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

Judgment reserved on: 31.07.2025
Judgment pronounced on: 16.10.2025

\+ **O.M.P. (COMM) 99/2017**

NATIONAL HIGHWAYS AUTHORITY OF INDIA....Petitioner

Through: Mr. Zafar Khurshid, Mr. Amit Singh Chauhan, Ms. Kshitij Singh, Mr. Udit Chauhan, Advs.

versus

HINDUSTAN CONSTRUCTION CO. LTD .....Respondent

Through: Mr. Dayan Krishna, Sr. Adv. with Mr. Anirudh Bakhru, Mr. Rishi Agrawala, Ms. Shruti Arora, Ms. Vasundhara Bakhru, Ms. Tarini Khurana, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***"the Act"***) seeking to set aside the Arbitral Award dated 14.10.2016 passed by the Arbitral Tribunal (***"Tribunal"***) in the matter of "*Hindustan Construction Co. Ltd. and National*

Highways Authority of India" to the limited extent that pertains to amounts awarded to respondent, in Dispute No. 6.

FACTUAL BACKGROUND

2. The petitioner (respondent before the Tribunal), National Highways Authority of India (***"NHAI"***), is a statutory body constituted under Section 3 of the National Highways Authority of India Act, 1988. Under Section 16 of the said Act, NHAI has been entrusted with the responsibility to develop, maintain, and manage National Highways assigned to it by the Central Government. All National Highways vest in the Central Government under Section 4 of the National Highways Act, 1956, and in terms of Section 11 of the 1988 Act, the Central Government entrusted the execution of the project in question to NHAI. The project related to the four-laning of National Highway No. 28 from Km 45.00 to Km 92.00 of the Lucknow - Ayodhya Section (***"the Project"***).

3. For execution of the Project, NHAI entered into a Contract Agreement with the respondent (Claimant before the Arbitral Tribunal), Hindustan Construction Company Ltd. (***"HCC"***). The contract was executed on 05.10.2005 for a price of Rs. 212,33,44,969/-.The scheduled period for completion was thirty-six months, with 13.10.2005 fixed as the date of commencement and 12.10.2008 as the date of completion.

4. The scope of work included not only the construction of roads and bridges but also culverts, minor bridges, underpasses, approaches, and other allied works. The contract was an item-rate contract, and the respondent quoted rates for various items of work as per the Technical

Specifications and Bill of Quantities (***"BOQ"***), both of which formed part of the Agreement.

5. The works, however, could not be completed within the stipulated time. On extensions requested by the respondent, the Engineer recommended and NHAI approved extensions from time to time. Eventually, the work was completed on 12.09.2011. The Engineer-in-Charge accordingly issued a Taking Over Certificate (***"TOC"***) on 29.09.2011, recording the substantial completion of works as on 12.09.2011. In the course of execution of the contract, certain disputes arose between the parties. In accordance with Clause 67 of the Contract Agreement, the said disputes were referred to arbitration.

6. The disputes raised by the respondent before the Arbitral Tribunal were twofold. Dispute No. 5 concerned the non-fixation of appropriate rates for varied works under Clause 52.2 of the contract. Dispute No. 6 related to the claim for additional costs incurred during the extended period of the contract, from 13.10.2008 to 12.09.2011.

7. By its Award dated 14.10.2016, the Tribunal partially allowed the claim under Dispute No. 5, which NHAI has chosen not to challenge in the present petition. The present proceedings are confined to the Award in respect of Dispute No. 6. NHAI is aggrieved by the findings of the Tribunal allowing the respondent's claims under this head.

8. Specifically, NHAI challenges the Award insofar as it grants relief in respect of overhead expenses, costs on account of retention of plant and machinery during the extended period, and unrecovered portions of price adjustments towards steel, cement, POL (***"Petroleum, Oil and Lubricants"***), and labour. These claims, collectively forming the

prolongation and additional costs, were allowed by the Tribunal for the extended period of the contract, namely 13.10.2008 to 12.09.2011, despite NHAI's contention that the delays were attributable to the respondent itself.

9. The different heads of costs allowed by the Tribunal for Dispute No. 6 are adumbrated hereinafter:-

S.No.	**Heads of Claims**	**Amount awarded in the Award**
1.	Additional cost incurred towards onsite and offsite overhead expenses during the extended period 13.10.2008 to 12.09.2011	2063.27 lakhs
2.	Additional Cost incurred towards Contractor's plant and equipment.	3020.98 lakhs
3.	Additional Cost by way of financing charges (Interest) on delayed recovery of components of overheads of Profits	NIL
4.	Additional Cost on account of loss of earning capacity and profit due to the extended period of the contract	NIL
5.	Additional Cost incurred on account of unrecovered portion of price variation on POL	200.78 lakhs

6.	Additional Cost incurred on account of unrecovered portion of price variation on Cement.	353.53 lakhs
7.	Additional Cost incurred on account of unrecovered portion of price variation on steel	96.77 lakhs
8.	Additional Cost incurred on account of unrecovered portion of price variation on labour	647.43 lakhs
9.	Additional Cost incurred on account of unrecovered portion of price variation on bitumen	NIL
	Total	6364.78 lakhs

10. The aforementioned amount was reduced to INR. 53.79 crores on account of the additional work included within the scope of the Contract along with payment of interest computed at the rate of 12% compounded monthly on the awarded amount, from the time the claim was submitted to the Engineer up to the date of the award and future interest at the rate of 12% compounded monthly from date of Award till realization.

11. Hence, the present petition has been filed challenging the Arbitral Award dated 14.10.2016.

SUBMISSIONS BY THE PETITIONER

The Tribunal has travelled beyond the terms of the Contract

12. Learned counsel for the petitioner submitted that the Tribunal has travelled beyond the terms of the General Conditions of Contract (***"GCC"***), the Conditions of Particular Application (***"COPA"***) and the Technical Specifications, thereby in effect rewriting the contract.

13. It is urged that under Clauses 14.1 and 14.4 of the General Conditions of the Contract, the respondent did not submit a comprehensive work program. The Engineer had on several occasions recorded that the respondent had failed to mobilise in accordance with the contractual requirements, yet the Tribunal ignored this material evidence and proceeded to hold otherwise.

14. It is further contended that the Tribunal erred in attributing delays solely to the petitioner. Despite the fact that the priority stretch was handed over, the respondent was unable to complete the work by the stipulated date i.e. 16.12.2006. The extensions of time (***"EOT")*** granted by the Engineer were made in public interest and could not be construed as an admission of default on the part of NHAI. The finding of the Tribunal that the mere absence of liquidated damages (***"LD"***) implied fault of the petitioner is unsustainable.

15. Learned Counsel for the petitioner has placed reliance on Clause 53.4 of the Contract, which requires verification of claims by reference to contemporary records. The Tribunal, however, accepted the monthly progress reports prepared by the respondent while disregarding those drawn up by the Engineer, which amounted to a serious misdirection in appreciation of evidence. He has also pointed out that under Clause

54.1 of the Contract, the Contractor's equipment and materials were meant for the exclusive use of the works, of the petitioner.

16. It was next submitted that the Tribunal disregarded Clause 60.2 which provides that the Engineer's certification on valuation of items is final. Likewise, in relation to price adjustment, it was argued that under Clause 70 of COPA escalation was permissible only during the original contract period or validly extended periods, and not beyond. By awarding costs outside the contractual framework, the Tribunal has in effect rewritten the contract.

17. Learned counsel also emphasised that Clause 110.1 of the Technical Specifications specifically placed the responsibility of site clearance and shifting of utilities on the respondent without any entitlement to additional compensation. The Tribunal nevertheless overlooked this provision and proceeded to award claims under this head.

18. Placing reliance on the decision of the Hon'ble Supreme Court in ***New India Civil Erectors (P) Ltd. v. ONGC, AIR 1997 SC 980***, it was argued that the Arbitrator, being a creature of contract, is bound to operate within its four corners and cannot travel beyond it. More particularly, no amount can be awarded which is expressly ruled out by the Agreement. It was therefore submitted that the Award suffers from patent illegality and a disregard of vital contractual provisions, and consequently warrants interference under Section 34 of the Act.

Award of the Tribunal is a Non speaking Award

19. Learned counsel for the petitioner further assails the Award on the ground that it is non-speaking and devoid of rationale. He states that the Tribunal accepted the respondent's auditor-certified overheads

without undertaking any analysis as to whether such expenses were actually incurred during the extended period of time, or whether they were substantiated by invoices and receipts. No reasons were provided as to why the Engineer's certified values were ignored, and such unexplained preference for one set of documents over another without any reasons renders the Award unsustainable.

20. It was next urged that the Tribunal adopted an arbitrary and inconsistent approach in selectively relying upon the certificates issued by the Chartered Accountant (***"CA"***), accepting them in respect of certain sub-heads while rejecting them in respect of others. Such approbation and reprobation, is impermissible and strikes at the root of the Award. Counsel further submitted that Clause 70.3 of the COPA prescribes the formula for computing price variation, whereas the Tribunal has chosen to uphold additional costs on the basis of arbitrary and inapplicable formulae devised by the respondent, thereby departing from the contractual framework and more particularly Clause 70.3 of COPA.

21. Attention was also drawn to the Tribunal's reasoning that the computations of the Engineer based on the MoRTH Standard Data Book could not be relied upon since the same did not form part of the Contract. According to the petitioner, this approach was fundamentally flawed inasmuch as the Technical Specifications, particularly Clauses 2.1 and 2.2, specifically refer to the specifications and guidelines issued by the MoRTH, and the BOQ itself incorporates by reference the "Standard Method of Measurement of the Indian Roads Congress", which is founded upon the said Standard Data Book. The Tribunal,

therefore, erred in discarding the Engineer's computations, which were in fact based on contractual references.

The Tribunal Disregarded Material Evidence

22. Learned Counsel for the petitioner submits that the Tribunal disregarded material evidence placed on record. Despite the contemporaneous correspondence of the Engineer recording shortfalls and defaults on the part of the respondent, the Tribunal has proceeded solely on the basis of the respondent's statement of claims and the CA certificates appended thereto. These certificates, it was argued, were inadmissible, not subjected to cross-examination and unverified by primary records. The Engineer's assessment, which was founded on actual deployment data, was unjustifiably brushed aside.

23. It is also urged that the Tribunal failed to take into account the contractual requirement of early warning notices under Clause 53.2. No such notices were ever issued by the respondent. Nevertheless, the Tribunal concluded that sufficient intimation had been provided, a finding which, as per the petitioner, is plainly contrary to the record.

Additional Cost Claims Are Unfounded And Contractually Barred

24. Learned counsel for the petitioner next submitted that despite the Engineer's detailed cost analysis demonstrating that the respondent's claims were inflated, the Tribunal proceeded to award a sum of Rs. 53.79 crores towards prolongation without any legal or factual basis. The delay, it was emphasised, was attributable to the respondent's own lapses, including improper mobilisation, frequent breakdown of outdated equipment, shortage of manpower, poor planning, failure to

obtain requisite permissions, slippages in schedule, non-utilisation of available stretches, delays in testing and securing approvals, and inadequacy of plant capacity. The Award, however, disregarded these findings and wrongly shifted the burden of delay upon the petitioner.

25. Learned Counsel further submitted that the issue of retention of plant and equipment is directly covered by the judgment of this Court in ***National Highways Authority of India v. Hindustan Construction Co. Ltd., 2016 SCC OnLine Del 6112,*** wherein it has been categorically held that claims towards retention of equipment at site are inadmissible. Clause 54.1 of the Contract clearly bars unauthorised removal of equipment and does not confer any entitlement upon the Contractor to seek costs for retention. In the present case, no evidence was furnished by the respondent to demonstrate idling of machinery, nor was any notice issued to the Engineer regarding demobilisation. The Tribunal's award under this head is, therefore, in the submission of the petitioner, contrary to the contractual stipulations.

26. It was also urged that claims towards labour, cement, steel, bitumen and POL costs are untenable, since these items are already covered under the BOQ and compensated through the mechanism of price adjustment envisaged in Clause 70. The Tribunal's grant of additional costs for the extended period amounts to double recovery and is in direct violation of the contractual provisions. According to the petitioner, the Preamble to the BOQ itself makes it clear that the whole cost, including all risks and liabilities, was to be subsumed in the BOQ rates, and having received payment on that basis, the respondent cannot now seek further sums under the same heads.

27. It was pointed out that even the claims towards onsite and offsite overheads were impermissible. Such expenses are time-related and foreseeable costs which are factored into the Contract rates. The Tribunal, however, ignored the Engineer's records showing that qualified staff was not even present at the site for most of the time. By treating retention of plant and equipment as an additional burden imposed on the respondent due to the alleged delay by NHAI, the Tribunal has fundamentally misconstrued the contractual framework. The respondent was obliged to keep resources at site until completion, and the contention that such retention gave rise to separate compensable claims is wholly unsustainable.

28. Lastly, it was submitted that the Tribunal wrongly allowed claims for alleged unrecovered price adjustment on cement, steel, bitumen, labour and POL during the extended period by disregarding the contractual formula prescribed in Clause 70.3. Such an approach, in the submission of the petitioner, amounts to rewriting the contract and awarding amounts that were expressly prohibited by the agreed terms.

Against public policy

29. Learned counsel for the petitioner submits that the Tribunal has failed to appreciate the settled principles of law as laid down by the Hon'ble Supreme Court in ***Associated Builders v. DDA (2015) 3 SCC 49,*** wherein it was held that if delays are attributable either to the contractor, or the employer, or both, and the contractor seeks and obtains an extension of time on that account, no claim for compensation can be maintained in addition to the extension of time so granted.

30. It is the specific contention of the petitioner that in the present case, the respondent had admittedly sought and obtained extensions of time for execution of the works. Having availed such extensions without any reservation of rights, the respondent stood precluded from raising any claim for additional costs. The Tribunal, however, has proceeded on wrongful conjectures by presuming that entitlement to extension of time would *ipso facto* establish the suffering of losses and damages.

Perverse Findings

31. It is submitted that it was incumbent on the Tribunal to construe the provision harmoniously but in total contradiction, has disregarded one of its express clauses outright, without rendering any finding that the said clause was void, illegal, or severable from rest of the contract. Instead, the Tribunal purported to invoke the principle of *contra proferentem*. Such an approach, it is urged, is contrary to the well-settled principle that contractual terms must be interpreted in a manner which harmonises their operation so as to give effect to the object and purpose of the Agreement as a whole. The interpretation adopted by the Tribunal has effectively nullified one of the express terms of the Contract an interpretation which no reasonable person could possibly arrive at.

Award of Interest

32. It is submitted that the Tribunal erred in awarding interest despite the constituent claims being inadmissible under the Contract, and hence no question of interest arises. Without prejudice, even if interest were permissible, the award of 12% compounded monthly is exorbitant, and the Tribunal's reliance on Sub-Clause 60.8 is misconceived, as the

clause applies only to certified amounts payable upon the Engineer's certification. In the present case, the respondent's claim was in the nature of damages, and there was no certification by the Engineer. Hence, no amount could be deemed due and payable unless and until adjudicated by the Tribunal.

33. In any event, the Tribunal has awarded interest from 42 days after the claim was raised before the Engineer. This approach is patently contrary to the settled law laid down by the Hon'ble Supreme Court, which has consistently held that a claim for damages crystallises only upon adjudication and affirmation by a competent authority. Therefore, even assuming liability, interest could at best have been awarded from the date of the Award, and not earlier. He places reliance on ***NHAI v. M/s. KNR Patel (JV) KNR House SLP(C) No. 31440 of 2015***, wherein the Hon'ble Supreme Court, dealt with an identical issue.

34. In light of the above, it is submitted that the Tribunal has committed a manifest error of law in awarding compound interest on claims in the nature of damages. Such an award of interest is not only excessive and unreasonable but also contrary to Section 31(7)(a) and (b) of the Act, which circumscribes the Tribunal's discretion by permitting only reasonable interest. Accordingly, the impugned award, to the extent it grants compound interest, is liable to be set aside.

SUBMISSIONS OF THE RESPONDENT

35. Mr. Dayan Krishnan, learned senior counsel for the respondent submits that the present petition is a challenge under Section 34 of the Act where the scope of interference is extremely limited and does not permit a re-examination of the merits of the case or a re-appreciation of

evidence duly considered by the Tribunal. It is well settled that the interpretation of contractual terms falls squarely within the domain of the Tribunal, and so long as a plausible view has been taken, even if erroneous in the Court's opinion, interference is unwarranted. The Tribunal in the present case, after appreciating the material on record, has returned reasoned findings in favour of the respondent.

36. It is further submitted that the dispute before the Tribunal was limited to the computation of costs incurred during the extended period of the contract and not to the interpretation of the clauses themselves, which were unambiguous and had already been applied by the Engineer. The Engineer had in fact accepted the entitlement of the respondent to additional costs, though he had determined the amount at a figure much lower than the actual costs incurred. The Tribunal, after examining the evidence and considering the contractual provisions, corrected this underestimation and awarded the sums due. In such circumstances, no ground under Section 34 of the Act is made out for interference with the Award, and the present petition deserves to be dismissed.

37. The learned senior counsel for the respondent submits that the petitioner's contention regarding breaches in mobilisation was fully considered and rejected by the Tribunal. The Tribunal noted the objection and held that the Engineer had granted an extension of 35.01 months under Clause 44.1 of the GCC for delays not attributable to the respondent, without imposing liquidated damages under Clause 47.1. The Engineer also determined that the respondent was entitled to additional costs, and the letter dated 16.08.2013 confirms that the extension was for causes beyond the respondent's control.

38. Further, Clause 110 of the Technical Specifications only required coordination for utility removal, and delays in this regard cannot be attributed to the respondent. Reliance is placed on ***National Highways Authority of India v. CEC-HCC Joint Venture, 2017 SCC OnLine Del 9177, NHAI v. Hindustan Construction Co. Ltd., 2017 SCC OnLine Del 10273,*** and ***National Highways Authority of India v. Hindustan Construction Co. Ltd., 2022 SCC OnLine Del 120.*** In view of these findings, it is submitted that the Tribunal correctly held that the respondent was entitled to compensation for costs arising from delays not attributable to it. The Award is reasoned, plausible, and does not warrant interference under Section 34 of the Act.

39. The respondent submits that the contention regarding the applicability of Clauses 51 and 70.3 of the Contract is misconceived. The Tribunal has correctly held that the respondent is entitled to compensation under Clauses 6.4, 12.2, and 42.2, which expressly relate to costs associated with delays being added to the Contract Price. These clauses address time-related costs and are distinct from variations in quantity or escalation in rates, which are governed separately under Clauses 51 and 70.3. The Tribunal notes that once the contract period is extended for delays not attributable to the respondent, the Claimant cannot rely on price escalation formulas to cover their own defaults, and the respondent is entitled to costs incurred during the extended period.

40. It is further submitted that the Tribunal also found that actual input costs, such as steel, cement, and POL, incurred during the extended period are compensable even if not covered by escalation, as they fall within the ambit of Clauses 6.4, 12.2, and 42.2. The respondent has

credited the price adjustments already paid and claimed only the uncompensated portion. Reliance is paid on ***NHAI v. HCC (2016:DHC:1544:DB), National Highways Authority of India v. CEC-HCC Joint Venture, 2017 SCC OnLine Del 9177,NHAI v. Hindustan Construction Co. Ltd., 2017 SCC OnLine Del 10273 National Highways Authority of India v. Hindustan Construction Co. Ltd. 2022 SCC OnLine Del 120,*** which confirm that where delays are not attributable to the contractor, such costs are payable. In light of these findings, the Tribunal's conclusion is plausible, reasoned, and does not warrant interference under the narrow scope of Section 34 of the Act.

41. Learned senior counsel further submits that the Tribunal correctly determined the "costs" associated with delays not attributable to respondent by relying on the CA certificate, which reflected the actual overheads incurred. The Tribunal's decision to not rely on the MORTH Standard Data Book was appropriate, as the Data Book provides standard rates but does not represent actual costs for the purpose of compensation under the Contract. The CA certificates were contemporaneously produced and were not challenged by the petitioner, and their use falls squarely within the Tribunal's authority to assess costs based on the circumstances and available evidence, as recognized in ***McDermott International Inc. v. Burn Standards (2006) 11 SCC 181.***

42. Further, it is stated that the Courts have repeatedly upheld awards of damages based on CA certificates in similar contractual contexts, including ***NHAI v. HCC (2016:DHC:1544:DB), upheld in CA***

3593/2017 and ***National Highways Authority of India v. Hindustan Construction Co. Ltd. 2022 SCC OnLine Del 120***. The Tribunal's approach in interpreting the Contract and assessing sufficiency of evidence is reasoned and consistent with established jurisprudence under FIDIC Contracts.

43. Learned senior counsel also submits that the Tribunal's decision to rely on the Monthly Progress Reports (***"MPRs"***) filed by the respondent, rather than those prepared by the Engineer, is a matter of assessing the sufficiency and quality of evidence, which falls squarely within the Tribunal's domain, as recognized in ***Associated Builders v. DDA (2015) 3 SCC 49*** and ***Kwality Mfg. Corpn. v. Central Warehousing Corpn. (2009) 5 SCC 142***. The Tribunal provided a reasoned basis for this approach, noting that the respondent's MPRs reflected the equipment actually deployed on site, whereas the Engineer's MPRs considered only the minimally required equipment under the Contract.

44. The Tribunal also observed that even the Engineer had not consistently followed its own MPRs in assessing retention costs. In these circumstances, the Tribunal's evaluation of which evidence to rely upon cannot be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996. Reliance on other judgments, such as ***NHAI v. HCC*** **(2016:DHC:7668)**, is misplaced, as the quantum and quality of evidence are fact-specific, and the Tribunal has passed a reasoned order after examining the evidence presented.

45. The respondent submits that the Tribunal acted within its discretion in awarding interest at 12% per annum compounded monthly, consistent with the contractual provisions and established principles of restitution,

as recognized in ***Larsen Air Conditioning and Refrigeration Company v. Union of India 2023 SCC Online SC 982.*** The Tribunal provided reasons for selecting this rate, noting that it corresponds to the rate applicable to delayed payments under the Contract and is intended to place the respondent in the position it would have occupied but for the delay.

46. The award of compound interest is further justified by the respondent's financial position, including interest payable to lenders due to delayed receipt of contractual payments, as well as ongoing costs in maintaining bank guarantees to secure the award. In these circumstances, the grant of interest is reasonable, contractually supported, and cannot be said to exceed the Tribunal's powers or warrant interference under Section 34 of the Act.

ANALYSIS AND FINDINGS

47. I have heard the learned counsel for the parties and perused the material on record. Before dealing with the rival contentions of the parties, it is important to set out the scope of interference under Section 34 of the Act.

48. The scope of interference under Section 34 of the Act is very limited and narrow. The Court does not sit in appeal over the Award, nor does it review or re-appreciate the evidence as if it were an appellate forum. It is the prerogative of the Tribunal to interpret the terms of the contract, and if the Tribunal has adopted a plausible view, the Court is not required to interfere, even if another interpretation is possible. The Arbitrator is the last word on facts.

49. An arbitral Award can only be set aside if it falls under the specific grounds enumerated in Section 34 of the Act. One of these grounds relates to the public policy of India. Explanation I to Section 34(2)(b)(ii) clarifies that an Award may be set aside if it conflicts with the fundamental policy of Indian law or the most basic notions of morality or justice. The Hon'ble Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417***, has emphasized that the phrase "public policy of India" must be accorded a restricted meaning post the 2015 amendments. Mere contravention of law is not sufficient; the contravention must relate to such fundamental principles as form the very basis of the administration of justice and enforcement of law.

50. The Court further clarified that by way of illustration, the following could fall within the scope of "fundamental policy of Indian law":

- **i.** violation of principles of natural justice;
- **ii.** disregard of orders or binding judgments of superior courts in India;
- **iii.** violation of Indian laws linked to public good or public interest.

51. On the ground of "conflict with the most basic notions of morality or justice", the Court has held that this would be attracted only where the award offends elementary principles of justice that would shock the conscience of the Court.

52. The ground of patent illegality is distinct and applies only to domestic arbitral awards. Patent illegality refers to such illegality which goes to the root of the matter but which does not amount to mere erroneous

application of law. In ***DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd., (2024) 6 SCC 357***, the Hon'ble Supreme Court has explained patent illegality in the following terms:

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

53. Perversity, as a ground for setting aside an arbitral award, is to be examined on the touchstone of the Wednesbury principle of reasonableness. It would arise where the findings in the award are based on no evidence, where the Tribunal takes into account irrelevant considerations, or where it ignores vital evidence in arriving at its decision. At the same time, an Award founded on some evidence, however limited or compendious, cannot be regarded as perverse; if the view adopted by the arbitrator is a possible one, it must be upheld, and

neither the quantity nor the quality of the evidence is open to re-assessment by the Court in judicial review.[1]

54. In ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1***, it has been observed that "courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award."[2]

55. In ***OPG Power (supra)*** the Supreme Court, affirming the view in ***Dyna Technologies (supra)***, classified arbitral awards particularly for the purpose of a challenge based on improper, inadequate, or absent reasoning into three broad categories, as under:

a) Category 1: Awards where no reasons are recorded, or where the reasons are unintelligible. Such awards violate Section 31(3) of the Act, and are liable to be set aside under Section 34, unless the parties have agreed that no reasons are to be provided, or the award is rendered on agreed terms under Section 30 of the Act.

b) Category 2: Awards where the reasons are improper, indicating a flaw or perversity in the decision-making process. These awards may be challenged strictly on the limited grounds available under Section 34 of the Act.

[1]OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417, para 70.
[2] Ibid., para 75.

c) **Category 3:** Awards where reasons appear inadequate. Such awards must be dealt with caution. The Court must consider the nature and complexity of the issues and assess whether the reasoning, though brief, is sufficient to address the controversy. If, upon a fair reading, the reasons are intelligible, coherent, or can be inferred from the award and the documents relied upon, the award should not be interfered with merely on the ground of inadequacy. However, if the gaps in reasoning render the award unintelligible or unsupported, it may be set aside under Section 34 of the Act.

56. Having set out the scope of interference under section 34 of the Act, I shall now deal with the following issues.

A. Whether the Tribunal's interpretation of various contractual clauses is perverse or suffers from patent illegality?

B. Whether awarding amounts over and above price escalation cost amounts to rewriting of the Contract?

C. Whether the reliance of Tribunal on Chartered Accountant's certificate is erroneous and devoid of rationale?

D. Whether disregard of MPRs submitted by the engineer of the petitioner to the Tribunal is disregard of vital evidence and amounts to patent illegality?

E. Whether interest awarded by the Tribunal is exorbitant and cannot be sustained?

Issue 1: Interpretation of Contractual Clauses

A. Findings of Delay attributable to petitioner

57. The petitioner has contended that the Tribunal had failed to take into consideration that the work program of the respondent was not comprehensive as per Clauses 14.1 and 14.2 and that the respondent had failed to mobilise in accordance with the contractual stipulations. Secondly, it has been submitted that even if the EOT had been granted by the petitioner without imposition of any liquidated damages, which, as the contract agreement had to be calculated by the Engineer, would not *ipso facto* lead to the conclusion that the EOT granted to the respondent was due to the default of the petitioner. Thirdly, it is argued that the Tribunal acted contrary to settled law laid down by the Hon'ble Supreme Court, which holds that where there are contributory delays attributable to both the contractor and the employer, and the contractor has sought and obtained an extension of time, he is not entitled to claim compensation for such delay.

58. It would be apposite to mention that the aforementioned submissions by the petitioner were placed before the Tribunal, as well, and considered which is clear from the perusal of the paragraphs 4.3.4, of the Award which reads as under:

> *"4.3.4. Respondent has also stated that there was an overall lack of planning and foresight on part of Claimant and that Claimant has been unable to execute the works in a planned manner. Respondent has placed on record numerous correspondence issued by Engineer pointing out improper*

*mobilization, lack of planning and scant deployment of resources. That Claimant has been deficient in execution of works in all areas and throughout the period of Contract including the extended period. That Engineer was constrained to issue notices of slow progress and also held the same in the recommendations of EOT. The Claimant has stated that all the letters issued by the respondent/Engineer on slow progress of work and deployment were replied by him at the contemporaneous time. AT observes that Engineer/respondent approved 35.01 months EOT in spite of the above notices in terms of Sub-clause 44.1 of GCC, and in terms of Sub-clause 44.1, Contractor/Claimant is entitled to EOT in the event of delays, "**other than through a default or breach of Contract by the Contractor or for which he is responsible**" (emphasis provided). Thus, EOT granted by Engineer/respondent, AT considers, is for delay events other than through a default or breach of Contract by the Claimant.*

Also, in terms of Sub-clause 47.1, if the Contractor fails to comply with the Time for Completion, then Contractor shall pay to Employer the relevant sum stated in the Appendix to Tender as LD for such default. It is admitted by the parties that no LD was levied on Claimant. This further proves that EOT granted is for delay events not attributable to Claimant. Further, AT observed that in terms of Sub-clause 70.3(a),

Price Adjustment shall apply only for work carried out within the stipulated time or extensions granted by the Engineer/respondent and shall not apply to work carried out beyond the stipulated time; Price Adjustment for extensions paid to the Claimant by Engineer/respondent goes to prove that the EOTs were for the delay events not attributable to Claimant.

AT observes that Engineer, who had commented on slow progress of work vide various letters relied on by respondent, had finally considered the totality of site conditions and delays falling in the critical path and had determined EOT up to 12.09.2011, i.e., 1065 days, solely on account of delays not attributable to Claimant. AT is, therefore, of the view that the EOT granted of 35.01 months by Engineer/respondent is exclusively for delay events not attributable to Claimant*."*

59. The relevant clauses of Contract read as under:

"14.1 The Contractor shall, within the time stated in Part II of these Conditions after the date of the Letter of Acceptance, submit to the Engineer for his consent a programme, in such form and detail as the Engineer shall reasonably prescribe, for the execution of the Works. The Contractor shall, whenever required by the Engineer, also provide in writing for his information a general description of the arrangements and methods which the Contractor

proposes to adopt for the execution of the Works.

14.2 If at any time it should appear to the Engineer that the actual progress of the Works does not conform to the programme to which consent has been given under Sub-Clause 14, the Contractor shall produce, at the request of the Engineer, a revised programme showing the modifications to such programme necessary to ensure completion of the Works within the Time for Completion.

44.1 In the event of:

(a) the amount or nature of extra or additional work,

(b) any cause of delay referred to in these Conditions,

(c) exceptionally adverse climatic conditions,

(d) any delay, impediment, or prevention by the Employer, or

(e) other special circumstances which may occur, other than through a default of or breach of contract by the Contractor or for which he is responsible,

being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.

47.1 If the Contractor fails to comply with the Time for

Completion in accordance with Clause 43, for the whole of the Works or, if applicable, any Section within the relevant time prescribed by Clause 48, then the Contractor shall pay to the Employer the relevant sum stated in the Appendix to Tender as liquidated damages for such default and not as a penalty (which sum shall be the only monies due from the Contractor for such default), for every day or part of a day which shall elapse between the relevant Time for Completion and the date stated in a Taking-Over Certificate of the whole of the Works or the relevant Section, subject to the applicable limit stated in the Appendix to Tender. The Employer may, without prejudice to any other method of recovery, deduct the amount of such damages from any monies due or to become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works, or from any other of his obligations and liabilities under the Contract."

60. A perusal of the above shows that the Tribunal noted that the Contract contemplated completion of the entire works within 36 months. On the basis of contemporaneous documents, it was found that several delay events occurred during the course of execution which led to the completion being extended. The works were substantially completed on 12.09.2011 and the Engineer accordingly issued the Taking Over Certificate. The Engineer as well as the respondent determined an EoT

of 35.01 months under Sub-clause 44.1 of the GCC, recording that such delays were not attributable to the Claimant.

61. It was further noted by the Tribunal that no liquidated damages had been levied under Sub-clause 47.1, and that the Claimant had in fact been paid price adjustment under Clause 70 of the COPA during the extended period. Importantly, the Tribunal also observed that the parties by their conduct had given a go-by to the concept of "priority stretch completion" and in any event, the Contract did not stipulate any consequences for non-completion of the priority stretch.

62. While the petitioner had placed reliance on various communications issued by the Engineer pointing to lack of mobilisation, slow progress, and inadequate deployment of resources, the Tribunal has correctly noted that despite these letters, the Engineer and respondent themselves granted extension of time of 35.01 months under Sub-clause 44.1, which could only have been granted in respect of delays "other than through a default or breach of Contract by the Contractor." This finding is borne out from the record and from the admission of the Engineer in his communications dated 11.10.2011. The Tribunal further noted that Price Adjustment payments were made by the Engineer in terms of Sub-clause 70.3 for the extended period, which would not have been permissible had the extensions been attributable to the respondent.

63. In light of the above, the Tribunal has arrived at a plausible and reasoned conclusion that the delays up to 12.09.2011 were not attributable to the Claimant as the Engineer himself determined that the respondent was entitled to additional costs, no LD were imposed and

extension of time was granted due to petitioner's failures. The findings are squarely based on appreciation of evidence and interpretation of the Contract, which is within the domain of the Tribunal. This Court cannot sit in appeal over such findings or reappreciate evidence under Section 34 of the Act. The petitioner has not demonstrated that the award suffers from perversity, patent illegality, or violation of the fundamental policy of Indian law.

64. Further the finding of delay is a finding of fact which this Court will not interfere with. The relevant paragraph of ***NHAI v. HCC 2016:DHC:1544*** reads as under:

> *"19. At the forefront is the finding by the majority arbitrators that HCC was not responsible for the delay and entire delay is attributable to NHAI. It being settled law that a finding of fact returned by an Arbitral Tribunal can be challenged on the limited ground of either perversity or ignoring material evidence, we refrain from re-appreciating the evidence discussed on this issue by the majority and the minority, but would highlight that both have centred on document RA-120 filed by NHAI, which had an enclosure Annexure A-2."*

65. Having found, on the basis of the material before it, that the petitioner was in default and caused delay, the Tribunal's finding does not warrant re-examination by this Court. Consequently, the petitioner's contention that there were contributory delays and that the respondent is therefore not entitled to additional costs is without merit.

66. Accordingly, I am of the view that no ground for interference with the arbitral award is made out under Section 34 of the Act.

B. Interpretation of Clause 110 of Technical Specification

67. The petitioner has argued that the Tribunal has failed to accord due consideration to Clause 110 of the technical specifications that place the responsibility of site clearance and utility shifting on the respondent without any entitlement to any additional compensation. This argument was also advanced before the Tribunal.

68. Clause 110 of Technical Specification reads as under:

> *"Clause 110* ***ENCUMBRANCES IN CONSTRUCTION AREA, INCLUDING TREES AND UTILITIES***
>
> *Clause 110.1 The contractor shall be responsible to coordinate with service provider/concerned authorities for cutting of trees, shifting of utilities and removal of encroachments, etc. and making the site unencumbered from the project construction area required for completion of work. This will include initial and frequent follow-up meetings/actions/discussions, with each involved service provider/concerned authorities. The contractor will not be entitled for any additional compensation for delay in cutting of trees, shifting of utilities and removal of encroachments by the service provider/concerned authorities. The Employer shall make payment for cutting of trees and shifting of utilities as required by the concerned department."*

69. Clause 110.1 places the responsibility on the Contractor to coordinate with service providers and concerned authorities for cutting of trees, shifting of utilities, and removal of encroachments, and to ensure that the project site is made unencumbered. This responsibility also includes undertaking initial and frequent follow-up meetings, actions, and discussions with each involved service provider or authority. The clause also specifies that the Contractor is not entitled to any additional compensation for delays caused in cutting of trees, shifting of utilities, or removal of encroachments by the service providers or concerned authorities.

70. The relevant findings of the Tribunal read as under:

> *"4.3.7 ... Clause 110 when read with Sub-clauses 12.2 and 42.1 of Contract and relevant sections in Appendix to Bid, mandates respondent to provide entire length of encumbrances free ROW within 12 months from the date of commencement. Claimant added that Sub-clause 42.1 (d) is unequivocal which provides that "such access as, in accordance with contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of works in accordance with the programme referred to in Clause 14, if any.... "*
>
> *That respondent's contention is contrary and inconsistent with the provisions of Sub-clauses 42.2, 12.2, 51.1(1) and 6.4 of GCC, which specifically provide for the payment of compensation to Claimant for respondent's failure to live up to his obligations. Assuming that there is some discrepancy*

or ambiguity between Clause 110 of supplementary technical Specification on one hand and Sub-clauses 12.2 and 42.2 of GCC, then also Claimant would be entitled for additional costs under Subclause 42.2 in view of clause 5.2 of CoPA. The priority of documents specified in Sub-clause 5.2 shows that the General Conditions of Contract have higher priority over Technical Specifications of Contract. Claimant has argued that Clause 110 is a disclaimer clause which shall be construed strictly against the drafter of the agreement i.e, respondent. That this disclaimer is hit by Section 23 of the Contract Act which defeats the provisions of substantive law of the land. Thus, respondent is liable for compensating Claimant in case of creating prevention by its own action and omissions in terms of Sections 53 and 54 of Indian Contract Act.

AT has noted that Sub-clause 110.1 of Technical Specifications stipulates:- "The Contractor shall be responsible to coordinate with service provider/concerned authorities for cutting of trees, shifting of utilities and removal of encroachments etc. and making the site unencumbered.... " (emphasis provided) and that "this will include initial and frequent follow-up meetings / actions / discussions with each involved service provider / concerned authorities." The Sub-clause further stipulates that, "The contractor will not be entitled for any additional compensation for delay in cutting of tree, shifting of utilities

and removal of encroachment by the service provider/concerned authorities."

Thus, the delay on account of the above factors has to be removed from the EOT granted, if any, while working out the compensation due to Claimant. However, the priority of documents specified in Sub-clause 5.2 shows that GCC have higher priority over Technical Specifications of Contract. ***Hence even accepting the position as stated above in respect of Sub-clause 110.1, AT rules that Claimant is entitled for additional costs on account of delays in completion of Contract due to defaults not attributable to Claimant in terms of Sub-clauses 42.2, 12.2, 51.1 (f) & 6.4 of GCC."***

71. The Tribunal observed, that the provisions of Clause 110.1 cannot be interpreted in isolation. Clause 5.2 of the Contract establishes the hierarchy of documents, giving the GCC higher priority over the Technical Specifications. Under Sub-clauses 42.2, 12.2, 51.1(f), and 6.4 of the GCC, the Employer is obliged to provide unencumbered access to the site, and failure to do so gives the Contractor an entitlement to compensation for delays not attributable to it. The Tribunal therefore reasoned that even if the Contractor is tasked with coordinating site clearance, the Employer's primary obligation to ensure unencumbered possession cannot be shifted onto the Contractor. Any delay arising from the Employer's default cannot be excluded by Clause 110.1.

72. The Tribunal further noted that Clause 110 of Technical Specifications, being a disclaimer clause drafted in favor of the Employer, must be

construed strictly against the drafter. To the extent that any ambiguity exists between the Technical Specifications and the GCC, the hierarchy under Clause 5.2 mandates that the GCC prevails. The Tribunal thus concluded that the respondent is entitled to additional costs for delays caused by defaults not attributable to it, including those arising from delays in the actions of service providers or authorities.

73. I find that the Tribunal's reasoning is plausible. The Tribunal has not disregarded Clause 110 or other material evidence; rather, it has harmoniously interpreted the clause within the broader contractual framework, giving effect to the GCC, and the hierarchy of documents.

74. Moreover, the interpretation of Clause 110 of the Technical Specifications, as contended by the petitioner to place the entire responsibility of site clearance, utility shifting, and removal of encroachments on the Contractor, is not correct. In ***National Highways Authority of India v. CEC-HCC Joint Venture, 2017 SCC OnLine Del 9177***, the Court observed:

> *"17. As regards the PBMs and the discussions with regard to Clause 110 of the TS, Mr. Krishnan is right in his contention that the respondent's responsibility as per this clause was limited only to coordinating with the service providers. It was indeed not the responsibility of the respondent to actually ensure the removal of the encroachments by obtaining the permissions. The above findings of the majority Award are based on an analysis of the relevant*

clauses of the contract as well as the evidence on record. It is a plausible view to take.

...

12. This Court is of the opinion that there is no infirmity in the impugned order or to the conclusion of the learned Single Judge. As to the interpretation of the terms of the contract, it is now too well settled that, unlike other , while it is deemed to be a question of law that can be gone into by the court, in India, right from the decision in Vishwanath Sood vs. UOI & Anr., AIR 1989 SC 952 onwards till date, interpretation of contract is deemed to be within the exclusive domain of the Arbitral Tribunal. In the present case, the Tribunal was circumspect in respect of the grant of damages."

75. In light of the above discussion, I find no infirmity in the interpretation of Clause 110.1 as adopted by the Tribunal. The interpretation rendered by the Tribunal is both plausible and consistent with the view upheld by the Division Bench as quoted above. Once such a plausible interpretation exists, this Court, in exercise of its limited jurisdiction under Section 34 of the Act, cannot substitute its own view or reappreciate the evidence merely because another interpretation may also be possible.

C. Interpretation of Clause 53.1 and 53.2

76. The petitioner has further argued that the respondent neither gave any early warning notice nor any notice of intention was served upon the

petitioner to claim any cost or expense. It has been wrongly held by the Tribunal that the respondent had been notifying Engineer/petitioner regarding the occurrence of the delay events and also its consequences and that the respondent could notify his interim claim for costs only when all the parameters affecting the costs had been crystallised.

77. The argument advanced by the petitioner before this Court was also raised before the Tribunal, as is evident from paragraph 4.3.8 of the Award. The Tribunal noted that the respondent had contended there was no specific provision in the contract mandating an "early warning notice." However, the respondent had, in all its interim applications submitted to the Engineer/petitioner, duly notified its intention to claim additional costs and expenses arising from delays not attributable to it. These communications were evidenced through Exhibits provided in the Statement of Claim. The Tribunal further recorded that the respondent's claim pertained to additional costs incurred during the extended period of the contract due to delays, and not for idling of resources on account of the EOT, as alleged by the petitioner.

78. The Tribunal, after examining the material, found that the respondent had been regularly notifying the Engineer/petitioner regarding the occurrence of delay events and their consequent impact. It observed that the respondent could only quantify and submit its interim claim for costs once all parameters affecting such costs were crystallized.

79. The contention of the petitioner has been adequately addressed by the Tribunal and needs no interference. The findings are based on evidence

on record and this Court under Section 34 of the Act, will not undertake an exercise to reappreciate the evidence.

Issue 2: Whether the Tribunal erred in awarding sum beyond Price Escalation cost?

80. The next contention urged by the petitioner is that the Tribunal erred in awarding compensation towards prolongation costs despite Clause 70.3 of the GCC specifically restricting price adjustment to the Contract period or valid extensions thereof. It is contended that once price adjustment as per the prescribed formula has been paid during the extended period, nothing further remains payable, and any additional award amounts to rewriting the Contract.

81. Clause 70.3 of the COPA reads as under:

> *"Contract price shall be adjusted for increase or decrease in rates and price of labour, materials, fuels and lubricants in accordance with the following principles and procedures as per formula given below. The amount certified in each payment certificate is adjusted by applying the respective price adjustment factor to the payment amounts due in each currency:*
>
> *a) Price adjustment shall apply only for work carried out within the stipulated time or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated time; price adjustment for extensions for reasons attributable to the Contractor, shall be paid in accordance with sub-clause 70.6;*

b) Price adjustment shall be calculated for the local and foreign components of the payment for work done as per formulae given below; and

c) Following expressions and meanings are assigned to the value of the work done during each month:

R = Total value of work done during the month. It would include the value of materials on which secured advance has been granted, if any, during the month, less the value of materials in respect of which the secured advance has been recovered, if any, during the month. This will exclude cost of work on items for which rates were fixed under variations clause (51 and 52) for which the escalation will be regulated as mutually agreed at the time of fixation of rate.

R_I = Portion of 'R' as payable in Indian Rupees

Rf = Portion of 'R' as payable in foreign currency (at fixed exchange rates)

$R = R_I + Rf$

To the extent that full compensation for any rise or fall costs to the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs…"

82. Clauses 6.4, 12.2 and 42.2 read as under:

"6.4 If, by reason of any failure or inability of the Engineer to issue, within a time reasonable in all the circumstances, any drawing or instruction for which notice has been given

by the Contractor in accordance with Sub-Clause 6.3, the Contractor suffers delay and/or incurs costs, then the Engineer shall, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44; and

(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

12.2 If, however, during the execution of the Works, the Contractor encounters physical obstructions or physical conditions, other than climatic conditions, on the Site which obstructions or conditions were, in his opinion, not foreseeable by an experienced Contractor, the Contractor shall forthwith give notice thereof to the Engineer, with a copy to the Employer. On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced Contractor, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44; and

(b) the amount of any costs which may have been incurred by the Contractor by reason of such obstructions or conditions having been encountered, which shall be added to the Contract Price,

and shall notify the Contractor accordingly, with a copy to the Employer. Such determination shall take account of any instruction which the Engineer may issue to the Contractor in connection therewith, and any proper and reasonable measures acceptable to the Engineer which the Contractor may take in the absence of specific instructions by the Engineer.

42.2 If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 42.1, the Engineer shall, after due consultation with the Employer and the Contractor, determine:

(a) any extension of time to which the Contractor is entitled under Clause 44; and

(b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer."

83. From a perusal of the above, it is clear that the Tribunal has correctly drawn a distinction between (i) price adjustment under Clause 70.3, and (ii) compensation for delay-related costs under Clauses 6.4, 12.2, and 42.2. While Clause 70.3 is a formula-driven mechanism to neutralise escalation in labour, materials, and fuels, Clauses 6.4, 12.2, and 42.2 specifically provide for reimbursement of costs incurred due to delays attributable to the Employer. The Tribunal has further recorded that the respondent gave due credit for the amounts already received under

Clause 70.3, and claimed only uncompensated costs arising during the extended period.

84. The distinction between escalation and costs for prolongation is no longer res integra. In a similar dispute between ***NHAI v. HCC (2016:DHC:1544:DB)***, while dealing with identical clauses, it was argued that the "contract price" and "cost" as defined under the GCC envisaged reimbursement of expenditure properly incurred, excluding profit, and that once delays were attributable to NHAI, the Contractor would be entitled to recompense beyond the escalation formula under Clause 70.3. Therefore, under the general law of damages, the Contractor was entitled to be fully recompensed for costs directly arising from the Employer's breach. The Court upheld the arbitral Award granting such compensation, noting that for elements of loss not provided in the contract, general principles of damages would apply. The said decision has been affirmed by the Hon'ble Supreme Court.

85. The relevant paras of ***NHAI v. HCC (2016:DHC:1544:DB)*** read as under:

> *"24. The majority award is fairly lengthy and written by men with non legal background and thus has a fair amount of diffusion of thoughts, and to a reader does cause some degree of discomfort and one gets the feeling of being taken around the forest and have an experience akin to the one on a safari on a tiger sighting. But, the distillate of the majority opinion could be summarized that for such elements of recompense which are not provided in the contract, if there is breach by a*

party, the other party would be entitled to remedy the loss incurred as a direct consequence of the breach.

25. The view taken by the majority Arbitrator conforms to the principles of law relating to damages and we simply note that for a similar contract such damages awarded have been upheld by this Court. The decision is dated January 31, 2013 in FAO (OS) No.461/2012 NHAI Vs. Oriental Structural Engineers Pvt. Ltd. The same has been upheld by the Supreme Court. But we note a point over here because it would be relevant on the subject of loss of profits because the Division Bench in said judgment had noted that the learned Arbitral Tribunal had declined claim for loss of profit because clause 1.1(g)(i) was interpreted by the Arbitral Tribunal to include all expenditure properly incurred or to be incurred whether on or off the site. We note that the contractor had accepted the award and therefore the view taken by the Arbitral Tribunal in said case against the contractor was not a subject matter of a judicial scrutiny. But claims for recompense on account of increase in price of material, labour, petrol and lubricants in a similar contract was upheld by the Division Bench with seal of approval granted by the Supreme Court.

26. In view of the binding judicial precedent it has to be held that the view taken by the majority Arbitrators cannot be faulted and a challenge thereto on said aspect of recompense

under Section 34 of the Arbitration and Conciliation Act, 1996 must fail.

27. Learned counsel for NHAI had fairly conceded that if delay was held attributable to NHAI and on the maintainability of the claims 1 to 6 for dispute 8 and 8A, NHAI would be liable to recompense HCC the additional overhead costs in the extended period of the contract as also additional costs on account of extended stay of plant and equipment at site as also further amounts towards cement, steel, labour and POL after taking into account the amounts paid as per indices and formula under clause 70.3 of the General Conditions of the Contract."

86. The learned counsel for the petitioner has also stated that the claim with regard to subheads 5-9 stands covered by the above-mentioned judgement. The same findings have also been held in similar inter partes dispute i.e. ***NHAI v. Hindustan Construction Co. Ltd., 2017 SCC OnLine Del 10273*** and ***National Highways Authority of India v. Hindustan Construction Co. Ltd. 2022 SCC OnLine Del 120.***

87. In light of the above, the Tribunal's conclusion that the Claimant was entitled to additional costs incurred during the extended period, over and above the escalation formula under Clause 70.3, is consistent both with the contractual framework (Clauses 6.4, 12.2, and 42.2) and with judgements cited above does not warrant interference under Section 34 of the Act.

Issue 3: Whether reliance placed on CA certificates is erroneous and devoid of rationale?

88. This issue pertains to the reliance placed by the Tribunal on the CA certificates, which formed the basis for quantifying the respondent's claims. The petitioner contends that the Tribunal erred in relying on CA certificates to quantify the respondent's claims without verifying if the expenses were incurred during the extended period or supported by invoices, and without giving reasons for rejecting the Engineer's certified values. The selective acceptance of certain CA-certified heads is arbitrary and perverse.

89. It is important to note that the argument of the petitioner regarding validity of CA certificates was also placed before the Tribunal. While dealing with 'Claim Subhead No. 1 – 'Additional Overhead Costs in the Extended Period' the Tribunal held as under:

> *"4.3.18.1…The books of account, which are maintained during the normal course of business, were audited by a statutorily authorized person and are thus maintainable as evidence under Sections 34 and 65 of the Indian Evidence Act, 1872. The certificates were submitted to the Engineer vide letters dated 31.01.2012 (Ex.C-6/25) and 09.01.2012 (Ex.C-6/30). The respondent has shown nothing to demonstrate that the audited certificates should not be relied upon, specifically before arbitration proceedings. The Claimant had not only submitted the Trial Balance sheets but also supported them by a person duly authorized to certify*

the accounts. Therefore, it is not a cost statement filed alone to inflict any liability. These accounts were placed before the Engineer for appropriate evaluation, and no infirmity was found either by the Engineer or the respondent at the relevant point of time.

Engineer followed the norms prescribed in the Standard Data Book for working out the overhead expenses incurred by the Claimant during the extended period of the contract. However, the Standard Data Book does not form part of the Contract and does not compensate the actual overhead expenses incurred by the Claimant during the extended period of the Contract. Further, the Claimant claimed the overhead expenses actually incurred at site, as extracted from the audited statement of the project prepared by the statutory auditors. These audited reports have the sanction of the Companies Act enacted by the Government of India and are acknowledged as a true representation of the state of affairs. In fact, this is a usage of trade practice to determine the percentage of time-related costs. Therefore, audited statements duly certified by statutory auditors reflect the actual expenses incurred by the Claimant on overheads. These expenses have been furnished year-wise for the total duration of the Contract, including the extended period, and thus meet the requirement of cost as defined in the Contract. The overhead expenses have been determined by the auditors

for each head of expenses, and the consolidated statement of expenses was certified by the auditors (page nos. 1251–1254 of SOC). In the certificate issued along with the audited statement, the Chartered Accounting Firm, which had audited the books of accounts in the usual course of business, stated that the overhead expenses incurred for the project were correctly extracted from the books of accounts/records of Hindustan Construction Company Ltd., Lucknow-Muzaffarpur Road Project, Package-2, for the respective years.

AT, therefore holds that the overhead expenses as worked out by the Engineer are not actual overheads and that those certified by the auditors and presented by the Claimant are actual. AT further holds that it is not bound by the Indian Evidence Act, 1872, and as such the respondent's objection does not stand. AT has noted some discrepancies, which have been corrected in the amounts allowed."

90. The Tribunal, in paragraph 4.3.18.1 of the Award, recorded that the books of accounts prepared by the respondent were contemporaneous business records, duly audited by a statutory auditor, and therefore maintainable as evidence under Sections 34 and 65 of the Indian Evidence Act, 1872. The Tribunal noted that these audited statements had been submitted to the Engineer at the relevant time and that no infirmity was found either by the Engineer or by the respondent. In these circumstances, once the Tribunal has found the CA certificates to

be reliable, it is not open to the Court to vitiate such a finding, as the Tribunal, being the master of the quality and quantity of evidence, has taken a plausible view. The validity and evidentiary value of CA certificates have been upheld in ***NHAI v. HCC, 2016:DHC:1544:DB, [upheld by the Hon'ble Supreme Court in CA 3593/2017],*** and ***National Highways Authority of India v. Hindustan Construction Co. Ltd. 2022 SCC OnLine Del 120.***

91. The relevant para of ***NHAI v. HCC, 2016:DHC:1544:DB*** reads as under:

> *"31. On the subject of additional costs on account of extending stay of plant and equipment at site the argument that the majority and the minority awards are without any evidence is wrong for the reason we find that the manner of proof contemplated by the parties was a certification by the Chartered Accountant of HCC to file compilation with reference to the account books, stock register etc. of HCC. Record of the Arbitral Tribunal shows that the Chartered Accountant did the necessary ground work and filed a tabulation with reference to the books maintained by HCC. The extract of the compilation, summarized by the Chartered Accountant, forms part of the majority award in the form of enclosures to Annexure 1 to the award and we find that the learned Chartered Accountant has extracted the equipment deployed during the extended period of the contract Based on the jointly signed monthly reports. This has been highlighted*

by the majority award while annexing the tabulation as an Annexure to the award.

…"

92. Similarly, the relevant paragraph of ***National Highways Authority of India v. Hindustan Construction Co. Ltd. 2022 SCC OnLine Del 120*** reads as under:

"55. ...The Arbitral Tribunal noted that HCC had submitted audited statements of additional costs certified by the Chartered Accountants in support of the aforesaid amounts. The Engineer had, based on the statements furnished by HCC, determined the costs under the sub-head by adopting percentage of 25%of the value as overheads for structure and, 8% of value for road works in respect of balance works which remained pending. The Arbitral Tribunal found that the audited statements duly certified by statutory auditors reflected the actual expenses incurred by HCC on overheads.

57. In addition to the above, the Arbitral Tribunal also relied on a certificate issued by the Chartered Engineer. NHAI had objected to the said certificate on the ground that it was not supported by an affidavit filed by the Chartered Engineer and he had deposed as a witness and was subjected to cross-examination. The Arbitral Tribunal rejected the aforesaid contention and it held that the certificate of the Chartered Engineer was annexed with the claim as submitted to the Engineer. The Engineer/NHAI did not have any reservation

with the said certificate at the material time. The Arbitral Tribunal noted that the Engineer had declined to ascertain the claim on the alleged ground that HCC had not furnished the equipment required for completion of the balance work. The Arbitral Tribunal found that the Chartered Engineer's certificate was a contemporaneous document, which could be relied on.

58. It is, thus, seen that the award in respect of machinery and equipment, which was retained at site, is based on relevant material and cannot be stated to be arbitrary or without any basis."

93. Further, the Tribunal has not selectively relied on the CA certificates; claims that were not backed by supporting evidence were disallowed. Even the amounts that were allowed have been adjusted as appropriate, as reflected in Appendix 3/1.

94. The reliance placed by the petitioner on ***Ratul Puri v. Bank of Baroda, 2024 SCC OnLine Del 1411*** is misplaced. In that case, the Court was concerned with a finding of wilful default under the RBI Master Circular, which required the lender banks to independently determine that the default was "intentional, deliberate, and calculated," based on "objective facts and circumstances of the case." The Forensic Audit Report, as clarified therein, can serve only as corroborative material and not as the sole basis for such a conclusion. The Master Circular, particularly Clauses 2.1.3 and 2.5, obligated banks to apply their own

independent and objective assessment before recording a finding of wilful default.

95. The Court observed that if banks were permitted to rely solely on the observations contained in a forensic audit report, it would undermine the procedural safeguards envisaged under the Master Circular and risk categorizing ordinary cases of default as wilful defaults. Therefore, it is incumbent upon the banks to record their independent satisfaction, supported by cogent material, that the acts of default were indeed "intentional, deliberate, and calculated."

96. Similarly, in ***Devas Multimedia Pvt. Ltd. v. Antrix Corporation Ltd.***, (**2023) 1 SCC 216,** the Hon'ble Supreme Court held that "an auditor's report cannot be treated as gospel truth nor can it operate as an estoppel against the company." The auditor's statements are prepared on the basis of information provided to them or gathered to the best of their ability, and therefore cannot be conclusive proof of the facts stated therein.

97. In the present case, the Tribunal has relied not merely on the CA certificates but also on other materials available before it. The certificates were submitted to Engineer vide letters dated 31.01.2012 and dated 09.01.2012. The petitioner showed nothing to demonstrate that the audited certificate should not be relied specifically before an arbitration proceeding. Moreover, the evidentiary value of such certificates has already been judicially considered in prior inter partes disputes, where courts have upheld Tribunal's reliance on CA certificates.

98. Further it is argued Tribunal erred in disregarding the cost analysis calculated by the Engineer based on Standard Method of Measurement of Indian Roads Congress, i.e., The Standard Data Book, which forms a part of the Contract as per documents under the Technical Specifications.

99. *Per Contra* the learned senior counsel for the respondent has argued that the Tribunal has rightly not placed its reliance on the MORTH Standard Data Books as it did not reflect the actual costs incurred by the respondent for the overheads Claimant during the prolongation of the Contract period, and which were also not compensated by the contractual scheme.

100. In the regard, the Tribunal observed that while the Engineer applied the norms prescribed in the Standard Data Book to compute overhead expenses, the Standard Data Book does not form part of the Contract and does not accurately reflect the actual overheads incurred by the Claimant during the extended period. The Tribunal held that the audited statements, duly certified by statutory auditors and submitted by the Claimant, constitute a true and reliable record of the actual expenses, and accordingly, the amounts certified by the auditors were accepted as reflecting the real overhead costs.

101. It is well-settled that the Tribunal is the final authority on questions of fact and the sufficiency of evidence. The petitioner has failed to demonstrate any ground that meets the threshold of Section 34 of the Act. What is sought to be agitated before me amounts merely to a re-appreciation of evidence and a re-hearing of arguments that have already been considered and decided by the Tribunal.

Issue 4: Whether disregard of MPRs submitted by the engineer of the petitioner to the Tribunal is disregard of vital evidence and amounts to patent illegality?

102. The petitioner contends that the Tribunal erred in awarding additional costs under Claim Subhead No. 2 pertaining to the extended stay of plants and equipment at site, amounting to Rs. 30,20,98,041. It is argued that such an award violates the contractual mandate, as the contractor was obligated to maintain the requisite deployment of machinery and equipment during the extended period for completion of balance and additional works. According to the petitioner, no separate or additional compensation could have been granted for this purpose, since continued deployment was an express contractual obligation.

103. The petitioner further submits that the Tribunal's reliance on the contractor's Monthly Progress Reports (***"MPRs"***) was misplaced and contrary to the contract, as only the Engineer's MPRs constitute authentic contemporaneous records duly verified under the terms of the agreement. The finding that the Engineer's MPRs were merely "notional" is alleged to be baseless, given that these reports were prepared, verified, and confirmed during regular project review meetings.

104. It is further urged that the Tribunal's approach stands contrary to this Court's decision in ***National Highways Authority of India v. HCC Ltd., 2016 SCC OnLine Del 6112,*** wherein a similar methodology for computing additional costs was held to be unreasonable. The petitioner maintains that the contractor's claim was based on arbitrary and unsubstantiated formula, without proof of actual deployment, purchase

cost, or ownership of the machinery. No evidence was produced to show the extent to which equipment was used for balance work or reduced over time. Therefore, the impugned award, insofar as it grants additional costs under this head, is alleged to be perverse, contrary to record, and liable to be set aside.

105. *Per Contra*, the learned senior counsel for the respondent submits that the tribunal has provided sufficient reasons to rely upon the MPRs submitted by the respondents and if the Tribunal has accorded plausible reasoning to ascribe veracity to such MPRs, the Court is not vested to interfere in such findings under section 34 of the Act. Moreover, the case cited by the petitioner is pending a challenge before the Division Bench of this Court and hence a reasoned order by the Tribunal cannot be set aside on this count alone.

106. With regards to the argument as advanced by the petitioner, it would be apposite to refer to the findings of the tribunal which have been recorded in para 4.3.18.2 of the Award.

> "4.3.18.2....*But Engineer had considered in a restrictive manner the deployment of machinery notionally as per the list of minimum requirement for plant & equipment available at page nos. 46, 47 & 48 of Contract. Thus, the actual deployment of machinery is drastically slashed down for two-fold reasons viz., for reducing the type of equipment from 59 types to 27 types and from numbers as per actual deployment for each type to numbers as per minimum requirement of the list of plant & equipment at pages 46 to*

48 of Contract.

Claimant explained by showing the equipments considered by Claimant, equipments as per Engineer's MPRs and equipments considered by Engineer in its determination of Additional Cost as extracted from the chart available at pages 1213 to 1214(a) and pages 1200 to 1201 of SOC, Vol-III that Engineer had not followed his own reports in respect of deployment of equipments for determination costs. That the reliable contemporaneous document in so far as the deployment of equipment is concerned, is the MPRs submitted by Claimant.

AT has observed that (i) Claimant shared the plant and equipment with other adjoining packages and added that it had passed the benefit to respondent by way of additional discount. Claimant had also given setoff for machinery hire charges as noted by AT in para 4.3.1.4, (ii) Engineer had not followed his own reports in respect of deployment of equipment for costs determination and that the reliable contemporaneous document in so far as the deployment of equipment is concerned is the MPRs submitted by Claimant.

…

According to respondent all equipment charges are paid in BOQ rates. Claimant submitted that he had envisaged that, various construction plant and equipment deployed for

execution and completion of the works could be demobilized from site after completion of the works within the original Contract period to other Project sites of Claimant in a phased manner, once their respective job for this project was completed. Accordingly. Claimant had distributed the equipment costs comprising Owning and Operating costs in the rates and amounts, which along with other component costs constituted the Contract Price.

AT observes that Claimant had to retain plant & machinery at site, for execution of works during the extended period of Contract. This forceful retention of the resources at site had caused him to incur costs, which were over and above the costs considered in the Contract Price. AT considers that these additional costs have arisen on account of the delays by respondent and hence are to be borne by respondent."

107. I cannot agree with the aforesaid reasoning by the Tribunal insofar as the Tribunal has justified non-reliance on the petitioner's MPR.

108. This issue is directly covered by the case of ***National Highways Authority of India v. HCC (supra)*** as argued by the petitioner. It would be apposite to refer to the relevant paras of the judgement which read as under:

"26....It is equally admitted that HCC had never contested any of the MPRs indicating the equipment deployed at site, which were furnished by the Engineer. A bare perusal of the

MPRs submitted by the Engineer indicate that the Engineer had indicated the minimum requirement of equipment as per the agreement in a separate column and the equipment physically deployed at site in a separate column. HCC may assert that the MPRs did not correctly reflect the equipment deployed at site, but it cannot dispute that the MPRs submitted by the Engineer did reflect, what according to the Engineer, were the equipment deployed at site. Viewed in the aforesaid context, the finding of the Arbitral Tribunal that "the Engineer had considered the deployment of machinery notionally as per the list of minimum requirement for plant & equipment available at page no. 42, 43 & 44 of contract" is incorrect. The finding that Engineer's MPRs does not reflect what was deployed at site is contrary to the material on record.

27. This Court has not examined the conclusion that the Engineer had only considered the minimum requirement of plant and machinery to be deployed for computing the additional costs; and the same may be correct. However, the finding that "the actual deployment of machineries is modified from 68 types to 27 types and from numbers as per actual deployment for each type to numbers as per minimum requirement of the list of plant & equipment" is also plainly not supported by any material.

28. A plain reading of the afore-quoted conclusion indicates that the Arbitral Tribunal had found that, (i) the Engineer

had modified the deployment of machinery from 68 types to 27; and (ii) the Engineer had modified the numbers as per actual to as per minimum requirement.

29. The second finding regarding modifying the numbers of machinery to what was specified as the minimum requirement under the agreement is plainly wrong. The MPRs submitted by the Engineer clearly indicated the machinery deployed at site as well as the minimum requirement. A perusal of the MPRs indicate that the Engineer has, in fact, reflected certain items of machinery at site to be in excess of the minimum requirement. In this regard Mr. Dayan Krishnan was pointedly asked as to how the Arbitral Tribunal's conclusion could be sustained. He fairly responded that although there were some discrepancies, the Engineer had recorded the machinery available at site, albeit, in respect of only 27 items for which minimum requirement was specified in the agreement. He however contended that in addition to the 27 types of machinery, there were other machinery and equipment, which were necessary for completion of the agreement and were deployed at site, but the Engineer had ignored the same. Be that as it may, the finding that the Engineer had modified the numbers of machinery physically deployed at site to as per minimum requirement is plainly wrong; it is not supported by any material and falls foul of what is commonly known as the Wednesbury principle, that is, no

reasonable person could, looking at the MPRs, arrive at such a conclusion. A finding which is perverse is susceptible to judicial review under section 34 of the Act (See : Oil and Natural Gas Corporation Ltd. v. Western Geco International Ltd. : (2014) 9 SCC 263).

...

31. ...There is no material to indicate that either the Engineer or NHAI had accepted the reports submitted by HCC as to the equipment deployed at site. However, it is not disputed that the MPRs submitted by the Engineer formed part of the record of the joint meetings held monthly and there was no objection to the said reports at the material time. Thus, the Arbitral Tribunal has discarded the MPRs of the Engineer even though the same were admitted inasmuch as the MPRs were not objected to by the representative of HCC at the meetings or for that matter thereafter, but has accepted the statements submitted by HCC. It apparent that the impugned award is solely based on the unilateral statements of HCC (the claimant).

32. It appears from the reading of the impugned award that the Engineer had calculated the additional costs on account of deployment of machinery at site during the extended period on the basis of minimum requirement; the rationale being that if the machinery at site is idle, the contractor ought to have maintained only the minimum required. Whether this rationale should be applied or the actual

machinery brought at site should be considered for computing additional costs is a contentious issue. The Arbitral Tribunal has concluded that the computation made by the Engineer was wrong and the additional costs have to be computed on the basis of machinery physically deployed at site. Since the issue is a contentious one and the view accepted by the Arbitral Tribunal is also a plausible one, this Court cannot supplant its views over that of the Arbitral Tribunal. However, the determination as to the equipment physically deployed at site has to be made on the basis of material on record and as indicated earlier, the Arbitral Tribunal's finding in this regard cannot be sustained. In my view, the Arbitral Tribunal has not disclosed any plausible reason for rejecting the Engineer's MPRs as to the machinery physically deployed at site and thus any computation of additional costs on account of equipment retained at site could only have been based on the admitted MPRs submitted by the Engineer."

109. From a perusal of the above judgement, it stands established that the Tribunal's approach in disregarding the Engineer's MPRs and relying solely on the contractor's unilateral statements without there being any supporting material was held to be perverse and contrary to the material on record. The Court clarified that since the MPRs formed part of the contemporaneous record and were never objected to by the contractor at the material time, they constituted the most reliable evidence of the equipment deployed at site. Any computation of additional costs or

prolongation claims, therefore, had to be based strictly on these MPRs and any deviation there from renders the finding unsustainable in law and liable for interference under Section 34 of the Act.

110. The scope of interference under Section 34 of the Act is confined to examining whether the view taken by the Arbitral Tribunal is a plausible and reasonable one, supported by evidence and cogent reasoning. In the present case, the Tribunal chose to disregard the Engineer's MPRs and instead relied upon the self-prepared MPRs of the respondent. The Tribunal's reasoning was twofold: (i) that the MPRs prepared by the respondent reflected the actual deployment of equipment at site, whereas the Engineer's MPRs restricted the count to only the minimum number of equipment prescribed under the Contract; and (ii) that the Engineer, while computing the compensation payable, had itself not adhered to its own MPRs, thereby undermining their evidentiary reliability.

111. However, a careful examination of the Engineer's MPRs reveals that each report contained a chart showing two separate columns one specifying the minimum number of machinery required under the Contract and the other recording the actual number of machinery physically deployed at site. The Tribunal's finding that the Engineer's report reflected only the minimum contractual requirement is therefore factually unsustainable. The said finding stands directly contradicted by the material on record and runs contrary to the law laid down in above cited case, wherein the Court observed that such a conclusion "is plainly wrong; it is not supported by any material and falls foul of the

Wednesbury principle" i.e., no reasonable person, on a fair reading of the MPRs, could have arrived at such a finding.

112. By disregarding the Engineer's MPRs, which formed the very basis for contemporaneous assessment of work progress and machinery deployment, the Tribunal has ignored vital evidence and substituted it with speculative estimation. This constitutes a clear case of patent illegality, as the finding is not only contrary to the contractual scheme but also to the established evidentiary record. Accordingly, the impugned award, insofar as it grants additional costs for extended stay of plant and equipment based solely on the contractor's self-serving reports, cannot be sustained in law.

113. Although the judgment relied upon by the petitioner has been challenged by the respondent, it has not been stayed. Hence as of today the observations in the above quoted judgment continue to be binding. The Tribunal, therefore, erred in disregarding the MPRs prepared by the Engineer, which constitute the authentic contemporaneous record as per the contractual provisions.

114. In light of the above discussion, the objection to the impugned claim succeeds. The award under this head cannot be sustained. However, since the claim under this head is severable, the remainder of the award is left undisturbed.

Issue 5: Interest

115. The Tribunal awarded interest at the rate of 12% per annum to be compounded monthly from the date of claim submission to the Engineer until the date of the award. The relevant finding reads as under:

"4.3.19 Interest.

Claimant's argument on this point has been that, they have been deprived of the legitimate entitlements due to them at the appropriate time when the Claim was submitted to Engineer. According to them the law provides that, any party, which is deprived of the use of money legitimately due to it, has a right to be compensated for the deprivation. Further, Sub-clause 60.8 of Contract under CoPA contemplates payment of interest compounded monthly on the amounts due at rate stipulated in the Appendix to Bid upon all the sums unpaid from the date by which the same should have been paid. Such rate stipulated in the Contract is at 12% compounded monthly.

Further, Section 31 (7)(a) and (b) of the Arbitration and Conciliation Act, 1996 also gives power and authority to AT to award interest on the amounts found due and payable to Claimant.

According to respondent, the claim for the payment of Additional Costs is inadmissible and hence there is no question of interest being eligible at all. Claimant has claimed interest from the date of cause of action.

AT is of the opinion that had there been no dispute between the parties, the amounts found due would have been paid to Claimant. Therefore, it would be fair and reasonable and ends of justice would be met by awarding interest at the rate

of 12% per annum compounded monthly on all the amounts awarded upto the date of award."

116. The petitioner contends that the interest awarded by the Tribunal is exorbitant, unreasonable, and contrary to the mandate of Section 31(7)(a) and (b) of the Act, which permits only reasonable interest. It is submitted that the Tribunal grossly erred in awarding interest.

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

119. The same is also substantiated by the case of ***National Highways Authority of India v. ITD Cementation India Limited O.M.P. No. 27 of 2010*** which reads as under:

> *"36. Finally, it was submitted that the AT ought not to have directed payment of compound interest. It is seen that the AT has, in paras 9.1 and 9.2, given the reasons for doing so. A reference has been made to Sub-Clause 60.8 of the Contract, in terms of which the rate of interest payable on unpaid sums was to be 1/30th of 1% per calendar day, which works out to 12% per annum compounded monthly. In the circumstances, the award of interest @ 12% per annum compounded monthly for the pre-reference and pendente lite period cannot be said to be erroneous. The award of post-Award interest @ 12% per annum from the date of the Award to the date of payment also cannot be said to be unreasonable."*
>
> ***(Emphasis supplied)***

120. In ***National Highways Authority of India v. BSC-RBM-Pati Joint Venture, 2014 SCC OnLine Del 1682*** it was held as under:

> *"41. The next question that has arisen during arguments of ld. Counsel is whether grant of compound interest is against the public policy.*
>
> *42. In Central Bank of India v. Ravindra, (2002) 1 SCC 367: (AIR 2001 SC 3095: 2001 AIR SCW 4468), the Constitution Bench of the Supreme Court, after exhaustive consideration*

of the case law, summarised the legal position regarding compound interest as under:-

> *"The English decisions and the decisions of this Court and almost all the High courts of the country have noticed and approved long established banking practice of charging interest at reasonable rates on periodical rests and capitalising the same or remaining unpaid. Such a practice is prevalent and also recognised in non-banking money lending transactions. Legislature has stepped in from time to time to relieve the debtors from hardship whenever it has found the practice of charging compound interest and its capitalization to be oppressive and hence needing to be curbed. The practice is permissible, legal and judicially upheld excepting when superseded by legislation. There is nothing wrong in the parties voluntarily entering into transactions, evidenced by deeds incorporating covenant or stipulation for payment of compound interest at reasonable rates, and authorising the creditor to capitalise the interest on remaining unpaid so as to enable interest being charged at the agreed rate on the interest component of the capitalised sum for the succeeding period. Interest once capitalised sheds its colour of being interest and becomes a part of principal so as to bind the debtor/borrower."*

43. In view of above, it is clear that the contract between the parties for compound interest is not against public policy."

121. In ***National Highways Authority of India v. HCC Ltd., 2014 SCC OnLine Del 3507,*** it was held as under:

"88. The arbitral tribunal in order to arrive at the finding of award of compounded interest at SBI PLR rate relied upon clause 60.8 which provides for payment of the compound interest at SBI PLR relates on sums due and upon contractual indication awarded the interest at the rate of 12%.

89. Learned counsel for the petitioner has challenged the award of the interest at the rate of 12% as excessive. It has been argued that clause 60.8 relates to the cases where the interim payment certificate issued by the Engineer which is not the instant case. It has been further argued that there is no stipulation in the contract for awarding such high rate of interest to be compounded monthly. It is further submitted that the interests on the damages are not awarded by the tribunals and this Court should consider interfering with the award of interest component.

90. I have gone through the submissions advanced by the learned counsel for the petitioner. I find that interest has been granted by the arbitral tribunal after placing reliance on the contractual condition stipulating the award of such rates on the sums due. Once, the provision exists in the

contractual mechanism to award the interest rate compounded at the SBI PLR rates, no unreasonableness can be inferred in relation to the interest granted at the rate of 12% as granted by the Arbitral Tribunal.

91. So far as the contention of the petitioner that the interest on damages are not granted, it is submitted that the award in the instant case is in the nature of the costs which are based on the fair computation and supported by the documents. The said sums are monetary liability towards the expenses incurred along with the other charges incurred by the respondent. Thus, the interest on the delayed payment of such sums is permissible under the provisions of the Contract Act and no fault can be found on grant of interest on the said account."

(Emphasis supplied)

122. In ***Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472*** the issue before the Court was whether the High Court erred in modifying the arbitral award to the extent of reducing the interest, from compound interest of 18% to 9% simple interest p.a. The Hon'ble Supreme Court held as under:

"17. *In view of the foregoing discussion, the impugned judgment [Union of India v. Larsen Air Conditioning & Refrigeration Co., 2019 SCC OnLine All 7205] warrants interference and is hereby set aside to the extent of modification of rate of interest for past, pendente lite and*

future interest. The 18% p.a. rate of interest, as awarded by the arbitrator on 21-1-1999 (in Claim 9) is reinstated. The respondent State is hereby directed to accordingly pay the dues within 8 weeks from the date of this judgment."

123. Even the case of ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1*** only allows Courts to modify post award interest. The relevant findings of the Court read as under:

"74. *There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the Court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).*

75. *For the post-award interest in terms of Section 31(7)(b), the courts will retain the power to modify the interest where the facts justify such modification. This is why the standard rate stipulated in clause (b) applies when the award itself does not specify the applicable post-award interest. There can be a situation where the party to be paid money is at fault and is guilty of delay which may require a modification in the rate of interest. In the absence of grant of post-award interest in the award, the Court also possesses the power to grant post-award interest. Clearly, as per the legislative mandate, it is not the sole prerogative of the arbitrator."*

(Emphasis supplied)

124. Lastly, in ***Gammon India Ltd. v. National Highways Authority of India, 2019 SCC OnLine Del 9056*** the Court dealt with an identical Clause of Interest namely 60.8 wherein the Court observed as under:

> *"77. The above clause shows that if any claims of the contractor are not acceded to by NHAI and payments are made later after being awarded by either the DRB or even the Tribunal, the amounts so awarded would have to be paid by NHAI with interest compounded monthly at the rates specified in the Appendix to Bid. This would be applicable upon all sums which are unpaid from the date upon which the same should have been paid…*
>
> *…*
>
> *79. Thus, there is a need for NHAI to not mechanically and casually challenge arbitral awards, especially where objections to the award are not strong or substantial. The challenge being raised to awards in this manner also results in derailment of infrastructural projects. On the one hand NHAI deprived the Contractor of timely payments and added to that additional amounts are payable on account of interest, that too compounded monthly.*
>
> *80. This Court has upheld the payment of interest compounded monthly under clause 60.8 of the COPA in various decisions including:*
>
> - *NHAI v. M/s HCC Ltd. (2014) 211 DLT 656;*
> - *NHAI v. Som Datt Builders-Noc-Nec(JV) 2014 iv AD (Delhi) 632;*

- *NHAI v. DIC-NCC (JV) [OMP (COMM) 416/2017 decided on 12th October, 2018]*

81. Recently, a Division Bench of this Court, has in NHAI v. DIC-NCC(JV) [FAO(OS) (COMM) 20/2019 decided on 14th March, 2019] has reaffirmed the said position.

82. There is an urgent need for the NHAI to take a policy decision on the manner in which disputes with contractors need to be resolved. The entire mechanism of DRB and Arbitral Tribunal would be set at naught if every recommendation of the DRB and every award of the Tribunal is challenged. The large number of NHAI disputes pending before the Court are evidence of the fact that most awards are challenged."

125. A perusal of the reasoning of the Tribunal coupled with the judgments reproduced above shows that the Tribunal has relied on 60.8 of Contract under COPA and awarded interest from 42 days after the claim was raised before the Engineer. The contention of the petitioner that this approach is patently contrary to the settled law laid down by the Hon'ble Supreme Court, which has consistently held that a claim for damages crystallises only upon adjudication and affirmation by a competent authority is incorrect as in the present case the Tribunal has adjudicated and granted the sums as "amounts due and payble" and not as damages. This position is also covered by judgments stated above.

126. Further, reliance on ***NHAI v. M/s. KNR Patel (JV) KNR House (supra)*** does not aid the petitioner's case as the Hon'ble Supreme Court in that case had merely observed that "in the facts and circumstances"

of the case, the interest awarded was required to be reduced to simple interest at the rate of 12% per annum. The Hon'ble Court had not stated any other reason in the said order. It is, thus, clear that the said decision was rendered in the particular facts of that case and does not lay down a rule applicable in all cases.

127. Therefore, the said view of the Tribunal is permissible and plausible and is within the discretionary domain of the Tribunal. Hence, I am not inclined to interfere in the Award of interest.

CONCLUSION

128. In view of the foregoing analysis, the portion of the Award granting additional costs amounting to Rs. 30,20,98,041/- in respect of plant and machinery under Claim No. 2 is set aside. The objections raised to the remaining claims are hereby dismissed.

129. Consequently, the present petition is allowed insofar as it pertains to Claim No. 2 and is dismissed in respect of all other claims.

130. Any pending applications, if any, also stand disposed of.

JASMEET SINGH, J

OCTOBER 16th, 2025/DE