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

Judgment reserved on: 26.09.2025
Judgment pronounced on: 08.01.2026

\+ **O.M.P. 1556/2014**

M/S NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Petitioner

Through: Mr. A P Singh, Mr. Naman, Saraswat, Mr. Varnit Vashishth, Advocates

versus

M/S HINDUSTAN CONSTRUCTION CO LTD ....Respondent

Through: Mr. Anirudh Bakhru, Mr. Rishi Agrawala, Ms. Shruti Arora, Ms. Vasundhara Bakhru, Ms. Tarini Khurana, Advocates.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("***1996 Act***") seeking to challenge the Arbitral Award dated 22.07.2014 passed by the learned Arbitral Tribunal ("***Tribunal***") in the matter of "*Hindustan Construction Co. Ltd. v. M/s. National Highways Authority of India"*.

FACTUAL BACKGROUND

2. The petitioner (respondent before the Tribunal) is a statutory body constituted under Section 3 of the National Highways Authority of India Act, 1998, for the purpose of developing, maintaining, and managing the National Highways entrusted to it by the Central Government. The respondent (claimant before the Tribunal) is an entity engaged in the business of providing various services on contractual basis.

3. The petitioner *vide* Agreement dated 21.10.2005, awarded the respondent the contract package titled "4-Laning from Km. 92.00 to Km. 135.00 of the Lucknow to Ayodhya Section of NH-28 in Uttar Pradesh Contract Package LMNHP EX-II (WB)-3" for a total contract value of Rs. 249,95,04,940/-. The Conditions of Particular Application ("***CoPA***") has Arbitration clause being Clause No. 67.3.

4. Since there were disputes between the parties, disputes were referred to Dispute Resolution Board ("***DRB***"). The respondent was not satisfied with the resolution by the DRB therefore the disputes were referred to the Tribunal for the following claims:

> *"Claim No.1: Fixing of appropriate rates for the new/varied works of construction of embankment at Faizabad bypass with earth in place fly ash embankment as provided for in the contract.*
>
> ***Claim No.2: Payment for construction of embankment with fly ash as per additional Technical Specification Clause A-8.***
>
> *Claim No. 3: Reimbursement of additional cost incurred by*

the Contractor on account of subsequent legislation in respect of imposition of levy of Cess in the State of UP w.e.f. 04.02.2009.

Claim No. 4: Withholding the part payment due to Price Adjustment on foreign currency portion from interim payment certificate."

5. The Tribunal *vide* Award dated 22.07.2014 allowed all the claims of the respondent. Aggrieved thereby, the petitioner filed a petition under Section 34 of the 1996 Act challenging the said Award.

6. This Court *vide* order dated 20.04.2017 in ***National Highway Authority of India v. Hindustan Construction Co. Ltd.***[1], rejected the objections raised by the petitioner and upheld the Award. Aggrieved by the said order, the petitioner preferred an Appeal under Section 37 of the 1996 Act before the Division Bench of this Court. The Division Bench, *vide* judgment dated 23.03.2018 in ***National Highway Authority of India v. Hindustan Construction Co. Ltd.***[2] upheld Claim Nos. 1, 3, and 4, and remanded the matter to the Single Bench for fresh consideration only with respect to Claim No. 2. The said finding of the Division bench is reproduced below:

"10.6 Accordingly, we are constrained to set aside the finding of the learned Single Judge Claim No.2 of the respondent and remand the matter to the learned Single Judge for reconsideration thereof."

7. Accordingly, the present petition survives only qua Claim No. 2, and

[1] *OMP Nos. 1165/2014; 1556/2014 & OMP (Comm.) No. 156/2016.*
[2] *FAO (OS) 192/2017.*

the parties have addressed their submissions limited to the said claim.

SUBMISSIONS ON BEHALF OF PETITIONER

8. Mr. Singh, learned counsel for the petitioner opposes the findings of the Tribunal to the extent of Claim No. 2.

9. He states that the Tribunal has allowed the prayer of the respondent in a dispute which was not even invoked before the Tribunal. The Tribunal allowed even top one meter of subgrade throughout the length of the road to be treated as fly ash embankment and directed the payment at pay Rs. 386 per cum instead of Rs. 112 per cum, has acted in excess of jurisdiction and went beyond the term of reference.

10. He further states that the petitioner had invoked arbitration in respect of the decision dated 12.12.2009 passed by the DRB, wherein the DRB held that the rate of soil/earth used in the fly ash embankment was payable at nearly three times the Bill of Quantities ("***BOQ"***) rate under Item 2.08 instead of ₹104 under BOQ Item 2.02. However, the petitioner expressly accepted the other part of the said DRB decision,that the top one meter of the fly ash embankment was to be treated as a separate item and paid under BOQ Item 2.04 at the rate of ₹112 per cubic metre. This portion of the DRB's decision was never challenged before the Tribunal, nor was any dispute raised or invocation made in that regard. Consequently, in the absence of any reference or dispute, there was no occasion for the Tribunal to return any finding on the said issue.

11. He further, pointing out the difference between the embankment and subgrade, states that these are two different distinct layers and are executed under different BOQ items. While an embankment is

primarily meant to raise the finished road level to the appropriate height, the subgrade performs an entirely different role being a foundation layer for the overlying and comparatively heavier layers such as Granular Sub-Base, Wet Mix Macadam, Dense Bituminous Macadam, and the like. Owing to this distinction, the quality and specifications of the earth/soil used in the subgrade is required to possess a higher California Bearing Ratio, typically above 7, which is not a requirement applicable to embankment material. Consequently, embankment material cannot be equated with, or treated at par with, subgrade material for the purposes of classification or payment and are therefore, executed under different BOQ items i.e. embankment under BOQ item 2.02, 2.03, 2.08 and subgrade under 2.04.

12. The Tribunal's finding has the effect of completely deleting BOQ Item 2.04, which ultimately amounts torewriting the contractual conditions. In a road project spanning approximately 43 kilometres, i.e. from Km 92 to Km 135, the grant of nearly three times the prescribed payment for a one-metre depth of subgrade on both sides of the road has led to an enormous benefit to the respondent and substantial loss to the petitioner in a claim not even invoked by the petitioner.

13. Secondly, he submits that the Tribunal has erred in relying on Clause No. 60.8 to Award the compound interest at 12%. The said clause is attracted only in circumstances where there is a default in payment by the petitioner despite due certification of the Interim Payment Certificate ("***IPC***") or Running Bill by the independent engineer. In the present case, the respondent neither raised any running bill nor

submitted any claim for payment of fly ash in the manner as claimed herein. Consequently, there was no occasion for the independent engineer to certify any payment towards soil/fly ash. In the absence of such certification and any corresponding default on the part of petitioner, the pre-conditions for invocation of Clause 60.8 were not satisfied, and the said clause had no applicability for the award of compound interest at the rate of 12%.

14. He further submits that the respondent has placed reliance on the judgment of the Hon'ble Supreme Court in *Hindustan Construction Co. Ltd. v. NHAI*[3], wherein it was held that the earth/soil portion in a fly ash embankment is payable at the rate applicable to fly ash. The said judgment does not support the respondent's case on the issue of interest. On the contrary, the Hon'ble Supreme Court, inter alia, in paragraph No. 33 of the said judgment, expressly set aside that part of the Award in the entire batch of matters wherein interest at the rate of 12% compounded monthly had been granted. Instead, the Hon'ble Supreme Court directed that simple interest be paid at the rate of 12% from the date of the Award till the date of payment. Consequently, the reliance placed by the respondent on the said judgment to justify the Award of compound interest is wholly misplaced and contrary to the law laid down by the Hon'ble Supreme Court.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

15. *Per Contra*, Mr. Bhakru, learned counsel for the respondent supports the Award qua Claim No.2 and submits that the contentions of the petitioner are wholly incorrect. The Tribunal, by Award dated

[3] *(2023) SCC OnLine SC 1063.*

22.07.2014, has rightly awarded a sum of Rs 2.09 crores with interest under the said claim.

16. He submits that the interpretation adopted by the Tribunal stands conclusively upheld by the Hon'ble Supreme Court in *Hindustan Construction Co. Ltd. v. NHAI*[4]. The same interpretation has also been affirmed by this Court in *National Highways Authority of India v. M/s Hindustan Construction Co. Ltd.*[5], which was further upheld by the Division Bench in *National Highways Authority of India v. Hindustan Construction Company Limited*[6] by final order dated 07.12.2023.

17. He further states that the present case involves dispute related to BOQ Item No. 2.02, construction with soil, and Item No. 2.08, construction with fly ash. The dispute decided by the aforesaid judgments also involved separate BOQ items.

18. Learned counsel submits that the Hon'ble Supreme Court, while examining disputes concerning measurement of embankment construction with soil and pond ash/fly ash, has held that where the Tribunal adopts a plausible interpretation, particularly one supported by technical experts then the scope of interference under Section 34 of the 1996 Act is extremely limited. The said judgment applies equally to cases where embankment construction with soil and with fly ash are provided under separate BOQ items as well as under a single BOQ item.

19. Learned Counsel, thus submits that, in view of the aforesaid authoritative pronouncements, the issue stands settled and is no longer

[4]*(2023) SCC OnLine SC 1063.*
[5]*OMP (COMM) 101 of 2016.*
[6]*FAO (OS) (COMM) 145 of 2020.*

respondent integra. The challenge raised by the petitioner is purely on interpretation of contractual clauses, which lies within the exclusive domain of the Tribunal. None of the grounds urged fall within the limited ambit of Section 34 of the 1996 Act, nor do they raise any issue of public policy. Thus, the present petition is devoid of merit and deserves to be dismissed.

ANALYSIS AND FINDINGS

20. It is a well settled law that while exercising jurisdiction under Section 34 of the 1996 Act, the Court cannot act as an appellate authority or re-appreciate the evidence or interfere with the plausible findings of the Tribunal. The Court may only interfere with the findings of the Tribunal only on grounds expressly provided under the said Section i.e. unless the impugned Award is shown to suffer from patent illegality, perversity, or contravention of the fundamental policy of law, no interference is warranted.

21. In ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India***[7]**,** the Hon'ble Supreme Court has observed as under:

> *"46. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to*

[7] *(2025) 7 SCC 757*.

be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."

22. The present petition only survives qua Claim No. 2.

23. For the sake of clarity and proper appreciation, the relevant clauses of Technical Specifications and Bill of Quantities, both of which formed the part of the Agreement are reproduced as under:

*"**BOQ ITEM NO. 2.02**: Construction of embankment with approved borrow soil with all leads and lifts, all complete as per drawings and Technical Specifications Clause 305.*

***BOQ ITEM NO. 2.08**: Construction of embankment with fly ash obtained from coal or lignite burning thermal power*

station as waste material, spread and compacted in layers as per drawings and Additional Technical Specification Clause A-8.

Clause 6 of Preamble to BOQ *– The method of measurement of completed work for payment shall be in accordance with the requirements as stated in the individual sections of the Technical Specifications.*

A-8 CONSTRUCTION OF EMBANKMENT WITH FLY ASH / POND ASH AVAILABLE FROM COAL OR LIGNITE BURNING THERMAL PLANTS AS BASE MATERIAL

"1. General

These specifications shall apply to the construction of fly ash embankments. All fly ash embankments shall be constructed with the requirements of these specifications, and the earthen side cover, selected subgrade construction on top, and preparation of ground shall be as per Sections 300 and 200 of MORT&H Specifications.

….

4. Earth Cover

The fly ash embankments shall be covered on the sides and top by soil to prevent erosion of fly ash. Good earth suitable for embankment construction shall be adopted as cover material for fly ash embankments. The soil used for cover shall have maximum dry density as per MORT&H Specifications. The plasticity index of cover soil shall be

between 5 to 9 percent. Chemical analysis or determination of deleterious constituents shall be necessary in salt-infested areas or when presence of salts is suspected in the borrow material. Expansive soils shall not be used for construction of cover.

5.Embankment Construction

5.1 Compacting the ground supporting embankment

5.2 Spreading and compaction

The cover soil and fly ash shall be laid simultaneously before compaction to ensure confinement of fly ash. Clods in cover soil shall be broken to have a maximum size of 50 mm.

….

10.Measurement for Payments

The measurements and payments shall be done as per Clause 305 of MORT&H Specifications.

CLAUSE 305.8

Earth embankment or sub-grade construction shall be measured separately by taking cross-sections at intervals after clearing, grubbing, scarifying and compacting the original ground and after its completion, and computing the volumes of earthwork in cum by the method of average end areas."

24. The findings of the Tribunal with respect to Claim No. 2 read as under:

"9.2.11 Therefore, AT finds that BOQ Items 2.02 and 2.08 are not for the type of materials to be used in the respective items, but for the completed or finished items of work mentioned for each of the items in all respects, i.e., embankment construction.

9.2.12 As far as the measurement of embankment is concerned, AT finds that both the clauses, i.e., Technical Specification Clause 305 for earth embankment and Additional Technical Specification Clause A-8 for fly ash embankment, refer to the same method of measurement, which is stipulated in Clause 305.8 of the Technical Specifications and Clause 10 of A-8 Additional Technical Specification:

Clause 305.8

"Earth embankment/sub-grade construction shall be measured separately by taking cross-sections at intervals after clearing, grubbing, scarifying and compacting the original ground and after its completion, and computing the volumes of earthwork in cubic metres by the method of average end areas…"

9.2.13 As far as embankment with flyash is concerned, the Clause 10 of A8 mandates that the method of measurement for embankment construction with flyash shall also be as per Clause 305.8 of MORT&H Specifications

"The measurement and payments shall be done as per Clause 305 of the MORT&H Specifications."

Therefore, the method adopted for measuring the soil embankment shall be adopted for the measurement of the fly ash embankment.

9.2.14 AT, however, finds that the Engineer has adopted different types of measurements for earth embankment and fly ash embankment. The Engineer has measured the earth embankment and paid it as one composite section, whereas he has segregated/ measured/ paid earth and fly ash portions separately in case of flyash embankment. This is clearly not provided for in Clause A8 of the Additional Technical Specifications.

9.2.15 Therefore, AT is of the view that the method of measurement for payment of soil embankment and flyash embankment in the contract are one and the same, i.e., by taking the composite cross-section as a whole of the embankment and determining the volume by the average end area method. The method adopted by the Engineer/ Respondent is contrary to the provisions relating to the method of measurement stipulated for the fly ash embankment."

....

9.2.19 On the issue whether the top 1 m of the embankment required to be measured separately under sub-grade or not, AT perused the Clause A8 of Additional Technical Specifications,

"The top 1 m of the embankment shall be constructed using selected earth to form the subgrade of the road pavement"

It is clear from the above provision that top 1mofthe embankment shall act as subgrade. If the top 1.0 mof embankment is separated to measure and valued as sub-grade, then the embankment cannot be termed as complete as per Clause A-8 of ATS. Even the top 1 m of the embankment is a part of embankment like the side cover and intermediate soil layers. There cannot be different method ofmeasurement for top 1 m just like side soil cover/intermediate soil layers.

Unless the measurement clause clearly and specifically mentions, the soil and fly ash components cannot be measured separately for payment. For that matter, the top 1m of the embankment cannot be separated and if it is done it would be completely contrary to the specific provisions of the Contract.

AT, therefore, holds that any part of the embankment, be it side cover, or intermediate soil, layer or top 1m soil/earth, cannot be measured and paid separately and the whole trapezium section has to be measured as one and paid under BOQ item 2.08."

25. The core dispute concerns the proper method of measurement and payment for construction of embankment with fly ash as per Additional Technical Specification A-8 (Item No. 2.08 of BOQ). The petitioner contends that, since BOQ Items 2.02 (soil embankment),

2.04 (subgrade) and 2.08 (fly ash embankment) are separately described with distinct rates, the soil and fly ash components must be measured and paid under their respective items and the top one metre must be paid as subgrade under Item 2.04. The respondent submits that Item 2.08 is itself a complete, composite work item for a finished embankment with fly ash, inclusive of necessary soil cover, and therefore the entire embankment cross-section has to be measured and paid under Item 2.08.

26. In this respect it is pertinent to see Clause No. 114.1 of the Technical Specifications. The said clause reads as under:

> *"For item rate contracts, the contract unit rates for different items of work shall be payment in full for completing the work to with the requirements of the specifications, including full compensation for all the operations detailed in the relevant sections of these specifications under the rates. In absence of any directions to the contrary the rates are to be considered as full inclusive rate for finished work…"*

27. Clause No. 114.1 provides that contract unit rates shall be payment in full for completing the work to the requirements of the specifications and that in the absence of any contrary direction, the rates are to be considered as "full inclusive rate for finished work". Clause No. 305.8 prescribes that earth embankment/subgrade construction shall be measured by taking cross-sections at intervals before and after construction and computing volumes by the average end area method.

28. The Tribunal, reading Item 2.08 with Clause No. A8, Clause No. 114.1 and Clause No. 305.8, held that embankment with fly ash was intended to be a composite work item whose quantity is measured on the basis of the finished cross-section, and that the soil cover, including the top one meter, formed part of that composite section.

29. The similar controversy was considered and adjudicated by this Court in ***National Highway Authority of India v. Hindustan Construction Co. Ltd.***[8]The said finding reads as under:

> *"43. The Tribunal was of the view that method of measurement for the fly ash embankment was to be as per Clause 305.8 of MoRT&H Specifications which meant that the embankment with soil under Item No. 2.02 and the embankment with fly ash under Item No. 2.08 were to be measured in the same manner. The Tribunal arrived at this conclusion based on the extract from MoRT&H Specifications for Road and Bridge Works-Fifth-Revision Clause 305.8 which stipulated that fly ash embankment was to be measured separately for fly ash and earth portion, while such a provision was noticeably absent in the Fourth-Revision, applicable to the present Contract. This conclusively establishes that the fly ash embankment was required to be measured as one composite section by taking the cross-section as a whole and determining the volume by Average and Area Method. The Tribunal was of the view that if the intention of the Petitioner was to measure the*

[8]*OMP (COMM) 101 of 2016*

volume of earth and fly ash separately, then the same would have been stipulated in the Tender. The Tribunal also relied on Clause 114.1, as per which the rates were to be considered as full inclusive rates for finished works, in the absence of any directions to the contrary. Therefore, the rate for Item No. 2.08 was for completed work of fly ash embankment and not to measure the two components separately. Interpreting Clause A-8 of Additional Technical Specifications, Tribunal rendered a finding that the methodology followed by the Engineer to measure the fly ash embankment was contrary to the provisions of the Contract. The Tribunal also concluded that the top '1m' of the embankment was also part of the embankment, like the side cover and intermediate soil layers and could not be measured by a different method.

44. Tribunal has given an interpretation to the various Clauses of the Contract and it is not open to this Court to substitute its interpretation with that of the Tribunal. The view taken is a plausible view. Even otherwise a perusal of the Clauses referred to above by their plain reading supports the interpretation and the findings of the Tribunal."

30. The above finding was affirmed by the Division Bench in ***National Highways Authority of India v. Hindustan Construction Company Limited***[9] while relying on the judgment of ***Hindustan Construction***

[9]*FAO (OS) (COMM) 145 of 2020.*

Company Limited v. National Highways Authority of India[10] wherein the Hon'ble Supreme Court, based on materially identical clauses, upheld the very interpretation adopted by the present Tribunal. The observation of the Hon'ble Supreme Court reads as under:

> *"19. The majority award, in the main judgment (from which Civil Appeal No. 4658 of 2023 arises) listed why the members in the majority found for the contractor:*
>
> *"(i) It is contemplated in the contract to construct two types of embankments. One with the soil alone, and the second one with the combination of soil pond ash.*
>
> *(ii) The embankment with pond ash alone cannot be constructed, as the pond ash is susceptible for erosion. Hence, the soil cover is provided for protection of the embankment.*
>
> *(iii) The composite cross-section of the embankment comprising of soil and pond ash together is as the collectively termed embankment construction with pond ash under BOQ Item 2.02(b).*
>
> *(iv) The method of measurement to be adopted for payment for the embankment construction with soil or with pond ash is one and the same, which is by taking composite cross-section as a whole of the embankment and determining the volume by average end area method.*

[10] *(2023) SCC OnLine SC 1063.*

(v) The method of measurement adopted by the Engineer, wherein, the area of the cross-section has been bifurcated to account for area occupied by the soil and pond ash for determination of quantum of the embankment in two different items if contrary to the technical specification Clause 305.8.

(vi) Clause 114.1 of MoRTH specification specifically states that the rates are for the finished work in all respects. The pond ash embankment comprising of soil and pond ash is composite and complete finished item of work. It cannot be separated into two different items as having been done by the Engineer.

(vii) The contention of the claimant that the whole cross-section of the pond ash embankment shall be measured as one cross-section for determination of the work under Item 2.02(b) is fully supported by the contract conditions."

....

24. It is quite evident that in most cases, the view of DRPs and tribunals, and in two cases, majority awards of tribunals, favoured the arguments of contractors, that composite embankment construction took place, as a result of which measurement was to be done in a composite, or unified manner. Dissenting or minority views, wherever expressed, were premised on separate measurements. This opinion was of technical experts constituted as arbitrators, who were versed in contractual interpretation of the type of

work involved; they also had first-hand experience as engineers who supervised such contracts. When the predominant view of these experts pointed to one direction i.e. a composite measurement, the question is what really is the role of the court under Section 34 of the Act.

….

26. The prevailing view about the standard of scrutiny — not judicial review, of an award, by persons of the disputants' choice being that of their decisions to stand — and not interfered with, (save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, perverse, as to qualify for interference, courts have to necessarily choose the path of least interference, except when absolutely necessary)."

31. In the view of the aforesaid, I am of the considered opinion that the Tribunal's finding that Item 2.08 of BOQ is a composite, finished work item and that the entire fly ash embankment cross-section, including soil cover, is to be measured and paid under Item 2.08, is not only a possible view but one now specifically endorsed by binding precedent.

32. The petitioner presses another challenge that even if the soil portion of the fly ash embankment is payable at Item 2.08 rates, the Tribunal could not have directed that the top one metre be so paid. It is urged that embankment and subgrade are technically different layers, performed under different items, that the DRB, by its decision dated

12.12.2009, had accepted the respondent's contention only to the extent of soil within the embankment, but held that the top one metre would be treated as subgrade under Item 2.04, that NHAI accepted this part of the DRB decision and challenged only the soil-rate aspect and that the contractor never invoked arbitration against the DRB's finding on the top one metre. On this basis, it is argued that there was no dispute before the tribunal regarding the classification of the top one metre, and its decision to pay that layer at Item 2.08 rates is an exercise in excess of its jurisdiction.

33. However, I am of the opinion that the reference to arbitration, covered Claim No. 2 as a whole being "*Construction of embankment with fly ash as per Additional Technical Specification A-8 (Item No. 2.08 of BOQ)*". The essential controversy was the proper method of measurement and the rate applicable to the embankment with fly ash. Once that dispute was before the tribunal, it was within its ambit to determine what layers and components properly form part of the work described by Item 2.08. The respondent contended before the Tribunal that the entire composite cross-section of the fly ash embankment, as designed and executed in accordance with Clause A-8, including the soil cover and top one metre, constituted "embankment with fly ash" within Item 2.08. The Tribunal was, therefore, had the jurisdiction to decide whether this assertion was correct in terms of the Agreement. The same involved interpretation of the terms of the Contract and falls squarely within the ambit of jurisdiction by the Arbitrator.

34. The Tribunal, in its Award dated 22.07.2014, directed payment of interest at the rate of 12% per annum compounded monthly on the

amounts found due under Claim No. 2. The petitioner contends that this interest award is exorbitant, unsustainable, and contrary to contractual provisions and settled law. Specifically, the petitioner argues that Clause No. 60.8 applies only to certified IPC issued by the Engineer, which were never raised by the respondent for the embankment claim as ultimately determined by the Tribunal.

35. The observation of the Tribunal this regard read as under:

> *i) Claimant is entitled to payment of Rs. 2,55,31,075 & Euro 53,656 towards construction of embankment with fly ash.*
>
> *ii) The Respondent/NHAI shall pay to the Claimant the balance amount of Rs. 2,09,10,463 & Euro 41,748 after adjusting payments made as. per DRB recommendations.*
>
> *iii) The Respondent/NHAI shall pay to the Claimant interest at 12% per annum compounded monthly on Indian currency & LIBOR + 2% on Euro portion from the respective due dates of payment, as per CH-5 (page 9-10) of the Claimant dated 06.08.2013 till the date of the Award."*

36. The Hon'ble Supreme Court in ***Hindustan Construction Company Limited v. National Highways Authority of India***[11] addressed a batch of cases involving the same parties, the same contract provisions, and identical disputes regarding embankment measurement and interest awards. The Hon'ble Supreme Court held as under:

> *"The direction in the awards, to the extent they required compounded monthly interest payments, are modified.*

[11] *(2023) SCC OnLine SC 1063.*

Instead, the NHAI shall pay uniform interest on the amounts due, on the head concerned, i.e., construction of embankment, to the extent of 12% from the date of award to the date of payment, within eight weeks from today."

37. As per the facts of the present case the Tribunal has relied on Clause No. 60.8 of the Contract to award 12 % compounded monthly. Clause No. 60.8 reads as under:

"(a)The amount due to the Contractor any Interim Payment Certificate issued by the Engineer pursuant to this clause, or to any other term of the Contract, shall subject to Clause 47, be paid by the Employer to the Contractor as follows:

(i)(A) in the case of Interim Payment Certificate, within 42 days after the Contractor's monthly statement has been submitted to the Engineer for certification, pursuant to Sub-Clause 60.1. Provided that if the Engineer's Interim Certificate has not been issued within said 42 days, the Employer shall pay the amount shown in the Contractors monthly statement and that any discrepancy shall be added to, or deducted from the next payment to the Contractor and

....

(b) In the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest compounded monthly at the rate(s) stated in the Appendix to Bid upon all sums unpaid from the date upon which the same should have been paid in the currencies in which the payments are due. The provisions of

this Sub-clause are without prejudice to the contractor's entitlement under Clause 69 or otherwise."

38. In ***National Highway Authority of India v. Hindustan Construction Co. Ltd***.[12], I have considered the said contentions and held as under:

"117. The petitioner further argues that the Tribunal's reliance on Sub-Clause 60.8 of the Conditions of Contract is misplaced, as the clause applies solely to certified amounts due and payable upon certification by the Engineer, whereas the present claim pertains to unverified damages that became payable, if at all, only upon adjudication. Moreover, the Tribunal has erroneously granted interest from 42 days after the claim was raised before the Engineer, contrary to the settled law that interest on damages is payable only from the date of adjudication or the award. Consequently, the impugned Award, insofar as it grants compound interest at an excessive rate from a premature date, is liable to be set aside.

118. This contention cannot be accepted. The Tribunal has awarded interest strictly in accordance with the terms of the Contract and has provided cogent reasons for doing so. It has construed the expression "sums payable" under Clause 60.8 to include the amounts found by the Tribunal to be due and payable. The Tribunal observed that, had there been no dispute between the parties, the amounts found due would have been paid to the respondent. Therefore, in fairness and

[12]*OMP (COMM) 99/2017*.

justice, it deemed it appropriate to award interest at the rate of 12% per annum."

39. It is evident from the aforesaid, that the term "sums payable" under Clause No. 60.8 also includes the sums found to be due and payable by the Tribunal. The Court in its exercise of jurisdiction under Section 34 of the 1996 Act cannot interfere with the plausible view of the Tribunal. In the present case, the view of the Tribunal is permissible and plausible. The modification of interest by Hon'ble Supreme Court in the ***Hindustan Construction Company Limited v. National Highways Authority of India***[13] was in the exercise of power conferred by Article 142 of the Constitution of India. Thus, I am of the considered opinion that the grant of interest does not warrant any interference.

CONCLUSION

40. Thus, in the view of the above discussion, I am of the opinion that the challenge to the said Award with respect to Claim No. 2 has no merit. Thus, the present petition is dismissed.

41. The petition is, thereby, disposed of with pending applications, if any.

JASMEET SINGH, J

JANUARY 8th, 2026/(MU)

[13] *(2023) SCC OnLine SC 1063.*