2026:DHC:5197-DB

$~

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

% ***Judgment reserved on: 24.02.2026***
Judgment pronounced on: 01.07.2026
Judgment uploaded on: 01.07.2026

\+ FAO(OS) (COMM) 131/2025 & CM APPL. 51730/2025

NATIONAL HIGHWAYS AUTHORITY OF INDIA
.....Appellant

Through: Mr. Vikas Goel, Mr. Ritesh Sharma, Mr. Vivek Gupta & Ms. Anisha Dahiya, Advs.

versus

M/S UNITECH-NCC JV .....Respondent

Through: Ms. Priya Kumar, Sr. Adv. with Mr. Rishabh Dheer, Ms. Aishwarya Singh, Mr. Sarthak Bhardwaj, Mr. Prateek Srivastava & Ms. Ekaa Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. Through the present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'A&C Act'], the Appellant assails the correctness of the Judgment dated 30.05.2025 [hereinafter referred to as 'Impugned Judgment'] passed by the learned Single Judge in Petition bearing OMP (COMM.) No.23/2017. The said Petition had been instituted under Section 34 [hereinafter referred to as 'Section 34 Petition'] of the A&C Act, assailing the Arbitral Award dated 16.05.2011 [hereinafter referred to as 'the

Award'] rendered by a three-member Arbitral Tribunal [hereinafter referred to as 'Tribunal']. By the Impugned Judgment, the learned Single Judge declined interference and upheld the Award.

2. The present Appeal is confined to Claim Nos.3, 4 and 7 of the Award. The Appellant submits that the findings returned by the Tribunal in respect of the said claims suffer from patent illegality and proceed on an erroneous appreciation of the contractual provisions as well as the material placed on record. It is contended that the claims were either contractually impermissible or otherwise unsustainable, and that the learned Single Judge erred in declining interference under Section 34 of the A&C Act.

3. Since the present proceedings arise under Section 37 of the A&C Act against an order refusing to set aside the Award, the scope of interference is necessarily limited. The question that arises for consideration is whether the learned Single Judge committed any error warranting appellate interference while declining to set aside the Award.

FACTUAL MATRIX:

4. Before examining the rival submissions advanced on behalf of the parties, it would be appropriate to briefly notice the factual background giving rise to the present Appeal.

5. The disputes between the parties arise out of a Contract Agreement dated 25.05.2001 [hereinafter referred to as the 'Contract Agreement'] executed between the Appellant and the Respondent for the widening and upgradation of the existing two-lane carriageway of National Highway-5 in the State of Andhra Pradesh. The project

pertained to the stretch between Vishakhapatnam and Ichapuram and formed part of the National Highway Development Programme.

6. In terms of the Contract Agreement, the stipulated date for commencement of the work was 08.06.2001 and the scheduled date for completion was 07.02.2004. It is not in dispute that the execution of the works did not conclude within the original contractual period and the project was ultimately completed on 20.03.2005.

7. Certain disputes thereafter arose between the parties in relation to the execution of the contract and the financial consequences flowing therefrom. The Respondent invoked the arbitration clause contained in the Contract Agreement and raised various claims against the Appellant. As the disputes remained unresolved, they were referred to arbitration in terms of the arbitration agreement contained in the Contract Agreement.

8. A three-member Tribunal came to be constituted to adjudicate the disputes between the parties. The parties placed their respective pleadings, documents and evidence before the Tribunal. Upon consideration of the material on record as well as the submissions advanced on behalf of the parties, the Tribunal rendered its Award dated 16.05.2011 determining the claims and counter-claims of the parties. Since the present Appeal concerns only certain claims adjudicated by the Tribunal, the outcome of Claim Nos.3, 4 and 7 is tabulated below for ready reference:

Claim No.	**Nature of Claim**	**Amount Claimed**	**Amount Awarded**

3	Loss suffered due to additional mobilization and deployment of plant and machinery, allegedly necessitated by lapses of the Appellant in handing over the project site in accordance with the Contract Agreement.	Rs.17,23,41,950	Rs.3,59,78,180
4(a)	Compensation for idling of machinery and workforce during the prolonged contract period allegedly caused by breaches on the part of the Appellant.	Rs.12,73,36,568	Rs.3,29,95,870
4(b)	Compensation towards idling of materials.	Rs.50,72,089	Nil
4(c)	Compensation towards idle overheads and establishment costs during the extended period of the contract.	Rs.2,47,93,302	Rs.1,70,98,829
7	Claim relating to the	Rs.8,81,80,046	Rs.3,87,01,242*

	extension of the contract period and entitlement to bonus under the contract.		

* The Tribunal adjusted the amount awarded under Claim 3, while carrying the computation under Claim 7 to avoid duplication, effectively resulting in the net figure awarded under Claim 7.

9. Aggrieved by the Award, the Appellant instituted the Section 34 Petition before this Court seeking setting aside of the Award. The said Petition was initially registered as O.M.P. No.715/2011. Subsequently, by Order dated 12.01.2017, this Court directed that the Petition be treated as a commercial matter. Pursuant thereto, the Petition came to be renumbered on 17.01.2017 as O.M.P.(COMM.) No.23/2017.

10. The learned Single Judge, *vide* the Impugned Judgment dated 30.05.2025, declined to interfere with the Award and dismissed the Section 34 Petition, primarily on the following grounds:

i. The findings returned by the Tribunal in respect of the claims under challenge were based on the material placed on record and did not disclose any perversity or patent illegality warranting interference under Section 34 of the A&C Act.

ii. Insofar as Claim No. 3 was concerned, the learned Single Judge noted that the delay in handing over the project site in the manner contemplated under the Contract Agreement stood established on the record, including from the correspondence of the Project Engineer. The Tribunal's conclusion that such delay had financial implications for the Respondent was therefore found to be a plausible view based

on evidence.

iii. With regard to Claim No.4, the Tribunal had interpreted the relevant contractual provisions and the material placed before it in arriving at its conclusion. Such interpretation of the contract and appreciation of evidence being within the domain of the Tribunal was found not to call for interference under Section 34 of the A&C Act.

iv. The objections raised by the Appellant essentially invited the Court to re-appreciate the evidence and substitute its own view for that taken by the Tribunal, which is impermissible within the limited scope of jurisdiction under Section 34 of the A&C Act.

v. In respect of Claim No.7, the grant of bonus by the Tribunal was within its jurisdiction under the A&C Act and did not suffer from any infirmity warranting interference.

11. Aggrieved by the dismissal of the Section 34 Petition, the Appellant has preferred the present Appeal under Section 37 of the A&C Act.

12. In the aforesaid backdrop, we proceed to notice the submissions advanced on behalf of the parties.

CONTENTION OF THE PARTIES:

13. Heard learned Senior Counsel appearing for the Respondent and learned Counsel appearing for the Appellant. The Written Submissions filed by the parties in the present Appeal have also been perused.

14. Learned counsel appearing for the Appellant submits as under:

i. Though the grounds of challenge under Section 34 of the A&C Act are limited, the Court's scrutiny of whether such grounds are made out cannot be superficial. Reliance is placed upon the judgment of this Court in ***NHAI v. IRB Pathan Kot Amritsar Toll Road Ltd.***[1]

ii. The learned Single Judge failed to appreciate that the Tribunal awarded compensation despite the absence of evidence showing that the Respondent incurred any additional expenditure towards mobilisation of plant and machinery [hereinafter referred to as 'P&M']. The claims were quantified mainly on the basis of computer-generated worksheets and paper calculations, which is impermissible in law as held in ***Jaiprakash Hyundai Consortium v. Satluj Jal Vidyut Nigam Ltd. & Anr.***[2]

iii. Due to elapse of more than 8 months between the date when the final arguments were heard and the date of the Impugned Order, the true challenge to the Award lost substratum and the attention of the learned Single Judge. Delay in pronouncement of judgment is fatal. Reliance is placed upon ***Anil Rai v. State of Bihar***[3].

iv. Not only breach but the causal injury arising from such breach has also to be established by the aggrieved party to be entitled to damages. Reliance is placed upon the judgment of ***Kailash Nath v. DDA***[4].

In Re Claim No.3

[1] 2023 SCC OnLine Del 3789
[2] 2024 SCC OnLine Del 1237
[3] (2001) 7 SCC 318
[4] (2015) 4 SCC 137

v. During the arbitral proceedings, the Appellant had placed on record detailed calculations (Annexures A, B and C) to demonstrate flaws in the Respondent's computation. These calculations were furnished strictly on a "*without prejudice*" basis to expose defects in the methodology and were never intended as an admission of quantification. However, the Tribunal selectively relied on Annexure A and adopted the figures therein for quantifying Claim No.3 while ignoring the Appellant's other objections demonstrating that the claim lacked evidentiary support.

vi. The learned Single Judge further erred in treating the Chartered Accountant's ('CA's') certificate relied upon by the Respondent as corroborative evidence of additional costs. The Tribunal itself had rejected the certificate for failing to account for several elements of machinery charges, including ownership charges. Despite this, the learned Single Judge relied upon it to support the Respondent's claim.

vii. The learned Single Judge failed to address the Appellant's contentions regarding the irrelevance and correctness of the figures of Rs.8,17,61,247/- and Rs.23,30,71,813/- as set out in its synopsis dated 23.09.2024.

viii. The learned Single Judge also failed to deal with the Appellant's contention that incurring additional deployment costs equivalent to Rs.3.87 crore merely to earn a bonus of the same value is commercially implausible.

In Re Claim No.4

ix. The Award under Claim No.4 relating to alleged prolongation costs suffers from similar infirmities. Claim No.4(a) was entirely hypothetical as the Respondent failed to produce any material showing that the P&M had actually remained idle during the contract period.

x. Claim No.4(a) also overlapped with Claim No.3. While asserting that additional P&M had been deployed from the beginning and remained deployed during the extended period, the Respondent simultaneously claimed compensation for deemed idling of the same machinery during the scheduled contract period.

xi. The Award contains no independent reasoning. The Tribunal merely narrated the rival submissions and reduced the alleged idling period from twelve months to ten months without addressing the Appellant's objections.

xii. The learned Single Judge further erred in treating Claim No.4(a) as compensation for continued mobilisation during the extended period, whereas the claim itself was premised on deemed idling during the original contract period.

xiii. Claim No.4(a) was not based on Monthly Progress Reports [hereinafter referred to as 'MPRs'] but on the assertion that the minimum P&M required under the Contract during the extended period remained idle for twelve months during the original contract period.

xiv. The learned Single Judge also failed to address the Appellant's contentions regarding Claim No.4(c), which was awarded without

reasoning and merely on a comparison of figures derived from different calculation methods.

In Re Claim No.7

xv. Clause 47.3 of the Contract Agreement expressly prohibits payment of bonus if the contract period stands extended, and Clause 44.1 permits extension only where the Contractor is not at fault. Despite this, the Tribunal held the clause inconsistent with Section 73 of the Indian Contract Act, 1872 [hereinafter referred to as 'Contract Act'], and awarded Rs.3,87,01,242/- as bonus.

xvi. Clause 42.2 of the Contract permits only actual costs incurred due to delay to be payable. Reliance is placed on the judgment in ***Plus 91 Security Solution v. NEC Corporation India Pvt. Ltd.***[5] to submit that when parties agree that a particular type of damage shall not be payable, such agreement must be enforced.

xvii. The Tribunal simultaneously rejected the Respondent's claim for loss of profit by giving effect to the contractual definition of "cost", thereby adopting an inconsistent interpretation of the contractual framework.

xviii. The learned Single Judge also recorded that the Tribunal had not found that the Respondent completed the project ahead of schedule, an essential condition for claiming bonus. This is contrary to the Tribunal's own finding awarding bonus for alleged early completion by 79 days.

[5] 2024 SCC OnLine Del 5114

15. *Per contra*, learned Senior Counsel appearing for the Respondent submits as under:

i. The scope of interference under Section 37 of the A&C Act is extremely limited. This Court cannot re-appreciate evidence or substitute its own view for a plausible interpretation adopted by the Tribunal.

In Re Claim No.3

ii. There is no dispute that the Appellant failed to hand over land in the manner stipulated under the Contract Agreement, compelling the Respondent to execute work on fragmented portions of the site, as recorded in the Engineer's letter dated 05.12.2003. The learned Single Judge also noted that the Appellant failed to dislodge this finding.

iii. No delay was attributable to the Respondent, as the Appellant itself granted extension of time without levying liquidated damages under the Contract Agreement. The learned Single Judge also rightly rejected the Appellant's contention that Annexure-I was merely indicative.

iv. Though the Respondent had originally claimed Rs.17,23,41,950/- towards additional mobilisation of P&M, the Tribunal, upon scrutiny of the material on record, awarded only Rs. 3,59,78,180/-, demonstrating careful evaluation of the claim.

v. The Tribunal did not blindly accept the Respondent's calculations but relied upon the computation in Annexure A filed by the Appellant itself. Having placed the same on record, the Appellant

cannot now contend that the Tribunal could not rely upon it. Further, the deployment of additional machinery was reflected in the MPRs, which the Appellant failed to discredit.

In Re Claim No.4

vi. The contention that Claim No.4 was allowed without evidence is incorrect, as the MPRs constituted contemporaneous records under the Contract Agreement. The amount awarded was also based on the 'Hire Charges' prescribed in the Data Book of the Ministry of Road Transport and Highways.

vii. Claim No.4 related to idling of machinery and manpower, whereas Claim No.3 concerned additional P&M deployed over and above the minimum requirement under Annexure-I to the Contract Agreement.

viii. The Tribunal's reliance on Section 73 of the Contract Act was justified in view of the delays attributable to the Appellant's breaches of the Contract Agreement, which the Appellant failed to effectively rebut.

In Re Claim No.7

ix. Claim No.7 was advanced not to claim bonus *per se*, but as compensation for the Respondent being deprived of the opportunity to earn bonus due to the Appellant's breaches.

x. The Tribunal rightly held that the contractual provisions relied upon by the Appellant could not defeat the Respondent's entitlement

to compensation otherwise recoverable under Section 73 of the Contract Act.

xi. The amounts awarded under Claim Nos.7 and 3 were essentially two components of a composite calculation. In any event, the effective grant under Claim No.7 was 'NIL' as the amount awarded under Claim No.3 was correspondingly reduced.

16. No other submissions have been advanced by the learned counsel representing the parties.

ANALYSIS AND FINDINGS

17. This Court has analysed the submissions advanced by the learned Counsel for the parties.

18. It would be apposite to set out herein the scrutiny permissible by this Court in exercise of its powers under Section 37. It is now well-settled that the appellate jurisdiction of the Court under Section 37 is to be exercised with due restraint, ensuring that it does not traverse beyond the statutory confines delineated under Section 34. The Supreme Court in the judgment of ***MMTC Ltd. v. Vedanta Ltd.***[6] contemplated upon the limited and supervisory nature of an appeal under Section 37 and has observed that:

> *"14. As far as interference with an order made Under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference Under Section 37 cannot travel beyond the restrictions laid down Under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court Under Section 34 has not exceeded the scope of the provision.* ***Thus, it is evident that in case an arbitral award has been confirmed by the court Under Section 34 and by the court in an***

[6] (2019) 4 SCC 163.

appeal Under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.*"*

(Emphasis supplied)

19. Similar observations have been made by the Supreme Court in ***Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills***[7], which reads as follows:

> ***"20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act.*** *Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court."*
>
> ***(Emphasis supplied)***

20. Further, a three-judge Bench of the Supreme Court in ***UHL Power Co. Limited v. State of Himachal Pradesh***[8] held the following:

> *"15. This Court also accepts as correct, the view expressed by the appellate court that the learned Single Judge committed a gross error in reappreciating the findings returned by the Arbitral Tribunal and taking an entirely different view in respect of the interpretation of the relevant clauses of the implementation agreement governing the parties inasmuch as it was not open to the*

[7] 2024 SCC OnLine SC 2632.
[8] (2022) 4 SCC 116.

said court to do so in proceedings Under Section 34 of the Arbitration Act, by virtually acting as a court of appeal.

16. ***As it is, the jurisdiction conferred on courts Under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal Under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed****."*

(Emphasis supplied)

21. Learned Counsel for the Respondents has placed his reliance upon the judgment rendered by the two-judge Bench of the Supreme Court in ***McDermott International*** *(supra)*, where the Court has taken a similar view. The relevant extracts of the same are extracted hereunder:

*"**52.** The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness.* ***Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc.*** *The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So,* ***the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it****.*

***

112. *It is trite that the terms of the contract can be express or implied. The conduct of the parties would also be a relevant factor in the matter of construction of a contract. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into consideration the conduct of the parties. It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract. Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See Pure Helium India (P) Ltd. v. ONGC [(2003) 8 SCC 593] and D.D. Sharma v. Union of India [(2004) 5 SCC 325] .)*

> ***113.*** ***<u>Once, thus, it is held that the arbitrator had the jurisdiction, no further question shall be raised and the court will not exercise its jurisdiction unless it is found that there exists any bar on the face of the award.</u>***
>
> ***114.*** *The above principles have been reiterated in Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors [(2004) 2 SCC 663] , Union of India v. Banwari Lal & Sons (P) Ltd. [(2004) 5 SCC 304] , Continental Construction Ltd. v. State of U.P. [(2003) 8 SCC 4] and State of U.P. v. Allied Constructions [(2003) 7 SCC 396] .”*
>
> ***(Emphasis supplied)***

22. The Courts have adopted the same consistent view in a catena of decisions, a few of which may be adverted to, namely, ***Vedanta Ltd. v. Shenzhen Shandong Nuclear Power Construction Co. Ltd.***[9]; ***ONGC Ltd. Western Geco International Ltd.***[10]; ***Numaligarh Refinery Ltd. v. Daelim Industrial Co. Ltd.***[11]; ***Tata Hydro-Electric Power Supply Co. Ltd. v. Union of India***[12]; ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[13]; and, ***NHAI v. M. Hakeem***[14].

23. Thus, it is a well-embedded principle in arbitration jurisprudence that the scope of interference under Section 37 is even narrower than that contemplated under Section 34. The appellate court, while examining an order passed under Section 34, does not sit in substantive review of the Award, nor does it reassess or re-appreciate the evidence underlying the Arbitrator’s findings. Thus, the enquiry under Section 37 is confined to testing whether the court below has acted within the statutory boundaries prescribed under

[9] (2019) 11 SCC 465.
[10] (2014) 9 SCC 263.
[11] (2007) 8 SCC 466.
[12] (2003) 4 SCC 172.
[13] (2019) 15 SCC 131.
[14] (2021) 9 SCC 1.

Section 34, and whether its decision suffers from patent illegality, perversity, or a jurisdictional infirmity warranting correction.

24. Consistent with this framework, the Supreme Court has repeatedly underscored that an appeal under Section 37 is supervisory and not corrective in the ordinary appellate sense. The appellate court is not empowered to expand the permissible grounds of challenge, revisit factual determinations, or substitute its own view for that of either the Arbitral Tribunal or the Section 34 Court. Its remit is limited to ascertaining whether the lower court has applied the correct legal standards and whether its interference with, or refusal to interfere with, the Award aligns with the restrictive contours of Section 34.

25. At the outset, it is also pertinent to deal with the Appellant's contention that the delay of approximately eight months in pronouncement of the Impugned Judgment vitiates the decision. This Court is of the considered opinion that this contention of the Appellant is without merit. While reliance has been placed on ***Anil Rai*** *(supra)*, the said decision does not lay down that delay, by itself, renders a judgment invalid. As noticed by the Coordinate Bench of this Court in ***M/s Dhir International Pvt. Ltd. v. Karnataka Bank Ltd.***[15], delay in pronouncement is undoubtedly undesirable, but it is not *ipso facto* fatal unless it is shown that such delay has caused prejudice or has affected the reasoning of the judgment.

26. In the present case, the Impugned Judgment reflects due consideration of the material on record and deals with the contentions of the parties with cogent reasoning. Moreover, the Appellant did not

[15] W.P.(C) 8071/2025

avail the remedies contemplated in ***Anil Rai*** *(supra)* for seeking expeditious pronouncement at the relevant stage. Having failed to do so, the Appellant cannot now assail the Impugned Judgment on this ground alone.

27. We now proceed to examine the Impugned Order, materials placed on record and the rival submissions within the contours of Section 37 of the A&C Act.

In Re Claim No.3

28. Claim No.3 relates to the Respondent's claim for compensation on account of additional mobilisation of P&M necessitated by the Appellant's failure to hand over the project site in the manner envisaged under the Contract Agreement.

29. Upon consideration of the record, this Court finds that the Tribunal had returned a categorical finding that the project site was not made available in the staged manner envisaged under the Contract Agreement. The materials before the Tribunal, particularly the Engineer's Letter dated 05.12.2003, indicated that the land was made available in thirty-six (36) fragments across the project stretch, thereby compelling the contractor to execute work simultaneously across scattered locations.

30. The Tribunal further recorded that the minimum machinery specified in Annexure-I to the Contract Agreement represented only the baseline deployment necessary for execution of the work within the stipulated schedule and that additional machinery had to be deployed to ensure productivity in the fragmented working conditions

that arose on account of the manner in which the site was handed over.

31. The details regarding the machinery actually deployed were drawn from the MPRs maintained by the Engineer supervising the project. The Tribunal treated these reports as contemporaneous records of the project and pertinently, the Appellant was unable to produce any evidence to discredit the accuracy of the said records.

32. It is also significant that the Tribunal did not accept the Respondent's computation of loss in its entirety. On the contrary, the Tribunal rejected the Respondent's worksheets and adopted the working placed on record by the Appellant itself, which reflected the actual deployment of machinery. This exercise resulted in a substantial reduction of the claim from Rs.17.23 cr to Rs.3.59 cr.

33. The contention of the Appellant that Annexure-A was produced merely for illustrative purposes was also examined by the learned Single Judge, who noted that the Tribunal had utilised the said working only as a basis for arriving at a conservative estimate of the actual deployment rather than as an admission of liability.

34. Similarly, the reliance placed by the Appellant on the CA's certificate was found to be misplaced. The certificate reflected expenditure inclusive of certain components such as petroleum oil and lubricants and inherent idling expenses, which were subsequently excluded by the Tribunal while computing the admissible claim.

35. Having examined the reasoning of the Tribunal and the findings recorded by the learned Single Judge, this Court is of the view that the core issue arising under Claim No.3 is whether the Tribunal's

conclusion regarding additional deployment of machinery is unsupported by evidence or suffers from perversity.

36. The Appellant has contended that no causal nexus between the alleged breach and the claimed expenditure was established and that the Respondent relied upon hypothetical calculations rather than proof of actual expenditure. However, the record indicates that the Tribunal relied upon contemporaneous project records, including the MPRs and correspondence exchanged during execution of the work, to ascertain the actual deployment of machinery and the working conditions at site. Once the Tribunal found that the project site was handed over in thirty-two (32) fragmented stretches, the inference that the contractor was compelled to mobilise additional machinery in order to maintain progress of work cannot be said to be either illogical or unsupported by the material on record.

37. The Appellant has also contended that the learned Single Judge failed to address its submissions regarding the figures of Rs.8,17,61,247/- and Rs.23,30,71,813/- referred to in its synopsis dated 23.09.2024. A perusal of the record, however, indicates that these figures formed part of alternative calculations presented by the Appellant to dispute the Respondent's methodology. The Tribunal ultimately did not adopt either of these figures as the basis for quantification of damages. Instead, the Tribunal independently assessed the deployment reflected in the contemporaneous records and arrived at a much lower figure of Rs.3.59 crores. In these circumstances, the mere reference to alternative figures in the Appellant's submissions cannot by itself render the Tribunal's reasoning unsustainable.

38. The Appellant has further argued that it would be commercially implausible for the Respondent to incur additional mobilisation expenditure of approximately Rs.3.87 cr merely to earn a contractual bonus of a comparable value. This submission, in the view of this Court, proceeds on an incorrect premise.

39. The Tribunal did not conclude that the additional machinery was deployed for the purpose of earning bonus. Rather, the Tribunal found that the fragmented handing over of the project site compelled the contractor to mobilise additional resources in order to execute the work efficiently and adhere, as far as possible, to the contractual timeline. The possibility that such deployment may also have enabled the contractor to accelerate progress of work or avail contractual incentives does not detract from the finding that the underlying cause of such deployment was the manner in which the site was made available.

40. The Appellant has also reiterated its contention that Annexure-I to the Contract Agreement was merely indicative and could not be treated as prescribing the minimum machinery required for execution of the project. The Tribunal rejected this contention on the ground that Annexure-I formed part of the contractual framework governing the project and represented the baseline machinery deployment contemplated at the time of execution of the contract. The learned Single Judge affirmed this interpretation, noting that the machinery indicated therein constituted the minimum resources required for completion of the project within the stipulated schedule. Having considered the contractual provisions, this Court finds no reason to take a different view.

41. In the ultimate analysis, the challenge raised by the Appellant essentially invites this Court to re-examine the factual findings of the Tribunal regarding deployment of machinery, interpretation of the contractual documents and quantification of damages. These are matters which fall squarely within the domain of the Tribunal. The jurisdiction of this Court under Section 37 does not extend to reassessment of the evidentiary material or substitution of the Tribunal's findings with an alternative view merely because such a view may also be possible.

42. Further, the reliance placed by the Appellant on ***IRB Pathankot Amritsar Toll Road Ltd.*** *(supra)* and ***Jaiprakash Hyundai Consortium*** *(supra)* does not advance its case. There can be no dispute with the principle that while the scope of interference under Section 34 of the A&C Act is limited, the Court must nonetheless examine whether the statutory grounds of challenge are made out and such scrutiny cannot be superficial. However, the said principle does not imply that the Court is required to reappreciate the entire evidentiary record or substitute its own assessment for that of the Arbitral Tribunal.

43. In the present case, the findings of the Tribunal are not founded upon bare assertions or mere computer-generated worksheets. The Tribunal has relied upon contemporaneous project records, including the MPRs and other contractual documentation maintained during execution of the works, to determine the deployment of P&M and the consequences of the delay attributable to the Appellant. These records formed part of the contractual reporting mechanism and were examined by the Tribunal while quantifying the claims.

44. Further, the Appellant's reliance on ***Kailash Nath*** (supra) is equally misplaced. The principle enunciated therein, that damages cannot be awarded in the absence of proof of loss, is not in dispute. However, the factual foundation of the present case is materially distinct. The Tribunal has not proceeded on the basis of presumed or notional loss, rather, it has returned a clear and reasoned finding, based on the Engineer's contemporaneous records, that the Appellant committed a breach by failing to hand over the project site in the contractually stipulated phased manner, instead releasing the land in thirty-two (32) fragmented stretches. This finding of breach is not only supported by documentary evidence, including the Engineer's letter dated 05.12.2003, but has also not been successfully dislodged by the Appellant.

45. Once such breach stood established, the Tribunal proceeded to examine the financial consequences flowing therefrom. For this purpose, it relied upon contemporaneous material forming part of the contractual record, including the MPRs, which reflected the actual deployment of plant and machinery at site. These records were maintained in the ordinary course of execution of the project and were neither shown to be fabricated nor unreliable. On the basis of these documents, the Tribunal concluded that the Respondent was compelled to deploy machinery in excess of the contractual baseline in order to maintain progress across multiple fragmented work fronts.

46. Significantly, the Tribunal did not accept the Respondent's claim at face value. It undertook an independent scrutiny of the competing computations and, in fact, discarded the Respondent's worksheets. Instead, it adopted the Appellant's own data regarding

machinery deployment and applied a conservative methodology to quantify the admissible claim. This exercise led to a substantial reduction of the claim from Rs.17.23 crores to Rs.3.59 crores, thereby demonstrating that the damages awarded were not the result of conjecture, but of a calibrated assessment grounded in record evidence.

47. Further, while computing the loss, the Tribunal excluded components such as POL (petroleum, oil and lubricants), thereby ensuring that only those costs which bore a direct nexus with the additional deployment necessitated by the Appellant's breach were taken into account. The approach adopted thus satisfies the requirement of causality as well as reasonable certainty in quantification of damages.

48. In this backdrop, the ratio of ***Kailash Nath*** *(supra)*, which cautions against grant of damages in the absence of proof of actual loss, has no application to the present case, where both the occurrence of loss and its quantification stand established on the basis of contemporaneous and reliable evidence. The damages awarded by the Tribunal are therefore compensatory in nature, directly attributable to the breach, and cannot be characterised as speculative or unsupported.

49. The Award, therefore, cannot be characterised as resting on speculative or unsupported calculations. Consequently, the decisions relied upon by the Appellant, which caution against superficial judicial scrutiny or awards based solely on unsubstantiated computations, are clearly distinguishable on facts.

50. This Court is therefore satisfied that the Tribunal's conclusion that the Respondent incurred additional mobilisation costs owing to the fragmented handing over of the project site represents a plausible view based on the material placed before it. The learned Single Judge was consequently justified in declining to interfere with the Award under Section 34 of the A&C Act.

In Re Claim No.4

51. Claim No.4 pertains to compensation awarded to the Respondent on account of the prolongation of the contract period and the costs incurred in maintaining machinery, manpower and site infrastructure during the extended period of the project.

52. The Appellant has assailed the Award under this claim primarily on the ground that the claim was based on the concept of "deemed idling" rather than actual idling of machinery. It is further contended that the Tribunal failed to record adequate reasoning and merely reduced the period of idling from twelve months to ten months without examining the Appellant's objections.

53. The Appellant has also argued that Claim No.4 overlaps with Claim No.3, as the Respondent simultaneously claimed additional deployment of machinery while asserting that the minimum machinery remained idle during the same period.

54. The Tribunal, however, addressed this aspect and distinguished the two claims. Claim No.3 pertains to the deployment of additional P&M beyond the minimum contractual requirement, whereas Claim No.4 relates to the expenditure incurred in maintaining the minimum machinery during the prolonged period of execution of the contract.

55. The Tribunal further examined the actual value of work executed during the project and concluded that the delay attributable to the Appellant resulted in an additional period of approximately ten months beyond the scheduled completion period. The claim was accordingly restricted to the said period rather than the twelve months originally claimed by the Respondent.

56. In quantifying the claim, the Tribunal relied upon the 'Hire Charges' prescribed in the Data Book issued by the Ministry of Road Transport and Highways, which constitutes a recognised benchmark for determining equipment costs in infrastructure projects.

57. The Tribunal also relied upon the MPRs to determine the machinery deployed at the site and treated these records as contemporaneous documentation under the Contract Agreement.

58. The learned Single Judge examined these findings and concluded that the Tribunal had applied Section 73 of the Contract Act in awarding compensation for the additional expenditure incurred due to the delay attributable to the Appellant's breaches of the contract.

59. Having considered the rival submissions, this Court is unable to accept the Appellant's contention that Claim No.4 was purely hypothetical or unsupported by evidence. The Respondent's case was that due to the fragmented handing over of the project site and the resulting disruption in the sequence of work, the contractor was compelled to retain the minimum P&M as well as manpower at the project site for a longer period than originally contemplated.

60. Further, the MPRs maintained during the execution of the project constituted contemporaneous records reflecting the machinery deployed at the site. The Tribunal relied upon these records along with the contractual requirement of maintaining minimum resources under Annexure-I while determining the extent of prolongation costs.

61. The Appellant has emphasised that Claim No.4(a) was premised on "deemed idling" during the original contract period and that the learned Single Judge erred in characterising the claim as compensation for continued mobilisation during the extended period. In our view, this submission proceeds on a narrow reading of the Award. The Tribunal's reasoning indicates that the claim was examined in the broader context of the financial consequences of prolongation of the project arising from the manner in which the site was handed over. The reference to idling was essentially reflective of the contractor's inability to utilise the deployed resources optimally during the disrupted execution of the project.

62. The learned Single Judge's observation that the claim represented compensation for maintaining machinery and infrastructure during the extended period is therefore consistent with the substance of the Tribunal's reasoning.

63. The Appellant's further submission that Claim No.4 overlaps with Claim No.3 also does not merit acceptance. As noted earlier, Claim No.3 concerned additional P&M deployed over and above the contractual baseline in order to execute work across fragmented locations. Claim No.4, on the other hand, addressed the cost incurred in maintaining the minimum contractual resources at site during the prolonged duration of the project. These claims relate to distinct

financial consequences arising from the same underlying breach. The mere fact that both claims arise from delays in execution of the project does not render them mutually inconsistent.

64. The Appellant has also contended that Claim No.4(a) was not based on the MPRs but on an assumption that the minimum machinery remained idle during the original contract period. This argument overlooks that the Tribunal did not accept the Respondent's computation in its entirety. Instead, the Tribunal examined the progress of work and the value of work executed during the project and reduced the claimed period of idling from twelve months to ten months. The reduction itself demonstrates that the Tribunal undertook an independent evaluation of the material rather than mechanically accepting the Respondent's calculations.

65. The Appellant has further urged that the learned Single Judge failed to deal with its objections to Claim No.4(c), which was allegedly awarded without adequate reasoning and merely on a comparison of figures derived from different calculation methods. A perusal of the Award, however, indicates that the Tribunal considered alternative methods of computation placed on record by the parties and adopted a figure which it considered reasonable in the circumstances. The exercise undertaken by the Tribunal reflects an assessment of competing calculations rather than an absence of reasoning. The learned Single Judge, upon examining the Award, found no perversity in the approach adopted by the Tribunal and declined to interfere.

66. The Respondent has also rightly pointed out that the Tribunal relied upon the 'Hire Charges' prescribed in the Data Book issued by

the Ministry of Road Transport and Highways while determining the cost of machinery. These benchmark rates are widely recognised in infrastructure projects and provide an objective basis for estimating equipment costs where precise accounting records may not be available for each item of machinery deployed during execution of the project.

67. Once the breach on the part of the Appellant in handing over the project site in the agreed manner stood established, the Tribunal was justified in awarding compensation for the additional expenditure incurred by the contractor in maintaining machinery, manpower and site infrastructure during the prolonged period of execution of the project. Such compensation falls squarely within the ambit of damages contemplated under Section 73 of the Contract Act.

68. In the ultimate analysis, the Appellant's challenge essentially invites this Court to reappreciate the evidence regarding deployment of machinery, the duration of delay and the methodology adopted by the Tribunal in quantifying prolongation costs. These are matters which fall within the domain of the Tribunal. The jurisdiction of this Court under Section 37 of the A&C Act does not extend to substituting the Tribunal's assessment with an alternative evaluation merely because another view may also be possible.

69. This Court therefore finds no perversity or patent illegality in the reasoning adopted by the Tribunal or in the conclusion of the learned Single Judge in upholding the Award under Claim No.4.

In Re Claim No.7

70. Claim No. 7 concerns the Respondent's claim relating to bonus under the contractual framework.

71. The Appellant contends that the Award under this claim is contrary to Clause 47.3 of the Contract Agreement which governs the grant of bonus for early completion of the project. It is also argued that under Clause 2.1(d) the Project Engineer could not grant extension of time without the approval of the Appellant.

72. The Tribunal examined the contractual provisions governing extension of time and noted that the Project Engineer had determined the extension of time up to 20.04.2005. The Tribunal also recorded that the Respondent had substantially completed the work well before the extended completion date.

73. The Tribunal therefore held that the Respondent had been deprived of the opportunity to earn contractual bonus on account of the delays attributable to the Appellant in handing over the project site.

74. Significantly, the Tribunal did not treat Claim No.7 as an independent contractual claim for bonus. Rather, the claim was considered as compensation for the loss of opportunity to earn bonus owing to the Appellant's breach of the Contract Agreement.

75. The Tribunal further ensured that there was no duplication of recovery by adjusting the amount awarded under Claim No.7 against the amount awarded under Claim No.3. Consequently, the effective grant under this claim did not result in any additional monetary benefit beyond what had already been awarded.

76. The learned Single Judge, while examining this aspect, observed that Claim Nos.3, 4 and 7 essentially represented different facets of the financial consequences arising from the same breaches committed by the Appellant.

77. Once the foundational finding regarding breach of the Contract Agreement by the Appellant had been upheld, the Tribunal's approach in compensating the Respondent for the resulting financial impact cannot be said to be either perverse or contrary to the contractual framework.

78. The Appellant has nevertheless contended that Clause 47.3 of the Contract Agreement expressly prohibits payment of bonus where the contract period stands extended and that the Tribunal erred in disregarding this contractual stipulation by invoking Section 73 of the Contract Act. It is further argued that Clause 42.2 restricts recoverable damages to actual costs incurred due to delay and that the Award of bonus would therefore run contrary to the contractual allocation of risk between the parties.

79. In the considered view of this Court, the submission proceeds on an incorrect characterisation of the Award. The Tribunal did not award bonus as a contractual entitlement under Clause 47.3. Rather, the Tribunal proceeded on the basis that the Respondent had been deprived of the opportunity to earn such bonus on account of the Appellant's breaches in handing over the project site in the manner contemplated under the Contract Agreement. The compensation awarded was therefore treated as damages arising from breach rather than as enforcement of the bonus clause itself.

80. The distinction between enforcement of a contractual incentive and compensation for loss occasioned by breach is significant. Contractual clauses restricting payment of bonus or other incentives ordinarily operate within the framework of performance of the contract. However, where a party's breach deprives the other party of the opportunity to earn such contractual benefit, the resulting loss may legitimately fall within the ambit of damages recoverable under Section 73 of the Contract Act. The Tribunal's reasoning proceeds on this principle.

81. The reliance placed by the Appellant on the decision in ***Plus 91 Security Solutions*** *(supra)* does not materially advance its case. That decision reiterates the settled principle that contractual stipulations governing the measure of damages are ordinarily binding between the parties. In the present case, however, the Tribunal did not disregard the contractual framework. Instead, it interpreted the relevant clauses in the context of the breach found to have been committed by the Appellant and assessed the consequential financial impact on the Respondent.

82. The Appellant has also argued that the Tribunal adopted an inconsistent approach by rejecting the Respondent's claim for loss of profit while simultaneously awarding compensation equivalent to bonus. This contention again overlooks the distinct conceptual basis of the claims. Loss of profit represents a speculative measure of expected gains from performance of the contract, whereas the bonus contemplated under the contractual framework represented a specifically quantifiable incentive linked to timely completion of the

project. The Tribunal was therefore justified in treating these claims differently.

83. The Appellant has further relied upon an observation in the Impugned Judgment to contend that the Tribunal had not recorded a finding that the Respondent completed the project ahead of schedule, which according to the Appellant constituted an essential precondition for grant of bonus. A careful reading of the Award, however, indicates that the Tribunal recorded that the Respondent completed the works substantially ahead of the extended completion date determined by the Engineer. The reference to early completion by seventy-nine days was made in that context.

84. It is also relevant that the Tribunal ultimately adjusted the amount computed under Claim No.7 against the amount awarded under Claim No.3. As a result, the effective monetary benefit flowing from Claim No.7 stood neutralised. The adjustment undertaken by the Tribunal indicates that Claim No.7 formed part of the overall exercise undertaken by the Tribunal to quantify the financial consequences of the breaches committed by the Appellant, rather than constituting a separate and independent monetary award.

85. In these circumstances, the challenge raised by the Appellant essentially invites this Court to undertake a fresh interpretation of the contractual provisions and the methodology adopted by the Tribunal in assessing the financial consequences of the Appellant's breach. Such an exercise would fall beyond the limited scope of interference available under Section 37 of the A&C Act.

86. This Court therefore finds no perversity or patent illegality in the reasoning adopted by the Tribunal or in the conclusion of the learned Single Judge in declining to interfere with the Award under Claim No.7.

CONCLUSION:

87. Keeping in view the aforegoing dicussion, the Appellant's challenge essentially invites this Court to re-examine the factual findings of the Tribunal and to undertake a fresh evaluation of the evidence on record.

88. Such an exercise is impermissible within the limited jurisdiction conferred upon this Court under Section 37 of the A&C Act.

89. The learned Single Judge has carefully examined the Award and has rightly concluded that the findings of the Tribunal represent a plausible view based on the contractual provisions and the material placed on record.

90. No patent illegality, perversity, or jurisdictional error has been demonstrated that would justify interference with the Impugned Judgment.

91. Accordingly, the present Appeal is dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

JULY 01, 2026
jai/shah