* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 14.08.2026

Judgment pronounced on: 19.08.2026

CNR No. DLHC011986042018

\+ O.M.P. (COMM) 355/2018

HINDUSTAN CONSTRUCTION CO. LTD. .....Petitioner

Through: Mr. Dayan Krishnan, Sr. Adv with Mr. Anirudh Bakhru, Mr. Shreedhar Kale, Mr. Rishi Agrawala, Ms. Shruti Arora, Mr. Rajat Sinha, Ms. Tarini Khurana and Mr. Alekshendra Sharma, Advs.

versus

NHPC LTD. .....Respondent

Through: Mr. Neeraj Malhotra, Sr. Adv. with Mr. Aslam Ahmed, Mr. Rohit Jain, Ms. Ankita Sharma, Mr. Abhishek Dwivedi, Mr. Nimesh, Ms. Rithika, Mr. Zeeshan Haider & Ms. Sheila Arora, Advs.

CNR No. DLHC010212342020

\+ O.M.P. (COMM) 446/2020

NHPC LIMITED .....Petitioner

Through: Mr. Neeraj Malhotra, Sr. Adv. with Mr. Aslam Ahmed, Mr. Rohit Jain, Ms. Ankita Sharma, Mr. Abhishek Dwivedi, Mr. Nimesh, Ms. Rithika, Mr. Zeeshan Haider & Ms. Sheila

Arora, Advs.

versus

HINDUSTAN CONSTRUCTION COMPANY LTD. & ORS. .....Respondents

Through: Mr. Shivam Goel, Mr. Anil Kumar Goyal, Ms. Ramya Shivam Goel, Ms. Sanya Sharma and Ms. Ishika Kanyal, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

JUDGMENT

1. These cross petitions are filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the arbitral award dated 09.04.2018 (for brevity 'the award') passed by the majority of the arbitral tribunal (hereinafter 'the tribunal').

Brief Facts

2. For convenience, the facts are taken from O.M.P. (COMM) 446/2020. The petitioner/NHPC invited bids on 10.12.2004 for construction of a diversion tunnel and associated civil works for the 231 MW Chamera III Hydroelectric Power Project on river Ravi, Himachal Pradesh. The respondent/HCCL was the successful bidder and the Letter of Acceptance (for short 'LoA') was issued on 21.09.2005. The contract was executed between the parties on 17.10.2005 for a value of Rs.504,87,10,000/- inclusive of unconditional rebate of 32.4 per cent. The work was to be completed within fifty-two months i.e. by 20.01.2010.

2.1 HCCL during execution of the work by filing ten applications sought extension of time (for short 'EOT') on account of various hindrances. From time to time the extensions were granted till 16.03.2012. HCCL completed the work on 16.03.2012.

2.2 During the extended period HCCL raised claims towards additional costs. By letter dated 23.02.2011, HCCL claimed Rs.149.78 crores for the period from 21.01.2010 to 25.01.2011 and by letter dated 22.08.2011, a further claim of Rs.65.19 crores was raised for the period from 26.01.2011 to 31.07.2011.

2.3 Dispute arose between the parties regarding grant of EOT and the claim for additional costs for the extended period of work. The arbitration clause 67.3 of the General Conditions of the Contract (for short 'GCC') was invoked on 09.09.2011 at the instance of HCCL.

2.4 HCCL raised claims before the tribunal for determination of EOT, refund of Rs.7.62 crores deducted towards liquidated damages, interest on Rs.15.49 crores deducted towards milestones 7 & 8 and additional costs incurred during the extended period. The claims relating to EOT, refund of liquidated damages and interest thereon were subsequently withdrawn. The claim for additional costs incurred during the extended period from 21.01.2010 to 31.07.2011 initially quantified at Rs.195,33,70,354/- was reduced to Rs.143,04,78,453/-. The tribunal awarded Rs.26,05,59,100/- towards on-site and head-office overheads for the hindrance period along with interest at 6% per annum while rejecting the claim for costs incurred during the extended period. Hence, the present petitions.

Submissions of the Parties

3. Learned Counsel for NHPC contends that the claim for additional costs for the extended period was not payable and sub-clause 12.2 of the GCC provides for costs arising from an unforeseeable physical obstruction. There was no breach on the part of the NHPC which could make the NHPC liable for the costs claimed by HCCL. It is submitted that HCCL having accepted the EOT on the ground of unforeseen obstruction, has not put NHPC to notice in the EOT applications that HCCL will claim additional costs for the extended period and continued to execute the work even after rejection of the claim. The submission is that the grant of EOT cannot create an entitlement to costs for the entire extended period. Reliance is on ***Jaiprakash Associates Ltd. v. NHPC Ltd.,*** 2023 SCC OnLine Del 3295, ***State of West Bengal v. Tapas Kumar Hazra,*** 2022 SCC OnLine Cal 4663 and ***Morgan Securities & Credits Pvt. Ltd. v. Samtel Display Systems Ltd.,*** 2023 DHC 9041**.**

3.1 The grievance is that the tribunal after holding that HCCL was not entitled to costs for the extended period, proceeded beyond the provisions of the contract to award the claim on equity and in the interest of justice. The submission is that the tribunal is a creature of the contract and cannot impose an obligation not envisaged in the contract. Reliance is on ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust,*** (2023) 15 SCC 781, ***NHPC Ltd. v.***

Jaiprakash Associates Ltd., 2023 DHC 3866, ***DMRC v. Kone Elevators India (P) Ltd.,*** 2021 SCC OnLine Del 5048 and ***Five-Star Construction Pvt. Ltd. v. Orchid Infrastructure Developments Pvt. Ltd.,*** 2024 DHC 37-DB.

3.2 The submission is that the claim was awarded despite the tribunal having recorded that the loss suffered due to overstay was not proved by HCCL and that the Emden formula could only assist in quantifying a loss and is not a replacement to prove the actual loss. The argument is that this also applies to the claims for loss of profit, overheads and supervision charges which require credible evidence of the loss or of a specific opportunity lost due to prolongation. In the absence of evidence adduced, the award of the claim based on a formula or percentage basis is unsustainable. Reliance is on ***Bharat Coking Coal Ltd. v. L.K. Ahuja,*** (2004) 5 SCC 109, ***State of Rajasthan v. Ferro Concrete Construction (P) Ltd.,*** (2009) 12 SCC 1, ***Unibros v. All India Radio,*** 2023 INSC 931 and ***Delhi Airport Metro Express Pvt. Ltd. v. DMRC,*** (2022) 1 SCC 131.

3.3 The contention is that the tribunal interpreted clauses 6.4, 12.2, 40.2, 42.2 and 44.1 of the GCC and concluded that the claim for costs during the extended period was not in consonance with the aforesaid clauses. It is submitted that the interpretation of the contract is within the domain of the arbitral tribunal and a possible view taken by the tribunal cannot be interfered with under Section 34 of the Act. Reliance is placed on ***McDermott International Inc. v. Burn Standard Co. Ltd.,*** (2006) 11 SCC 181, ***Steel Authority of India Ltd.***

v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63, ***Sumitomo Heavy Industries Ltd. v. ONGC Ltd.,*** (2010) 11 SCC 296, ***MSK Projects (I) (JV) Ltd. v. State of Rajasthan,*** (2011) 10 SCC 573, ***Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran,*** (2012) 5 SCC 306, ***Associate Builders v. Delhi Development Authority,*** 2014 SCC OnLine SC 937, ***Dyna Technologies Pvt. Ltd. (S) v. Crompton Greaves Ltd. (S),*** (2019) 20 SCC 1, ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar*** (2022) 4 SCC 463, ***South East Asia Marine Engineering and Constructions Ltd. (SEAMEC Ltd.) v. Oil India Ltd.,*** (2020) 5 SCC 164, ***Uhl Power Company Ltd. v. State of Himachal Pradesh,*** (2022) 4 SCC 116, ***Hughes Communications India Pvt. Ltd. v. Imaging Solutions Pvt. Ltd.,*** 2023 SCC OnLine Del 2351 and ***Delhi Transco Ltd. v. KEC International Ltd.,*** 2025 SCC OnLine Del 3736.

4. *Per contra*, sub-clause 12.2 read with clauses 40.2, 42.2 and 44.1 of the GCC entitles HCCL to costs arising from hindrances resulting in extension of the contract period. The contention is that sub-clause 12.2 nowhere restricts the claim to the period of actual hindrance and there is no temporal limitation on the costs which may be added to the contract price on account of physical obstructions and the consequential extension of the contract period. It is submitted that every hindrance do not necessarily result in extension of the contract period and restricting the claim to the hindrance period imposes a restriction not envisaged by the contract. Reliance is on the decision of this court in ***NHAI v. HCC Ltd.,*** 2014 SCC OnLine Del 3507 wherein

a similar clause of the contract was interpreted to include costs incurred during the period extended consequent to hindrance. This was affirmed by the Division Bench in 2016 SCC OnLine Del 1144 and upheld by the Supreme Court by order dated 21.09.2023 in Civil Appeal No.3593/2017. The decision in ***Union of India v. Rama Construction Co.,*** 2022 SCC OnLine Del 1016 is also relied in support of the claim for costs incurred during the extended period. Further reliance is on ***PSA Sical Terminals Pvt. Ltd.*** (supra) to contend that an arbitral tribunal cannot rewrite the contract or impose an obligation not provided for under the contract.

4.1 It is submitted that the tribunal held that NHPC acknowledged the entitlement of HCCL and made payments for the costs during performance of the contract. The tribunal further recorded a finding that HCCL suffered loss and used the Emden formula for quantification of the amount to be paid. It is argued that the amount awarded was not merely founded on the principle of equity but followed the provisions of the contract with quantification made by reference to the contractual formula and the Central Water Commission guidelines (for short 'CWC'). The submission is that once the loss was established for determining a reasonable amount of compensation, accepted yardsticks can be applied. Reliance is placed on ***R.K. Jain v. Bharat Aluminium Co. Ltd. (BALCO)***, 2025 SCC OnLine SC 2857, ***Bharat Heavy Electricals Ltd. v. Delkon India Pvt. Ltd.,*** 2026 SCC OnLine Del 482 and ***Cobra Instalaciones Y Servicios, S.A. & Shyam Indus Power Solutions Pvt. Ltd. (J.V.) v.***

Haryana Vidyut Prasaran Nigam Ltd. (HVPNL), 2024:DHC:2880-DB to contend that where the loss is established but exact amount cannot be determined, the tribunal can make a reasonable assessment and use guesswork for quantification.

4.2 It is submitted that HCCL initially sought relief in respect of the EOT and upon amendment of statement of claim (for short 'SOC') specifically sought additional time-related costs for the extended period from 21.01.2010 to 31.07.2011. The contention is that the tribunal having permitted HCCL to amend SOC to seek the costs erred in rejecting the claim by restricting the contractual entitlement to the period of actual hindrance instead of determining the claim on evidentiary merits. It is submitted that HCCL by letters dated 23.02.2011 and 22.08.2011 specifically raised and quantified claims for additional costs incurred during the extended period but the tribunal failed to give effect to the correspondence while considering the claim.

4.3 HCCL relies upon the minority opinion wherein after considering the relevant provisions of the contract and material on record, the entitlement of HCCL to time-related costs was upheld. It is submitted that the minority opinion can be relied upon to buttress the challenge to the impugned award and the findings therein can be considered by the Court under Section 34 of the Act. Reliance is on the decision of the Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.,*** (2021) 7 SCC 657 to fortify the contention that a party challenging an award can draw support from the reasoning and findings in a dissenting opinion. It is submitted that the minority opinion records that HCCL produced contemporary records in support of claim including the auditor certificates, books of accounts, labour registers, log books, equipment invoices, monthly progress reports and vouchers and that witnesses were examined. It is argued that NHPC failed to challenge the material relied upon.

5. Heard learned counsel for the parties at length.

6. Before proceeding further, it would be apposite to reproduce the following clauses of the GCC-

> "**Clause 1.1**
>
> **Definitions and Interpretation**
>
> **(g)(i)** "cost" means all expenditure properly incurred or to be incurred, whether on or off the Site, including overhead and other charges properly allocable thereto but does not include any allowance for profit.
>
> **Sub-clause 12.2**
>
> **Not Foreseeable Physical Obstructions or Conditions**
>
> If, however, during the execution of the Works the Contractor encounters physical obstructions or physical conditions, other than climatic conditions on the Site, which obstructions or conditions were, in his opinion, not foreseeable by an experienced contractor, the Contractor shall forthwith give notice thereof to the Engineer, with a copy to the Employer. On receipt of such notice, the Engineer shall, if in his opinion such obstructions or conditions could not have been reasonably foreseen by an experienced contractor, after due consultation with the Employer and the Contractor,

determine:

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

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

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

Clause 44.1

Extension of Time for Completion

In the event of:

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

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

(c) exceptionally adverse climatic conditions,

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

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

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

Clause 44.2

Contractor to Provide Information and Detailed Particulars

Provided that the Engineer is not bound to make any determination unless the Contractor has

(a) within 28 days after such event has first arisen notified the Engineer with a copy to the Employer, and

(b) within 28 days, or such other reasonable time as may be agreed by the Engineer, after such notification submitted to the Engineer detailed particulars of any extension of time to which he may consider himself entitled in order that such submission may be investigated at the time."

Analysis

7. It would be apposite to mention that there is no dispute with regard to the occurrence of the hindrance, grant of EOT and that HCCL was paid for the work done during the extended period including escalation costs.

8. The tribunal first considered whether the delay was attributable to NHPC. The communications *inter se* the parties and the letter granting EOT dated 20.07.2013 whereby the time was extended from 21.01.2010 to 16.03.2012 were considered. It was also taken note of that the EOT was granted under sub-clause 12.2 of the GCC for unforeseeable obstructions. The conclusion was that there was no breach of contract or failure or neglect on the part of NHPC in carrying out the obligations to be undertaken by it.

9. The tribunal dealt with the claim of additional costs incurred by HCCL during the extended period from 21.01.2010 to 31.07.2011.

The definitions of contract price and costs and the following sub-clauses of the GCC were considered:

Clauses of the GCC	Title
6.4	Delays and Cost of Delay of Drawings
12.2	Not Foreseeable Physical Obstructions or Conditions
42.2	Failure to Give Possession
44.2	Contractor to Provide Notification and Detailed Particulars
44.3	Interim Determination of Extension
53.1	Notice of Claims
53.2	Contemporary Records
53.4	Failure to comply
53.5	Payment of claims

10. It was concluded that the claim of costs during the extended period was not permissible under the clauses of the contract and that HCCL was entitled to claim additional costs for the hindrance period. The tribunal held that the clauses provided that a claim for additional payment should be supported by contemporaneous records but HCCL failed to produce it. It was noted that HCCL was paid for the work done during the extended period and also the escalation charges.

11. The tribunal inferred that according to HCCL the claim for additional costs was also to be made for the hindrance period. The first

and the second requests by HCCL for EOT were relied upon wherein the claim of Rs.14 crores for the hindrance period was made and not for the extended period. The engineer in-charge under sub-clause 12.2 of the GCC approved a claim of Rs.3.67 crores and it was accepted by HCCL in lieu of the expenses incurred during the hindrance period. It was held that HCCL by its conduct had waived the right to claim additional costs for the extended period. The tribunal deduced that HCCL was estopped from claiming additional costs for executing the work during the extended period.

12. The tribunal held that sub-clause 12.2 of the GCC is not applicable to the extended period of the contract but provides for claiming costs during the hindrance period. Despite holding that under sub-clause 12.2 of the GCC, HCCL could not claim off-site and on-site costs incurred during the extended period, the tribunal proceeded to deal with the claim on the premise that HCCL was entitled to such costs.

13. The sub-clause 12.2 of GCC deals with unforeseeable physical obstructions or conditions not foreseeable by an experienced contractor. It provides that in case the contractor during the execution of the work faces a physical obstruction or condition on the site other than the climatic conditions, a notice shall be issued to the engineer with a copy to the employer. The engineer if so opines that the obstructions or conditions could not have been reasonably foreseen shall determine after consultation with the employer: (a) the time to be extended as per the entitlement of the contractor under clause 44 and

(b) add to the contract price the cost that may have been incurred by the contractor consequent to obstructions or conditions. The determination shall be notified to the contractor accordingly, with a copy to the employer.

14. The only possible interpretation of sub-clause 12.2 is that the EOT, costs incurred due to unforeseeable physical obstruction or condition at the site are to be determined by the engineer after consultation with the employer. The use of word 'may' in sub-paragraph 12.2(b) is in relation to costs which might or might not have been incurred for the reason of such obstruction or condition and gives no leverage that the costs incurred are not to be proved.

15. The financial statements relied upon by HCCL along with the auditor certificate were found to be unreliable. It was held that the actual expenses incurred during the extended period were not proved, yet the tribunal proceeded on equity basis to quantify the overhead costs and supervision charges. Relying upon clause 52.1 of the Conditions of Particular Application (for short 'COPA') and para 3.5 of the CWC guidelines the tribunal awarded 20% of the prime cost for the period of hindrance.

16. Despite holding that under sub-clause 12.2 of the GCC the claim for costs incurred during the extended period is not maintainable, the tribunal relying upon clauses of COPA and CWC guidelines proceeded to quantify the costs incurred when there was no occasion for doing so.

17. Another aspect is that the tribunal having held that HCCL failed to prove the expenses incurred and that the Emden Formula cannot be relied upon, proceeded to quantify the costs incurred by relying upon the clauses of COPA and CWC guidelines. The parties were not confronted with the clauses of COPA and CWC guidelines and the award is vitiated for being violative of principles of natural justice and Section 24(3) of the Act. Section 24(3) of the Act is reproduced.

> "**Section 24(3)** All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties."

18. The Supreme Court in ***Ssangyong Engineering and Construction Company Ltd v. NHAI***, (2019) 15 SCC 131 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:

> "**41.** What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49: (2015) 2 SCC (Civ) 204], while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on

the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.

*** *** *** ***

51. Sections 18, 24(3) and 26 are important pointers to what is contained in the ground of challenge mentioned in Section 34(2)(a)(iii). Under Section 18, each party is to be given a full opportunity to present its case. Under Section 24(3), all statements, documents, or other information supplied by one party to the Arbitral Tribunal shall be communicated to the other party, and any expert report or document on which the Arbitral Tribunal relies in making its decision shall be communicated to the parties. Section 26 is an important pointer to the fact that when an expert's report is relied upon by an Arbitral Tribunal, the said report, and all documents, goods, or other property in the possession of the expert, with which he was provided in order to prepare his report, must first be made available to any party who requests for these things. Secondly, once the report is arrived at, if requested, parties have to be given an opportunity to put questions to him and to present their own expert witnesses in order to testify on the points at issue.

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."

(emphasis supplied)

19. The impugned award has contradictions. The tribunal held that

HCCL was not entitled to claim costs incurred during the extended period yet proceeded in the interest of justice to deal with the issue and ultimately awarded the costs on equity basis.

20. It is trite law that an arbitral tribunal is bound by the terms agreed between the parties and cannot invoke equity in a commercial transaction to travel beyond the terms and conditions of the contract. The tribunal is to act within the four corners of the clauses agreed between the parties even if these appear to be unfair to the tribunal and the equities cannot be balanced. Reference in this regard be made to the following decisions:

20.1 The Supreme Court in ***PSA Sical Terminals (P) Ltd***. (supra) held:

> "89. It has been held that an Arbitral Tribunal is not a court of law. Its orders are not judicial orders. Its functions are not judicial functions. It cannot exercise its powers ex debito justitiae. It has been held that the jurisdiction of the arbitrator being confined to the four corners of the agreement, he can only pass such an order which may be the subject-matter of reference."

20.2 In ***Indian Oil Corpn. Ltd. v. Shree Ganesh Petroleum,*** *(2022)* 4 SCC 463 held:

> "43. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract."

20.3 In ***State of Chhattisgarh v. SAL Udyog (P) Ltd.,*** (2022) 2 SCC 275 held:

> "26. ………. We are, therefore, of the view that failure on the part of the learned sole arbitrator to decide in accordance with the terms of the contract governing the parties, would certainly attract the "patent illegality ground", as the said oversight amounts to gross contravention of Section 28(3) of the 1996 Act, that enjoins the Arbitral Tribunal to take into account the terms of the contract while making an award. The said "patent illegality" is not only apparent on the face of the award, it goes to the very root of the matter and deserves interference………."

20.4 In ***Bharat Coking Coal Ltd. v. Annapurna Construction***, (2003) 8 SCC 154 held:

> "22. There lies a clear distinction between an error within the jurisdiction and error in excess of jurisdiction. Thus, the role of the arbitrator is to arbitrate within the terms of the contract. He has no power apart from what the parties have given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction, whereas if he has remained inside the parameters of the contract, his award cannot be questioned on the ground that it contains an error apparent on the face of the record."

20.5 The Division Bench of this court in ***Five Star Construction (P) Ltd. v. Orchid Infrastructure Developers*** (supra) held:

> "30. .....The learned arbitrator's conclusions could have been based only on the claims raised by the parties. An arbitrator cannot award an amount that he may feel is

> just to a party in the interest of justice, when there is no specific claim in that regard. The learned arbitrator thus, has exceeded his mandate and jurisdiction by awarding a sum of Rs 4,33,877."
>
> (emphasis supplied)

21. It is recorded in the impugned award that no claim for additional costs incurred during the hindrance period was made. Paragraph 53 of the award is quoted below:

> "53. Since the parties were not ad idem on the construction of the clauses, we have analyzed the clauses and are of the opinion that the Claimant is not entitled to claim the said additional costs during the extended period but it is entitled to the additional costs during the hindrance period, which unfortunately it has failed to claim."

The tribunal categorically held that HCCL was not entitled to claim additional costs during the extended period and that HCCL failed to make a claim for additional costs during the hindrance period. Despite this finding, the tribunal awarded Rs.26,05,59,100/- towards on-site and head-office overheads for the hindrance period along with VAT and labour cess thereon. The tribunal granted relief for a claim not raised before it. The award travels beyond the scope of submissions made before the tribunal and falls within the teeth 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:

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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”

22. The impugned award has contradiction, travels beyond the clauses of the contract, ignores the relevant clauses of the contract, suffers from patent illegality and is unsustainable.

23. Having held that the impugned award is liable to be set aside, the other grounds raised by the learned counsel for the parties need not be dilated upon.

24. In view of the above discussion, the impugned award is set aside.

25. The petitions under Section 34 of the Act are accordingly disposed of.

AVNEESH JHINGAN, J

AUGUST 19, 2026
‘JK’

Reportable:-**Yes**