2026:DHC:6815

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

Judgment reserved on: 08.07.2026
Judgment pronounced on:18.08.2026

\+ O.M.P. (COMM) 386/2016 & I.A. 10038/2016

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Petitioner

Through: Mr. A. P. Singh and Mr. Naman Saraswat, Advs.

versus

ORIENTAL STRUCTURAL ENGINEERS PVT LTD .....Respondent

Through: Mr. Anil K. Airi, Sr Adv. with Mr. Ravi K Chandna, Mr. Vishal Tyagi, Mr. Shayuk Kumar, Mr. Harsh Gautam, Mr. Sadlma Sharma, Ms. Jasrain, Advocates.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% **18.08.2026**

INTRODUCTION

1. The present petition has been instituted under Section 34 of the Arbitration and Conciliation Act, 1996[1] by National Highways Authority of India[2] assailing the arbitral award dated 18.04.2016 rendered by a three-member Arbitral Tribunal[3] comprising Shri Surjeet Singh, Presiding Arbitrator, Shri V.K. Tyagi and Shri R.S. Rana, Co-Arbitrator. The disputes arose out of the Contract for the rehabilitation and upgradation of NH-25 from Km. 50.000 to Km. 91.000 into a four-

[1] "the Act", hereinafter
[2] "NHAI", hereinafter
[3] "Tribunal or AT", hereinafter

lane highway in the States of Madhya Pradesh and Uttar Pradesh under Contract Package EW-II (MP/UP-1). NHAI was the Respondent before the Tribunal, while OSE was the claimant.

2. By the impugned award, the learned Arbitral Tribunal allowed all four claims preferred by the Respondent, M/s Oriental Structural Engineers Pvt. Ltd. ("OSE"). While Claim Nos. 1, 2 and 4 came to be allowed unanimously, Claim No. 3 was allowed by majority. Shri R.S. Rana, Co-Arbitrator gave his dissenting opinion on Claim No.3.

3. The present petition, as originally instituted, assailed the award in respect of Claim Nos. 1, 2 and 3. However, by order dated 04.01.2017, NHAI withdrew its challenge to Claim No.1, and Claim No.4. Therefore, the challenge now survives only in respect of Claim Nos. 2 and 3. The present judgment is accordingly confined to examining the sustainability of the impugned award *qua* the aforesaid claims and Claims 1 and 4 are discussed only where necessary to understand the overall contractual arrangement.

4. The matter also involves later legal developments. Although the Award was passed on 18.04.2016, during the pendency of this challenge, the Supreme Court and this Court have interpreted similar NHAI price adjustment clauses. This Court's role under Section 34 is limited to examining whether the Award suffers from any legal defect warranting interference, while also applying the binding legal principles subsequently laid down by higher courts.

FACTS

5. The facts of the present petition can be traced back to the time when Government of India entrusted NHAI with the rehabilitation and upgrading of NH-25 from Km. 50.00 to Km. 91.00 to a four-lane configuration in the States of Madhya Pradesh and Uttar Pradesh under Contract Package EW-II (MP/UP-1).

6. Pursuant to the bidding process and Addendum/Corrigendum dated 04.02.2005, NHAI accepted the bid submitted by the Respondent and issued a Letter of Acceptance[4] dated 27.07.2005. Thereafter, the parties executed a Contract Agreement dated 29.09.2005 for a contract value of Rs.150,03,08,429/-. The work commenced on 11.10.2005 and was scheduled to be completed by 10.04.2008. The project, however, ultimately came to be completed on 10.04.2009.

7. The Contract was an item-rate contract governed by the Bill of Quantities[5], Technical Specifications, General Conditions of Contract[6] and other documents executed between the parties. During the execution of the contract, disputes arose between the parties in relation to certain terms of contract. In accordance with the dispute resolution mechanism contained in the Contract Agreement, the disputes were referred to arbitration.

8. Before the Arbitral Tribunal, the Respondent preferred four claims, namely: (i) reimbursement of additional cost arising from increase in Entry Tax on High Speed Diesel in the State of Madhya Pradesh; (ii) payment of price adjustment in accordance with the

[4] "LOA" hereinafter
[5] "BOQ", hereinafter
[6] "GCC" hereinafter

Contract based upon proper determination of the variable factors x, y and z; (iii) exclusion of price adjustment amounts from discount; and (iv) reimbursement of additional expenditure incurred owing to enhancement of royalty on sand, aggregates and other minor minerals. No counterclaims were preferred by NHAI in the said arbitral reference.

9. By the impugned award dated 18.04.2016, the Arbitral Tribunal unanimously allowed Claim Nos.1, 2 and 4. Insofar as Claim No.3 was concerned, the same was allowed by a majority comprising the Presiding Arbitrator and Shri V.K. Tyagi, whereas Shri R.S. Rana rendered a dissenting opinion rejecting the said claim. The operative part of the award records that Claim No.1 was awarded for Rs.1,71,27,112/- along with 10 % p.a. compound interest, Claim No.2 for Rs.4,05,95,805/- together with 10% p.a. compound interest, Claim No.3 for Rs.7,87,76,490/- together with 10% p.a. compound interest, and Claim No.4 for Rs.10,15,885/- with simple interest at 10% p.a.

10. Aggrieved by the findings returned by the majority Tribunal, NHAI instituted the present petition under Section 34 of the Act challenging the impugned award. Although the petition originally questioned the findings rendered on Claim Nos.1, 2 and 3, the proceedings before this Court was subsequently narrowed principally to Claim Nos.2 and 3.

PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

11. Upon disputes arising between the parties during the execution of the Contract, the same were initially referred to the Dispute

Adjudication Board[7] in terms of the dispute resolution mechanism stipulated under the Contract. As the decisions rendered by the DAB were not acceptable to the respective parties in relation to certain disputes, the arbitration agreement was invoked. Consequently, the disputes came to be adjudicated by a three-member Arbitral Tribunal comprising Shri Surjeet Singh, Presiding Arbitrator, Shri V.K. Tyagi and Shri R.S. Rana, Co-Arbitrators.

12. Before the Arbitral Tribunal, OSE preferred four claims arising out of the Contract. By the impugned majority award dated 18.04.2016, the Presiding Arbitrator and Shri V.K. Tyagi allowed all four claims preferred by OSE. Shri R.S. Rana rendered a dissenting opinion only in respect of Claim No. 3.

13. The award proceeds claim-wise and undertakes an independent examination of the terms of contract governing each dispute. In respect of Claim Nos. 1 and 4, the Tribunal principally examined whether the increase in Entry Tax on High Speed Diesel and the increase in royalty payable on minor minerals constituted the consequence of 'subsequent legislation' within the meaning of Clause 70.7 of the Conditions of Particular Application[8], and whether the additional financial burden imposed upon OSE had already been factored into the price adjustment mechanism based on the Wholesale Price Index[9].The Tribunal concluded that Entry Tax and royalty were local statutory levies, the increase whereof had not been captured in the WPI-based escalation

[7] "DAB", hereinafter
[8] "COPA", hereinafter
[9] "WPI", hereinafter

formula, and consequently held OSE entitled to reimbursement of the additional expenditure incurred on both counts.

14. Claim No. 2 required the Tribunal to interpret the formula governing price adjustment under Clause 70 of COPA. The controversy centred on the determination of the variables x , y and z, representing the percentage cost of bitumen, cement and steel respectively, as well as the identification of the relevant indices and prices to be adopted for computation of the escalation payable under the Contract.

15. The Tribunal construed the terms of contract to hold that the cost of materials was required to include all allocable expenditure, including transportation, overheads and local taxes, though excluding profit, and further held that the applicable indices were those prevailing twenty-eight days prior to the last day of the relevant Interim Payment Certificate[10], as expressly stipulated in the Contract. On such interpretation, the Tribunal substantially accepted OSE's computation of price adjustment, subject to exclusion of the profit component from the calculation.

16. Claim No. 3 involved the principal controversy between the parties regarding the effect of the additional rebate of 7.75% offered by OSE at the bidding stage. OSE contended that the rebate was offered only on the overall contract price and was never intended to alter the quoted unit rates or affect the formula for price adjustment under Clause 70 of COPA. NHAI, on the other hand, asserted that the rebate stood

[10] "IPC", hereinafter

incorporated into the quoted unit rates and was therefore liable to be accounted for while computing escalation. The majority of the Tribunal accepted OSE's interpretation, holding that the rebate of 7.75% operated only upon the contract price and could not be imported into the computation of the "R" value under the price adjustment formula. The majority further held that the LOA could not unilaterally alter the nature of the rebate offered by OSE and that the price adjustment mechanism contemplated adjustment with reference to the quoted rates and prices.

17. Shri R.S. Rana, however, dissented from the majority insofar as Claim No. 3 was concerned and held that the rebate was liable to be factored into the computation of price adjustment, thereby rejecting the said claim.

18. Consequently, by the majority award dated 18.04.2016, the Tribunal allowed all four claims preferred by OSE, whereas the dissenting opinion was confined solely to Claim No. 3. The claims preferred by OSE and the findings returned by the Arbitral Tribunal are tabulated below:-

CLAIM NO	PARTICULARS	AMOUNTS CLAIMED	MAJORITY AWARD	DISSENTING AWARD
1.	Additional cost due to increase in the rates of Entry Tax on High Speed Disel in the State of Madhya Pradesh	Rs.1,71,27,112/-	Rs.1,71,27,112/- with 10 % p.a compounded interest	-
2.	Price adjustment based on determination of	Rs.5,02,05,552/- (As revised before the Tribunal by the	Rs 4,05,95,805/- with 10% p.a compounded	-

	x,y and z factors	Claimant to Rs. 4,05,95,805)	interest	
3.	Price escalation amounts not being subjected to the contractual rebate/ discount	Rs.7,87,76,490/-	Rs.7,87,76,490/- with pre-reference interest @10 % p.a compounded monthly	Allowed by Majority Dissented by Shri S S Rana, learned Arbitrator-
4.	Additional cost due to increase in the rates of royalty on sand, stone aggregates and other minor minerals	Rs.10,15,885/-	Rs.10,15,885/- with 10 % simple interest	-

19. In addition to the aforesaid monetary awards, the majority Arbitral Tribunal granted pre-reference, pendente lite and future interest on Claim Nos. 1 to 3 in accordance with the terms of contract, while awarding simple interest on Claim No. 4. The Tribunal further directed that, in the event the awarded amounts were not paid within sixty days, OSE would be entitled to future interest at the rate of 12% per annum on the aggregate amount awarded.

SUBMISSIONS BEFORE THIS COURT

20. Mr. A.P. Singh, learned Counsel appearing for the Petitioner, NHAI, submits that although the present petition originally assailed the impugned award in its entirety, the challenge, as presently pressed, is confined only to Claim Nos. 2 and 3. Claim Nos. 1 and 4, relating respectively to reimbursement of additional Entry Tax and enhanced royalty on minor minerals, are no longer pressed in view of the subsequent judicial pronouncements governing the said issues. The controversy before this Court is, therefore, confined to the findings returned by the Arbitral Tribunal on Claim Nos. 2 and 3.

21. It is further submitted that the findings returned by the Arbitral Tribunal suffer from patent illegality apparent on the face of the award, as the Tribunal has ignored the express stipulations contained in the Contract and has instead substituted its own commercial interpretation thereof, contrary to the terms agreed between the parties.

22. According to NHAI, the award proceeds on an interpretation which is not merely erroneous but directly contrary to the express terms of contract governing price adjustment, thereby travelling beyond the terms of the Contract and attracting interference under Section 34 of the Act.

23. Learned Counsel further contends that the Arbitral Tribunal has altogether failed to adjudicate the issue of limitation, despite the same having been specifically urged before it.

24. It is submitted that the cause of action, if any, arose when the first IPC was certified in December 2005. OSE, however, continued to execute the Contract without protest, raised as many as forty-one IPC, accepted payments made thereunder and invoked the dispute resolution mechanism only after completion of the Project in June 2009. Arbitration itself came to be invoked on 02.07.2012. It is, therefore, urged that the claims, at least insofar as they relate to the period preceding 03.07.2009, were *ex facie* barred by limitation. The omission of the Tribunal to render any finding on this jurisdictional objection, according to NHAI, constitutes a material infirmity, vitiating the impugned award.

25. Insofar as Claim No. 2 is concerned, learned Counsel submits that the Tribunal has fundamentally misconstrued Clause 70 of the COPA governing the mechanism for determination of price adjustment. It is urged that the Tribunal has erroneously accepted OSE's interpretation that the variables x, y and z, representing the percentage cost of bitumen, cement and steel respectively, were required to be computed on the basis of the prevailing current prices, including local taxes, transportation charges and overheads.

26. According to NHAI, such an interpretation is directly contrary to the Addendum/Corrigendum dated 04.02.2005, which unequivocally stipulates that the prices of bitumen, cement and steel are to be reckoned with reference to the base prices prevailing in the month immediately preceding the last date for submission of bids. It is submitted that the Tribunal has ignored the specific contractual amendment and instead relied upon the general definition of "cost" contained in Clause 1.1(g)(i) of the GCC, which stands contrary to the settled principle that a specific contractual provision must prevail over a general one.

27. Learned Counsel further submits that the Tribunal has committed a manifest error in permitting inclusion of transportation costs, local taxes and overheads while determining the cost of bitumen, cement and steel for the purposes of price adjustment under the contract.

28. It is contended that escalation on account of local taxes and transportation is already compensated through separate terms of contract mechanisms, whereas the factor of 0.85, expressly incorporated in the formula under Clause 70.3, excludes overheads and profit from the adjustable component. The Tribunal, by awarding an additional 10% towards overheads, has, according to NHAI, conferred a double benefit upon OSE in complete disregard of the contract.

29. Reliance is placed upon the judgment of this Court in ***National Highways Authority of India v. Hindustan Construction Company***[11], wherein the significance of the 0.85 factor incorporated in Clause 70.3 has been considered and explained.

30. NHAI further submits that the interpretation adopted by the Tribunal stands impliedly overruled by the subsequent decision of the Supreme Court in ***National Highways Authority of India v. Progressive-MVR (JV)***[12]**.**

31. According to learned Counsel, the Supreme Court has authoritatively held that price adjustment mechanism under Clause 70 is intended to neutralise escalation with reference to the base prices prevailing at the bidding stage and not with reference to the current market prices at the time of execution. The judgment further clarifies that the expression "actual" occurring in Clause 70.3(xi) refers to the percentage composition of the materials and not to their prevailing market value. It is accordingly urged that the impugned award, being directly contrary to the binding ratio laid down by the Supreme Court,

[11] 2015:DHC:5019
[12] (2018) 14 SCC 688

cannot be sustained.

32. Turning to Claim No. 3, learned Counsel submits that the Tribunal has erred in disregarding the unequivocal terms of the LOA dated 27.07.2005.

33. It is contended that while OSE may initially have offered separate rebates of 5% and 7.75%, the LOA, which culminated in the concluded contract, expressly provided for a combined rebate of 12.3625% on the quoted rates of all items. OSE accepted the LOA without demur, executed the formal Agreement, raised all forty-one IPCs by consistently applying the combined rebate, and accepted payments calculated on the said basis throughout the execution of the Contract, and questioned the methodology only after completion of the Project. It is, therefore, contended that the Tribunal failed to consider the parties' subsequent conduct and the terms of the final contract while accepting OSE's interpretation.

34. It is further submitted that the Tribunal committed a jurisdictional error in assigning precedence to the language employed in OSE's bid while disregarding the hierarchy of contractual documents expressly stipulated under Clause 5.2 of COPA.

35. Learned Counsel submits that the Contract Agreement and the LOA enjoy precedence over the bid documents. Consequently, once the LOA unequivocally recorded the combined rebate was applicable to the quoted rates, the Tribunal could not have rewritten the bargain by reverting to the language employed in the original bid submitted by OSE.

36. According to NHAI, the Tribunal, by adopting such an approach, thereby substituted the contract entered into between the parties with one which the parties themselves never agreed upon. Such an interpretation amounts to rewriting the contract and renders the award vulnerable to interference under Section 34.

37. Lastly, learned Counsel assails the award of compound interest. It is submitted that Clause 60.8 of the Contract contemplates payment of interest only on amounts certified by the Engineer and payable under an Interim Payment Certificate. The claims awarded by the Tribunal, it is urged, never formed part of any certified IPC and were never admitted as payable by the Engineer. The Tribunal, therefore, lacked any basis to award compound interest under Clause 60.8.

38. Reliance is also placed on the judgments of the Supreme Court in ***National Highways Authority of India v. Hindustan Construction Company***[13] and ***M/S Hindustan Construction Company v National Highways Authority of India***[14]**,** wherein the grant of compound interest under similar contractual provisions has not been approved.

39. On the aforesaid grounds, it is submitted that the findings returned by the Arbitral Tribunal in respect of Claim Nos. 2 and 3 suffer from patent illegality, are contrary to the express terms of the Contract, ignore binding contractual terms as well as subsequent authoritative

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[13] **Civil Appeal NO.3593/2017**
[14] **Civil Appeal 4658 of 2023**

pronouncements of the Supreme Court, and consequently warrant interference by this Court in exercise of its jurisdiction under Section 34 of the Act.

40. *Per Contra* Mr. Anil K. Airi, learned Counsel appearing on behalf of OSE submits that the present petition is wholly devoid of merit and is liable to be dismissed in *limine*.

41. It is contended that the challenge mounted by NHAI is confined to Claim Nos. 2 and 3, NHAI having consciously accepted the findings returned by the Arbitral Tribunal in respect of Claim Nos. 1 and 4, as recorded by this Court in its order dated 04.01.2017.

42. According to OSE, the petition does not disclose any of the statutorily recognised grounds for interference under Section 34 of the Act and, in substance, merely seeks a re-appreciation of the provisions of the contract and the evidence considered by the Arbitral Tribunal. It is submitted that such an exercise is wholly impermissible in proceedings under Section 34, which do not confer appellate jurisdiction upon this Court.

43. It is urged that the Tribunal has meticulously examined the terms of contract, the pleadings, documentary evidence and the rival submissions before arriving at its conclusions. The interpretation adopted by the Tribunal , according to OSE, represents a plausible and reasonable interpretation, which cannot be substituted merely because another interpretation is possible. It is submitted that NHAI’s challenge proceeds on the erroneous assumption that this Court may reassess the interpretation of the contract adopted by the Tribunal, which is contrary to the settled principles governing judicial review of arbitral awards.

44. Insofar as Claim No. 2 is concerned, learned Counsel submits that the dispute essentially relates to the determination of the variables x, y and z under the price adjustment formula and the identification of the relevant indices applicable for computation thereof. It is contended that the Tribunal has correctly construed Clause 70.3 of the COPA by holding that the variable percentages were required to be determined on the basis of the actual cost of bitumen, cement and steel used in execution of the works.

45. The Tribunal, while interpreting the expression "cost", rightly relied upon Clause 1.1(g)(i) of the Contract, which defines "cost" as all expenditure properly incurred, including overheads and other allocable charges, while expressly excluding profit. On that basis of the said definition, the Tribunal correctly concluded that transportation charges, local taxes and overheads formed part of the cost of materials, whereas the element of profit stood excluded from the computation.

46. OSE further emphasises that the Tribunal had, in fact, specifically rejected its own contention to the extent it sought inclusion of profit in the computation, thereby demonstrating that the award was not based on an arbitrary or one sided interpretation but represents a balanced and reasoned interpretation of the contract.

47. It is further submitted that the Tribunal rightly rejected NHAI's contention that the variable percentages were required to be computed on the basis of ex-source prices. According to OSE, the Contract does not employ the expression "ex-source price" and, therefore, the interpretation canvassed by NHAI amounts to importing words into the Contract which the parties themselves never agreed upon. Equally, the Tribunal correctly held that, under Clause 70.3, the applicable indices are those prevailing twenty-eight days prior to the last day of the relevant IPC, which constitutes the specific contractual stipulation governing price adjustment and, consequently, prevails over the more general provision contained in Clause 70.5.

48. Learned Counsel further submits that the findings returned by the Tribunal in relation to Claim No. 2 stand fortified by the judgment of the Supreme Court in ***Progressive-MVR (JV)*** *(supra)*. It is contended that the Supreme Court has unequivocally held that the price adjustment mechanism is relatable to the base rates quoted by the successful bidder and that such adjustment necessarily has to be worked out with reference to the base price reflected in the bid.

49. According to OSE, the Tribunal has adopted precisely the same approach by determining the price adjustment with reference to the quoted base rates while excluding the element of profit from the computation. The objection raised by NHAI, therefore, proceeds on a complete misreading of both the terms of contract and the judgment of the Supreme Court.

50. In respect of Claim No. 3, learned Counsel submits that the controversy is no longer *res integra*. It is urged that the Tribunal, after an elaborate consideration of the documents and the bid submissions, correctly held that the additional rebate of 7.75% offered by OSE constituted a discount on the overall bid price and not a reduction in the quoted item rates. Consequently, while the first rebate of 5% operated upon the quoted rates, the additional rebate of 7.75% was merely a concession in the aggregate bid price and had no bearing upon the mechanism governing price adjustment. Since price adjustment is computed with reference to the value of work executed on the quoted rates contained in the Bill of Quantities and does not itself constitute a quoted rate, the Tribunal rightly concluded that the additional rebate of 7.75% could not be extended to price adjustment amounts.

51. Learned Counsel further submits that the aforesaid issue stands squarely concluded by the judgment of the Division Bench of this Court in ***National Highways Authority of India v. Oriental Structural Engineers Pvt. Ltd***[15], arising out of an arbitral award concerning the same contractual arrangement. The Division Bench affirmed the interpretation adopted by the Arbitral Tribunal and categorically held that price adjustment is not a rate quoted in the BOQ but is merely computed on the basis of the quoted rates and, consequently, the additional rebate of 7.75% was held to be inapplicable thereto. It is submitted that the present dispute pertains to the companion contract awarded pursuant to the very same bidding process and governed by identical contractual provisions. Therefore, the ratio of the said judgment applies to the controversy involved herein and leaves no scope for further challenge on this issue.

52. OSE also places reliance upon the judgments of this Court in ***National Highways Authority of India v. M/s Hindustan Construction***

[15] **2018 SCC OnLine Del 10120**

Company[16], as affirmed by the Division Bench of this Court[17], wherein an identical interpretation of the provisions contained in the contract governing price adjustment has been upheld, which further reinforce the correctness of the view adopted by the Tribunal.

53. On the question of interest, learned Counsel submits that the award of interest is strictly in accordance with the contract. Reliance is placed upon Clause 60.8 of COPA read with the Appendix to Bid, which expressly provides for payment of interest at the rate of 10% per annum, compounded monthly.

54. It is further submitted that NHAI has itself accepted the award of compound interest in relation to Claim No. 1 and, therefore, cannot selectively assail the grant of identical interest in respect of Claim Nos. 2 and 3. Such a selective challenge, according to OSE, is wholly untenable.

55. OSE further relies upon the decisions of the Supreme Court in ***State of Haryana v. S.L. Arora & Co***[18]**.** **and** ***M/s D. Khosla & Co. v. Union of India***[19] to contend that where the contract expressly provides for compounding of interest, the Arbitral Tribunal is bound to give effect to such contractual stipulation. It is also pointed out that post-award interest has been awarded only at the simple rate of 12% per annum in accordance with the operative directions contained in the award and no interference is warranted on that count.

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[16] **O.M.P. No. 274 of 2015**

[17] **National Highways Authority of India v v.M/s Hindustan Construction Company; 2016:DHC:1309-DB**

[18] **(2010)3SCC690**

[19] **(2010)3SCC690**

56. On the aforesaid grounds, learned Counsel submits that the impugned award discloses a careful and reasoned interpretation of the contract, is consistent with the law laid down by the Supreme Court as well as this Court in analogous disputes arising out of NHAI contracts, and does not suffer from any patent illegality, perversity or jurisdictional error warranting interference under Section 34 of the Act. Thus, the present petition according to OSE is nothing but an impermissible attempt by NHAI to invite this Court to sit in appeal over a plausible view and well-reasoned findings returned by the Tribunal and is, therefore, liable to be dismissed.

FINDINGS AND ANALYSIS

57. Before embarking upon claim-wise evaluation of the impugned arbitral award, it is imperative to appreciate the contours of this Court's jurisdiction under Section 34 of the Act.

58. Section 34 Court does not sit as a Court of appeal over the findings rendered by an arbitral tribunal. The scope of judicial review is limited and Section 34 does not permit a roving inquiry or a re-appreciation of evidence, nor does it empower this Court to substitute its own view for that of the tribunal merely because another view of the contract may be possible or even preferable. The Court is concerned only with examining whether the award suffers from any of the limited infirmities recognized under Section 34 of the Act.

59. The limits of judicial intervention under Section 34 have been authoritatively settled by the Supreme Court in a long line of decisions, including ***Associate Builders v. DDA***[20], ***Ssangyong Engg. & Construction Co. Ltd. v. NHAI***[21] and ***Delhi Airport Metro Express (P) Ltd. v. DMRC***[22].

60. Casual and cavalier interference with arbitral awards, and proscription from interfering on the ground that a better, alternative view was possible, stands firmly foreclosed. The autonomy of the Arbitral Tribunal is required to be respected and interference with arbitral awards on factual aspects firmly eschewed.[23]

61. Further the principles governing the exercise of jurisdiction under Section 34, particularly where an award is assailed on the ground of "patent illegality" under Section 34(2A) or as being in conflict with the "public policy of India" under Section 34(2)(b)(ii), stand comprehensively restated in the recent decisions of the Supreme Court in ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd***[24] and ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***[25]. These decisions reaffirm the consistent judicial approach that arbitral awards are entitled to a high degree of deference and judicial interference remains the exception rather than the rule, warranted only where the award falls within the narrowly circumscribed statutory grounds.

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[20] (2015) 3 SCC 49
[21] (2019) 15 SCC 131
[22] (2022) 1 SCC 131
[23] National Highways Authority of India v. Unitech-NCC (JV),2025 SCC OnLine Del 4280
[24] (2025) 2 SCC 417
[25] (2025) 7 SCC 1

62. It is also worthy to reproduce the line in ***NDMC v. R & T Enterprises*** [26] wherein the Single Bench of this Court analysed the contours of Section 34 of the Act and observed thus:

> ***"55.*** *The decisions on the scope of Section 34 of the 1996 Act are too numerous to justify any paraphrasing, but the position is, by now, certain. UHL Power Co. Ltd. v. State of H.P.*[28] *and Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*[29] *hold that the jurisdiction of the Court under Section 34 cannot be likened to normal appellate jurisdiction. Casual and cavalier interference with arbitral awards, and proscription from interfering on the ground that a better, alternative view was possible, stands clearly foreclosed by Ssangyong Engineering & Construction Co. Ltd. v. N.H.A.I.*[30] *and Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*[31]*. The autonomy of the Arbitral Tribunal was required to be respected and interference with arbitral awards on factual aspects firmly eschewed. At the same time, if the award was found to be perverse, or that the interpretation of the contractual covenants by the Arbitral Tribunal was one which could not possibly be accepted, the Court was bound to interfere*[32]*. Instances where the construction of the contractual clauses, by the Arbitral Tribunal, was found to be so unacceptable as to justify interference, are South East Asia Marine Engineering & Constructions Ltd. v. Oil India Ltd.*[33] *and Patel Engineering Ltd. v. North Eastern Electric Power Corporation Ltd.*[34]*.*
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> ***56.*** *"Perversity", as would justify interference with an arbitral award, connotes a situation in which the finding of fact, by the Arbitral Tribunal, was arrived at by ignoring or excluding relevant material, or by taking into consideration irrelevant material, or where the finding is so outrageously in defiance of logic as to suffer from the viced of irrationality*[35]*. Associate Builders v. D.D.A.*[36] *also placed especial reliance, on the concept of "perversity", on the following clarification, provided in Kuldeep Singh v. Commissioner of Police*[37]*:*
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> > *"10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be*

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[26] **2024 SCC OnLine Del 5436**

treated as perverse and the findings would not be interfered with."

63. It is now firmly settled that the Arbitral Tribunal is the final arbiter of facts. The Tribunal is the sole judge of the quality, sufficiency and probative value of the evidence placed before it. A finding of fact cannot be reopened merely because this Court may have drawn a different inference from the same material. Equally, the interpretation of contractual terms is primarily a matter for the Arbitral Tribunal. Where the contract is reasonably capable of more than one interpretation and the Tribunal adopts one such interpretation after considering the provisions and the rival submissions of the parties, the Court cannot supplant its own construction in exercise of jurisdiction under Section 34. An erroneous interpretation of a clause, by itself, remains an error within the jurisdiction of the Tribunal and not a ground for interference.

64. The autonomy accorded to an arbitral tribunal, however, is not unqualified. The Tribunal derives its authority from the contract and is statutorily bound by Section 28(3) of the Act to decide the dispute in accordance with its terms. The distinction between an erroneous interpretation of a contract and an interpretation contrary to the contract must constantly be borne in mind. While the former ordinarily falls within the exclusive domain of the Arbitral Tribunal, the latter amounts to a jurisdictional error, as the Tribunal, being a creature of the contract, cannot confer upon itself authority to disregard, modify or rewrite the bargain voluntarily entered into by the parties.

65. The Constitution Bench in ***Gayatri Balasamy*** (*supra*) has further clarified that while Section 34 does not confer a general power of appellate review or modification of arbitral awards, the Court is not denuded of all corrective jurisdiction. Where the offending portion of an award is severable from the remainder, or where correction of clerical, computational or similar errors is warranted, the Court may exercise a limited power of modification consistent with the statutory framework. Beyond these narrowly circumscribed situations, however, the Court cannot rewrite or recast the award under the guise of exercising jurisdiction under Section 34.

66. The present petition must, therefore, be examined against the aforesaid settled principles. The question before this Court is not whether this Court would have interpreted the provisions differently had it been sitting as the arbitral tribunal. The limited enquiry is whether the impugned award, insofar as it concerns Claim Nos. 2 and 3, discloses any patent illegality, travels beyond the contractual framework agreed between the parties, or otherwise falls within any of the limited grounds for interference recognised under Section 34 of the Act.

CLAIM 2

67. The challenge to the award under Claim No. 2 essentially rests on the premise that the Tribunal has interpreted Clause 70 of the COPA in a manner contrary to the contract, governing price adjustment. It is therefore necessary to examine whether the Tribunal has merely preferred one among two possible constructions of the Contract, or whether, in the guise of interpretation, it has travelled beyond the bargain consciously entered into by the parties.

68. Under Claim No. 2, the primary controversy between the parties centres upon the mathematical and methodology adopted for determining the variable percentage weightages denoted as x, y and z under Sub-Clause 70.3 of the COPA representing Bitumen, Cement, and Steel respectively, for the purpose of computing price escalation.

69. Clause 70 of COPA provides a comprehensive mechanism for price adjustment to neutralize inflation during the execution of the works. Sub-Clause 70.3(xi) contains a crucial note governing the determination of x,y,z which stipulates:

> *"Note:* x,y,z *are the actual percentage of cost of bitumen cement and steel respectively used for execution of works as per the Interim Payment Certificate for the month"*

70. The formula under Sub-Clause 70.3 incorporates a fixed factor of 0.85 to exclude non-adjustable elements (overheads and profit) and assigns a residual component for "Other Materials" expressed as (50-(x+y+z)).

71. OSE relied heavily on Clause 1.1(g)(i) of GCC, which defines "Cost" as *"all expenditure properly incurred or to be incurred whether on or off the Site, including overheads and other charges properly allocable thereto but does not include any allowance for profit".*

72. OSE contended before the Arbitral Tribunal that "cost" in Sub-Clause 70.3(xi) must be read with GCC Clause 1.1(g)(i) to mean the actual landed cost at site. OSE argued that transportation charges, local taxes, and 10% allocable overheads must be loaded onto the basic ex-source prices of Bitumen, Cement, and Steel to calculate the respective weightages represented by x, y and z.

73. Conversely, NHAI submitted that x, y and z represent the input composition of key materials valued strictly at base prices/ex-source rates prevailing 28 days prior to bid submission. NHAI urged that loading transportation, taxes, and overheads into x, y and z distorts the formula, causing the residual factor (50- (x+y+z)) to yield a negative figure and conferring an unauthorized double benefit of overheads upon the contractor.

74. By a majority award dated 18.04.2016, the Arbitral Tribunal accepted OSE's interpretation of "cost" by invoking GCC Clause 1.1(g)(i).

75. The reasoning of the majority Tribunal proceeds on the premise that, since Clause 1.1(g)(i) defines the expression "Cost", the same definition necessarily governs the expression "actual percentage cost" occurring in the Note appended to Clause 70.3. On that basis, the Tribunal concluded that transportation charges, taxes and allocable overheads form part of the cost of bitumen, cement and steel and must therefore be included while computing the variables x,y and z. The Tribunal held that freight, taxes, and 10% allocable overheads fell within the definition of "Cost" and were required to be loaded onto the base prices of key materials, thereby awarding OSE a differential sum of Rs. 4,05,95,805/- along with pre-reference interest @ 10% p.a compounded monthly.

76. The approach adopted by the Tribunal undoubtedly constitutes an exercise in contractual interpretation. It cannot be said that the Tribunal has ignored Clause 70 or decided the claim dehors the Contract. The Tribunal has referred to the relevant provisions and assigned reasons for accepting the interpretation canvassed by OSE. Ordinarily, such an exercise would fall within the exclusive province of the Arbitral Tribunal and would not warrant interference under Section 34 merely because another interpretation appears to be preferable.

77. The matter, however, does not rest there. Section 28(3) of the Act obligates the Tribunal to decide the disputes in accordance with the terms of the Contract. The Court must therefore examine whether the interpretation adopted by the Tribunal accords with the scheme governing Clause 70 or whether it effectively alters that scheme.

78. In this context, the decision of the Supreme Court in**.** ***Progressive-MVR (JV)*** *(supra)* assumes significance. The Supreme Court authoritatively construed the very same provisions and held that Clause 70 constitutes a self-contained mechanism for price adjustment. It further explained that the expression "actual" occurring in the Note appended to Clause 70.3 refers to the actual proportion of bitumen, cement and steel incorporated in the work and does not warrant loading transportation charges, taxes or allocable overheads into the computation of the variables x, y and z.

79. The significance of ***Progressive-MVR (JV)*** *(supra)* lies not merely in the conclusion reached by the Supreme Court but in the analysis undertaken therein in the interpretation of contract. The judgment explains the architecture of Clause 70 and demonstrates that the escalation formula is intended to operate on predetermined base-price components. The interpretation adopted by the Tribunal, by importing the general definition of "Cost" into the specialised formula contained in Clause 70, departs from as what stands recognised by the Supreme Court. Consequently, the Tribunal's approach cannot be sustained merely as a plausible alternative interpretation of the Contract.

80. It is true that the award in the present case preceded the decision in ***Progressive-MVR (JV)*** *(supra)*. Equally, however, the question before this Court is not whether the Tribunal acted in disregard of that judgment. The question is whether the award, viewed in the light of the law declared by the Supreme Court under Article 141 of the Constitution, can be sustained as an interpretation rendered in accordance with the terms of the Contract. Once the Supreme Court has authoritatively explained the Clause/contract, this Court cannot ignore such binding declaration while examining whether the award suffers from patent illegality under Section 34(2A).

81. The Supreme Court held that the price adjustment mechanism under Clause 70 is founded upon the base prices prevailing 28 days prior to the submission of bids and not upon the current or landed cost of the materials incurred by the contractor during execution of the works. It was observed that the very object of the escalation formula is to neutralise fluctuations in prices with reference to the "base" and not to substitute the formula with one based upon the contractor's actual expenditure.

82. The Court further clarified that the expression "actual" occurring in the Note appended to Sub-Clause 70.3(xi) qualifies the percentage composition of bitumen, cement and steel incorporated in the work during the relevant IPC and not the prevailing cost of such materials. The variables x, y and z are therefore intended to reflect the actual proportion of the specified materials incorporated in the executed work, while their valuation continues to be anchored to the base-price mechanism as given in the contract.

83. The Supreme Court also noticed that if the contractor's interpretation were to be accepted and transportation charges, taxes and overheads were loaded onto the material cost while determining x, y and z, the aggregate of the said variables could exceed the contractual limit of 50%, resulting in the residual component for "Other Materials", namely (50 – (x + y + z)), becoming negative. Such a consequence, the Court held, would be wholly inconsistent with the structure of the formula and would defeat the commercial scheme consciously adopted by the parties.

84. The Court further forms the opinion that the expression "actual" relates to the percentage of material incorporated in the work and that the base price, and not the current or landed cost, constitutes the correct basis for applying the escalation formula.

85. Significantly, the Supreme Court also considered the applicability of its interpretation to pending proceedings wherein, the Court held that the interpretation placed upon Clause 70 would govern all cases where the arbitral award had not attained finality and judicial proceedings remained pending. The Court observed that the principle of issue estoppel would apply only to matters which had attained finality and that, in all pending challenges to arbitral awards involving this issue, the interpretation declared therein would govern the outcome.

86. When a Section 34 Court adjudicates a challenge to an arbitral award, it is bound to apply the law prevailing on the date of adjudication. The timing of the award does not grant immunity against setting aside an award that stands directly in the teeth of a binding declaration of law.

87. In the present case, the majority Tribunal proceeded on the premise that the expression "actual percentage cost" occurring in the Note to Sub-Clause 70.3(xi) necessarily derives its content from the general definition of "Cost" contained in Clause 1.1(g)(i) of the GCC. On that basis, the Tribunal directed inclusion of transportation charges, taxes and allocable overheads while determining the variables x, y and z. The interpretation adopted by the Tribunal, therefore, proceeds on a premise fundamentally inconsistent with the construction subsequently and authoritatively placed upon the same contractual provisions by the Supreme Court.

88. This Court is conscious that the impugned award preceded the decision in ***Progressive-MVR (JV)(***supra)**.** Nevertheless, the said judgment expressly clarifies that the interpretation declared therein governs all pending challenges where the award has not attained finality. This Court is, therefore, bound to examine the validity of the impugned award in the light of the law declared by the Supreme Court under Article 141 of the Constitution.

89. Once the interpretation placed upon Clause 70 by the Supreme Court is applied, the methodology adopted by the majority Tribunal cannot be sustained. By importing into the escalation formula elements which the contract itself does not contemplate, the Tribunal departed from the framework governing price adjustment. Such a departure is not merely an erroneous interpretation of the contract but a failure to decide the dispute in accordance with the terms of the contract as mandated by Section 28(3) of the Act.

90. This Court is, therefore, of the considered opinion that the majority Tribunal, by importing into Clause 70 elements altered the methodology agreed between the parties for computation of price adjustment. The award, to that extent, cannot be regarded as a mere erroneous interpretation of the Contract. It amounts to a departure from the lines of Contract itself and consequently falls foul of Section 28(3) of the Act. The resultant infirmity goes to the root of the award and attracts the ground of patent illegality under Section 34(2A).

91. Accordingly, the award insofar as it allows Claim No. 2 for an amount of Rs. 4,05,95,805/- is set aside. Consequently, the aggregate amount payable under the award shall stand reduced to that extent and the interest payable shall be recomputed accordingly in terms of direction contained in the award.

CLAIM 3

92. Claim No. 3 raises a pure question of interpretation or construction of the contract. The controversy is not with respect to the mathematical computation of price adjustment under Clause 70 of the COPA but whether the additional rebate of 7.75%, offered by OSE in its bid in the event of being awarded more than one contract, was intended to operate only upon the bid price, or whether it also extended to the price adjustment/escalation amounts becoming payable during execution of the works.

93. The answer to the aforesaid question depends upon a harmonious construction of the bid documents, the LOA dated 27.07.2005, the Contract Agreement, the hierarchy of documents under Clause 5.2 of the COPA and the price adjustment mechanism embodied in Clause 70. The dispute is therefore one of interpretation.

94. There is no dispute that OSE, while submitting its bid, offered two separate and distinct rebates. The first was a general rebate of 5% on the quoted rates. Separately, OSE declared:

> *"We are bidding for Contract No.(s) EW-II (MP/UP-I & EW-II (UP-3).In the event we are awarded more than one contract, we will offer an additional discount of 7.75% percent over and above the quoted*

Bid Price for all the contracts awarded to us."

95. Equally, there is no dispute that the LOA subsequently recorded a combined discount of 12.3625% on the quoted rates of all the items, thereby treating the additional rebate of 7.75% as operating upon the quoted item rates themselves. It is this apparent divergence between the language employed in the bid and the language adopted in the LOA which forms the genesis of the present dispute.

96. According to OSE, the two rebates were consciously structured differently. Whereas the first rebate expressly operated upon the quoted rates, the second rebate was offered only upon the overall bid price. Consequently, according to OSE, the "R" value under Clause 70, representing the value of work executed during the relevant month for the purpose of price adjustment, continued to be computed on the quoted rates, subject only to the first rebate of 5%. The second rebate of 7.75%, it was contended that, it merely reduced the overall contract consideration and was never intended to dilute the statutory and contractual entitlement to price adjustment under Clause 70.

97. NHAI, on the other hand, contended that once the LOA expressly incorporated a combined rebate of 12.3625% on the quoted rates of all items, and the Contract Agreement came to be executed on that basis, the rates themselves stood reduced. Consequently, every running account bill, every IPC and every price adjustment had necessarily to proceed on the reduced contractual rates.

98. NHAI further submits that OSE accepted all forty-one IPCs over a period of nearly four years without demur, raised every running bill after applying the combined rebate, and questioned the applicability of the second rebate to price adjustment only after completion of the works. The challenge, according to NHAI, is therefore contrary to the contractual documents and is, in any event, barred by acquiescence, waiver and limitation.

99. The primary legal issue raised by NHAI under Claim No. 3 is no longer *res integra*. In relation to the companion contract awarded under the exact same tender process and governed by identical provisions, a Division Bench of this Court ***in M/s Oriental Structural Engineers Pvt. Ltd***. *(supra)*, held that :-

> ***10.*** *In this court's opinion, what NHAI argues, is to invite the court, in the guise of saying that the contract conditions were ignored, to substitute its reasons for the reasons given in the award. When the law is clear, that the interpretation of contract is the primary task - or within the exclusive domain of an arbitral tribunal, the court cannot, by a sleight of reasoning, by saying that the reasons are contrary to the contract, upset the award. In P.R. Shah v. B.H.H. Securities, (2012) 1 SCC 594 it was held that:*
>
>> *"21. A court does not sit in appeal over the award of an Arbitral Tribunal by reassessing or reappreciating the evidence. An award can be challenged only under the grounds mentioned in Section 34(2) of the Act. The Arbitral Tribunal has examined the facts and held that both the second respondent and the appellant are liable. The case as put forward by the first respondent has been accepted. Even the minority view was that the second respondent was liable as claimed by the first respondent, but the appellant was not liable only on the ground that the arbitrators appointed by the Stock Exchange under Bye-law 248, in a claim against a non-member, had no jurisdiction to decide a claim against another member. The finding of the majority is that the appellant did the transaction in the name of the second respondent and is therefore, liable along with the second respondent. Therefore, in the absence of any ground under*

Section 34(2) of the Act, it is not possible to re-examine the facts to find out whether a different decision can be arrived at.”

100. Thus, price adjustment under Clause 70 is calculated on the value of work done based on BOQ rates. Extending an overall bid discount to lower the base BOQ rates for escalation formula purposes would amount to imposing a double deduction on the contractor, which is not contemplated by the contract scheme.

101. Claim No. 3 presents a controversy distinct in character from Claim No. 2. Unlike Claim No. 2, which concerns the interpretation of the mathematical formula prescribed under Clause 70.3 of the COPA, the present dispute centres upon the true construction of the contract entered into between the parties and, more particularly, the scope and operation of the additional rebate of 7.75% offered by OSE in its bid.

102. There is no dispute between the parties that Clause 70 entitles the contractor to price adjustment in respect of increase or decrease in the cost of labour, materials, fuel and other specified inputs during execution of the works. Equally, there is no dispute that OSE, while submitting its bid, offered two separate concessions:(i) a general rebate of 5% on the quoted rates; and(ii) an additional rebate of 7.75% in the event both contract packages were awarded to it.

103. The controversy lies in determining whether the additional rebate of 7.75% was confined to the bid price/contract price or whether it also operated upon the amounts becoming payable towards price adjustment under Clause 70 during execution of the contract.

104. The answer to this question does not merely depend upon the language employed in one isolated clause. It requires a harmonious construction of the Bid, the LOA dated 27.07.2005, the Contract Agreement dated 29.09.2005, the order of precedence prescribed under Clause 5.2 of the COPA, the mechanism of price adjustment under Clause 70, and the conduct of the parties during performance of the contract. The dispute is, therefore, fundamentally one of contractual interpretation.

105. Moving on to the interpretation which is under dispute in claim 3, the bid submitted by OSE contained two distinct concessions. The first was a general rebate of 5% on the quoted rates. The second was worded in the following terms:

> *"We are bidding for Contract No.(s) EW-II (MP/UP-1) & EW-II (UP-3). In the event we are awarded more than one contract, we will offer an additional discount of 7.75 per cent over and above the quoted Bid Price for all the contracts awarded to us."*

The phraseology employed in the second rebate constitutes the genesis of Claim 3.

106. Upon both contract packages being awarded to OSE, the LOA dated 27.07.2005 recorded that the contract price included:

> *"(a) corrections for arithmetic errors; and*
>
> *(b) general discount of 5% together with combination discount of 7.75%, i.e. a combined discount of 12.3625% on the quoted rates of all the items."*

107. NHAI asserts that the LOA crystallised the bargain and converted both rebates into a combined reduction applicable to the quoted rates of every BOQ item. OSE, on the other hand, contends that the LOA merely quantified the overall contract price and did not alter the essential character of the second rebate, which, according to OSE, continued to operate only upon the bid price and not upon the independent mechanism of price adjustment.

108. It is this divergence which ultimately found expression before the Arbitral Tribunal.

109. The majority Tribunal examined the language employed in the bid documents, the LOA and the terms governing price adjustment. It noticed that the first rebate was expressly offered "on the quoted rates", whereas the second rebate was offered "over and above the quoted bid price" in the event both contracts were awarded to OSE. The Tribunal observed that these were not identical expressions and that the distinction between them could not be rendered otiose.

110. The Tribunal further noticed that although the LOA referred to a combined rebate of 12.3625% on the quoted rates, such expression was not found in the original offer made by OSE. Proceeding on that premise, the Tribunal invoked Sections 7 and 13 of the Indian Contract Act, 1872[27] and reasoned that acceptance must correspond to the proposal; if the LOA introduced a material variation, it could not unilaterally alter the bargain originally offered by the contractor. It

[27] "Contract Act", hereinafter

therefore concluded that the additional rebate of 7.75% was never intended to alter the quoted unit rates forming the basis of the price adjustment formula under Clause 70.

111. The Tribunal's reference to Sections 7 and 13 of the Contract Act cannot, in itself, be characterised as legally erroneous. The question whether the LOA constituted an acceptance of the offer as made or introduced a variation therein was a question of contractual construction which fell within the Tribunal's jurisdiction. While NHAI may have a plausible basis for contending, on the strength of the subsequent conduct of the parties, that the LOA reflected the concluded bargain between them, that circumstance does not render the contrary construction adopted by the Tribunal perverse or patently illegal. This Court, exercising jurisdiction under Section 34, cannot substitute its own preferred construction for a construction which is reasonably possible on the contractual record.

112. The Tribunal also drew a distinction between the contract price and the price adjustment payable under Clause 70. According to the majority, price adjustment is not itself a rate quoted in the BOQ but represents an independent entitlement under the contract computed in accordance with the formula prescribed under Clause 70 to neutralise fluctuations in input costs during execution. On that reasoning, the Tribunal held that the additional rebate, though relevant while determining the contract price, could not be extended to the amounts payable towards price adjustment.

113. Upon accepting the aforesaid interpretation, the Tribunal relied upon the computation placed by OSE in CD/8. Recording that since NHAI had not demonstrated any specific arithmetical error or infirmity in the said computation, the Tribunal awarded a sum of Rs. 7,87,76,490/- together with interest @ 10% p.a. compounded monthly.

114. NHAI's principal submission was that the Tribunal ignored the hierarchy of documents prescribed under Clause 5.2 of the COPA. It is contended that once the parties executed the Contract Agreement pursuant to the LOA dated 27.07.2005, the contract stood crystallised and the Tribunal could not revert to the language employed in the original bid for the purpose of determining the scope and effect of the rebate.

115. The aforesaid submission undoubtedly deserves careful consideration. The LOA records that the contract price includes a combined rebate of 12.3625% on the quoted rates of all the items. Equally, Clause 5.2 of the COPA accords precedence to the Contract Agreement and the LOA over the Bid in the event of any inconsistency. Read in isolation, these circumstances lend considerable support to the contention urged by NHAI that the concluded contract contemplated application of the combined rebate to the quoted rates.

116. The question, however, is not whether this interpretation is plausible. The question is whether it is the only interpretation reasonably available as per the contract.

117. A careful reading of the majority award reveals that the Tribunal has not ignored either the LOA or Clause 5.2 of the COPA. On the contrary, both documents have been specifically noticed. The Tribunal was alive to the language employed in the LOA. Nevertheless, after examining the bid, the LOA and the provisions governing price adjustment, it concluded that the second rebate retained a character distinct from the general rebate of 5%.

118. The majority Tribunal attached significance to the distinction in the language consciously employed by OSE while submitting its bid. The first concession was unequivocally described as a "discount on quoted rates". The second concession, however, was couched in materially different language and referred to an additional discount "over and above the quoted Bid Price." The Tribunal proceeded on the premise that if the parties intended both rebates to operate identically, there was no discernible reason to employ two different expressions in the bid itself.

119. It is difficult to hold that such reasoning is wholly irrational or unsupported from the record. Whether the distinction ultimately persuades this Court is not determinative. The Tribunal has assigned intelligible reasons for construing the two rebates differently. It cannot therefore be said that the Tribunal ignored the language in the contract or substituted the contract with one of its own making.

120. NHAI has strongly relied upon Clause 5.2 of the COPA to contend that the LOA overrides the Bid. The submission, though attractive at first blush, overlooks the fact that the Tribunal did not hold the Bid to prevailed over the LOA. Rather, it attempted to harmonise the two documents by holding that while the LOA quantified the contract price after taking into account the second rebate, it did not necessarily alter the independent terms governing price adjustment under Clause 70. Whether this construction is ultimately preferable is beside the point. It undoubtedly constitutes a process of interpretation of contract.

121. The distinction between interpreting a contract and rewriting a contract assumes significance in this context. A tribunal rewrites a contract where it ignores an express stipulation or substitutes a new contractual term in place of one consciously agreed by the parties. Conversely, where the tribunal examines two apparently competing contractual provisions and attempts to reconcile them through a process of construction, it remains within the legitimate bounds of interpretation. The majority award, in the considered opinion of this Court, falls within the latter category.

122. Learned Counsel for NHAI has also placed considerable emphasis upon the dissenting opinion of Shri S.S.Rana, Co-Arbitrator. There can be no quarrel with the proposition that the dissent presents a cogent and well-reasoned interpretation of the contract. The dissent accords primacy to the LOA and concludes that once the Contract Agreement stood executed and acted upon, the initial bargain could not thereafter be tested with reference to the pre-contractual offer.

123. The dissent undoubtedly represents a plausible construction of the contract. However, the mere existence of a persuasive dissent does not, by itself, render the majority award vulnerable under Section 34.

Were the Court to interfere merely because the dissent appears more convincing, it would effectively convert proceedings under Section 34 into a statutory appeal on merits an approach consistently deprecated by the Supreme Court.

124. Indeed, the very existence of two reasoned but conflicting interpretations within the Tribunal itself demonstrates that the documents were capable of more than one construction. Once the majority has adopted one of the reasonably possible interpretations after considering the provisions and the rival submissions, this Court cannot substitute its own view merely because the dissent appears to present a more attractive or commercially preferable interpretation. The jurisdiction under Section 34 does not permit the Court to choose between competing interpretations of a contract, but only to determine whether the interpretation adopted by the Tribunal falls within the bounds of permissible contractual construction.

125. There is yet another aspect which, in the considered opinion of this Court, substantially narrows the scope of judicial review in the present case. During the course of hearing, learned Counsel appearing for OSE placed considerable reliance upon the judgment of the Division Bench of this Court in ***Oriental Structural Engineers Pvt. Ltd*** *(supra).* The said decision arose out of a challenge to an arbitral award rendered between the same parties and involved substantially similar contractual provisions governing the rebate offered by OSE and the mechanism of price adjustment under Clause 70.

126. NHAI sought to distinguish the said decision by contending that each arbitral award must stand or fall on its own reasoning and that this Court is required to independently examine whether the majority Tribunal, in the present case, has exceeded the limits imposed by Section 28(3) of the Act. There can be no quarrel with the aforesaid proposition. An earlier arbitral award cannot, by itself, bind another Tribunal or determine the outcome of an independent challenge under Section 34.

127. Equally, however, where a Division Bench of this Court has already examined substantially identical contractual provisions and upheld an arbitral interpretation thereof while exercising appellate jurisdiction under Section 37 of the Act, such pronouncement undoubtedly possesses considerable precedential value while examining a subsequent challenge founded on the same contractual language.

128. A careful reading of the Division Bench judgment reveals that the controversy before the Court was materially similar to the one arising in the present proceedings. NHAI had contended before the Division Bench that the additional rebate of 7.75% necessarily reduced the rates forming the basis for computation of price adjustment and that the Tribunal had erred in holding otherwise.

129. The Division Bench noticed the reasoning of the arbitral tribunal that price adjustment was not itself a rate quoted in the BOQ but constituted an amount computed under Clause 70 upon the basis of the formula, and that the additional rebate offered on the quoted bid price could not automatically be applied to the separate price-adjustment formula prescribed under Clause 70. The Division Bench found no infirmity in such reasoning and declined to interfere with the award.

130. The significance of the aforesaid judgment lies not merely in the ultimate conclusion reached by the Division Bench but in the principle applied by it. The Court recognised that the arbitral tribunal had undertaken an exercise of construction and that the interpretation adopted, even if another view were possible, could not be characterised as one warranting interference under Section 34. The said principle applies with equal force in the present proceedings.

131. In other words, the Division Bench treated the dispute as falling within the legitimate domain of arbitral interpretation rather than constituting a jurisdictional departure from the contract.

132. The present case stands on substantially the same footing. The provisions relied upon before this Court are materially similar. The rival submissions advanced by NHAI are also, in substance, the same as those considered in the proceedings before the Division Bench.

133. The principal grounds urged by NHAI namely, that the LOA transformed the second rebate into a rebate on quoted rates, that the Tribunal ignored the hierarchy under Clause 5.2 and that the Tribunal rewrote the contract, were also canvassed before the Division Bench. The fact that these submissions did not find favour with the Division Bench constitutes a relevant circumstance while examining whether the present award discloses patent illegality under Section 34 of the Act.

134. Learned Counsel for NHAI was unable to point out any material distinction in the terms of contract governing the present contract *vis-a-vis* those considered by the Division Bench. Nor has it been shown that the contract language presently under consideration materially departs from that considered in the said case. In these circumstances, this Court finds no reason to adopt an approach inconsistent with the one already approved by the Division Bench in respect of substantially identical contractual provisions.

135. Now while addressing the contention of NHAI as to IPC; it was contended that OSE itself prepared all forty-one IPCs as well as the corresponding price variation bills after applying the combined rebate of 12.3625%, accepted payments made thereunder throughout the execution of the works, and raised the present dispute only after completion of the project.

136. According to NHAI, such conduct not only demonstrates acceptance of its interpretation of the contract, but also renders the claim barred by limitation and acquiescence.

137. The submission, however, overlooks the essential nature and purpose of an IPC. An IPC is, by its very nature and purpose is, interim in character. It is a mechanism for facilitating periodic payments during the subsistence of the contract and does not, in itself, constitute a final adjudication of the parties' respective entitlements.

138. The same contractual scheme has been considered by this Court in ***National Highways Authority of India v. Ssangyong Engineering***

& Construction Co. Ltd[28], wherein the Court observed that the monthly statements and IPCs were "plainly interim in nature" and did not finally foreclose the right of either party to seek further amounts found due under the Contract. This Court specifically noticed the existence of the mechanism of the Final Statement, under which the contractor could claim further sums considered due under the Contract.

139. The principle emerging from ***Ssangyong Engineering & Construction Co. Ltd*** *(supra)* is therefore material. The mere fact that a contractor has accepted payments pursuant to IPCs cannot, without more, be treated as a final abandonment or waiver of a contractual claim. Nor can every omission to raise a particular component in an interim statement be converted into a complete bar against its subsequent adjudication.

140. Accordingly, the acceptance of the IPCs and the payments made thereunder do not, in the facts of the present case, furnish a sufficient ground to interfere with the award under Claim No. 3 on the grounds of waiver, acquiescence or limitation.

141. Thus, having examined the award in the light of the rival submissions, the documents and the governing precedents, this Court is unable to subscribe to the contention that the majority Tribunal has rewritten the contract. The Tribunal has adopted a construction that is supported by reasons and the contractual record.

142. The dissenting opinion undoubtedly presents another plausible

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construction; however, the existence of a persuasive dissent cannot convert the jurisdiction under Section 34 into an appellate forum for choosing between competing contractual interpretations. The limited question is whether the interpretation adopted by the majority Tribunal falls within the realm of permissible contractual construction. In the present case, it does.

143. Now as to the question of interest under Claim No. 3. The Tribunal awarded Rs.7,87,76,490/- as the principal amount, together with pre-reference interest at 10% per annum, compounded monthly, calculated from the respective due dates up to 15.07.2014 at Rs.7,15,19,945/-, and thereafter interest at the same rate up to the date of the award.

144. The basis for the aforesaid award of interest is Clause 60.8 of the COPA read with the Appendix to Bid, expressly stipulates interest at 10% per annum, compounded monthly. OSE specifically relies upon the contracts and submits that the Tribunal was bound to give effect to it. It also points out that NHAI has accepted the award of interest at the same interest rate in respect of Claim No. 1 and cannot, having accepted that part of the award, selectively challenge the application of the interest provision to Claim No. 3.

145. In the aforesaid circumstances, and particularly in view of the fact that the rate of interest @ 10% per annum compounded monthly is traceable to the express contract, no independent ground for interference under Claim No. 3 is made out. The 12% post-award interest, being a discretionary statutory award, may likewise be interfered with only if the circumstances of the case demonstrate that the Tribunal exercised that discretion in an arbitrary, unreasonable or legally impermissible manner warranting interference. No such infirmity is demonstrated merely by the fact that NHAI disputes the rate.

146. For the aforesaid reasons, this Court finds that the majority Tribunal's determination under Claim No. 3 does not disclose or suffer from any perversity, patent illegality or jurisdictional error warranting interference under Section 34 of the Act. The Tribunal duly considered the competing constructions advanced by the parties regarding the 7.75% rebate and, upon examining the bid documents, LOA and the scheme governing price adjustment, concluded that the rebate offered on the overall bid price could not be treated as a reduction of the BOQ rates for the purposes of Clause 70. The view so adopted represents a plausible construction and is, therefore, beyond the scope of interference under Section 34.

CONCLUSION

147. In view of the above, the challenge to the impugned majority Award dated 18.04.2016 succeeds only in part. The findings of the Tribunal on Claim No. 2 cannot be sustained, as the interpretation adopted therein is contrary to the law subsequently declared by the Supreme Court in ***M/s Progressive-MVR (JV)*** (supra) with respect to the very contract interpretation governing the computation of price adjustment. Accordingly, the award under Claim No. 2, together with the interest consequential thereto, is liable to be set aside.

148. As to Claim No.3, the interpretation adopted by the majority Tribunal regarding the applicability of the 7.75% rebate to the price-adjustment mechanism constitutes a possible, reasoned and legally permissible construction of the contractual documents, according to me. The dissenting view, though plausible, cannot furnish a basis for this Court to substitute its own interpretation for that of the majority Tribunal in exercise of jurisdiction under Section 34 of the Act.

149. Consequently, the award under Claim No. 3, including the principal amount of Rs.7,87,76,490/- and the interest awarded thereon, is upheld.

150. The petition under Section 34 is, therefore, partly allowed in the aforesaid terms. The impugned Award dated 18.04.2016 is set aside only to the extent of Claim No. 2 and the interest consequential thereto. The award in respect of Claim No. 3 is sustained in its entirety.

151. There shall be no interference with the remaining findings and directions contained in the impugned award.

152. The parties shall bear their own costs.

153. All pending applications, if any, stand disposed of.

OM PRAKASH SHUKLA, J.

AUGUST 18, 2026/*gunn*