2026:DHC:6216

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 24.07.2026
Judgment pronounced on: 03.08.2026

\+ O.M.P. (COMM) 351/2023 & I.A. 17160/2023
NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Arun Kumar Varma, Sr. Adv. with Mr. C. S. Chauhan & Mr. Kunal, Advs.

Versus

THE LOUIS BERGER GROUP INC. JV WITH M/S. COWI A/S .....Respondent

Through: Mr. Vadlamani Seshagiri, Adv.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

JUDGMENT

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the award dated 04.05.2023 of Ld. Arbitral Tribunal (for brevity 'the tribunal').

2. The relevant facts are that the petitioner/National Highways Authority of India (NHAI) invited bids for the construction of cable stayed bridge across river Chambal in Kota, Rajasthan. The Louis Berger Group Inc., a company incorporated in the USA in joint venture with M/s COWI A/S, a Danish public limited company (hereinafter referred as 'the respondent') was the successful bidder and was awarded the consultancy work for a price of INR 8,16,30,000/- and USD 24,40,590/- exclusive of escalation and service tax. The parties executed the consultancy contract on 07.12.2006 (for

brevity 'the contract') for the Design, Construction and Maintenance of the bridge. The scope of services comprised four phases:

(i) Establishment of code and design, methodology to be adopted,

(ii) Proof checking of design/drawing submitted by the contractor,

(iii) Supervision of construction, and

(iv) Operation and Maintenance (for short 'O&M')

2.1 The petitioner awarded the civil construction work to a joint venture of M/s Hyundai Engineering Construction Co. Ltd. & Gammon India (JV). M/s Syspra, France was appointed as the design consultant. The respondent commenced performance of obligations on 01.01.2007. During the execution of the project in an accident that occurred on 24.12.2009, extensive damage was caused to the partly constructed bridge.

2.2 A Committee of Experts (for short 'CoE') constituted by the petitioner to inquire into the incident submitted report dated 07.08.2010. The petitioner decided to retain the respondent and the civil contractor for completion of the project. The civil contractor *vide* communication dated 07.10.2010 submitted a revised timeline for completion of the construction by 31.10.2013 which was approved by the petitioner.

2.3 The petitioner issued a show cause notice (for short 'SCN') dated 06.12.2010 for debarring the respondent and levy of penalty. The respondent replied to the SCN on 15.01.2011. The executive committee considered the matter under Agenda Item no.15 on

25.05.2012 and resolved:

> **"Item No. 15: Consultancy services for design, construction and maintenance of a Cable Stayed Bridge across river Chambal on Kota bypass on NH-76 of East-West Corridor in the State of Rajasthan Package No. CS (RJ-05): Release of payment to the consultant M/s LBG-COW (JV) reg.**
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> **Decision:** The Committee deliberated the agenda taking into account the decision taken by NHAI to continue the work through existing civil Contractor by imposing maximum LD and freezing of price escalation apropos to the recommendations of expert committee, who has investigated the cause of collapse of under construction bridge, and decided to extend the Consultancy Services commensurate with civil work subject to acceptance of following conditions by the Consultant:
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> (i) The maximum amount of final consultancy cost should not exceed the original contract value awarded to the Consultant on the basis of actual man power deployed at site as per contract and the Consultant should ensure that all the key personnel proposed in the contract are deployed at site.
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> (ii) The price adjustment for the extended consultancy period should be freezed as on 02.11.2010 i.e. up to allowable extension of time given to the civil contractor.
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> (iii) Consultant should bear all the additional cost associated with mobilization of requisite additional technical Expert without any financial implication to NHAI
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> (iv) A firm commitment/undertaking should be obtained from the Consultant for agreement to above conditions and in case the Consultant do not agree to above modalities, NHAI should initiate action for

termination of consultancy contract and take action for debarring the Consultant for appropriate period based on show cause notice already served on the Consultant. In case of agreement, a supplementary agreement may be signed."

2.4 In December, 2011 and March, 2012 the respondent sought release of the pending payments but the petitioner insisted that the conditions contained in the decision of the executive committee shall bind the parties. By letter dated 31.08.2012 the respondent refused to accept the unilateral conditions imposed by the petitioner. The draft supplementary agreement forwarded by the petitioner was not accepted by the respondent.

2.5 In February 2016, the petitioner released part payment for the period up to July, 2013. The dispute of exchange rate was resolved but the respondent continued to claim the balance amount including the escalation component consequent to the delay in completion of the project. The O&M period was extended up to 31.08.2023 and the respondent continued to provide O&M services during the extended period.

2.6 The financial implications of extension of the O&M period furnished by the respondent were forwarded by the Project Implementation Unit but were not approved by the Headquarters. By letter dated 17.07.2019 the petitioner insisted that the respondent should execute the supplementary agreement and for processing of the claims, invoices be raised in the prescribed proforma. Pursuant to communications dated 08.11.2019 and 11.12.2019 the respondent submitted the invoices on 17.01.2020 in the specified format. By communication dated 21.04.2020 the petitioner approved the extension of the O&M period but refused to release the pending payments till execution of the supplementary agreement. The petitioner also raised a dispute regarding the qualifications and experience of Sh. Sunil Bohra, the O&M expert appointed by the respondent.

2.7 The contract between the parties provided for dispute resolution through arbitration and the respondent invoked arbitration by issuing a notice dated 26.01.2021 under Section 21 of the Act. The arbitral proceedings culminated in the impugned award. The claims raised before the tribunal and the decisions thereon of majority members of tribunal are tabulated below:

CLAIM	DECISION
CLAIM NO. 1 Claim towards payment for the construction period (31.07.2013 to 29.08.2017) of Rs. 5,39,38,987/- & USD 12,74,174.17 along with interest at 6% p.a. on the local currency component & LIBOR+1% p.a. on the foreign currency component	Allowed
CLAIM NO. 2 O&M charges from 29.08.2017 till September 2021 of Rs. 4,13,05,161/- & USD 60,769/- along with interest	(Partly allowed) USD 60,769/- & Rs. 5,16,82,887/- (after deducting Rs. 1,07,40,310/-) along with interest

CLAIM NO. 3 Costs of arbitration proceedings	Allowed

Submissions of the Parties

3. Learned senior counsel for the petitioner submits that the tribunal erred in not deciding the issue as to whether the respondent and the civil contractor were responsible for the incident dated 24.12.2009 wherein the partly constructed bridge collapsed. The submission is that the fixing of responsibility was the core issue before the tribunal and the non-adjudication thereof is fatal to the impugned award. Reliance is placed upon the decision of Division Bench of this court in ***National Highways Authority of India v. IRB Pathankot Amritsar Toll Road Ltd.,*** 2023:DHC:4352.

3.1 The argument is that while allowing claim no.2 towards O&M charges, the tribunal granted relief beyond the prayer. It is canvassed that although the award was passed on 04.05.2023, payment for services to be rendered up to November 2023 was also granted. The tribunal while quantifying the deduction at Rs.1,07,40,310/-, in violation of the provisions of the Act and the principles of natural justice relied upon the financial implications of employing Sh. Sunil Bohra, as O&M expert. The information was received through an e-mail from learned counsel for the respondent and was not confronted to the petitioner. The grievance is that the petitioner was denied an opportunity to defend the case. It is contended that despite quantifying the financial implication of hiring an expert not possessing the necessary qualifications and experience, no deduction was made while quantifying the final amount awarded.

3.2 The last contention is that the claims are barred by limitation. It is submitted that the cause of action arose on 25.05.2012 when the executive committee imposed the conditions and froze the escalation. Alternative argument is that even if limitation is computed from February 2016 when part payment was made, the claim is time barred as arbitration was invoked after five years.

4. *Per contra*, the scope of interference under Section 34 of the Act in an international commercial arbitration is limited. The court does not sit in appeal over the award and cannot re-appreciate the evidence or substitute its view for that of the tribunal. Reliance is placed upon the decisions of Supreme Court in ***Prakash Atlanta (JV) v. National Highways Authority of India,*** 2026 INSC 76, ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO)***, 2025 INSC 1457, ***Consolidated Construction Consortium Limited v. Software Technology Parks of India,*** (2025) 7 SCC 757 and ***Parsa Kente Collieries Limited. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited,*** (2019) 7 SCC 236.

4.1 The submission is that the petitioner chose not to take action pursuant to the SCN and instead continued with the respondent and the civil contractor. The award is defended stating that the issue of fixing responsibility for the bridge collapse was not the subject matter of arbitration and the dispute before the tribunal was confined to the non-release of payment for the services rendered during the extended period. The tribunal after a detailed discussion, recorded reasons to support the conclusion arrived at and calls for no interference.

4.2 The awarding of claim no. 2 till the end of consultancy period is defended by contending that the respondent continued to provide O&M services till 19.11.2023 and the amount was granted to avoid further litigation. The contention of learned counsel for the petitioner that the e-mail relied upon was received at the back of the petitioner is refuted by stating that the e-mail sent to the tribunal was also marked to the petitioner. It is further argued that the petitioner *vide* letter dated 25.01.2024 extended the services of Sh. Sunil Bohra for a further period of six months. The submission is that the entire claim was not awarded and the financial implication of Sh. Sunil Bohra was taken into account while awarding claim no. 2.

4.3 Lastly, it is contended that the cause of action to raise dispute arose on 21.04.2020 upon rejection of the claim by the petitioner and the arbitration was invoked on 26.01.2021 well within limitation.

5. Heard learned counsel for the parties at length. No other contention than those noted above was pressed.

Analysis

6. Before proceeding further it would be apposite to quote the decision of Supreme Court on the scope of interference under Section 34 of the Act in an international commercial arbitration. The relevant paras of ***Ssangyong Engineering & Constructions Co. Ltd. v. NHAI,*** (2019) 15 SCC 131 are reproduced below:

"42. Given the fact that the amended Act will now apply, and that the "patent illegality" ground for setting aside arbitral awards in international commercial arbitrations will not apply, it is necessary to advert to the grounds contained in Sections 34(2)(*a*)(*iii*) and (*iv*) as applicable to the facts of the present case.

43. Sections 34(2)(a)(iii) and (iv) state as under:

> "34. Application for setting aside arbitral award.—(1)
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> (2) An arbitral award may be set aside by the court only if—
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> (a) the party making the application furnishes proof that—
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> ***
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> (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
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> (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
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> Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or"

7. In view of the above, the challenge to the impugned award is to be examined within the parameters of Section 34(2) and Section

34(2A) is not applicable.

8. The undisputed facts are that during the construction the partly built bridge collapsed on 24.12.2009. A CoE appointed by the petitioner submitted report dated 07.08.2010. A SCN dated 06.12.2010 was issued to the respondent which was responded on 15.01.2011. The executive committee made recommendations on 25.05.2012. The petitioner without complying with the decision of CoE i.e. execution of a supplementary agreement or acceptance of the conditions by the respondent, decided to continue to avail the services of the respondent for completion of the work. Consequent to the delay caused by the accident, the petitioner extended the time of the project and the respondent rendered services in all the four phases of the contract.

9. The issue of fixing responsibility for the breach would have a fall-out if the supplementary agreement was executed between the parties or the amended terms and conditions were accepted by the respondent, but it is not so. The tribunal rightly held that despite constituting the CoE, issuing the SCN and placing the agenda before the executive committee, the proceedings were not taken to the logical end. Neither the work awarded was terminated nor the penalty was imposed, rather the petitioner got the work completed through the respondent without any variation in the original terms and conditions agreed between the parties. The contention that fixing of responsibility was the core issue is ill-founded.

10. The reliance placed by the learned counsel for the petitioner on

NHAI v. IRB Pathankot (supra) is not applicable to the facts of this case. In that case, the tribunal proceeded to decide the issue of compensation and extension of the concession period without deciding whether the material default under the concession agreement was attributable to the concessionaire. In the present case, the issue of fixing responsibility was not taken to its logical end by the petitioner and as a natural consequence the tribunal proceeded to adjudicate the claim of the respondent as per the original terms and conditions agreed between the parties.

11. Before proceeding further it would be relevant to reproduce the portion of the impugned award allowing the claim no.2:

> "**Prayer**
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> **Claim No. 2** - for the amount of Rs. 4,13,05,161/- & USD 60,769.00 allegedly due and payable by NHAI to the LBGC-JV towards the O&M charges in the O&M period from dt.29.08.2017 to dt.nill.09.2021 together with interest at 6% per annum on local currency and Lending Rate (LIBOR or any other rate that has replaced LIBOR) plus 1% per annum on foreign currency.
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> **Award**
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> 7(xxiii) Concerning Claim No.2, the sub-issue to be decided is whether Sh. Sunil Bohra was having the requisite experience, qualification prescribed to be the Head of Supervision Team pertaining to the O&M. The correspondences dated 08.09.2020 and 03.12.2020 emanating from the claimant show that because he had supervised the construction of the Cable Stayed Bridge the claimant claimed that he had the requisite experience. The requisite experience required was 'in similar capacity' i.e. supervision of Operation &

> Maintenance for at least one Cable Stayed Bridge. Supervising Construction and supervising Operation & Maintenance are two different things. The criteria mentioned in the contract is supervision of O&M. Merely because he was a part of the O&M from 31.08.2017 would not make him qualified as the supervisor of the team. This Tribunal cannot dilute the experience criteria mentioned. The Tribunal concurs with the stand of the respondent that Mr. Sunil Bohra could not be deputed as the supervisor of the O&M Team. The financial implication emailed by Learned Counsel for the claimant as directed by the Tribunal vide order dated 11.04.2023 is to the effect that the sum of INR 1,07,40,310.00 is liable to be deducted from Claim No.2.
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> 7(xxiv) Accordingly, the Tribunal decides issue No. 1 by awarding for Claim No. 1, INR 5,39,38,987.00 and US$ 12,74,174.17 to the claimant and against the respondent payable for the construction period 31.07.2013 to 29.08.2017 together with interest @ 6% p.a. on local currency and LIBOR rate or any other rate which may have replaced LIBOR plus 1 % p.a. on the foreign currency payment. The Tribunal grants claim No. 2 by awarding USD 60,769.00 till the end of the consultancy period i.e. 19.11.2023 and INR 5,16,82,887.00 together with interest at the same rate as for Claim No. 2. This decides issue No. 2 as well."

12. It is evident from the perusal of the prayer and the award that relief beyond the prayer made was granted. Even the amount for the services yet to be rendered was awarded. The contention of the learned counsel for the respondent that this was done only to avoid further litigation lacks merit. Relief cannot be granted on an apprehension and for services yet to be rendered for which no amount was due on the date of passing of the award. The award to that extent

travels beyond the scope of submission to arbitration and falls within the ambit of Section 34(2)(a)(iv) of the Act which reads as under:-

> "**Section 34(2)(a)(iv)** —the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:
>
> Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or"

13. The contention of learned counsel for the petitioner that the financial implication of employing Sh. Sunil Bohra received behind the back of the petitioner could not have been relied upon, deserves acceptance. The tribunal *vide* order dated 11.04.2023 sought the financial implication from the respondent and it was furnished to the tribunal through e-mail. The information before being relied upon was not confronted to the petitioner thereby denying an opportunity to rebut or object. Section 18 of the Act reproduced below provides that the parties shall be treated equally and each party shall be given a full opportunity to present the case.

> "**Section 18. Equal treatment of parties**.—The parties shall be treated with equality and each party shall be given a full opportunity to present this case."

14. With the procedure adopted by the tribunal, the petitioner was denied an opportunity to reasonably defend the case. The Supreme Court in ***Ssangyong Engineering & Constructions Co. Ltd.,*** (supra)

held that reliance upon material obtained behind the back of a party without affording an opportunity to rebut it, is a ground available under Section 34(2)(a)(iii) of the Act to challenge the award. The relevant para is reproduced below:

> "52. Under the rubric of a party being otherwise unable to present its case, the standard textbooks on the subject have stated that where materials are taken behind the back of the parties by the Tribunal, on which the parties have had no opportunity to comment, the ground under Section 34(2)(a)(iii) would be made out."

15. The tribunal granted relief beyond the prayer by awarding O&M charges for the period subsequent to the date of the award, i.e. till 19.11.2023. The relief travels beyond the scope of submission to arbitration and is contrary to the public policy of India. The relief granted for claim no.2 is in violation of Section 18 and is liable to be set aside. The award is unsustainable to that extent.

16. The grievance of the petitioner that the financial implication of Sh. Sunil Bohra though quantified by the tribunal was not deducted while awarding the final relief cannot be gone into under Section 34 of the Act with the limited scope of interference. It is not demonstrated by the petitioner that while awarding the amount for claim no. 2 the tribunal failed to give effect to the quantified amount. The court in proceedings under Section 34 of the Act is not acting as an appellate authority.

17. The challenge to the claim on the ground of limitation is noted to be rejected. The grievance of the respondent was not against the

decision of the executive committee dated 25.05.2012 as the respondent declined to execute the supplementary agreement and thereafter no action was taken by the petitioner. Though the petitioner while extending the contract released only part payment but the respondent continued to pursue the balance claim. It was only *vide* communication dated 21.04.2020 that the petitioner finally rejected the claim of the respondent and refused to release the remaining amount till the execution of the supplementary agreement. The arbitration was invoked on 26.01.2021 within one year of rejection and the claim is well within time.

18. In an International commercial arbitration, Section 34(2A) is not applicable but the remaining provisions of Section 34 are applicable in the full force. The Supreme Court in ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***, (2025) 7 SCC 1 held that severable portions of an award can be set aside provided that the invalid portion is capable of being severed. The clerical, computational and typographical errors apparent on the face of the record can be corrected and post-award interest may be modified in the circumstances mentioned therein. The relevant paragraphs are quoted below:

> "32. In the present controversy, the proviso to Section 34(2)(a)(iv) is particularly relevant. It states that if the decisions on matters submitted to arbitration can be separated from those not submitted, only that part of the arbitral award which contains decisions on matters non-submitted may be set aside. The proviso, therefore, permits courts to sever the non-arbitrable portions of an

award from arbitrable ones. This serves a twofold purpose. First, it aligns with Section 16 of the 1996 Act, which affirms the principle of *kompetenz-kompetenz*, that is, the arbitrators' competence to determine their own jurisdiction. Secondly, it enables the Court to sever and preserve the "valid" part(s) of the award while setting aside the "invalid" ones.[27] Indeed, before us, none of the parties have argued that the Court is not empowered to undertake such a segregation.

33. We hold that the power conferred under the proviso to Section 34(2)(a)(iv) is clarificatory in nature. The authority to sever the "invalid" portion of an arbitral award from the "valid" portion, while remaining within the narrow confines of Section 34, is inherent in the Court's jurisdiction when setting aside an award.

34. To this extent, the doctrine of *omne majus continet in se minus*—the greater power includes the lesser—applies squarely. The authority to set aside an arbitral award necessarily encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified."

(emphasis supplied)

19. Though claim no.1 and claim no.2 arise out of the same contract but they are not inextricably connected. The award relating to claim no. 2 is severable. The awarding of claim no.2 for reasons already recorded is set aside.

20. The petition is partly allowed. Pending application stands disposed of.

AVNEESH JHINGAN, J

AUGUST 3, 2026
JK

Reportable:- **Yes**