2026:DHC:6511

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

Reserved on: 13.07.2026
Pronounced on: 11.08.2026
Uploaded on: 11.08.2026

\# **CNR No. DLHC010265822022**

\+ **O.M.P. (COMM) 293/2022 & I.A. 10899/2022**

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Petitioner
Through: Mr. Manish K. Bishnoi and Mr. Khubaib Shakeel, Advocates.

versus

KNR CONSTRUCTIONS LTD. .....Respondent
Through: Ms. Kiran Suri, Senior Advocate with Mr. Hitendra Nath Rath and Ms. Laxmi, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [hereinafter, "the Act"], the petitioner – National Highways Authority of India [hereinafter, "NHAI"], assails an arbitral award dated 08.12.2021, by which a three-member arbitral tribunal has adjudicated a dispute arising out of a contract dated 22.10.2009, wherein the respondent – M/s. KNR Constructions Limited [hereinafter, "KNR"] was awarded "*Balance works of Widening to 4/6-Lanes and Strengthening of Existing 2- Lane Carriageway of NH-5 in the State of Orissa from Km*

284.000 to Km 338.000 (Ganjam-Sunakhala) (Project Chainage from Km 284.000 to 340.006)" [hereinafter, "the Agreement"].

A. <u>BACKGROUND</u>

2. This is the second round of proceedings between the parties, arising out of arbitral proceedings under the Agreement. Arbitral proceedings were earlier commenced by KNR on 08.07.2013, and resulted in an Award dated 29.04.2017, which was substantially in its favour [hereinafter, "the 2017 Award"]. However, the Award was challenged by both parties. NHAI's challenge[1] was dismissed by an order of this Court dated 25.10.2018. The said order was unsuccessfully assailed by NHAI before the Supreme Court[2]. The 2017 Award was also challenged by KNR[3], to the extent that the Arbitral Tribunal had denied pre-reference interest on the awarded amount of price adjustment, and also with regard to the rate of interest awarded for the *pendente lite* and post-award period. KNR's challenge was successful, and the Award, to the aforesaid extent, was set aside by an order of this Court dated 03.05.2019. It was left open to the parties to re-agitate their claims or counterclaims by way of appropriate proceedings. The impugned Award dated 08.12.2021 has been rendered pursuant to that process.

3. In the first round of arbitral proceedings, the Arbitral Tribunal was constituted by nominees of each of the parties, who will be referred to in this judgment as "Arbitrator A" [nominee of KNR] and "Arbitrator B" [nominee of NHAI]. They nominated a Presiding Arbitrator, who will be referred to as "Arbitrator C". The dispute pertained to payment of price

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[1] O.M.P.(COMM) 396/2017.
[2] SLP (C) Diary No. 12360/2019, decided on 03.07.2019.

adjustment on all items of the Bill of Quantities [hereinafter, "BOQ"], and interest thereon. A majority of the Tribunal, comprising Arbitrators A and C, awarded a sum of Rs. 35,39,67,728/- in favour of KNR. Interest was awarded on delayed payments from 03.08.2013, being the date of filing of the Statement of Claim, at the rate of 10% per annum, till the date of the Award, and further at the same rate from the date of the Award till the date of payment. Arbitrator B delivered a dissenting opinion, dismissing KNR's claims.

4. As noted above, challenges by both parties culminated in partial setting aside of the 2017 Award, at the instance of KNR, only on the question of denial of interest for the pre-reference period and the rate of interest for the post-reference period.

5. Pursuant to liberty granted by the order of this court dated 03.05.2019, KNR's plea relating to interest was again adjudicated by a Tribunal of three arbitrators. Arbitrators B and C were common to both proceedings. Arbitrator A, however, recused himself by letter dated 06.02.2020 citing "*personal problems and pre-occupation*", and KNR nominated a new arbitrator, hereinafter referred to as "Arbitrator D".

6. By the Award dated 08.12.2021, impugned in this petition, the Tribunal held in favour of KNR, relying upon Clause 60.8 of the Conditions of Particular Application [hereinafter, "COPA"]. It was held that KNR was entitled to interest at the rate of 10% per annum compounded monthly, on the amount of price adjustment awarded, such interest also being payable for the pre-reference period, i.e., from the date on which the amount should actually have been paid, until the date of

[3] O.M.P.(COMM) 295/2017.

actual payment. The impugned Award was also rendered by majority, this time consisting of Arbitrators C and D. Arbitrator B dissented.

B. Scope of Challenge

7. I have heard Mr. Manish K. Bishnoi, learned counsel for NHAI, and Ms. Kiran Suri, learned Senior Counsel for KNR.

8. The challenge was argued on two broad grounds – the first relating to the jurisdiction of the arbitral tribunal comprising arbitrators B, C, and D, and the second relating to the merits of the award. Each of these aspects is taken up in turn below, including reference to the arguments of learned counsel, and the authorities cited by them.

C. Relevant Clauses of The Agreement

9. As the impugned Award is confined to the question of interest, it is not necessary to enter into the factual position with regard to the substantive dispute, in detail. Only two clauses of the contract are relevant for the present purposes, being the clauses relating to interest and to arbitration.

10. Clause 60 of COPA deals with certificates and payment. Sub-clause 60.8 provides for time of payment and interest payable to the contractor. Clause 67 of COPA deals with settlement of disputes. Sub-clause 67.1 provides for a Disputes Review Board [hereinafter, "DRB"] and, if the recommendations of the DRB is unacceptable to either the employer or the contractor, then it provides for commencement of arbitration by notice to the other party. Sub-clause 67.3 contains detailed provisions with regard to the resulting arbitration. The relevant clauses are extracted hereinbelow:

"Sub-Clause 60.8	***Time of Payment and Interest*** *"The amount due to the Contractor under any Interim Payment Certificate issued by the Engineer pursuant to this Clause, or to any other term of the Contract, shall, subject to Clause 47, be paid by the Employer to the Contractor upto fifty percent (50%) of eligible payment within 7 (seven) days of receipt of acceptable Monthly Statement from the Contractor. The balance eligible payment shall be released within 42 days after the Contractor's monthly statement has been submitted to the Engineer for certification or, in the case of Final Certificate pursuant to Sub-Clause 60.13, within 84 days after the agreed Final Statement and written discharge have been submitted to the Engineer for certification. ln the event of the failure of the Employer to make payment within the times stated, the Employer shall pay to the Contractor interest compounded monthly at the rate stated in the Appendix to Bid upon all sums unpaid from the date upon which the same should have been paid, in the currencies in which the payments are due.* *However, for calculation of interest, the specified time limit of 42 (Forty two) days will be applicable.*
Clause 67:	***Settlement of Disputes*** *The procedure for settlement of disputes is stipulated below.*
Sub-Clause 67.1:	***Disputes Review Board*** *Sub-Clause 67.1 is substituted by the following:* *"67.1 If any dispute arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after the repudiation or other termination of Contract, including any disagreement by either party with any action, inaction, opinion, instruction, determination, certificate Or valuation of the Engineer, the matter in dispute shall, in the first place be referred to the Disputes Review Board ("the Board").* *xxx xxx xxx* *Either the Employer or the Contractor may refer a*

dispute to the Board in accordance with the provisions of Annex B to these Conditions of Particular Application.
If either the Employer or the Contractor is dissatisfied with any Recommendation of the Board, or if the Board fails to issue its Recommendation within 56 days after receipt by the Chairman of the Board of the written Request for Recommendation, then either the Employer or the Contractor may, within 14 days after his receipt of the Recommendation, or within 14 days after the expiry of the said 56-day period, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 67.4, no arbitration in respect thereof may be commenced unless such notice is given.
If the Board has issued a Recommendation to the Employer and the Contractor within the said 56 days and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor within 14 days after the parties received such Recommendation from the Board, the Recommendation shall become final and binding upon the Employer and the Contractor.

Whether or not it has become final and binding upon the Employer and the Contractor, a Recommendation shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the dispute to which the Recommendation relates.

All Recommendations which have become final and binding shall be implemented by the parties forthwith, such implementation to include any relevant action of the Engineer.

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Sub-Clause 67.3	***Arbitration***

Sub-Clause 67.3 is modified to read as follows:

"Any dispute in respect of which the Recommendation(s), if any, of the Board has not become final and binding pursuant to Sub-Clause 67.1 shall be finally settled by arbitration as set forth below. The arbitral tribunal shall have full power to open-up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer and any Recommendation(s) of the Board related to the dispute.

A dispute with an Indian Contractor shall be finally settled by arbitration in accordance with the Arbitration & Conciliation Act 1996, or any statutory amendment thereof. The arbitral tribunal shall consist of 3 arbitrators, one each to be appointed by the Employer and the Contractor. The third Arbitrator shall be chosen by the two Arbitrators so appointed by the Parties and shall act as Presiding arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach upon a consensus within period of 30 days from the appointment of the arbitrator appointed subsequently, the Presiding arbitrator shall be appointed by the President, Indian Roads Congress. For the purposes of this Sub-Clause, the term "Indian Contractor" means a contractor who is registered in India and is a juridic person created under Indian law as well as a joint venture between such a contractor and a Foreign Contractor.

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(v) If one of the parties fail to appoint its arbitrator in pursuance of sub- clause (i) and (ii) above, within 30 days after receipt of the notice of the appointment of its arbitrator by the other party, then the President of Indian Road Congress both in cases of foreign contractors as well as Indian Contractors, shall appoint the arbitrator. A certified copy of the order of the President of Indian Road Congress making such an appointment shall be furnished to each of the parties."

D. <u>RE: JURISDICTION OF THE TRIBUNAL</u>

11. The first contention requires adjudication of a fundamental argument, as to the validity of the second round of proceedings. Mr. Bishnoi contended that the entire procedure adopted by the Tribunal, after the order of this Court dated 03.05.2019, was fundamentally flawed in law. Relying upon Section 31 of the Act, he argued that the mandate of the first Arbitral Tribunal stood terminated as soon as the 2017 Award was passed on 29.04.2017. The present case, he submitted, neither fell within the scope of a rectification application under Section 33 of the Act, nor was the matter remanded to the Tribunal under Section 34(4) thereof. In these circumstances, Mr. Bishnoi submitted that, as a consequence of the liberty granted by the Court to re-agitate the matter, KNR could only have invoked arbitration anew under Clause 67 of COPA read with Section 21 of the Act.

12. In order to adjudicate this contention, the conduct of the arbitral proceedings, after the order of this Court dated 03.05.2019 in O.M.P. (COMM) 295/2017, must be noticed in some detail. Those facts are undisputed, and are as follows:

a. After the order dated 03.05.2019, KNR did not issue any fresh request for arbitration with regard to its claim for interest. Instead, it addressed an application dated 05.06.2019 to the earlier Arbitral Tribunal, comprising Arbitrators A, B, and C. The application referred to the aforesaid order of this Court and to "*Recommencement of Arbitration Proceeding for pronouncement of award on account of interest pertaining the claim "**payment towards price adjustment on all the BOQ** items of work*"". It requested the Tribunal to convene arbitral proceedings for oral deliberation of the aforesaid issue and to take appropriate action.

b. Arbitrator C addressed a communication dated 18.06.2019 to both parties and to the other Arbitrators, stating as follows:

> "*In this reference one of the party had prayed on 05/06/2019, and since then two weeks have passed. Taking cognisance of above facts, **with consent of both parties**, the Arbitral Tribunal hereby notify for start of proceedings, and soon the date/place of meeting/ hearing shall be intimated.*"[4]

c. On 22.06.2019, KNR once again requested that a date for arbitration be fixed.

d. A hearing was held before the said three Arbitrators on 10.07.2019, at which both parties were represented by counsel. The minutes record that the meeting was convened and was held "***with the consent of all concerned***"[5]. The parties undertook to submit a "*write-up*" with regard to the claim under adjudication.

e. On 24.07.2019, KNR submitted a document to the Arbitral Tribunal titled "*Re-agitation of Interest Claim*". It referred to various clauses of COPA – Clauses 60.1, 60.2, and 60.8 read with the Appendix to Bid, and judgments of this Court with regard to payment of interest under Clause 60.8 of COPA. It then formulated the relief sought in the following terms:

> "*(i) Monthly compounding interest @10% p.a. is payable from the date of reference till the date of actual payment of the amount awarded qualifying clause 60.8 of COPA.*
> *(ii) Monthly compounding interest @10% p.a. is payable as per Clause 60.8 of COPA till the day preceding the date of reference i.e. 03.08.2013.*

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[4] Emphasis supplied.
[5] Emphasis supplied.

> *(iii) Monthly compounding interest @10%PA is payable as per clause 60.8 of COPA for monthly statement- IPC 35, 36, & 37 and final certificate as per provision of the contract.*
> *(iv) And to pass any other award as the Hon'ble Tribunal may find it proper in the interest of justice.*"

f. The said document was accompanied by a table computing the interest payable on Interim Payment Certificates [hereinafter, "IPCs"] Nos. 1 to 37 and the Final Payment Certificate dated 25.06.2015.

g. As NHAI failed to submit its response, by a communication dated 01.10.2019, Arbitrator C directed it to do so.

h. In view of NHAI's continued failure, KNR, by a communication dated 24.01.2020, requested the Tribunal to hold further hearings.

i. Arbitrator C, by a further letter dated 07.02.2020, once again requested NHAI to respond.

j. NHAI, through its counsel, finally submitted a "*Statement of Defence for and on behalf of the respondent to the fresh Claim No. 6 [Interest]*" on 11.02.2020. The claim was contested on merits, but no dispute was raised with regard to the jurisdiction or the procedure of the Arbitral Tribunal. In fact, NHAI's only challenge to maintainability was due to KNR's failure to approach the Tribunal within the period of 30 days as contemplated by Section 33 of the Act.

k. By a letter dated 13.02.2020, Arbitrator C informed the parties that Arbitrator A had been replaced as KNR's nominee by Arbitrator D, and that the Arbitral Tribunal "*stands reconstituted*". The communication of KNR to this effect was also circulated, as was

Arbitrator D's declaration in terms of the Sixth Schedule to the Act. At this stage also, NHAI did not raise any objection.

l. KNR addressed a further letter dated 16.03.2020 to NHAI, in which it referred to an email dated 13.03.2020 addressed by Arbitrator B to the Chairman, NHAI. Arbitrator B expressed an opinion that the erstwhile Arbitral Tribunal was without any mandate to examine or re-examine any fresh claims, and sought a response towards resolution of this issue, as to whether the mandate of the erstwhile Tribunal stood revived. KNR specifically consented to the mandate of the Tribunal comprising Arbitrators B, C, and D in this regard.

m. KNR thereafter filed a rejoinder to the Statement of Defence on 01.06.2020.

n. A further meeting of the Arbitral Tribunal was held on 11.07.2020. In the minutes of the hearing dated 11.07.2020, a communication of Arbitrator B to Arbitrator C, dated 11.03.2020, has been extracted in full. Arbitrator B expressed his reservation about the mandate of the Arbitral Tribunal and opposed further hearings before resolving this basic issue. He contended that the mandate had been terminated in terms of Section 32 of the Act, after which re-examination of any fresh claim was beyond the mandate of the erstwhile Tribunal. The further observations of the Tribunal in the said minutes are of great relevance, and are reproduced below[6]:

> "*2.7 Presiding arbitrator asked the parties whether they would like to give their point of view/ make their submissions on above*

[6] KNR is described as the "*claimant*", and NHAI as the "*respondent*" in the below extract.

communication. The respondent's advocate suggested for video/ audio recordings of the proceedings from here. All the participants agreed and Shri Rajeev Kapoor favoured the AT by doing audio recording (later on he made it available to all).

2.8 Both the Claimant and Respondent made their detail submissions. Shri Prabhat Krishna Co-Arbitrator cross questioned many times to both the parties during their submissions.

2.9 Rather than making it an essay or award, ***both the parties in unison opined and stated that this present matter of claim pertaining to interest, in reference to Hon'ble Delhi High Court order dated 03/05/2019 and Claimant's application dated 05/06/2019 is to be dealt in continuity to the previous claim of price escalation, and there was no need for separate mandate. It was also stated in clear terms that they cooperated in full, and participated in first meeting of 10/07/2019 and submitted their pleadings. None of the parties ever objected.*** *Shri S L Jadhav Co-Arbitrator agreed with the views of both the parties and opined for proceeding in the matter. The Presiding arbitrator also agreed with the views/ submissions of both the parties, and Co-Arbitrator Shri S L Jadhav.*

2.10 The Presiding arbitrator explained that the minutes of 10/07/2019 meeting were drawn with final consent of AT. All the members of AT, without any reservation, signed the order and delivered to both the parties. There had been no comment over that till Shri C K Das recused himself on 06/02/2020 on account of his personal problems and preoccupation. So, nothing more can be assumed except Shri C K Das co-arbitrator's own letter, as "It is to intimate that I will not be able to continue/perform my obligation as the Co- Arbitrator in the above case because of my personal problems and pre-occupation. Hence I do hereby recuse from the said Tribunal with immediate effect."

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2.13 Thus, with consent of all, it was decided to hold the zoom meetings at 2.30 pm on 22/07/2020 and 11.50 am on 23/07/2020. After this, all the participants (except AT members) left the meeting for enabling the AT for further discussions amongst them.

2.14 The AT deliberated the matter. ***Both the Presiding Arbitrator and Shri S L Jadhav Co-arbitrator again opined the same, as hearing this matter of interest, in continuity.***"[7]

o. These minutes, as available on the record, were signed only by Arbitrator C. Arbitrator B objected to the aforesaid minutes by an email dated 17.07.2020. He suggested the following amendments to paragraphs 2.8 and 2.9 of the minutes dated 11.07.2020:

> "*Para 2.8 may be re-drafted to read: "**The Council for the Claimant (sic.) agreed that there was no provision for reviving the Erstwhile Arbitral Tribunal in the Arbitration and Reconciliation Act, 1996 (sic.). However, according to him, the Claimant had the option to either refer the matter to a fresh Arbitral Tribunal or at its discretion seek adjudication through the Erstwhile Arbitral Tribunal itself.** He further stated that matter now being brought up has to be treated as a fresh claim. **The Council for the Respondent (sic.) concurred with the view of the Council for the Claimant (sic.)** that there was no provision in the Arbitration and Reconciliation Act, 1996 (sic.) for reviving the erstwhile Arbitral Tribunal **and also agreed with him that if both the parties agreed, the matter could be adjudicated upon by the Erstwhile Arbitral Tribunal.** He, however, was of the firm view that the matter now brought up could not be considered as a fresh claim and had to be dealt with as an extension to the earlier claim already adjudicated upon by the Erstwhile Arbitral Tribunal. He also wanted a ruling on the above issues from the Arbitral Tribunal before proceeding further."*
>
> *Para 2.9 may be re-drafted to read "**The Presiding Arbitrator and Mr. Jadav, the substitute Arbitrator were of the view that in the light of the submissions made by both the Councils (sic.), the Erstwhile Arbitral Tribunal had the jurisdiction to adjudicate the matter but the Claim would not be considered as a fresh claim and would be dealt with as an extension to the earlier claim already dealt with and adjudicated upon by the Erstwhile Arbitral Tribunal.** The Arbitral Tribunal therefore ruled accordingly.*"[8]

p. The next hearing was held on 22.07.2020, by which the aforesaid paragraphs of the earlier minutes were replaced with the paragraphs suggested by Arbitrator B. Parties were directed to make copies of the contract and previous pleadings available to all the Arbitrators, and further meetings were fixed with the consent of all the parties.

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[7] Emphasis supplied.
[8] Emphasis supplied.

q. At this stage, on 01.08.2020, counsel for NHAI requested the Tribunal to adjourn its proposed sitting on 05.08.2020 to enable it to object to the recusal of Arbitrator A and to seek a direction that Arbitrator A must continue as an arbitrator. KNR, by communication dated 03.08.2020, objected to this request and urged the Tribunal to "*continue with the proceedings of the AT*[9] *to finalize the matter at the earliest*".

r. A meeting was, in fact, held on 05.08.2020, but was kept in abeyance due to the aforesaid request of NHAI.

s. On 24.09.2020, however, NHAI informed the Tribunal that it had decided not to pursue the above issue and requested the reconstituted Tribunal to take necessary action for further proceedings. On 22.02.2021, KNR submitted another document, updating its interest claim on account of a further period having lapsed.

t. Hearings were thereafter held, at which counsel for both parties made their submissions. No further objection was recorded at any stage with regard to the continuation of the proceedings.

u. The impugned Award was rendered on 08.12.2021.

13. Mr. Bishnoi argued that the entire procedure adopted by the Arbitral Tribunal was illegal and without jurisdiction. The decision of the Tribunal, that it was continuing with the old arbitral proceedings, as reflected in its minutes dated 11.07.2020 read with minutes dated 22.07.2020, was, according to him, without any basis in law. The substratum of the adjudicatory process being thus vitiated, learned

[9] Arbitral Tribunal.

counsel submitted that the impugned Award could also not stand scrutiny under Section 34 of the Act.

14. Mr. Bishnoi further contended that the question of consent or acquiescence did not arise, since the Tribunal had proceeded on the understanding that it was a continuation of the earlier Arbitral Tribunal, and not a newly constituted one. He also submitted that consent cannot validate proceedings which are inherently without jurisdiction, as in the present case. In support of this submission, Mr. Bishnoi cited judgments of the Supreme Court in *Inder Sain Mittal v. Housing Board, Haryana and Others*[10], *Srei Infrastructure Finance Ltd. v. Tuff Drilling Pvt. Ltd.*[11], *Lion Engineering Consultants v. State of Madhya Pradesh and Ors.*[12], and *Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd.*[13]. He also referred to the judgment in *Sweta Construction v. Chhattisgarh State Power Generation Co. Ltd.*[14], which follows an earlier judgment in *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors*[15].

15. Mr. Bishnoi submitted that, in any event, even on facts, the proceedings before the reconstituted Tribunal could not be construed as independent proceedings. There was no exchange of pleadings before the new Tribunal, no filing of documents, no evidence – whether documentary or oral – was taken, issues were not framed, and the entire

[10] (2002) 3 SCC 175 [hereinafter, "*Inder Sain Mittal*"].
[11] (2018) 11 SCC 470 [hereinafter, "*Srei Infrastructure*"].
[12] (2018) 16 SCC 758 [hereinafter, "*Lion Engineering*"].
[13] (2019) 17 SCC 82 [hereinafter, "*Hindustan Zinc*"].
[14] (2024) 4 SCC 722 [hereinafter, "*Sweta Construction*"].
[15] (2018) 10 SCC 826 [hereinafter, "*L.G. Chaudhary*"].

proceedings were, thereafter, irregular, and not in compliance with statutory provisions, particularly Sections 23 and 24 of the Act.

16. Ms. Suri, on the other hand, submitted that the facts detailed above clearly demonstrate that NHAI had acquiesced in the determination of this issue by the Arbitral Tribunal, as constituted with Arbitrators B and D as its Members, and Arbitrator C as the Presiding Arbitrator. She submitted that no objection on account of jurisdiction or procedure was raised by NHAI at any stage. Even after the issue was flagged by Arbitrator B, instead of raising an objection, NHAI expressly consented to the continuation of proceedings. Ms. Suri submitted that arbitral proceedings, being founded in the concept of consent to the submission of disputes before a mutually constituted tribunal, cannot be reopened at the instance of a party which did not file any objection under Section 16 of the Act. She places reliance on judgments of the Supreme Court in *L.G. Chaudhary*, *Quippo Construction Equipment Ltd. v. Janardan Nirman Pvt. Ltd.*[16], *M.P. Housing and Infrastructure Development Board and Anr. v. K.P. Dwivedi*,[17] *Sweta Construction*, and *JMC Projects (India) Ltd. v. Madhya Pradesh*[18], in support of these contentions.

17. As evident from the above submissions, it is factually undisputed that, after the order dated 03.05.2019, KNR sought to "*re-agitate*" its interest claim before the Tribunal, which had rendered the 2017 Award. Its submission of a "*write-up*" also expressly proceeded on this basis. NHAI not only failed to object to this procedure, but expressly consented to it. This is especially clear from paragraphs 2.8 and 2.9 of the minutes

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[16] (2020) 18 SCC 277 [hereinafter, "*Quippo Construction*"].
[17] (2022) 3 SCC 783 [hereinafter, "*K.P. Dwivedi*"].

of the hearing dated 11.07.2020, as corrected on 22.07.2020, both of which are extracted in paragraphs 6(n) and 6(o) hereinabove. It was also clearly conscious of the course it was adopting. The very issue of the Tribunal's mandate had been raised by Arbitrator B, and recorded in the Tribunal's minutes dated 11.07.2020 and 22.07.2020. It was in response to this, that both parties consented to the proceedings. In fact, the question of objecting to the constitution of the Tribunal was considered by NHAI, *albeit* in the context of the recusal of Arbitrator A, as reflected in the letter of Arbitrator C dated 02.08.2020, and the minutes of the meeting dated 05.08.2020. NHAI, however, decided not to pursue that line of objection. It is difficult to believe that NHAI applied its mind to the question of whether KNR's nominee arbitrator should be permitted to recuse himself for personal reasons, but did not apply its mind to the much more obvious question which it now seeks to raise.

18. In this context, the judgments cited by Ms. Suri preclude an objection by NHAI at the Section 34 stage:

a. As far as the composition of the Tribunal is concerned, the Supreme Court held, in *Quippo Construction*, that statutory provisions relating to the composition of the arbitral tribunal are derogable. It follows therefrom that such objections can be waived.

b. The question before the Court in *L.G. Chaudhary*, was with regard to a special State Act of the State of Madhya Pradesh, namely, Madhya Pradesh Madhyastham Adhikaran Adhiniyam, 1983 [hereinafter, "M.P.MAA"]. The Court took the view that the State Act would prevail over the Central Act – Arbitration and

[18] (2024) 4 SCC 729 [hereinafter, "*JMC Projects*"].

Conciliation Act, 1996, in view of Section 2(4) of the Central Act. It, therefore, held that pending proceedings before the arbitral tribunal would be transferred to the tribunal constituted under the M.P.MAA, but also observed as follows:

> "*17. We do not express any opinion on the applicability of the State Act where award has already been made. In such cases if no objection to the jurisdiction of the arbitration was taken at relevant stage, the award may not be annulled only on that ground.*
> *xxxx xxxx xxxx*
> *CA No. 2616 arising out of SLP (C) No. 35641 of 2011*
> *19. Leave granted. In view of the order [Set out in paras 15 to 18, above.] passed in CA No. 2751 of 2018 arising out of SLP (C) No. 16615 of 2012,* ***no objection having been raised by the respondents in terms of Section 16(2) of the Arbitration and Conciliation Act, 1996 at appropriate stage within the time stipulated, the award could not have been annulled.***"[19]

c. *K.P. Dwivedi* also considered the relationship between the Central Act and the M.P.MAA. Relying upon *L.G. Chaudhary*, a submission was raised that an award could not be annulled on the ground of jurisdiction, if no objection had been raised before the arbitrator. One of the parties sought to re-agitate the issue before the State Tribunal after the arbitral award had been made. This procedure was held to be impermissible, with the following observations:

> "*33. Even otherwise it is required to be noted that* ***no objection was raised by the respondent contractor before the arbitrator*** *— Housing Commissioner on the jurisdiction of the Housing Commissioner to act as an arbitrator. On the contrary as observed hereinabove the order passed by the High Court referring the dispute between the parties for adjudication to the arbitrator — Housing Commissioner was a consent order and the respondent contractor conceded to and accepted the said order and submitted*

[19] Emphasis supplied.

> *his claim before the arbitrator — Housing Commissioner. The arbitrator — Housing Commissioner also passed an award on the said claim. Therefore,* ***as no objections were raised by the respondent contractor at the appropriate stage, the award cannot be annulled subsequently****. At the cost of repetition, it is observed that at no point of time the respondent contractor had challenged the award passed by the arbitrator — Housing Commissioner and as observed and held hereinabove even no court has set aside the award declared by the arbitrator — Housing Commissioner dated 7-11-2008 and the same has attained finality. Therefore, the same is binding between the parties. Hence, the subsequent fresh reference petition before the learned Arbitral Tribunal under the 1983 Act for the very same claims which were raised before the arbitrator — Housing Commissioner would not be maintainable at all. We agree with the view taken by the Arbitral Tribunal.*"

d. In *Sweta Construction*, the Court followed *L.G. Chaudhary*, and further decided the case on its facts, as follows:

> "*18.* ***We are also of the view that in particular facts of the present case, the position is even more gross because when the appellant claimed arbitration, the respondent accepted invocation of arbitration, suggested a panel of arbitrators, the appellant chose one of the arbitrators out of the two suggested and the arbitrator was so appointed as the sole arbitrator. Thus, the arbitration proceedings commenced in pursuance to the acts of the respondent and it cannot be permitted to get away to say that the whole process was gone through because of some misconception or inappropriate legal advice.*** *Arbitration by consent is always possible. The mode and manner of conduct of arbitration is possible and how those arbitration proceedings would be governed is also a matter of consent. If at all there were any rights of the respondent to have claimed arbitration under the 1983 Adhiniyam, that right was never exercised or waived.* ***The respondent cannot be permitted to approbate and reprobate and that too in arbitration proceedings and that too in dispute or resolution through the method of arbitration defeating the very purpose of an alternative dispute resolution to arbitration as an expeditious remedy.***"[20]

e. The aforesaid judgment in *L.G. Chaudhary* was also followed in *JMC Projects*.

19. As against this line of judgments, Mr. Bishnoi relied upon *Lion Engineering*, which also deals with the relationship between the M.P.MAA and the 1996 Act. He submitted that the Court in *Lion Engineering*, had specifically observed that a plea of jurisdiction could be taken in Section 34 proceedings, even in the absence of an application under Section 16 of the Act. It may be noted in this connection, that in *Sweta Construction*, the Court considered the earlier authorities, including *L.G. Chaudhary* and *Lion Engineering*, and observed as follows:

> "*15. However, as pointed by the learned counsel for the respondent, there appears to be some lack of clarity on the issue raised in the present petition on account of the same three-Judge Bench having opined in another order passed in Lion Engg. Consultants v. State of M.P. [Lion Engg. Consultants v. State of M.P., (2018) 16 SCC 758 : (2019) 1 SCC (Civ) 699] on 22-3-2018 i.e. about three weeks after that. The issue however, raised was whether there was any bar to the plea of jurisdiction being raised by way of an objection under Section 34 of the 1996 Act even if no objection was raised under Section 16 of that Act. It was opined that public policy of India refers to law enforced in India i.e. both Central law as well as the State law. The respondent State was given liberty to argue before the trial court its objections that the 1996 Act stood excluded by the State Adhiniyam even without formal pleadings being a pure legal plea. This was in the context of an amendment sought being beyond limitation. In that context there is an observation in one sentence, "we do not see any bar to plea of jurisdiction being raised by way of an objection under Section 34 of the Act even if no objection was raised under Section 16 of that Act".*
> *16. If we appreciate the aforesaid observation in Lion Engg. Consultants [Lion Engg. Consultants v. State of M.P., (2018) 16 SCC 758 : (2019) 1 SCC (Civ) 699] and that too emerging from identical Bench in the two matters, we would have to construe as what is meant by this sentence extracted aforesaid. We take note of the fact that this is an order and not a judgment. The controversy before the Court was something different as noticed by us aforesaid. In that context, this sentence has been inserted, but that does not*

[20] Emphasis supplied.

> *take away the law laid down in the substantive judgment (in M.P. Rural Road Development Authority [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97]) dealing with the issue at hand in respect of awards already made where petitions were pending before the competent Court under Section 34 of the said Act.*
>
> *17.* ***This Court (in M.P. Rural Road Development Authority [M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors, (2018) 10 SCC 826 : (2019) 1 SCC (Civ) 97]) in the context of the 1996 Act and the 1983 Adhiniyam, keeping in mind the cleavage of judicial view earlier and expounding on the law in that judgment has in succinct terms set out that the objections under Section 34 of the said Act, where no such plea of jurisdiction was raised in proceedings before the arbitrator, should not be dealt with "alone" on the plea of jurisdiction i.e. it should be considered on merits.*** *One can say that possibly this part of the order can also be read as one made under Article 142 of the Constitution of India to do substantive justice inter se the parties, more so, when arbitration as an alternative dispute resolution mechanism presupposes an expeditious disposal of commercial disputes and that objective would stand nullified if a contrary view was taken."*[21]

20. The matter has more recently been clarified, to an even greater extent, in *Gayatri Project Limited v. Madhya Pradesh Road Development Corporation Limited*[22]. The Court held therein, that *L.G. Chaudhary* and *Lion Engineering* are not contradictory to each other. It was specifically held that *L.G. Chaudhary* carves out an exception to the ratio of *Lion Engineering* to the extent that, when a plea of lack of jurisdiction was not taken before the arbitral tribunal, an award would not be annulled only on that ground. It was further held that *Lion Engineering* was confined to the question of whether an amendment of pleadings in a Section 34 petition could be permitted, and not to the extent that an award may be annulled solely on that ground. That issue has specifically been dealt with only in

[21] Emphasis supplied.
[22] 2025 SCC OnLine SC 1136 [hereinafter, "*Gayatri Project*"].

L.G. Chaudhary. The Court clarified that a plea of jurisdiction raised at the stage of Section 34 for the first time, cannot result in automatic annulment of the award, even in terms of the ratio of *Lion Engineering*. The Court in *Gayatri Project*, relied upon its earlier decisions in *Union of India v. Pam Development (P) Ltd.*[23], *Gas Authority of India Ltd. v. Keti Construction (I) Ltd.*[24], and *AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai*[25] to arrive at the following conclusion:

> "*35. Thus, what can be discerned from the aforesaid is that **<u>although a plea of lack of jurisdiction, being a question of law, can be raised even for the first time in the proceedings under Section 34 as held in Lion Engineering (supra), yet such a plea ought not to be allowed to be raised as it is deemed to have been waived in view of Section 4 of the Act, 1996</u>** as per Pam Development (supra), unless the party makes out a strong and good reason for its failure to take such a plea before the arbitral tribunal as per Gas Authority of India (supra), and as per the dictum of L.G. Chaudhary (II) (supra) any failure to raise the issue of applicability of the MP Act, 1983 before the arbitral tribunal is not a strong and good reason to permit raising such a plea in the proceedings under Section 34 of the Act, 1996.*
>
> ***<u>D. CONCLUSION</u>***
>
> *36. What emerges from the foregoing is that although Lion Engineering (supra) affirms that a plea of lack of jurisdiction, being a question of law, may be raised for the first time under Section 34 of the Act, 1996, yet such a plea is nevertheless subject to the waiver as held in Pam Development (supra). Furthermore, as per Gas Authority of India (supra), **<u>such a plea may only be entertained if the party demonstrates a strong and sufficient reason for not raising it before the arbitral tribunal</u>**. However, L.G. Chaudhary (II) (supra) makes it clear that a failure to raise the issue of applicability of the MP Act, 1983 at the appropriate stage cannot be regarded as a sufficient reason, and therefore the plea cannot be permitted at the stage of Section 34 proceedings.*

[23] (2014) 11 SCC 366.
[24] (2007) 5 SCC 38.
[25] 2025 SCC OnLine SC 281.

37. L.G. Chaudhary (II) (supra) carved out the aforesaid limited exception to the general rule laid down in Lion Engineering (supra) that a plea of lack of jurisdiction, being a pure question of law, may be raised for the first time under Section 34 of the Act, 1996. The failure of L.G. Chaudhary (II) (supra) to take into consideration the decision of this Court in Lion Engineering (supra) does not render the former per incuriam, as there exists no direct conflict between the two. ***<u>While Lion Engineering (supra) permits a jurisdictional plea to be raised under Section 34 of the Act, 1996 even if not urged under Section 16, L.G. Chaudhary (II) (supra) merely clarifies that an arbitral award will not be annulled solely on that ground, particularly where the issue was not raised before the tribunal</u>.*** *On the contrary, the aforesaid observations of L.G. Chaudhary (II) (supra) had been consciously made by this Court keeping in mind the ratio of Lion Engineering (supra), even though the latter was never explicitly referred to. L.G. Chaudhary (II) (supra) cannot be termed to be per incuriam, as the very factum that the aforesaid observations were made by L.G. Chaudhary (II) (supra) in paras 16, 17 and 19 respectively shows that this Court was well aware of the decision of this Court in Lion Engineering (supra), and accordingly chose to carve out an exception to the ratio of Lion Engineering (supra) keeping in mind the cleavage of judicial view that was prevailing earlier.*"[26]

21. On a consideration of the aforesaid authorities, in light of the facts of this case and the conduct of NHAI in the subject arbitral proceedings, I am of the view that its challenge to the jurisdiction of the Tribunal must be rejected. Even if *Lion Engineering* permits such an objection at the Section 34 stage, later judgments restrict its applicability to questions of amendment of pleading, and require the Court to view the matter from the perspective of Section 4 of the Act, which permits waiver of derogable provisions. NHAI's conduct in this case parallels the facts noticed by the Supreme Court in *Sweta Construction* and *Gayatri Project*, where the jurisdictional objections, raised for the first time, were considered and

[26] Emphasis supplied.

rejected. NHAI has also not sought to explain its failure to raise the objection before the Tribunal.

22. In the face of these direct authorities, I am unable to accept Mr. Bishnoi's submission relying upon *Inder Sain Mittal*, *Srei Infrastructure*, and *Hindustan Zinc*, for the following reasons:

a. *Inder Sain Mittal* was a case under the Arbitration Act, 1940. Even there, the Court upheld the principle of acquiescence by participation in arbitral proceedings, but held that breach of a mandatory provision of law could be raised even at the stage of objections to an award. In the present case, however, no such mandatory provisions of law have been cited, so as to permit such a turnaround by NHAI.

b. In *Hindustan Zinc*, it was held that a question of inherent lack of jurisdiction could be raised for the first time in proceedings under Section 37 of the Act. The question arose in the context of Section 86(1)(f) of the Electricity Act, 2003, which provides for adjudication by the State Electricity Regulatory Commission upon disputes between licensees and generating companies, including the power to refer any dispute for arbitration. The Court held that the reference of a dispute between a licensee and a consumer did not fall within the scope of Section 86(1)(f), and that such a plea could have been raised in challenge proceedings. The question remains as to whether this objection is one of "*inherent lack of* *jurisdiction*", as expressed in *Hindustan Zinc*[27]. On this point also, I am of the view that NHAI's contention cannot prevail.

c. Similarly, *Srei Infrastructure* did not concern this question of jurisdictional objection at all, but rather the applicability of Section 32(2)(c). It is in this context that the Court observed that termination of proceedings by making of an award under Section 33(1) contemplates termination of the mandate of the tribunal.

23. Upon a holistic consideration of these authorities, I have come to the conclusion that NHAI's jurisdictional objection must fail for the reasons outlined above. A question certainly arises as to the legal nature of the proceedings taken before the Arbitral Tribunal, particularly in the light of Section 33(1) of the Act, and the judgment in *Srei Infrastructure*. The Tribunal was, in my view, quite wrong in arrogating to itself the power to continue the earlier proceedings, which had already been terminated by making of the 2017 Award. As a matter of law, Mr. Bishnoi is right in saying that the proceedings had come to an end; neither Section 33 nor 34(4) had been invoked, and the matter could not have been reopened as a continuation of the old proceedings. However, notwithstanding the Tribunal's own determination to the contrary, I am of the view that the proceedings, as a matter of law, must be construed as a fresh arbitration instituted with the consent of both parties, before a tribunal also constituted by express consent. Such consent is manifest in the orders of the Tribunal dated 10.07.2019, 11.07.2020, and 22.07.2020, and the communications of NHAI recorded above.

[27] Paragraph 17.

24. The alternative course, suggested by Mr. Bishnoi, would permit a recalcitrant litigant to participate fully in an arbitration, express its consent unequivocally, and then wriggle out of the consequences of an award by raising jurisdictional objections belatedly. I hasten to add that, in my view, the objections raised by NHAI, if raised at the appropriate juncture and in the appropriate manner, may have been worthy of acceptance, but its conduct estops it from raising this contention at this stage.

25. Mr. Bishnoi's argument that the procedure of the fresh arbitration had not been undertaken, inasmuch as no substantive pleadings were filed and no evidence taken, is also unmerited. The pleadings and documents filed before the erstwhile Arbitral Tribunal were available to the Tribunal in the present case also, as evidenced by minutes dated 11.07.2020. The particulars of the claim being adjudicated by the Tribunal, were clear from the order of this Court dated 03.05.2019 and KNR's submission dated 24.07.2019. The proceedings concerned only a claim for interest, which was to be decided in terms of contractual clauses and admitted documents. NHAI's "*Statement of Defence*" dated 11.02.2020 does not indicate any confusion with regard to the scope of the proceedings. NHAI could well have filed an objection raising these grounds or have filed further documents and pleadings if it was so inclined, but it chose not to do so.

26. The Tribunal, as also the parties, would have done well to pay greater attention to procedural provisions in the conduct of the proceedings, but the present case does not reveal a fundamental miscarriage, so as to vitiate the proceedings altogether. Reference, in this

connection, may be made to Sections 18 and 19 of the Act, which vest the Tribunal with considerable latitude in procedural matters, subject to adherence to the fundamental principles of equality and natural justice. There is no suggestion that NHAI was subjected to any breach of such principles, and, on balance, I am of the view that the Award is not required to be set aside on this ground.

27. Ancillary to the argument with regard to the Tribunal's jurisdiction, Mr. Bishnoi also submitted that, after the order of this Court dated 03.05.2019, no fresh declarations under Section 12 of the Act were given by Arbitrators B and C. Arbitrator D, who was substituted for Arbitrator A, did make a declaration, but Mr. Bishnoi submitted that, in order to constitute a valid fresh arbitration, such declarations would also have been required from Arbitrators B and C, particularly in view of the amendment to the Act in 2015[28]. In this connection, he relied upon a judgment of the Division Bench in *Ram Kumar and Another v. Shriram Transport Finance Co. Limited*[29], to submit that the impugned Award is required to be set aside, as a result of this lapse.

28. I am not inclined to accept this submission, in the facts of the present case. While the manner in which the Tribunal proceeded has resulted in avoidable ambiguity as to the status of the proceedings, the fact is that Arbitrators B and C had both given their declarations under Section 12 of the Act in the first round of arbitral proceedings[30]. Arbitrator D has admittedly made his disclosure, at the stage he entered into the reference. NHAI participated in the entirety of the proceedings

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[28] Arbitration and Conciliation (Amendment) Act, 2015.
[29] 2022 SCC OnLine Del 4268.

without demur. Whether non-disclosure may, in a given case, be fatal to an award, is not relevant to the present proceedings, as the concerned arbitrators had made declarations which were accepted by the parties, without protest. The fact that Arbitrators B and C had made those declarations in the earlier round of proceedings, and did not do so in the present proceedings, is evidently due to their erroneous presumption that the present proceedings were a continuation thereof. However, such a lapse does not, in my view, vitiate the proceedings altogether. It may also be noted that no such ground was raised by NHAI before the Tribunal, giving rise to an argument of waiver under Section 4 of the Act[31], and no such ground has been taken even in the present petition.

29. The jurisdictional objections to the impugned Award are, therefore, rejected.

E. <u>RE: MERITS OF THE IMPUGNED AWARD</u>

30. By the impugned majority Award, the Tribunal has held that KNR was entitled to interest on the amounts awarded by the 2017 Award, at the rate of 10% per annum compounded monthly, from the date when the amount was payable until the date of actual payment. For this purpose, it relied upon Sub-Clause 60.8 of COPA.

31. Mr. Bishnoi's first submission was that the award is vitiated by lack of pleadings and documents, as no formal pleadings or documents were invited, after the order of this Court dated 03.05.2019. I have dealt with this aspect in Section D above.

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[30] Paragraph 1.05 of the 2017 Award.
[31] *Quippo Construction*.

32. Mr. Bishnoi's further submission was that NHAI had clearly argued before the Tribunal that Clause 60.8 of COPA was inapplicable to the claims agitated by KNR, as the price adjustments were not certified by the independent engineer. Consequently, no rate of interest was contractually provided, as far as these claims are concerned. According to Mr. Bishnoi, by holding to the contrary, that Clause 60.8 is applicable to all dues, the impugned Award is tantamount to rewriting of the contract. He drew my attention to paragraph 10 of the "*Statement of Defence*" dated 11.02.2020, filed by NHAI before the reconstituted Tribunal, which according to him remained unaddressed in the impugned Award.

33. Ms. Suri, in her response on this aspect, submitted that the Tribunal has proceeded on the basis of a plausible interpretation of Clause 60.8, with which the Court should decline interference under Section 34 of the Act. Matters of contractual interpretation are within the domain of the Arbitral Tribunal, and the Tribunal's view cannot be substituted by the Court's interpretation, unless it is manifestly arbitrary or perverse. She also relied upon the judgments of this Court in *NHAI v. ITD Cementation India Limited*[32] and *NHAI v. ITD Cementation India Limited*[33] to submit that the Tribunal's interpretation in the present case, did not fall within this narrow category. Ms. Suri further submitted that interest was, in any event, payable under Section 31(7)(a) of the Act, as held by the Supreme Court in *Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation*[34].

[32] 2009 SCC OnLine Del 2327 [hereinafter, "*NHAI v. ITD – 2009*"].
[33] 2012 SCC OnLine Del 6210.
[34] 2022 9 SCC 286.

34. The majority award deals with this aspect as follows:[35]

> "*5.14 Per Contra, the Claimant protested the isuse of certification by the Engineer, and contended that, whether the Engineer certified the payment or not, once the amount is held as payable pursuant to the award passed by the AT and upheld by the Hon'ble Courts of the land, the same would be construed as the amount which should have been certified and paid at that material point of time. The same should have been passed with interest upon determination by the agreed mechanism as if the same is payable at the agreed rate i.e. from the date when it should have been paid, had it been correctly certified / determined as payable.*
>
> *5.15* ***The amount of price adjustment as per clause 60.8 of COPA is payable and as the award upheld to that by the Hon'ble Supreme Court even in absence of certification, therefore, now, the issue of certification by the Engineer has been settled and interest becomes payable to the Claimant as per the mechanism provided is Clause 60.8 of COPA.***
>
> *lt was also a submission of the Respondent that the Claimant did not include the claim of interest in respective IPCs but such plea of interest is being taken for the first time, which needs no consideration, as the issue has already been adjudicated and awarded on it. ln this regard, the Claimant made the argument that Respondent's contention is incorrect for the reason that Clause 60.1 of COPA does not have any such item/s to incorporate interest in IPCs. Rather it has one item for price adjustment which the Claimant has fully complied with. At the moment the Claimant incorporated the price adjustment in the respective IPCs, it was the contractual obligation on the part of the Engineer to certify the price adjustment for payment.*
>
> *5.16 The AT perused the Clause 60.1. According to this clause, the Contractor was required to submit a monthly statement to the Engineer for certification for the work executed up to the end of previous month in a tabulated form approved by the Engineer. According to Clause 60.8 the interest becomes payable on the amount certified by the Engineer and if there is any delay beyond the period stipulated in Clause 60.8. In this case the Contractor was continuing to include the item of price adjustment in the monthly statements, however the Engineer did not certify the amount of price adjustment in any of the IPCs. Unless the amount of price adjustment was certified and the date of payment was known, the amount of interest in the subsequent IPCs could not be determined and claimed.* ***Therefore the contention of the Respondent that the interest should have been incorporated in the monthly statements is not correct.***

[35] KNR is described as the "*claimant*", and NHAI as the "*respondent*" in the below extract.

5.17 The Respondent by referring Section 3 of Interest Act, stated that the Court may, if it thinks fit, allow interest to the person entitled to the debt or damages only after the same is adjudicated, in this case is 29.04.2017. Per contra, the Claimant argued that Section 3 of Interest Act also provides that no restriction can be imposed if the interest is payable as per conditions of the "Written Agreement".

5.18 ***There is 'written agreement' in terms of Clause 60.8 of COPA for payment of interest, therefore, necessity of re-adjudication arose. Thus, the interest is payable on the awarded sum of price adjustment in all IPCs with effect from the date it became due till the date of payment as per agreed terms of the Clause 60.8 of COPA.***

5.19 The Claimant's contentions are that from the plain reading of Clause 60.8 of COPA,_it was agreed by the parties that, if the amount due to the Claimant contractor is not paid within the time period stipulated in the said clause, the interest @ 10% p.a. compounding monthly as per the rate stipulated under the Appendix to Bid, would be paid to the Claimant Contractor from the date the amount was payable till the actual date of payment. ***Once it is agreed by the parties that unpaid amount will attract the interest at stipulated rate, none of the party can wriggle out from the agreed rate on any ground such as being excessive or unreasonable****, because following provisions of laws does not support such wriggling out.*

5.20 Section- 3 of the Interest Act provides that no such restriction can be imposed if the interest is payable as per conditions of the " Written agreement". As per Section 31 (7) of the Arbitration Act, the AT has authority to have its discretion if and "unless otherwise agreed by the parties Since the parties have "otherwise agreed" for payment of interest under Clause 60.8 of COPA read with Appendix to Bid, the AT cannot deviate from the conditions of the contract, for not allowing lower percentage of interest rate than what has been agreed in the Contract. As per Section 73 and 74 of Indian Contract Act, the compensation or damages at a reasonable rate is permissible and both the parties had agreed that the rate @ 10% p.a. compounding monthly as reasonable rate on account of blocked up capital with other party. The Clause 60.8 of COPA, never been supplemented by the parties for reduction in the rate of interest. The Respondent argued that it too, relying on Section 3 of the Interest Act which provides that, the Court has power to allow interest in any proceeding for recovery of any debt or damages, if it thinks fit, to the person entitled to the debt or damages or to the person making such claim, as the case may be. As per Section 3 of the Interest Act, the amount or debt becomes payable only when it was adjudicated i.e. on 29.04.2017 and not before that.

5.21 The AT is bound by the following provisions of the Arbitration Act. While deciding and making an award, the arbitral tribunal shall in all cases, take into account the terms of the Cantract and Trade *usages applicable to the transaction., Section 31 (7/ (a) : "Unless otherwise agreed by the parties ...... which award is made". Evidently, AT is bound to take in the consideration the terms and conditions prescribed in the Contract Agreement while passing the award.* ***In the present case the Clause 60.8 of COPA read with Appendix to Bid provides the terms clearly.***

5.22 The Contract is supreme and once both the parties agreed and signed the Contract entered into, subsequently they cannot deviate from their stand as such the agreed terms upon the parties. In the present case, both the parties agreed that upon default of payment, the interest @ 10% p.a. compounding monthly shall be payable by the defaulting party.

5.23 The AT is of the considered view that the Tribunal is bound by the provisions of Contract with respect to the rate of interest as agreed upon the parties and specified in the Contract. ***Thus, the AT is of the considered opinion that, the rate of interest can not be changed than what has been specified in the Clause 60.8 of COPA read with Appendix to Bid.***

5.24 The AT has reached to the conclusion that it cannot travel beyond the provisions under Section 28 (3) and 31 (7) (a) of the Arbitration Act as well as the agreed terms provided under Clause 60.8 of COPA read with Appendix to Bid and therefore is of the considered opinion that the Claimant is entitled to receive the rate of interest @ 10% p.a. compounding monthly from the date it became due till the date of actual payment."[36]

35. Having regard to the aforesaid observations in the impugned Award, I am inclined to agree with Ms. Suri, that the view taken by the Tribunal does not warrant judicial interference. The Tribunal has clearly held that Clause 60.8 of COPA applies to awarded sums of price adjustments in all IPCs[37]. The interpretation of contractual provisions is a matter that falls within the province of the Arbitral Tribunal. The Courts, exercising jurisdiction under Section 34 of the Act, are precluded from interfering with the Tribunal's interpretation or substituting their own interpretation for that of the Tribunal, except in the very narrow class of

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[36] Emphasis supplied.
[37] Impugned Award, paragraphs 5.15, 5.16 and 5.18.

cases, in which they are compelled to return findings of perversity or manifest arbitrariness. Reference in this connection may be made to the recent judgment of the Supreme Court in *Prakash Atlanta (JV) v. National Highways Authority of India*[38], wherein the Court observed as follows:

> "*27. As long back as in the year 2006, in McDermott International Inc. v. Burn Standard Co. Ltd.*[39]*, this Court affirmed that construction of a contract is within the jurisdiction of the arbitrator and interpretation thereof is a matter for the arbitrator to determine, even if it gives rise to a question of law. This was affirmed in National Highways Authority of India v. ITD Cementation India Limited*[40]*, wherein this Court held that construction of the terms of a contract is primarily for an arbitrator to decide and he is entitled to take the view that he holds to be the correct one, after considering the material and after interpreting the terms of the contract. It was observed that the Court, while considering a challenge to an arbitral award, does not sit in appeal over the findings and decision therein, unless the arbitrator construed the contract in such a way that no fair-minded or reasonable person would do. We may note that, in this case, the issue was whether additional costs owing to a change in the seigniorage fee had been taken into account in the indexing of inputs, while providing for price adjustment in the contract. NHAI had contended that the said levy was already factored into the indexing price formula and, therefore, no further payments were to be made to the contractor.*
>
> *xxx xxx xxx*
>
> *29. In UHL Power Company Limited v. State of Himachal Pradesh*[41]*, a 3-Judge Bench of this Court reiterated that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found if the arbitrator proceeds to accept one interpretation as against the other. Again, in Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India*[42]*, this Court held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not a plausible view to take.*

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[38] 2026 SCC OnLine SC 98.
[39] (2006) 11 SCC 181.
[40] (2015) 14 SCC 21.
[41] (2022) 4 SCC 116.
[42] (2019) 15 SCC 131.

30. In Dyna Technologies Private Limited v. Crompton Greaves Limited[43]*, a 3-Judge Bench of this Court held that an arbitral award should not be interfered with in a casual and cavalier manner, unless the perversity of the award goes to the root of the matter, without there being a possibility of an alternative interpretation that may sustain it. It was held that Section 34 is different in its approach and cannot be equated with normal appellate jurisdiction and that its mandate is to respect the finality of the award and the parties' autonomy to get the dispute adjudicated by an alternative forum as provided by law. This Court cautioned that if Courts were to interfere with awards in the usual course on factual aspects, then the commercial wisdom behind opting for alternative dispute resolution would stand frustrated.*

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52. The issue, in effect, boils down to whether the failure of the respondents to factor in their bid prices the cess payable under the BOCW Act and the Cess Act can be said to be in keeping with Clause 14.3, thereby attracting the 'subsequent legislation' procedure in Clause 70.8. In essence, it would come down to interpretation of these terms of the contract. The argument of NHAI that the 'subsequent legislation' clause only pertains to changes in existing laws or introduction of new laws overlooks the fact that there was a specific timeframe of twenty-eight days mentioned therein which was linked to the last date for submission of the bids and that is the basis on which the arbitral tribunals construed and interpreted that provision. Having considered the arbitral awards passed by the arbitral tribunals in the five appeals filed by NHAI, we find that the interpretation and construction of those terms and clauses by the arbitral tribunals cannot be said to be arbitrary, perverse or patently illegal. Given the situation obtaining in relation to the two Acts at the relevant time, the arbitral awards cannot be said to have violated the public policy of India or be in breach of Section 28(1)(a) of the Arbitration Act. Once the view taken by the arbitral tribunal is found to be a plausible and possible one on facts and not an unreasonable one, it is not for the Courts, under Sections 34 or 37 of the Arbitration Act, or for this Court to sit in appeal or substitute its view for that of the arbitral tribunal.

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59. We may now sum up our conclusions as under:

xxx xxx xxx

(vi) If an arbitral tribunal's view is found to be a possible and plausible one, it cannot be substituted merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine. Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible interpretations of the terms of a

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[43] (2019) 20 SCC 1.

> *contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other. To be in conflict with the public policy of India, the award must contravene the fundamental policy of Indian law, which makes it narrower in its application.*
> *(vii) We find that the arbitral awards in NHAI's five appeals turned upon interpretation and construction of identical terms in the contract and as the view taken by the arbitral tribunals was not only a plausible and possible one but also a justified one, on facts, we find no reason to interfere therewith. The awards are not perverse, patently illegal or opposed to the public policy of India. Further, we do not find the awards to be in breach of Section 28(1)(a) of the Arbitration Act.*"

A similar view has also recently been expressed by a Division Bench of this Court in *JSW Ispat Steel Limited v. Gas Authority of India Limited*[44].

36. I do not find the Tribunal's interpretation in the present case to fall within the narrow exception outlined in these judgments. The view taken by the Tribunal is also consistent with the judgment of this Court in *NHAI v. ITD – 2009*, cited by Ms. Suri, which concerns the very same clause.

37. Mr. Bishnoi's final argument, on merits, was that the award is vague and uncertain, as it has failed to quantify the amount or to ascertain the period for which the interest claim was being awarded. For this purpose, he relied upon the operative portion of the majority award, which reads as follows:

> "*The Claimant/ Contractor is entitled for getting interest @10% (Ten) per annum compounding monthly on the amount of price adjustment awarded, including IPC 35, 36 & 37 for the pre-reference period i.e. from date upon which the same should have been paid till the date of actual payment, as per Clause 60.8 of COPA, read with Appendix to Bid.*"

Learned counsel submitted that such a vague quantification was contrary to the judgment of the Division Bench in *NHAI v. ITD Cementation India Limited*[45].

38. On this aspect, Ms. Suri submitted that the aforesaid finding of the Tribunal was capable of quantification without any difficulty, as the amounts of price adjustment, and dates upon which the payment was to be made, had been clearly quantified in the 2017 Award. She also submitted that in paragraphs 4.49, 4.50, 5.1, and 5.2 of the 2017 Award, the Tribunal had already awarded interest on price adjustments upto the 34th running bill of March 2013, as well as other interim payments pending to be released. This, thus, covers all interim payments including IPCs No. 35, 36, and 37, which form part of the impugned Award. This was specifically reiterated in the document dated 24.07.2019 filed by KNR, after the order of this Court dated 03.05.2019, and was not disputed in NHAI's reply dated 11.02.2020. The claim was again included with proper quantification in an application under Section 23 of the Act, filed by KNR before the reconstituted Tribunal on 13.02.2020.

39. While I am of the view that the Tribunal ought to have undertaken the exercise of quantification, or atleast referenced the necessary documents from which the quantification could be ascertained, I do not consider it necessary to set aside the impugned award on this ground. The material cited by Ms. Suri, including the 2017 Award, and the documents and charts placed before the reconstituted tribunal, quantify the amounts with sufficient certainty for the computation to take place, consequent to the award. It may be noted that, pursuant to an order dated 18.07.2022 in these proceedings, NHAI itself has filed an affidavit dated 07.09.2022, computing the amounts payable under the Award. This suggests that, even

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[44] 2026 SCC OnLine 3924, paragraph 21.
[45] 2007 SCC OnLine Del 1590.

according to NHAI, the amount was capable of computation on the basis of the impugned Award.

40. In view of the above, NHAI's challenge to the impugned Award, on merits, is also rejected.

F. CONCLUSION

41. For the reasons aforesaid, I do not find any reason to interfere with the impugned majority Award dated 08.12.2021, in exercise of the jurisdiction under Section 34 of the Act.

42. The petition is, therefore, dismissed, but with no orders as to costs.

43. Pending application also stands disposed of.

PRATEEK JALAN, J

AUGUST 11, 2026
PV/tg/KA/