated therein. Sub-Clause 70.2 cannot be disregarded so as to permit a contractor to claim, under the guise of additional compensation, a price adjustment on accounts which the contract has expressly excluded from the agreed formula.

64. The aforesaid principle, however, does not by itself answer the distinct question that arose before the majority in the present case. There is a material distinction between a claim seeking a further escalation in the price of contractual inputs, over and above the

[10] **(2018) 14 SCC 688**

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

adjustment permitted by Clause 70, and a claim seeking reimbursement of additional expenditure alleged to have been incurred because the contractor was required to remain at site beyond the stipulated completion period on account of employer-attributable delay. The latter claim must be tested against the provisions of the contract said to confer such entitlement, including Sub-Clauses 6.4, 12.2 and 42.2.

65. The distinction is not merely one of nomenclature. A contractor cannot circumvent the agreed price-adjustment formula by simply describing an otherwise excluded escalation claim as a prolongation claim. At the same time, where the contract independently provides for recovery of additional costs arising from specified defaults or events attributable to the employer, the existence of a price-adjustment mechanism does not, without examining the relevant contractual provisions, necessarily extinguish that separate entitlement.

66. The Tribunal addressed this exact contention by construing Sub-Clause 70.2 harmoniously with Sub-Clauses 6.4, 12.2, and 42.2, and supported its view by relying on this Court's judgment in ***NHAI v. HCC Ltd***[11]**.** It was held that while Clause 70 limits price adjustment during the stipulated base period to the formulaic parameters, additional costs incurred during an extended period caused by employer defaults fall squarely within the operation of the other empowering clauses.

67. The decision in ***Progressive-MVR (JV)****(supra)* requires the Court to ensure that the distinction drawn by the majority is a real one and not a matter of nomenclature. In the present case, it is. The claims

[11] **(OMP 633/2012, decided on 08.07.2014)**

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

are confined to materials consumed during the 374-day extended period, a period which, on the Tribunal's finding, arose wholly from defaults attributable to NHAI; and the amounts were quantified on actual purchase and consumption, after giving full credit for the price adjustment received under Clause 70. No part of the claim relates to the stipulated period, for which the Tribunal held the Clause 70 formula to be exhaustive. The award under these heads is therefore compensation for additional cost under Sub-Clauses 6.4, 12.2 and 42.2, and not an enhanced escalation under Clause 70.

68. The Respondent's case is also that it claimed only the uncovered part actual additional expenses while giving full credit for price adjustments already received under the contract. The record relied upon by the Respondent included monthly consumption, monthly procurement cost and base cost and price adjustment already paid.

69. The Tribunal further considered the quantification and recorded that sufficient details of purchase and consumption of POL had been furnished and that the summary was duly certified by the Chartered Accountant. It also noted that price adjustment received under Clause 70 during the extended period had been deducted from the claim for additional costs.

70. Therefore, the interpretation adopted by the Tribunal is not shown to be an interpretation which disregards the contract. It is an interpretation based upon a harmonious reading of the relevant contractual provisions.

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

71. The Petitioner prefers an interpretation under which Clause 70 exhaustively governs all additional costs. The Tribunal gave reasons for rejecting that interpretation. The Court cannot replace a plausible contractual interpretation with another merely because it might prefer the latter; interference would require a finding that the interpretation is contrary to the contract or otherwise falls within a ground under Section 34.

72. No material has been identified to show that the award under Claims Nos. 1A to 1D grants the same amount twice or ignores the price adjustment already paid. The interpretation adopted by the Tribunal is a permissible reading of the relevant clauses, and the award under these claims does not warrant interference under Section 34.

73. Claim No. 2 concerns the cost of plant and equipment retained at the site during the extended period. The Tribunal awarded Rs.4,55,10,280/-. NHAI challenges both the method of calculation and the evidence supporting the amount.

74. The award records an alternative calculation based on the machinery component of 20%, the extended period of 374 days and a 15% deduction for mitigation. That calculation yielded Rs.11,80,32,831/-. The Tribunal did not award that higher figure; it restricted the award to Rs.4,55,10,280/-, which it treated as the actual ownership costs claimed by the Contractor.

75. The relevant question is not whether this Court would have selected the same calculation method. The question is whether the

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

Tribunal had evidence to find that the Contractor incurred additional machinery-related costs due to the extended period and whether the amount awarded has a rational and discernible basis in the record.

76. The material before the Tribunal included monthly machinery reports, invoices, inspection records, an auditor's certificate and the Engineer's joint verification. The Tribunal also considered evidence that some equipment remained underused or idle. The existence of equipment at the site does not, by itself, prove the full amount claimed; the evidence must reasonably connect the deployment or retention of the equipment to the additional costs awarded.

77. In ***McDermott International Inc. v. Burn Standard Co. Ltd.***[12], the Supreme Court recognised that the quantification of damages and the choice of an appropriate method of assessment are matters ordinarily within the domain of the arbitral tribunal. The Court exercising jurisdiction under Section 34 does not undertake the exercise afresh merely because another method might also have been available.

78. The qualification to that principle is that the amount awarded cannot be arbitrary or unsupported by reasons. In ***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd.***[13], the Supreme Court disapproved an award of overheads and profitability where the method of computation lacked adequate justification and the award involved disproportionate or overlapping recovery. The decision does not prohibit formula-based quantification in every case; it requires that the method be rationally supported and

[12] **(2006) 11 SCC 181**
[13] **(2024) 2 SCC 375**

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

that the award not result in an unjustified windfall or double recovery.

79. Here, the majority referred to records relating to the machinery retained at the site and awarded the amount claimed as actual ownership costs rather than the substantially higher amount produced by its alternative calculation. The lower figure is not, by itself, proof of correctness; however, when considered with the invoices, machinery reports, auditor's certificate and joint verification, it provides an identifiable evidentiary basis. NHAI has not identified a specific contradiction between those records and the Tribunal's finding, or shown that the same cost was recovered twice.

80. The Tribunal also recorded that the contract specified minimum equipment requirements, that equipment had in fact been mobilised, and that plant and equipment could not be removed from the site without the Engineer's written permission. These findings support the conclusion that the equipment identified in the relevant monthly reports remained available at the site during the extended period.

81. NHAI also argues that the value of the work in the hindered reaches was only about Rs.6.40 crores. That figure, by itself, does not determine whether costs were incurred to retain plant and equipment for the project as a whole during the extended period. The relevant question is whether the costs awarded were connected to the prolonged retention of equipment and supported by records. The Tribunal found that connection on the material before it.

82. The alternative calculation based on the 20% machinery component yielded Rs.11,80,32,831/- after applying the period and

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

mitigation adjustment. The Tribunal instead confined the award to Rs.4,55,10,280/-, the amount claimed as actual ownership costs. Read with the documentary material identified above, the award does not rest solely on a notional percentage of the contract price.

83. Accordingly, the award of Rs.4,55,10,280/- under Claim No. 2 is upheld.

84. Now moving on to Claim Nos. 4 and 5 which relates to additional expenditure on site-office and residential accommodation during the extended period, and additional head-office overheads. The amounts originally claimed were Rs.10,18,59,600/- and Rs.1,78,15,097/-, respectively. The Tribunal awarded a combined amount of Rs.6,86,95,108/-.

85. The Petitioner strongly disputes Claims No.4 and 5 on the ground that no timely notice was issued and no contemporary records capable of verification were produced. It was further contended that the amount claimed was excessive.

86. The Respondent's on the other hand relies upon its communication wherein it had communicated its intention to claim additional cost in the applications for EOT and had placed contemporary records, vouchers and Chartered Accountant's certified material before the Tribunal.

87. The Tribunal considered the contractual notice objection and held that sub-Clause 53.4 permitted adjudication of claims even in the absence of compliance with sub-Clauses 53.1, 53.2 and 53.3, provided

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

the claims can be substantiated on the basis of contemporary records.

88. The Tribunal thereafter did not accept the entire amount claimed under the overhead Heads. It adopted the standards recognised in MoRTH Data Book, which stipulated overheads at 8% for road work and 25% for bridges work, arrived at a weighted average of 11.64%, restricted the compensation to that rate for 374 days delay and further reduced the compensation by 15% for loss mitigation.

89. The final award under Claims No.4 and 5 was thus limited to Rs.6,86,95,108/- notwithstanding the much larger amount originally claimed under the two heads. The Petitioner submits that the weighted average method was uncalled for and that the data book rates related to cost of project rather than duration.

90. This according to this Court is again an objection to the methodology adopted by the Tribunal.

91. The award shows that the Tribunal did not simply accept the amounts claimed. It considered the different rates for road and bridge works, calculated a weighted average, applied the assessment to the extended period, and reduced the resulting amount by 15% for mitigation. These steps provide a discernible method of quantification.

92. Petitioner's objection about the relationship between the Data Book rates and the duration of delay is relevant, but it does not by itself establish patent illegality. On the material described in the award, the Tribunal used the rates to assess overheads attributable to the extended period, took account of the mix of road and bridge works, and made a

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

further deduction for mitigation. NHAI has not demonstrated a specific arithmetic error, an irrelevant cost base or double recovery that would make the result irrational.

93. Much of the Petitioner's challenge proceeds on the allegation that the claims were not supported by contemporary records and that no verification exercise was undertaken.

94. The Respondent, relied on contemporary records, vouchers, monthly progress reports, invoices, inspection records and certificates from the Chartered Accountant. For plant and machinery, it also relied on the Engineer's joint inspection dated 14.03.2009.

95. For the material-costs claims, the Tribunal recorded that the purchase and consumption figures had been certified by the Chartered Accountant and that the price adjustment already paid under Clause 70 had been deducted.

96. The award deals with the individual heads of claim in paragraphs 14 to 30. The fact that the Tribunal did not accept the Engineer's reasons in the manner urged by NHAI does not establish that it failed to consider the objection. The Tribunal was required to decide the dispute independently and recorded its findings on the claims and the supporting material.

97. The fact that the Tribunal disagreed with the Engineer's rejection dated 23.10.2010 does not, by itself, invalidate the award. The Engineer's decision formed part of the disputed record; the Tribunal considered the claim afresh and gave its own reasons. The Court must

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

assess those reasons under Section 34, rather than treat the Engineer's rejection as conclusive.

98. In view of the records and reasons identified in the award, the allegation that the Tribunal considered the claims without any supporting material is not borne out.

99. The Court therefore finds no basis, on the material placed before it, to conclude that the Tribunal failed to consider contemporary records or omitted the verification required by the contract. To the extent NHAI disputes the weight assigned to the records, its challenge seeks a reappreciation of evidence and does not establish a ground for interference under Section 34.

100. The Tribunal rejected Claim No. 3, for financing charges of Rs.47,07,166/-, Claim No. 6, for loss of promised bonus of Rs.11,37,82,238/-, and Claim No. 7, for loss of profit-earning capacity of Rs.7,58,54,826/-, because it found the contractual or evidentiary basis insufficient/-.

101. These rejections do not, by themselves, prove that the other claims were correctly quantified. They do, however, show that the Tribunal examined the heads of claim separately and declined relief where it found the basis for recovery inadequate. This is inconsistent with the allegation that the Tribunal mechanically accepted the Contractor's case in full.

102. The Tribunal awarded interest @ 10% per annum compounded monthly under sub-Clause 60.8 from 05.02.2011, the date of invocation

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

of arbitration, until the date of the award, and future interest at the same rate after the award until realisation.

103. Sub-Clause 60.8 provides for interest on sums remaining unpaid beyond the contractual period for payment, at the rate stipulated in the Appendix to Bid. The Petitioner's objection that the clause can apply only to amounts previously certified by the Engineer must be examined in light of the wording of the clause and the judicial interpretation of comparable contractual provisions.

104. In ***National Highways Authority of India v. Hindustan Construction Co. Ltd.***[14], this Court rejected a blanket objection that Sub-Clause 60.8 could apply only to amounts certified by the Engineer. The Court held that the expression "sums payable" could encompass amounts found due and payable by the arbitral tribunal. The mere fact that the amount had been disputed or had not previously been certified did not, by itself, exclude the operation of the clause.

105. The aforesaid principle, however, does not automatically determine the date from which interest becomes payable. The contractual provision must be applied with reference to the relevant payment mechanism, including the period of 42 days stipulated for payment following the monthly statement and the period of 84 days contemplated in relation to the final certificate, as applicable. The date on which the claim was referred to arbitration cannot, merely by reason of being the date of invocation, be treated as the contractual due date unless the relevant contractual and factual circumstances support that

[14] **2025:DHC:9222**

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

conclusion.

106. Here, the Tribunal commenced interest on 05.02.2011, the date arbitration was invoked. The record summarised above shows that the claims had already been submitted and rejected by the Engineer before arbitration was invoked. The award therefore does not grant interest from the date the costs were first incurred, but from the date on which the contractual dispute was referred to arbitration. NHAI has not identified a term of the contract requiring interest to commence only after the award or otherwise prohibiting interest from the date selected by the Tribunal.

107. The 10% rate and monthly compounding must be consistent with the Appendix to Bid and sub-Clause 60.8. The award expressly relies on that provision. No specific term of the Appendix to Bid has been identified in the material placed before the Court to show that the Tribunal used a rate or compounding method different from the agreed one. A general submission that the contractual rate is excessive does not establish a ground for interference where the parties have agreed to the applicable rate and method of calculation.

108. The Tribunal relied on the contract and selected a commencement date later than the Engineer's rejection of the claims. In the absence of material showing that the rate, monthly compounding or commencement date contradicts the contract, NHAI has not established a ground under Section 34 to interfere with the award of interest.

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

CONCLUSION

109. Petitioner's objections concern the sufficiency of notice, the existence and verification of contemporary records, the interpretation of Clauses 53 and 70, responsibility for the 374-day delay, the methods used to quantify plant-and-equipment costs and overheads, and the award of interest.

110. The Tribunal considered these matters by reference to the contract, the EOT, the evidence concerning the claims, the methods of quantification and NHAI's objections. The question under Section 34 is not whether this Court would have reached the same findings, but whether any finding falls within a statutory ground for setting aside the award.

111. Re-emphasizing the mandate in ***McDermott International Inc. v. Burn Standard Co. Ltd.***[15]**,** Section 34 courts cannot convert themselves into courts of appeal to re-examine factual matrices or mathematical apportionments.

112. Applying these principles, the objections concerning the EOT, plant and equipment, overheads, notices and contemporary records do not justify interference merely because NHAI disputes the Tribunal's assessment. The Court has examined whether the award identifies evidence and reasons supporting the findings and whether NHAI has demonstrated any specific contradiction with the contract or record. For the reasons set out above, no such defect has been established.

[15] **(2006) 11 SCC 181**

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

113. For Claims Nos. 1A to 1D, the award treats the amounts as additional costs recoverable under the relevant clauses and records that the price adjustment already received under Clause 70 was deducted. For Claim No. 2, the Tribunal relied on the machinery records and joint verification and awarded the amount claimed as actual ownership costs rather than the larger formula-based amount. For Claims Nos. 4 and 5, it explained the weighted rate and mitigation deduction. The award of interest is supported by sub-Clause 60.8, and NHAI has not shown that the contractual rate or commencement date was impermissible.

114. On a reading of the award as a whole, the majority's conclusions are supported by the material identified in the award and reflect plausible interpretations of the contract. NHAI has not shown that the Tribunal ignored a material contractual bar, granted a double recovery, relied on a finding contradicted by the record, or awarded interest contrary to sub-Clause 60.8. The objections therefore do not meet the threshold for interference under Section 34.

115. For the reasons stated above, the majority award dated 13.05.2015 is upheld.

116. The amounts awarded under Claim Nos.1A to 1D, 2, 4 and 5, together with interest as awarded by the Arbitral Tribunal, shall remain payable in accordance with the impugned award.

117. The petition under Section 34 of the Act is accordingly dismissed.

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26

118. Pending application(s), if any, are also disposed of. There shall be no order as to cost(s).

OM PRAKASH SHUKLA, J.

NOVEMBER 23, 2026/pa*/gunn*

Signature Not Verified
Signed By:GUNN
Signing Date:23.11.2026
19:11:26