2026:DHC:6812

$~

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

Judgment reserved on: 24.07.2026
Judgment pronounced on:18.08.2026

\+ O.M.P. (COMM) 206/2016

M/S NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Alok Kumar Jain, Mr. Ashok Gurnani and Mr. Abhishek Singh, Advocates.

versus

M/S ORIENTAL STRUCTURAL ENGINEERS PVT LTD .....Respondent

Through: Mr. Anil K Airi, Sr. Advocate with Ms. Bindiya Logawaney Airi, Mr. Ravi Krishan Chandna, Mr. Vishal Tyagi, Ms. Jasmin Sokhi, Mr. Harsh Gautam and Mr. Udbhav K. Garg, Advocates.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% **18.08.2026**

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996[1] assailing the Arbitral Award[2] dated 12.07.2012 passed by a three-member Tribunal in disputes arising out of Contract dated 26.03.2002[3].

2. The disputes between the parties arise out of a contract awarded by the National Highways Authority of India[4] for Four-Laning and

[1] "the Act", hereinafter
[2] "impugned award", alternatively
[3] "Contract", hereinafter
[4] "Petitioner", hereinafter

strengthening of the existing two-lane highway from Km. 199.66 to Km. 250.50 on NH-2 in the State of Uttar Pradesh (Construction Package IA – Contract No. GTRIP/1)[5].

3. The said disputes were initially referred to the Disputes Review Board[6]. When the issue did not get resolved before the DRB, the disputes were referred to arbitration, whereupon a three-member Arbitral Tribunal entered upon the reference and rendered the impugned Award dated 12.07.2012.

4. By the impugned Award, the Tribunal partly allowed Claim Nos. 1, 3 and 4 filed by the Respondent (claimant in the Arbitral Proceedings). For Claim No. 1, the Tribunal awarded a sum of Rs. 45,88,91,806/- together with interest. Under Claim No. 3, the Respondent was held entitled to reimbursement of the additional expenses incurred in Service Tax and Education Cess due to subsequent legislation. With respect to Claim No. 4, the Tribunal held that the Respondent was entitled to separate payment for "filler type expansion joints" used in retaining walls, separators and drains.

5. In both Claim Nos. 3&4, the Tribunal also directed the Engineer to verify the admissible amounts or quantities, as the case may be, and certify the amount payable to the Respondent.

6. Aggrieved by the impugned Award, the Petitioner has preferred the present petition under Section 34 of the Act.

[5] "the project" hereinafter
[6] "DRB" hereinafter

FACTS

7. The facts leading to the present controversy are briefly set out hereunder:

8. The Petitioner invited competitive bids for the project in which M/s Oriental Structural Engineers Ltd. – Gammon India Ltd. (Joint Venture)[7] participated and were declared as the successful bidder. A Letter of Acceptance was issued which was followed by an execution of the Contract Agreement on 26.03.2002[8] for a value of Rs.2,627,950,259/- and US $13,661,625/-.

9. Due to the scale and duration of the project, the Contract had clauses dealing with the consequences of delays during execution, price adjustment on account of fluctuations in input costs, and additional financial burdens arising from subsequent legislative changes etc. In that regard, Clauses 6.4, 12.2 and 42.2 provide for extension of time and reimbursement of additional costs in specified situations, Clause 70 provides for adjustment of the Contract Price, and Sub-Clause 70.8 deals with reimbursement of additional costs incurred due to change by subsequent legislation. The disputes in the present petition substantially arises as to the interpretation and application of these clauses.

10. In terms of the contract, the project was required to commence on 30.03.2002 and were to be completed within thirty-six months.

---

[7] "Respondent", hereinafter
[8] "contract", hereinafter

Instead of a single completion date, the contract provided for phased completion by dividing the project into three sections. The stipulated scheduled date as per the contract were as follows:

Section	Scope of work	Stipulated date of completion
Section-I	Km. 0 to Km. 30 (New Carriageway)	29.09.2003
Section -II	Km. 30 to Km. 50.50 (New Carriageway) and Km. 0 to Km. 15 (Existing Carriageway)	29.03.2004
Section-III	Km. 15 to Km. 50.50 (Existing Carriageway)	29.03.2005

11. The project, however, did not progress in accordance with the original stipulated schedule. During its execution, the agreed dates of completion was extended on several occasions and the period of completion stood extended upto 31.03.2009. According to the Respondent, the delay was caused by the Petitioner's failure to hand over the work front/site in time, physical obstructions, land acquisition issues and delays relating to the Tundla Railway Over Bridge. The Petitioner, on the other hand, attributed the delay to the Respondent's slow progress in execution of the works.

12. During the execution of the Contract, Service Tax was enhanced and Education Cess was introduced, resulting in an additional tax burden on the Respondent in respect of goods and services availed for execution of the works. Taking the position that the additional financial burden had arisen after the bid date and was not covered by the price

adjustment clauses given in the contract, the Respondent sought reimbursement as per Clause 70 of the Contract which was denied by the Petitioner.

13. Disputes also arose between the parties with respect to the Respondent's claim for payment towards "filler type expansion joints". According to the Respondent, the Bill of Quantities[9] did not provide for payment of the "filler type expansion joints" used in retaining walls, crash barriers, separators and drains. The Respondent, therefore, claimed that the use of such "filler type expansion joints" constituted a variation for which separate payment was payable. The Petitioner, on the other hand, contended that the agreed BOQ rates were all-inclusive and that no separate payment was payable.

14. The aforesaid developments gave rise to disputes between the parties.

15. Broadly, the disputes related to three issues. Firstly, whether the Respondent was entitled to compensation on account of the prolongation of the contract and expenses incurred in the extended period of execution. Secondly, whether the Respondent was entitled to reimbursement of the additional expenditure incurred due to imposition/enhancement of Service Tax and Education Cess, during the execution of the contract. Thirdly, whether the Respondent was entitled to separate payment for "filler type expansion joints" used in reinforced

[9] "BOQ" hereinafter

cement concrete structures, on the grounds that the said work constituted a variation not covered by the original BOQ.

16. In terms of Clause 67 of the Contract, the disputes were initially referred to the DRB. As the recommendations of the DRB did not attain finality, the disputes were, thereafter, referred to Tribunal under Clause 67.3 of the Contract.

17. Upon invocation of the arbitration agreement, a three-member Arbitral Tribunal comprising Shri Surjeet Singh as the Presiding Arbitrator and Shri S. Venkatesan and Shri Prem Nath as Co-Arbitrators entered upon the reference. The Respondent initially filed its Statement of Claims raising four substantive claims.

18. During the pendency of the arbitral proceedings, Claim No. 1, relating to prolongation costs was amended two times due to the continued extension of the Contract period. The Petitioner also filed its amended reply to amended Statement of Claim. However, the Respondent pressed only the following three claims for adjudication and withdrew the Claim No.2:

i. Claim No.1: Compensation due to delays during the period from 1% July, 2003 till completion of the works.
ii. Claim No. 3: Payment of additional cost due to subsequent Notification of Education Cess and Service Tax.
iii. Claim No.4: Payment of Variation item of Filler Expansion Joints:

19. Before the Tribunal, the Petitioner resisted all the claims in entirety. Insofar as Claim No. 1 was concerned, it was contended that the delay in completion was either attributable to the Respondent or, in any event, did not entitle it to any additional compensation under Clauses 6.4, 12.2 and 42.2 of the Contract.

20. As regards Claim No. 3, the Petitioner submitted that no reimbursement was payable in terms of 70.8 of the Contract towards Service Tax and Education Cess. In relation to Claim No. 4, it was contended that "filler type expansion joints" were already covered under the BOQ read with Technical Specification Clause 809 and, therefore, no separate payment was payable.

21. By the impugned Award, the learned Arbitral Tribunal partly allowed Claim Nos. 1, 3 and 4, and Claim No. 2 was dismissed as withdrawn. Under Claim No. 1, the Tribunal awarded a sum of Rs.45,88,91,806/- together with simple interest at the rate of 12% per annum from 19.10.2007 till the date of the Award.

22. In regard to Claim Nos. 3 and 4, the learned Arbitral Tribunal rendered a declaratory Award. Under Claim No. 3, it held that the Respondent is entitled to reimbursement of Service Tax and Education Cess, subject to verification and certification of the admissible amount by the Engineer.

23. For Claim No.4, the Tribunal held that "filler type expansion joints" used in retaining walls, separators and drains has to be paid separately as they are not already covered in the BOQ and fixed the rate

at Rs.480/- per sq. metre. It further directed the Engineer to verify the actual quantities executed and determine the amount payable.

24. The Tribunal also directed payment of the awarded amounts within sixty days, failing which future interest at the rate of 12% per annum would be payable till realization.

SUBMISSIONS

25. Learned Counsel for the Petitioner assailed the impugned Award pertaining to Claim No. 1 on the ground that the Tribunal has awarded this claim without recording the necessary findings on the causes of delay or the actual loss allegedly suffered by the Respondent. Reliance was placed on ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[10].

26. Elaborating his submission, learned Counsel submitted that the impugned Award does not identify the extent of delay in handing over the site, issuance of drawings, removal of physical obstructions or approvals from the Railway Authorities, nor does it examine the impact of these events on the execution of the work.

27. It was next contended that the Tribunal has acted contrary to Clauses 6.4, 12.2, and 42.2 of the Contract. According to the Petitioner, under these clauses, any claim for additional cost was required to be determined by the Engineer. Since the Engineer had not certified or

---

[10] **(2025) 2 SCC 417**

recommended any additional cost, the Tribunal could not have awarded prolongation costs.

28. In support, it was pointed out that the Tribunal has also failed to properly consider the Engineer's letters. He submits that, while granting extensions of time, the Engineer had consistently recorded slow progress on the part of the Respondent and had not recommended any additional cost.

29. Learned Counsel further submitted that the Respondent failed to prove the actual additional expenditure incurred during the extended period. According to the Petitioner, in the absence of such material, the Tribunal erred in quantifying the claim by adopting the Standard Data Book of the Ministry of Road Transport & Highways[11] and percentage-based calculations.

30. It was further contended that the methodology adopted by the Tribunal is *dehors* the Contract and, in any event, could not have been applied in the absence of evidence showing the actual additional expenditure allegedly incurred by the Respondent. It was also submitted that the deduction of 20% towards mitigation is a guesswork and unsupported by any material on record and therefore, perverse in nature.

31. In view of the above reasons, the assessment of costs incurred during prolongation, as well as the deduction towards mitigation, was stated to be speculative, suffering from patent illegality and perversity warranting interference under Section 34 of the Act. Reliance was

[11] "MoRTH" hereinafter

extensively placed on ***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corporation Ltd.***[12]

32. Learned Counsel for the Petitioner further submitted that the learned Arbitral Tribunal has erred in allowing Claim Nos. 3 and 4. It was contended that the Respondent had no entitlement either to reimbursement of Service Tax and Education Cess under Sub-Clause 70.8 or to separate payment for "filler type expansion joints" as its cost already stood included in the BOQ rates and specifications.

33. Learned Counsel further submitted that the Tribunal could not have left the quantification under Claim Nos. 3 and 4 to the Engineer. According to him, once the claims were before the Tribunal, it was for the Tribunal itself to determine the amount payable. By leaving the quantification to the Engineer, what has been passed is only a declaratory award, which, according to the Petitioner, lacks finality and such a course was beyond the jurisdiction of the Tribunal.

34. Learned Counsel for the Petitioner further submitted that the award of interest on Claim No. 1 is unsustainable. Reliance was placed upon ***Interstate Construction v. National Projects Construction Corporation Ltd.***[13], to contend that the power under Section 31(7) of the Act is procedural in nature and the entitlement to interest must have its source in the Contract or other substantive law. According to the him, as the Contract does not provide for payment of interest on the

---

[12] **2024 (2) SCC 375**
[13] **(2026) 2 SCC 780**

costs awarded under Claim No. 1, the Tribunal could not have granted interest.

35. In support the above arguments, learned Counsel for the Petitioner has also relied upon ***NHAI v. P. Nagaraju Cheluvaiah***[14]***, NHAI v. M/S Uem Essar joint***[15]***, NTPC v. Deconar Services Private Limited***[16]***, Penna Electricity v. Tamil Nadu***[17] ***, EFS Facilities Services v. Indian Bio Power Limited***[18]***, K P and SONS v. UOI***[19]***, Nangia Construction Pvt Ltd. v. National Building Construction Corporation Limited***[20]***, HJ Bakers and Brothers v. Minerals and Metal Trade Corporation***[21]***, Bawa Paulins Pvt. Ltd v. UPS Freight Services (India) Pvt. Ltd. and Another***[22]***, Satyabrata Ghose v. Mugneeram Bangur and Co. and Another***[23]***, NHAI v. IRB Pathankot Amritsar Toll Road***[24]***, M/S GMR Pochanpalli expressway v. NHAI***[25]***, MD and Others (J&K power development corporation) v. M/S Trust House Construction Engineers and Builders***[26]***, M/s. Larsen Air Conditioning and Refrigration Company v. Union of India and Others***[27]***, M/s Jsw Ispat Steel Limited (Now Known As Jsw Steel Limited) v. M/S Gas Authority Of India Limited***[28]***, Sujit Kumar Jaiswal v. Managing***

---

[14] **2022 (4) R.A.J. 441(SC)**
[15] **2022 (4) R.A.J. 469 (SC)**
[16] **(2021) 19 SCC 694**
[17] **(2023) 10 SCC 338**
[18] **277 (2021) DLT 551**
[19] **277 (2021) DLT 604 (DB)**
[20] **269 (2020) DLT 502**
[21] **(2023) 9 SCC 424**
[22] **(2023) 2 SCC 330**
[23] **AIR 1954 SC 44**
[24] **306 (2024) DLT 48 (DB)**
[25] **2022(3) R.A.J. 233 (Del)**
[26] **2022(3) R.A.J. 270(J&K)**
[27] **AIR 2023 SC 4452**
[28] **2026:DHC:1922-DB**

Director Dalmia Research International Pvt. Ltd[29]***, Oriental Insurance Co. Ltd. v. Jindal India Ltd.***[30]***, India Yamaha Motors Pvt. Ltd. v. M/S Millenium Automobiles and Ors.***[31] ***and Gayatri Balasamy v. Technologies Limited***[32]***, Kabushiki Kaisha v. Toshiba v. Tosiba Appliances Co.***[33] and ***B.C. Hasaram & Sons v. Smt. Nirmala Agarwal***[34].

36. *Per contra*, learned Senior Counsel for the Respondent supported the impugned Award. He submitted that the Tribunal, upon a detailed appreciation of the pleadings, record and evidence, has returned a categorical finding that the delay in execution of the project was substantially attributable to the Petitioner. According to the him, these are pure findings of fact, based on the material on record, and are not amenable to interference in proceedings under Section 34 of the Act.

37. It was further submitted that the Tribunal has neither accepted the Respondent's claim mechanically nor awarded a lump sum amount. On the contrary, it scrutinised the material placed before it, rejected the Respondent's original computation, adopted a reasonable methodology for quantification, and arrived at the amount awarded by making appropriate exclusions and deductions.

38. According to the learned Senior Counsel, such an exercise falls squarely within the domain of the Arbitral Tribunal and does not

---

[29] **329 (2026) DLT 748**
[30] **330 (2026) DLT 54**
[31] **327 (2026) DLT 423**
[32] **2025 (7) SCC 1**
[33] **2024 SCC OnLine Del 5594**
[34] **2025:DHC:9867-DB**

warrant reappreciation under Section 34. Reliance was placed upon ***McDermott International Inc. v. Burn Standard Co. Ltd.***[35].

39. Learned Senior Counsel further submitted that the Tribunal rightly granted declaratory relief under Claim Nos. 3 and 4. It was contended that the Tribunal adjudicated the Respondent's entitlement under the Contract and left only the task of verification and computation to the Engineer. According to the Respondent, the Engineer was not called upon to decide any disputed issue and, therefore, no part of the Tribunal's adjudicatory function stood delegated.

40. For interest, learned Senior Counsel for the Respondent submitted that the Tribunal has awarded interest only from the date of invocation of arbitration and not for the pre-reference period in terms of Section 31(7) of the Act.

ANALYSIS

Scope of interference

41. As the present case requires this Court to exercise its power under Section 34 of the Act, before examining the rival submissions, I find it appropriate to briefly notice the scope of interference under Section 34 of the Act. The law in this regard is well settled and has been consistently reiterated by the Hon'ble Supreme Court. More recently, in ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited***[36], the Supreme Court reiterated the principles in the following terms:

---

[35] **(2006) 11 SCC 181**
[36] **2025 SCC OnLine SC 2857**

> ***"28.*** *The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited, this court held that an award can be set aside under Section 34 on the following grounds:"(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."*

42. Similar observations are also found in the recent decision of the Hon'ble Supreme Court in ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India***[37]:

> *"**46**. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is*

[37] **(2025) 7 SCC 757**

contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."

43. It is apparent from the aforesaid decisions that the jurisdiction of this Court under Section 34 is circumscribed and a limited one. This Court does not sit in appeal over the findings of the Arbitral Tribunal and, therefore, cannot re-appreciate the evidence or interfere merely because another view on the facts or interpretation of the Contract is possible. Interference is warranted only where the Award is shown to suffer from one of the statutory grounds recognised under Section 34, including conflict with the public policy of India, contravention of the fundamental policy of Indian law or patent illegality appearing on the face of the Award.

44. As the challenge in the present petition is based on the ground of patent illegality and perversity, I am mindful that not every error of fact or law would amount to a patent illegality. The illegality should be of such a nature that goes to the root of the Award and not be confined to a mere erroneous application of law or appreciation of evidence. In a similar manner, a finding can be characterised as perverse only where it is based on no evidence, ignores material evidence having a direct bearing on the controversy, or is such that no reasonable person could have arrived at it. In ***OPG Power Generation (P) Ltd*** *(supra)*, the Hon'ble Supreme Court has succinctly explained the concepts of patent illegality and perversity in the following terms:

"Patent illegality

***

67. *In Associate Builders, this Court held that an award would be patently illegal if it were contrary to:*
(a) substantive provisions of the law of India;

(b) provisions of the 1996 Act; and
(c) terms of the contract30.
The Court clarified that if an award is contrary to the substantive provisions of the law of India, in effect, it is in contravention of Section 28(1)(a)31 of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.
68. *In Ssangyong, this Court specifically dealt with the 2015 Amendment, which inserted Sub-section (2- A) in Section 34 of the 1996 Act. It was held that "patent illegality appearing on the face of the award" refers to such illegality as goes to the root of the matter, but which does not amount to mere erroneous application of law. It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to 'public policy' or 'public interest', cannot be brought in by the back door when it comes to setting aside an award on the ground of patent illegality. Further, it was observed that reappreciation of evidence is not permissible under this category of challenge to an arbitral award.*
Perversity as a ground of challenge
69. *Perversity as a ground for setting aside an arbitral award was recognised in Western Geco. Therein, it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.*
70. *In Associate Builders, certain tests were laid down to determine whether a decision of an arbitral tribunal could be considered perverse. In this context, it was observed that:*
(i) a finding is based on no evidence; or
(ii) an arbitral tribunal takes into account something irrelevant to the decision which it arrives at; or
(iii) ignores vital evidence in arriving at its decision; such a decision would necessarily be perverse.
However, by way of a note of caution, it was observed that when a court applies these tests, it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though a possible view by the arbitrator on facts has necessarily to pass muster, as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score."

45. Bearing the aforesaid principles in mind, I shall now examine the challenge to the impugned Award in a claim-wise manner.

CLAIM NO.1

46. Since this Court, while exercising jurisdiction under Section 34 of the Act, is required to examine the correctness of the findings by the learned Arbitral Tribunal, I find it necessary to first reproduce the relevant findings rendered by the learned Arbitral Tribunal while adjudicating Claim No.1:-

> *"13. We have carefully gone through the voluminous documents filed by the parties. We have heard the parties at length and have gone through the written synopsis of their arguments. There is no denying that extensions of time sanctioned by the Employer beyond the stipulated date for completion of various sections of the road were because of delay in handing over site, physical obstruction at site such as buildings, telephone poles, electric poles, delay in handing over the land, delay in approval for Railway over - bridge etc. On a careful perusal of Sub Clause 20.4 (COPA) of the contract, it is evident that all the reasons based on which extension of time has been granted, fall under the Employer's risks. Progress slower than that originally expected is rather natural in the light of hindrances described above.*
>
> *...*
>
> *16. The project commenced on 30th March 2002 and the entire work was stipulated to be completed by 29th March 2005. While we acknowledge that prolonged stay in a project due to reasons beyond the control of the claimant results into a loss and additional cost to it as its resources are rendered underutilized or idle, it is imperative for us to assess the cost compensation only as per the terms of the contract. The contract does provide for cost to be determined under Sub-clauses 6.4, 12.2 and 42.2 in such circumstances. The "cost" as defined in Sub-clause l.1(g)(i) of the conditions of contract, 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. The claim of loss of profit cannot, therefore, be included in the cost. We also observe that the contract start and completion dates for the three sections are different, requiring appropriate quantity of resources, especially equipment, at different stages and consequent de-mobilization on completion of respective sections, so that the deployment of resources is optimum, obviating non- utilization costs*

being charged to the work. In this context, the calculation of additional cost by the claimant, assuming entire resources as rendered idle on a uniform basis for the entire delay period, may not be consistent and precise, although the deployment of equipment at different periods is available in evidence by way of contemporary record of monthly reports submitted by the claimant. The documents placed on record do not show whether the equipment and resources deployed over the duration of the works were deficient, surplus or optimal, although we must concede that the approved work programme does indicate the requirement of minimum essential equipment to be made available at site. There are delays/slow progress reported in the documents for which the contractor has been asked to take action (e.g., pages RD/ 5 and RD/11), but with so many obstructions and hindrances, some such effect on the programmed progress of work is inevitable. During the course of the execution of work, road- sections were revised because of non - availability of unhindered site at certain locations of the sections. This has rendered assessment of compensation cost rather complicated. Had the originally designated sections with the phased possessions of site been maintained, the deployment of manpower and equipment would be of a certain scale at the start of section-1, increasing after 6 months to coincide with the start of section 2 and peaking at start of section3 and then decreasing on the completion of section-1 & section -2. Even under such deployment some equipment like large batching plant, hot -mix plants, pavers etc. may be idling for want of sufficient quantity of work but still required to be kept on hold for completing balance works. Thus some idling may be inbuilt into the contract.

17. The issue of apportioning delay attributable to the three sections of the contract has been further complicated by the modifications of the scope of work in the originally designated sections by redistributing various stretches and calling them " Revised Sections 1, 2 & 3 ", based on equivalent lane kilometer-lengths of original sections. These revised milestones of equivalent lane-km were proposed by the Claimant vide its letter dated 8.4.2006 (Ex .Cl/66 - p600) and approved by the Respondent (Ex.C1/68-p605) .

…

19. The delays have been analyzed and Extensions of Time (EOT) recommended by the Engineer at various stages of work. The delays continued even after the last EOT of 12.6.2007 due to physical obstructions in small stretches and delay due to approvals required for the Railway Over-bridge (ROB) at Tundla. The right hand side carriageway of Tundla ROB was completed and traffic diverted on it on 26.9.2007(Ex. CD/9 - p24). Further extensions in this regard were recommended by the Engineer, the last being *interim extension for the balance work of Tundla ROB (LHS) up to 31.3.2009 (Ex. CD/23 - p36), although the Employer is yet to respond to these recommendations. As the remaining works in section 3 (except the Tundla ROB-LHS and its approaches) got completed on 7th March 2009 (Ex .CD/ 23 -p33). the claimant, by an Amendment Application, had sought quantification of compensation for delay limited only up to that date of 7th March 2009.*

20. The delay cost computed by the contractor is based on equipment and manpower deployment during March 2002 to March 2005, proportionately extrapolated for the entire period of delay thereafter. Such a calculation is likely to give an inaccurate result for the post March 2005 period. The arbitral tribunal, in the circumstances, had to arrive in a fair manner, at a method of computation of delay cost within the terms of the contract and wherever not possible, as per general engineering practice for such works. To this end, the cost of works has been proportionately split into the three sections and separately for the Tundla Railway over - bridge and its approaches. The delay cost has been computed on the basis of percentages indicated in the contract for different items such as equipment & overheads and the delay suffered in proportion to contractual period. The claim for loss of profit and opportunity cost are not allowed since the definition of " cost " in the contract expressly excludes profit. The overhead cost for delay as a proportion of the sanctioned duration, was assessed on the basis of percentage; 8% for road work & a weighted 12% for Tundla ROB and its approaches, on the basis of the figures in the Standard Data Book of the Ministry of Road Transport & Highways (MORTH); (It stipulates 8% overheads for road works & 25% for bridge works). The equipment utilization/non utilization cost was derived from the percentage (20%) given in Sub-clause 70.3(xi) of the " Conditions of Particular Application (COPA) " in the contract. The claimant argued that the rainy season should not be excluded for compensation as it could have been utilized for mobilization at some other site had the work been completed in time and that work continues even during the rainy season, there being no prohibition in the contract for doing so. This period could have been utilized for mobilization elsewhere or not is questionable, but in the rainy season, work such as WMM, crushing of aggregate and that of structures can definitely continue during in - between dry spells. Bituminous work however, stands almost entirely suspended. We, accordingly, consider it just and fair to deduct only 80% of rainy season from the delay for assessing the compensation for delay.

21. Since the respondent -Employer and the Claimant are party to the concept of equivalent lane -km length for completion of section 1 & 2, we would take into account the delay attributable to the *respondent for the purpose of compensation, only based on the extension of time already granted by it for section 1 & 2. We find that section 1 & 2 were actually completed on 15.4.2006. The commencement date for Section-1 was 30.3.2002 and that for Section- 2 was 30.9.2002. The stipulated dates for completion of Section -1 and Section- 2 were 29.9.03 and 29.3 .04 respectively. Accordingly, the delay as per the approved extension of time is of 929 days for Section 1 and 747 days for Section 2. The period of extension determined by the Engineer for the period prior to 30/ 06/ 2003 is 99 days for section -1 and 141 days for Section-2. (The period up to 30 / 06/ 2003 is of no concern to us since this reference to us is for the period beginning from 01/07/ 2003). Deducting this extension of time up to 30/06/2003, the net delay post 30/06/2003 period for Section-1 is (929 - 99) = 830 days. There was rainy season period of 180 days in between these 830 days. We have already mentioned above that we are inclined to deduct 80% of the rainy season from the period of delay for compensation. Accordingly, net delay for Section-1 for the purpose of compensation is (830 - 80% of 180) = 686 days. Similarly, the period of delay reckoned post 30/06/ 2003 for Section 2 is (747 - 141) = 606 days and deducting 80% of the intervening period of rainy season, the net delay for compensation is (606 - 80% of 180) = 462 days.*

22. So far as Section-3 is concerned, the road work was completed on 7th March 2009. The claimant had completed 94% of the work in this section-3 by 14/ 09/ 2006 and demobilized most of its men & machine thereafter (Ex, RD/21-p28). It would thus be unfair to take into account the entire delay from 29.3. 2005 to 7.3.2009 for compensation. We are, accordingly, inclined to reckon the period only up to 14/09 /2006 for the purposes of compensation for delay for Section-3. This period up to 14/09 /2006 works out to 534 days, and deducting 80% of the intervening rainy season period, the net delay for the purpose of compensation works out to (534 - 80% of 180) = 390 days.

23. We have separated the work of Tundla Over - bridge because of the peculiar circumstances of the case, so far as this over -bridge is concerned. This overbridge has two carriageways, left hand side and right hand side. Like Section- 3, it was also stipulated to be completed by 29/03 / 2005.The right hand side carriageway was completed on 26/09/ 2007 but the left hand side carriageway was held up because of obstructions, changes in design and want of approval from the railway authorities. Last extension of time for this work was recommended by the Engineer up to 07 /03/ 2009, but the hindrances could not be removed even after that date. The claimant, in these circumstances, prayed for limiting the compensation only up to 07/03/2009 by this arbitral tribunal. The total delay up to 07

/03 / 2009 works out to 1439 days. Deducting 80% of the rainy season period, net delay works out to (1439 - 80% of 360) = 1151 days.

24. ***Mitigation of losses by the claimant:*** *The claimant was obliged to arrange site staff, plant and equipment as per the approved programme during the stipulated period. But because of prolongation of contract due to various hindrances, the plant, equipment and manpower had to be kept in place for a longer period. We recognize that in such a project, it is not feasible to demobilize men and machines to a large measure strictly according to the availability of work space, especially plants like crushers, batching plant, hot mix plant and allied machines and manpower, but the claimant is legally obliged to mitigate the losses to an extent practicable by redeploying men and machines elsewhere. Since no specific quantification of such mitigation is possible, we estimate that the mitigation component at 20% would be a fair estimation considering the facts of the case. We accordingly, consider it just for both the parties, to reduce the compensation payable by 20%.*

25. *The computation of compensation on the basis of details supra is tabulated below:*

S.No.	Particulars	Section 1	Section 2	Section 3	Tundia RDB	Remarks
A	Section Length	79.081km	86.801km	66.290km	3.600km	
B	Pro-rata Contract (Rs.)	954,560,000	1,037,250,000	791,547,236	86,642,764	
C	Commencement dated	30/03/2002	30/09/2002	31/01/2003	31/01/2003	
D	Stipulated date of Completion	29/09/2003	29/03/2024	29/03/2005	29/03/2005	
E	Delay/EQT Granted/recommended up to:	15/04/2006	15/04/2006	12/06/2007	07/03/2009	
F	Stipulated Contract Period (Days)	548	547	789	789	
G	Total Delay in days	929	747	534**	1439	** up to 14/9/2006
H	Less Delay up to 30/06/2003	99	141	0	0	
J	Net Delay in days ('G' – 'H')	830	606	534	1439	
K	Deduct 80% of Rainy Season	144	144	144	288	
L	Net Delay attributable to Employer in days ("J"- "K")	686	462	390	1151	
M	Machinery Cost @ 20% of Contract Cost (Less Overheads & Profit) (20% of "B"*100/118) "L"/"F" (Rs.)	202,532,525	148,486,196	66,315,100	20,720,526	
N	Deduct 10% for unutilized spares during under-	20,253,253	14,848,620	6,631,510	2,072,052	

	utilization/ idle period (10% of 'M')					
O	*Net Compensation for underutilized/idle machinery ('M' - 'N') (Rs)*	*182,279,273*	*133,637,576*	*59,683,590*	*18,648,474*	
P	*Compensation for Overheads (8% for Road & weighted 12% for Over-Bridge work, of ('B'*100/118)) 'L'/'F' (Rs)*	*81,013,010*	*59,394,478*	*26,526,040*	*12,432,316*	
Q	*TOTAL Compensation in Rupees*	*263,292,283*	*193,032,055*	*86,209,630*	*31,080,790*	
R	*Grand Total of Compensation for Entire Work (Rs)*					*573,614,758*
T	*Less 20% for Mitigation Measures by the Claimant (Rs)*					*- 114,722,952*
U	*Net Compensation ('R'- 'T1'-'T2') in Rupees*					*458,891,806*

The claimant is, accordingly, awarded a sum of 45 ,88, 91,806/- with 12% per annum interest from the date of reference of the claim to this arbitral tribunal to the date of award."

47. A perusal of the aforesaid findings shows that the impugned Award under Claim No. 1 rests on certain findings of fact rendered by the learned Arbitral Tribunal after appreciation of the pleadings, evidence and the terms of the contract. Broadly, those findings are as follows:

i. The Tribunal found that the delay in completion of the project was largely on account of delay in handing over the site, physical obstructions, delay in land acquisition, delay in obtaining approvals for the Tundla Railway Over Bridge and other hindrances. On reading Sub-Clause 20.4 of the Conditions of Particular Application[38] in the

[38] "COPA" hereinafter

Contract, it held that these were risks within the domain of the Petitioner, who failed to take appropriate steps.

ii. The Tribunal proceeded on the footing that the Petitioner was responsible to make available a hindrance-free site. The contention that the Respondent ought to have anticipated such obstructions was rejected, since removal of those obstructions was the Petitioner's responsibility under the Contract.

iii. While dealing with the Claim for prolongation costs, the Tribunal read Clauses 6.4, 12.2 and 42.2 along with the definition of "Cost" under Clause 1.1(g)(i). It came to the conclusion that the Respondent could recover the actual costs incurred, including overheads, but not loss of profit. The claim towards loss of profit was, accordingly, rejected.

iv. It also appears that the Tribunal was, however, not inclined to accept the Respondent's calculation as it stood. It noticed that the project underwent changes during execution, the original sections were reworked into equivalent lane-kilometre sections and the deployment of manpower and machinery varied from time to time. Therefore, the Tribunal was of the view that a uniform extrapolation for the entire extended period would not present a correct picture.

v. Although the Engineer had attributed certain delays to the Respondent in some letters, those delays were treated as concurrent and overlapping delays and were held to be insignificant in view of the Petitioner failure to provide a hindrance-free site. Except for the delay due to rains, the reasons for grant of extension of time were found attributable to the Employer.

vi. It then proceeded to quantify the number of days of delays and the claim independently. Instead of accepting the Respondent's calculation, the Tribunal worked out the compensation independently by treating Section I, Section II, Section III and the Tundla Railway Over Bridge separately. In doing so, it adopted the overhead percentages from the MoRTH Standard Data Book and the machinery component from Clause 70.3(xi) of COPA.

vii. While determining the days for which compensation to be provided, the Tribunal did not exclude the rainy season altogether. Taking the view that certain activities could continue during that period, it deducted only 80% of the rainy season.

viii. Applying the above methodology, the Tribunal found the Petitioner responsible for a delay of 686 days in Section I, 462 days in Section II, 390 days in Section III and 1,151 days in the Tundla Railway Over Bridge.

ix. The total prolongation cost was, thus, assessed at Rs.57,36,14,758/-. A further deduction of 20% was made towards mitigation of loss, resulting in an impugned award of Rs.45,88,91,806/-.

48. Now adverting to the objections raised by the Petitioner, the first limb of the Petitioner's challenge rests on interpretation of the Clauses 6.4, 12.2 and 42.2 of the Contract. According to the Petitioner, under

these clauses it was for the Engineer to determine whether any additional cost was payable while granting an extension of time.

49. Since the Engineer did not recommend any such additional cost and had also recorded that the Respondent's progress was slow, the Tribunal could not have awarded the costs incurred during the prolongation period by taking a different view. It was further submitted that the Tribunal had ignored the Engineer's letters and proceeded only on the basis that extension of time had been granted.

50. I am unable to accept the aforesaid submission. I have gone through Clauses 6.4, 12.2 and 42.2 of the Contract. These clauses require the Engineer to determine the extension of time and the additional cost, if any, payable to the Contractor. However, they do not attach finality to the Engineer's determination or exclude the jurisdiction of the Arbitral Tribunal in cases where such determination itself becomes the subject matter of dispute. Clause 44 also merely sets out the procedure for claiming and determining extension of time in the circumstances specified and does not disentitle the Contractor from raising its claim before the Arbitral Tribunal or take away the Tribunal's power to adjudicate upon it.

51. Further, the impugned Award does not proceed on the premise that the grant of extension of time, by itself, entitled the Respondent to claim prolongation costs. The Tribunal independently examined the reasons which led to the grant of those extensions and found that the delay was primarily due to delay in handing over of the site, physical

obstructions, delay in land acquisition and delay in obtaining approvals for the Tundla Railway Over Bridge.

52. It can also not be said that the Tribunal ignored the Engineer's letters. It took note of the letters recording slow progress on the part of the Respondent but treated those delays as concurrent and insufficient to displace its finding that the principal cause for the delay was the Petitioner's failure to provide a hindrance-free site. Whether another view could have been taken on the same material is not the enquiry under Section 34. This Court cannot re-appreciate the evidence and substitute its own view when the view taken by the Tribunal is a possible and plausible view.

53. Once the above findings were rendered, the Tribunal proceeded further. Reading Clauses 6.4, 12.2 and 42.2 together with the definition of "Cost", it concluded that the Respondent was entitled to recover the additional costs incurred during the extended period. The impugned Award, therefore, rests on an independent appreciation of the clauses in the contract, the evidence on record, and not merely on the Engineer's recommendations or the grant of extensions of time.

54. The power of the Arbitral Tribunal relating to interpretation of the clauses are also not *res integra*. This view also finds support from the decision of a Coordinate Bench of this Court in ***NHAI v. BEL-TBL***[39], wherein it was held that once the delay is found to be attributable to the employer, Clauses 6.4, 12.2 and 42.2 entitles the contractor to

[39] **2016 SCC OnLine Del 4025**

recover the additional costs incurred during the extended period. The relevant observations are as follows:

> *"**26.** Firstly, I shall deal with claim No. 2 i.e. additional costs in the extended period of the contract. The said Claim No. 2 was raised by the respondent which relates to the additional cost incurred by it while staying on site for the extended period of the contract. The Arbitral Tribunal has given its findings with regard to this claim. The relevant findings of the Arbitral Tribunal have been reproduced here as under:*
>
> *****
>
> ***2.4.14** Arbitral Tribunal has come to the conclusion that as the extension of time was granted from 28.9.2001 to 30.9.2002 for reasons attributable to the Respondent, without levy of liquidated damages, the claimant is entitled to recover additional cost under clause 42.2, 6.4 and 12.2 of the conditions of contract for the extended period of 12 months. (emphasis supplied)*
>
> ***27.** It is evident from the findings that the Arbitral Tribunal has come to a conclusion that (a) the reasons for delay in the completion of the work were attributable to the petitioner, particularly its failure to make available the requisite land; (b) the contract contains clauses that provide an explicit entitlement to the respondent to claim additional cost on account of this delay for the extended stay at the site, namely clauses 6.4, 12.2 and 42.2. Whereas clause 6.4 deals with delay and cost of delay of drawings; clause 12.2 deals with unforeseeable physical obstructions or conditions and clause 42.2 deals with failure on the part of the petitioner to give possession of the site to the respondent. All these clauses envisaged additional costs to be awarded to the respondent; (c) there is extensive evidence led by the respondent to prove the damages suffered by it; and (d) the petitioner itself had consistently extended the time for completion without imposing any liquidated damages on the respondent."*
>
> *****
>
> ***32.** From the aforesaid judgments and settled law, it appears to the Court that the Arbitral award in the present case can be sustainable in law as also in the context of the particular contractual provisions. It has been laid down in the referred judgments for award of additional cost i.e. finding of fault, existence of relevant evidence and similar contractual clauses like 6.4, 12.2 and 42.2 are present in the case. The Arbitral Tribunal has in fact rejected the claim Nos. 2.3 and 2.4 of the respondent pertaining to loss of profit and delayed accrual of contract price in the extended period and only awarded the component of damages suffered on account of machinery cost and overheads in the extended period.*

55. A similar view was also taken by the Division Bench of this Court in ***National Highways Authority of India v. Patel KNR***[40], where the award of additional costs under Clause 42.2 was upheld by the Court on the ground that the delay in handing over the site and the removal of physical obstructions was attributable to the employer. The relevant observations are as follows:

> ***"29.*** *We may also note that considering the pleadings and evidence on record, and a communication dated 05.11.2004 of the Supervision Consultant, by June, 2002, only 20.28 kms of the site had been handed over instead of 50.112 kms decided. Also, the site that was handed over was divided into several stretches over the entire land and the length of each section ranged between 0.045 kms to 2.2 kms as against minimum of 5 kms. Learned Single Judge has also taken note of the report where it indicated that 11.75 kms was obstructed at the time of handing over of the complete stretch of 50.112 kms on 27.03.2002 and the phase clearance of the obstruction was done from May, 2003 to June, 2004. Paragraphs 25 & 26 of the order of the learned Single Judge read as under:*
>
> > *"25. The fact, that the acquisition of the complete stretch of site was not complete inasmuch as compensation for stretches of land had not been disbursed, was not seriously disputed. Even before this Court, Ms. Anand had contended that the delay on this count had been compensated by Patel by accelerating the progress of works.*
> >
> > *26. Patel had also produced material to indicate that there were other obstructions on the site including temples, building, wells and other structures which had not been removed."*
>
> ***30.*** *In this backdrop, the Tribunal, while placing reliance upon Clause 42.2 of the GCC, held that the contractor was entitled to costs towards entitlement of additional resources over the extended period of the GCC. The learned Single Judge, while relying upon Clause 42.2 of the GCC, has returned a categorical finding that the contractor was entitled to compensation for delay for handing over the site. The learned Single Judge also and rightly so, held that reliance on Clause 110.1 of the Technical Specifications was without any force. We find no infirmity in the view so taken by the arbitrator as also by the learned Single Judge. All the contentions sought to be raised by the counsel for the appellant have been duly*

[40] **2019 SCC OnLine Del 12305**

considered by the learned Single Judge and the same have rightly been rejected.”

56. However, the challenge of the Petitioner does not rest only on the Tribunal’s interpretation of the Contract. The Petitioner next contends that the impugned Award is also vitiated by perversity for want of specific findings on the causes of delay. According to the Petitioner, the Tribunal did not examine the extent of delay in handing over the site, the delay in issuance of drawings, the nature and duration of the physical obstructions or whether the delay in obtaining approvals for the Tundla Railway Over Bridge could be attributed to the Petitioner.

57. In my view, the above submission of the Petitioner also cannot stand after a whole reading of the Award. As noticed while dealing with the earlier objection, the Tribunal did not proceed merely on the grant of extensions of time. It independently examined the reasons for the prolonged execution of the project and recorded specific findings on the causes of delay. Those findings cannot be read in isolation or by searching for a separate discussion on every document or every instance of delay. The Award has to be read as a whole.

58. On a holistic reading of the impugned Award, the basis of the Tribunal’s conclusion is clearly made out. It identified the causes which, in its view, led to the prolongation of the project, considered the allocation of risk in terms of the contract and only thereafter, reached its conclusion on the attribution of delay. The mere absence of a separate discussion on each letter or every period of delay does not, by itself, render the impugned Award vulnerable under Section 34.

59. Moreover, the attribution of delay is a finding of fact resting on the Tribunal's examination of the evidence before it. Unless such a finding is shown to be perverse or based on no evidence, it is not open for this Court to undertake a fresh appraisal of the material under Section 34.

60. That brings me to the principal challenge raised by the Petitioner about the quantification of prolongation costs. According to the Petitioner, the Respondent failed to produce evidence of the actual expenditure incurred during the extended period and, in the absence of such evidence, the Tribunal could not have devised its own methodology for quantification.

61. The submission, in my view, proceeds on an incorrect reading of the impugned Award. Before undertaking the quantification, the Tribunal first examined whether the Respondent had, in fact, incurred additional expenditure on account of the prolonged execution. In that context, it considered the audited details of salaries and wages, site and corporate overheads, the monthly progress reports, and minimum essential requirements as per the contract. On the basis of this material, the Tribunal was satisfied that the Respondent had established the additional expenditure incurred during the extended period. The authenticity or reliability of these records has neither been questioned nor disputed by the Petitioner.

62. Further, this Court finds that the Arbitral Tribunal has not accepted the Respondent's computation in its entirety. While the material placed on record was accepted, the method adopted for

quantification was found to be inaccurate, having regard to the phased execution of the project and the varying deployment of resources. The Tribunal, therefore, undertook the exercise of quantification afresh.

63. Once the entitlement to compensation stood established and the relevant material was available on record, the choice of methodology lies primarily within the arbitral domain and does not warrant interference under Section 34 merely because another method of assessment may also have been possible. This principle stands recognised by the Supreme Court in ***McDermott International Inc.*** *(supra)*, where it was held that, in the absence of direct proof of every item of minute expenditure, the use of standard formulae is a permissible method to compute these damages.

64. An identical challenge, arising out of similar terms of the contract, came up for consideration before the Division Bench of this Court in ***National Highways Authority of India v. Oriental Structural Engineers (P) Ltd.***[41]. While dealing with objections substantially similar to those argued in the present case, the Division Bench observed as follows:

> *"**6.** Learned senior counsel for the appellant submits that the Arbitral Tribunal has awarded the amount under Claim No. 2 on presumptions; there were no actual figures available before him; even otherwise compensation for delay in work was adequately covered by the escalation clause for which purpose attention has been drawn to Clause 44 of the contract. Submission being that in all cases where extension of time was granted to the contractor he would be adequately compensated; further submission being that the formula adopted by the Arbitral Tribunal for the computation of the claim contained an element of profit and this is evident from the calculation chart given by him while allowing the aforesaid compensation. Submission being that the definition of 'cost' as*

[41] **2013 SCC OnLine Del 399**

defined under Clause 1.1(g)(i) of the contract in no manner includes any allowance for profits; it is only "the expenditure properly incurred or to be incurred, whether on or off the Site", which has to be afforded; this fact has been overlooked by the Arbitral Tribunal and the learned single Judge endorsing the finding of the Arbitral Tribunal on this count has committed an illegality. In support of his submissions reliance has been placed upon (2004) 5 SCC 109 Bharat Coking Coal Ltd. v. L.K. Ahuja. Submission being what has been awarded under Claim No. 2 is the loss of profit which could not have been awarded; the contract specifically excludes the grant of loss of profit; the error is apparent.

*****

9. *The Tribunal had noted that the highway which was the subject matter of the contract was split into three sections; the possession of the site was given on different dates for the three sections. <u>During the progress of work impediments occurred and extensions of time has been given for all three sections. Salaries, wages, overhead expenses, proportionate corporate overheads were claimed by the claimant. Fixed machinery cost based on actual deployment was also claimed on pro-rata basis</u>. The calculation made by the claimant in computing the cost was verified by the monthly reports submitted by him and verified and forwarded to the Engineer of the respondent. <u>MORTH method was applied in computation of this claim. This was noted to be a reasonable and appropriate method which methodology is even otherwise not the subject matter of challenge</u>. The factual delays and consequent extension of time recommended by the Engineer of the respondent were noted in detail by the Arbitral Tribunal. Relevant would it be to state that the initial dates of completion of Section-I was enlarged by the respondent up to 30.10.2007; for completion of Section-II it was enlarged up to 03.4.2007 and for Section-III it was extended up to 03.4.2007. <u>All these extensions stood approved by the respondent. The Arbitral Tribunal had in fact noted seven reasons for the delays which included belated possession of site; delay in issue of construction drawings and their revision; delay due to adverse law and order condition including terrorist attacks; delay due to strike, delay due to additional work</u>. These facts are not disputed. The Tribunal had also noted that climatic and weather condition which would delay the work could not be attributable to the respondent but to provide an encumbrance free site and designs/drawing at appropriate time was definitely the responsibility of the respondent; similarly terrorist attack, law and order condition also fell under the respondent risk list. These delays were attributed to the respondent. The Tribunal had noted that compensation for delays could be worked out in favor of the claimant in terms of the definition of 'cost' to be determined under sub clause 6.4, 12.2, 42.2 in terms of its definition as contained in sub-clause 1.1(g)(i) of the contract conditions. Clause 6.4 dealt with delay and cost of delay of* *drawings; Clause 12.2 dealt with unforeseeable physical obstructions or conditions and so also Clause 42.2 which dealt with failure on the part of the respondent to give possession of the site to the claimant. All these clauses envisaged additional costs to be awarded to the contractor. The Arbitral Tribunal has noted with caution that the claimant is not entitled to claim loss of profit and cost compensation for delay is alone to be considered.*

10. ***These factual findings which were based on voluminous evidence i.e. the monthly reports submitted by the claimant and verified by the Engineer of the respondent and by applying the MORTH formula to determine the 'cost' and noting the facts that the delays in the work being attributable to the respondent, the claimant was accordingly awarded the aforenoted amount.***

11. *These finding were rightly not interfered with by the learned Single Judge. Objections under Section 34 of the said Act are limited in scope; the learned single Judge while dealing with such objections is not an appellate form. Unless there is a plain perversity appearing on the face of the Award there is little scope for interference; non-interference was accordingly rightly adhered to by the learned single Judge."*

(emphasis supplied)"

65. A similar challenge was considered by this Court in ***DMRC v. GYT TPL Joint Venture***[42]. In this case as well, it was contended that the Tribunal had quantified prolongation costs by adopting a formula-based approach without sufficient documentary proof and reliance was placed on ***Batliboi Environmental Engineers Limited*** *(supra)*. Rejecting the challenge, this Court held as follows:

"42. *The principal objection of the Petitioner is that the Tribunal erred in determining the effective period of prolongation and in computing overheads and P&M idling charges on assumed parameters. It is contended that the Tribunal ought to have called for further documentary substantiation and that its adoption of industry norms amounts to conjecture.*

43. *The record reflects that the Tribunal examined the pleadings, the evidence adduced, and the sequence of extensions granted. It returned a finding that the delay in completion extended beyond the scheduled date and that such prolongation was attributable to the Petitioner. The quantification of prolongation*

[42] **2026 SCC OnLine Del 3540**

costs was thereafter undertaken by adopting a formula based on the contract value and accepted industry practice. The Petitioner did not place before the Tribunal any specific and cogent quantification of the time exclusively attributable to variations, nor did it produce material segregating the value of work executed during the alleged variation period. In such circumstances, the Tribunal cannot be faulted for proceeding on the basis of the material available.

44. *The Arbitral Tribunal in paras 220, 222, 225 has dealt with the facts of the case and held that the extensions sought by the Respondent, and the delay in works were due to the conduct of the Petitioner entirely. It further held that all the extensions were granted without the levy of liquidated damages upon the Petitioner. The Tribunal held that the Respondent is benefitted under Section 54, 55, and 73 of the Indian Contract Act. The Tribunal has fairly held that if there is a contractual clause prohibiting a claim for loss/damages, then such contractual clauses have to be ignored and the contractor is liable to damages as per law. The Tribunal relied upon a judgment of the Supreme Court in G. Ramachandra Reddy v. Union of India; (2009) 6 SCC 414 : (2009) 2 SCC (Civ) 903 and K.N. Sathyapalan v. State of Kerala; (2007) 13 SCC 43.*

45. *The Tribunal further held in paras 228 and 229 of the Impugned Award that notices of delay and cost implications were tendered by the Respondent to the Petitioner. The Supreme Court in Northern Railway v. Sarvesh Chopra; (2002) 4 SCC 45, has held that if such notice is tendered, then in law, such claims can be provided despite of a clause prohibiting the same.*

46. ***It is settled that while damages must be founded on evidence, mathematical precision is not an indispensable requirement where exact computation is impracticable. An Arbitral Tribunal is entitled to adopt a reasonable and recognised methodology for estimating loss, provided the estimation is not arbitrary and is supported by the evidentiary record. The adoption of a 10% parameter for overheads and a proportionate approach for P&M does not, in the facts of the present case, amount to creation of a new case. It constitutes a quantification exercise within the domain of the Tribunal.***

47. The decisions relied upon by the Petitioner to contend that an award based on "assumptions" is liable to be set aside would apply only where the finding is based on no evidence or where material evidence has been ignored. The Impugned Award in the present case does not disclose such infirmity. The Tribunal in para 233 of the impugned Award has already dismissed the objection of the Petitioner that the Claim No. 1 is based on assumed figures. The Tribunal has held that the claim has been quantified on the basis of evidence before it i.e. CW-1 and CW-2. Further, the Tribunal has relied upon the report of the EY to assess the claim. This Court is of the opinion that the Tribunal has passed a well-reasoned order taking into consideration all the evidence put

before it for assessment of claim and therefore, this Court is not inclined to interfere with the aforesaid claim under Section 34 of the Act.”

66. The same view has been taken by the Division Bench of this Court in ***NHAI v. Oriental Pathways***[43]. It was observed that the choice of a particular method for quantification lies with the Arbitral Tribunal and would not justify interference under Section 34 merely because another method could also have been adopted, so long as the one adopted is a reasonable one. The relevant observations read as thus-

> *“**38**. It is trite that it is open to the arbitrator to adopt any reasonable formula for arriving at the computation of the compensation. In this regard, reference may be made to the pronouncement of the Supreme Court in, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204, Associate Builders v. Delhi Development Authority extracted above.*
>
> ***39**. In para 43 of the judgment, the Supreme Court has held that the construction of the contract by the arbitrator is also within the jurisdiction of the arbitrator. It is trite law that such construction is clearly beyond the scope of consideration by the Court while considering objections under Section 34 of the Arbitration and Conciliation Act, 1996.*
>
> ***40. In para 56 of the judgment, the Supreme Court has held that the adoption and application of a formula by an arbitrator is a pure question of fact. Clearly, the same is beyond the purview of objections under Section 34 of the Arbitration and Conciliation Act.***
>
> ***41**. In view of the above statement of law, the objections of NHAI to the Arbitral Award were clearly beyond the scope and purview of Section 34 of the Arbitration and Conciliation Act and have been rightly rejected by the learned Single Judge.”*

67. Applying the aforesaid principles to the facts of the present case, no substance remains in the Petitioner’s objection. The Tribunal was satisfied that the Respondent had incurred additional expenditure and therefore, it was open to the Tribunal to adopt a reasonable

[43] **2016 SCC OnLine Del 3163**

methodology for assessing the compensation. Whether a different formula or method could also have been adopted is not a matter for discussion under Section 34. It is definitely not a case where there was nothing before the Tribunal to satisfy itself that during the prolongation expenses were actually incurred.

68. The challenge, however, does not rest there. The Petitioner further contends that the Tribunal travelled beyond the Contract by adopting the MoRTH Standard Data Book and recognised engineering practices for quantifying the claim and that the whole exercise of quantification undertaken was arbitrary, unsupported by the record and based on surmises and conjectures.

69. To my mind, no arbitrariness or perversity can be made out on a reading of the award as suggested by the Petitioner. In my reading, at every stage, the Tribunal was cautious in determining the final amount payable as is evident from the fact that it did not accept the computation of the Respondent as it is. It found that the Respondent had worked out the delay costs by carrying forward the deployment of manpower and machinery beyond March 2005 for the entire prolonged period. The Tribunal found that such an approach did not reflect the manner in which the project had actually progressed, particularly when the deployment of resources kept changing from one stage to another.

70. Further, the Tribunal did not treat the project as one homogeneous unit. Since each section had a different commencement date, completion schedule and period of extension for Section-I, the period of delay and extension in each section were examined separately.

The delay attributable to each component then worked out on the basis of the extensions granted or recommended by the Engineer.

71. Even thereafter, the Tribunal excluded the period falling outside the reference and, keeping in view the nature of work that could be executed during the rainy season, deducted 80% of that period. The figures of 686, 462, 390 and 1151 days did not emerge from broad estimates but from the detailed exercise undertaken by the Tribunal itself.

72. The same degree of scrutiny by the Tribunal is evident while assessing the monetary claim. The Tribunal first declined the claim towards loss of profit in view of the definition of "Cost". It then assessed the machinery component with reference to Clause 70.3(xi) of COPA. The MoRTH Standard Data Book was relied upon only for working out the overhead component after recording that the Contract itself did not provide a workable basis in that regard.

73. Learned Counsel for the Petitioner has not been able to point out any provision in the Contract which explicitly prohibited such an approach.

74. Further, the Tribunal has not awarded the amount so worked out in its entirety. It also made deductions of 10% towards unutilised spares and 20% on account of mitigation. These deductions formed part of the Tribunal's overall assessment based on the material before it and cannot be characterised as arbitrary. As recognised in ***McDermott International Inc.*** *(supra)* and ***M/s Cobra Instalaciones Y Servicios,***

S.A. & Shyam Indus Power Solution Pvt. Ltd. (JV). v. Haryana Vidyut Prasaran Nigam Ltd.(Hvpnl)[44], assessment of damages may necessarily involve a measure of reasonable estimation where exact computation is not feasible.

75. A similar approach has recently been adopted by a Coordinate Bench of this Court in ***Airports Authority of India v. URC Construction (P) Ltd***[45]. Repelling the contention that overhead charges could not be awarded in the absence of salary registers, vouchers or other minute proof of expenditure, the Court held that once the delay is attributable to the employer, the use of recognised standard formulae or industry benchmarks for quantification does not render the award arbitrary. It was observed that in construction contracts, it is not always possible to establish every component of prolongation costs by direct evidence and a reasonable method of quantification based on accepted standards falls within the domain of the Arbitrator. The relevant observations are as follows:

> ***<u>Claim No. 4: Compensation for Overheads:</u>***
> ***129.*** *The Petitioner has challenged the award of* ***Rs. 89,18,765/-*** *towards* ***Overhead expenses,*** *on the ground that the Respondent failed to lead specific evidence, such as salary registers, vouchers, or books of account, to prove that it incurred actual expenditure during the extended period. The Petitioner relies on the principle that damages must be proved and contends that the Arbitrator's reliance on the* ***CPWD Circular dated 14.12.2007*** *acts as a substitute for evidence, which is impermissible.*
> ***130.*** *To adjudicate this challenge, it is necessary to appreciate the commercial nature of construction contracts.*
> ***131.*** ***<u>Overheads refer to the indirect costs incurred by a contractor which cannot be directly allocated to a specific physical item of work, but are necessary for the sustenance of the business and the project. These include Head Office administrative costs</u>***

---

[44] **2024:DHC:2880-DB**
[45] **2026 SCC OnLine Del 534**

and Site Office expenses like staff salaries, rent, electricity, stationary, etc.
132. It is a judicially recognized fact that when a Project is delayed due to the fault of the Employer, the Contractor is forced to keep its resources and establishment deployed for a period longer than anticipated. This inevitably results in the consumption of overheads without corresponding revenue generation from the project. As observed by the Supreme Court in McDermott International Inc. (supra), in the absence of direct proof of every minute expenditure, the use of standard formulae is a permissible method to compute these damages.
133. In the present case, the Arbitrator was faced with the task of quantifying the loss after having already established the factum of delay attributable to the Petitioner. Instead of applying a complex international formula, the Arbitrator adopted the CPWD Circular, which specifically quantifies overheads at 7.5%.
134. *This Court finds that the approach of the Arbitrator is neither arbitrary nor perverse as the CPWD Manual and Circulars are standard reference documents, in government infrastructure contracts. Adopting a percentage fixed by the CPWD as a reasonable estimate of overheads, is a plausible method of quantification.*
135. As held in A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59, it is not always possible for a contractor to produce minute proof of every rupee lost due to the prolongation of the contract. In such cases, a broad evaluation based on industry norms, is legally sustainable.
136. The award of 7.5% towards overheads is not an exaggerated figure that would shock the conscience of the Court. It is a conservative estimate of the administrative costs required to maintain a construction setup for an additional 477 days.
137. The Petitioner's argument that there was no evidence is, therefore, misconceived. The evidence was the prolongation of the contract itself and the industry standard evident from the CPWD Circular establishing the norm for such costs. The Arbitrator applied the law of damages by using a reasonable yardstick for quantification. This falls squarely within the domain of the Arbitral Tribunal, as the master of facts.
138. *Consequently, this Court finds no patent illegality in the Arbitrator's order to award overhead charges based on the CPWD Circular."*

76. The reliance placed on ***Batliboi*** *(supra)* is also misplaced. That decision does not lay down that a reasonable method of quantification can never be adopted. Rather, it cautions against quantification resting

on mere assumptions, unsupported formulae, or double recovery. In the present case, the Tribunal, on the basis of the material placed before it, came to the conclusion that the Respondent had incurred additional expenditure on account of the prolongation of the Contract. The subsequent exercise of quantification was supported by reasons at each stage, and therefore, the methodology was not applied in a vacuum, as cautioned in ***Batliboi*** *(supra).*

77. The use of the MoRTH Standard Data Book for quantifying the claim for compensation of additional overhead expenses due to prolongation of the Contract Period has also received judicial recognition. In ***National Highways Authority of India v. IJM-Gayatri Joint Venture***[46], this Court upheld the Tribunal's adoption of the MoRTH Data Book after it had rejected the claimant's own computation. A similar view was taken in ***National Highways Authority of India v. DIC - NCC (JV)***[47]**,** and ***Public Works Department (NH Wing) v. GVR Infra Projects Ltd.***[48], where this Court recognised the MoRTH Standard Data Book as an accepted basis for assessment of costs arising from prolongation attributable to the employer. The percentage ultimately adopted also cannot be said to be so unreasonable as to shock the conscience of this Court. The final amount awarded under this claim was also not some figure in air but was determined on a reasoned basis at each stage after taking into account the material on record.

[46] **2020 SCC OnLine Del 2498**
[47] **2018 SCC OnLine Del 11931**
[48] **2026 SCC OnLine Del 5087**

78. For all the aforesaid reasons, I find no infirmity in the Tribunal's determination of Claim No. 1. The findings returned are a reasonable and plausible view emerging from the material on record and the Tribunal's interpretation of the Contract. I do not find the impugned Award to suffer from any perversity, patent illegality or any error going to the root of the matter so as to warrant interference under Section 34. I have also perused all the authorities relied upon by the Petitioner and find that they are of no assistance to the Petitioner in support of its claim. Accordingly, the challenge to Claim No. 1 is rejected.

CLAIM 3 AND CLAIM 4

79. Moving to the challenge to Claim No. 3, the Tribunal examined Sub-Clause 70.8 of the Contract and held that reimbursement was available only in respect of such additional statutory burden which was not already covered by the other Clauses related to price adjustment. On that basis, it excluded the Education Cess relatable to excise duty on goods as it already stood reflected in the WPI-based price adjustment but allowed reimbursement of Service Tax and the corresponding Education Cess on services such as insurance, and other services, as these were found to fall outside the price adjustment clauses.

80. I find no ground to interfere with the aforesaid view. The Tribunal has interpreted the terms of the contract and returned a finding as to what was, and what was not, covered by the price adjustment clauses. Whether that distinction was correctly drawn is essentially a matter of interpretation of the Contract and material on record. At the cost of repetition, so long as the view taken is a plausible one, this Court cannot substitute its own interpretation in challenge under Section 34.

81. The view taken also finds support from the decision of the Supreme Court in ***NHAI v. ITD Cementation India Ltd.***[49], where it was held that a contractor is entitled to reimbursement when a subsequent legislative change imposes an additional burden not already covered in the initial prices provided in the Contract.

82. Further, in regard to Claim No. 4, on examining the BOQ, the drawings and the Technical Specifications, the Tribunal found that "filler type expansion joints" formed part of the BOQ only for crash barriers. Insofar as retaining walls, separators and drains were concerned, no such provision was found. The claim was, therefore, rejected in respect of crash barriers but allowed for the remaining structures at the rate already approved by the Engineer's Representative.

83. The challenge to this finding is nothing but an invitation to re-appreciate the evidences. Once the Tribunal, upon examining the BOQ, the drawings and the Technical Specifications, has found that the item was neither provided for nor priced under the Contract, this Court cannot re-examine those documents to arrive at a different conclusion. No perversity or patent illegality in that finding has been demonstrated.

84. Having dealt with the merits of Claims Nos. 3 and 4, I now turn to the principal objection pressed by the Petitioner.

---

[49] **(2015) 14 SCC 21**

85. The common thread running through the Petitioner's challenge to Claims Nos. 3 and 4 is not directed against the findings rendered under Claims Nos. 3 and 4, but with the form of the relief granted. According to the Petitioner, by leaving the quantification to the Engineer instead of determining the amount itself, the Tribunal rendered a merely declaratory award, which, according to the Petitioner, is beyond the jurisdiction of the Tribunal.

86. Recently, a Coordinate Bench of this Court in ***State (NCT of Delhi) v. Harbel Singh***[50], had considered the permissibility of a declaratory award. Upholding such an award, the Court observed as follows:

> ***"27.*** *The arbitrator while adjudicating the issue regarding Goods and Service Tax on the awarded claims has held as under:*
>
> > *"23.3. So far as the arbitration agreement is concerned, there is no limitation with regard to power for making any declaratory award. Section 7 of the Arbitration and Conciliation Act, 1996 also covers disputes in respect of a defined legal relationship. Section 28(1) of the Arbitration and Conciliation Act mandates the arbitrator to decide the dispute submitted to Arbitration in accordance with the substantive law for the time being in force in India.* ***<u>Hence, I do not find any prohibition in law or bar regarding arbitrability for making declaratory awards by the arbitrators. In fact, it is a practice in most jurisdictions to make declaratory awards, including on interpretation of contracts, by the Arbitral Tribunals.</u>***
> >
> > ***23.4. In this case, the declaratory award is based on the plea that in case the claimant has to pay GST on award amount, the said amount of GST should be reimbursed by the respondent. I find no reason if the claimant incurs liability of GST on awarded sum and lawfully and properly pays the same to the government, then the same should be reimbursed by the respondent. This shall be an additional tax burden and is covered under Clause 38 of the GCC forming part of the contract.***

[50] **2025 SCC OnLine Del 3304**

23.5. In view of above, I make a declaratory award that the claimant shall submit details within 30 days of receipt of award amount, the GST amount actually paid to the government on the awarded sum which shall be reimbursed by the respondent within 30 days of submission of details of such payment by the claimant failing which a simple interest @ 10 per cent will be payable by the respondent to the claimant till actual date of payment."

..

30. *This Court is of the opinion that the sole arbitrator has dealt with and has considered all the material that was placed before him. There is no prescribed format under the Arbitration and Conciliation Act, in which an arbitral award must be made.* ***<u>After going through the award this Court could not find any observation made by the arbitrator which was devoid of merit or was made without considering the submissions made by the petitioner or the respondent/claimant or was outside the purview of the agreement entered into between the parties</u>****."*

87. The principle was explained further by another Coordinate Bench of this Court in ***Union of India v. Reliance Industries Ltd. & Anr***[51]**,** while considering the executability of a declaratory award which was also reiterated by the Division Bench in ***Union of India vs Reliance Industries***[52]. The Coordinate Bench took a view that there is no prohibition against such an award, however, it must finally determine the rights of the parties and leave no adjudicatory exercise to be undertaken thereafter. The relevant observations are as follows:

*"**58.** The proposition is, however, easier stated than applied. While I also subscribe to the view that there is no proscription against enforcement of a declaratory award - no such proscription being contained in the 1996 Act either - the enforcement would, clearly, require the declaration to be practically enforceable. This principle would have to be applied keeping in mind the fact that the executing Court merely executes; it does not pronounce or adjudicate. The executing Court can, therefore, execute only if the award - or decree - is*

---

[51] **O.M.P.(EFA)(COMM.) 1/2019**
[52] **EFA (OS) (COMM) 19/2023**

> *executable, and not otherwise. Mere declarations, which cannot be reduced to hard cash cannot, therefore, be executed in terms of money. If, however, the declarations are sufficiently explicit as to require a mere application of the principles declared to accepted facts and figures and application of mere arithmetic to arrive at the liability, then the award would probably be executable; but not otherwise. Russell, therefore, correctly expressed the principle in the passage on which the petitioner itself relies:*
>
> *"It is, however, sufficiently certain if the award sets out the method of calculation of the amount due to be paid, so that all that is required to determine the actual amount is "mere arithmetic". It is not unusual, for example, for an award to set out the basis on which interest is to be calculated, without actually including a specific figure."*
>
> ***59.** **What would be required, therefore, for a purely declaratory award to be executed like a money decree is, therefore, that the award must, firstly, identify one of the parties to the dispute as entitled to receive a quantifiable sum of money from the other, and, secondly, to set out the principles on the basis of which such quantification is to be done, so that all that is required to be done by the executing Court is application of pure arithmetic."***

(Emphasis supplied)

88. It emerges from the aforesaid decisions that the validity of a declaratory award does not depend upon whether the exact amount is quantified in the award itself or not. The real test is whether the Tribunal has finally adjudicated the rights and liabilities of the parties and laid down the basis on which the liability is to be worked out, leaving no adjudicatory function to be performed thereafter. If what remains is only the verification of the relevant record and application of the principles already declared, such an award cannot be faulted merely because the final figure is to be worked out subsequently.

89. The impugned Award, in my view, falls squarely within the above parameters. The Tribunal has finally determined the entitlement of the Respondent under both claims and laid down the basis on which the liability is to be worked out. Nothing has been left for the Engineer to adjudicate. He is only required to verify the record and quantify the amount payable in terms of the Award.

90. In view of the above, no merit remains in the Petitioner's challenge to Claim Nos. 3 and 4. The Tribunal has finally determined the Respondent's entitlement. No patent illegality or perversity has been shown in adopting such a course. The authorities relied upon in regard to price escalation and others are also of no avail. Therefore, there is no need of any interference with this part of the impugned Award while exercising jurisdiction under Section 34 of the Act.

91. As far as challenge to interest is concerned, it is wholly misconceived and devoid of merit. The Tribunal has not awarded any pre-reference interest. Under Claim No. 1, interest has been awarded only from the date of invocation of arbitration till the date of the Award.

92. Reliance placed on ***Interstate Construction*** *(supra)*, is also of no avail. The said decision distinguishes between pre-reference interest and pendente lite interest. While entitlement to pre-reference interest must be based on substantive law, pendente lite interest is governed by Section 31(7)(a) of the Act. Since the Tribunal has awarded interest only for the pendente lite period, the said decision does not advance the Petitioner's case.

93. In any case, the substantive right of the Respondent for interest lies under Clause 60.8 of the Contract. This Court in ***NHAI v. Hindustan Construction Co. Ltd.***[53] has held that 60.8 also applies to the sums found to be due and payable. In the present case as well, the Tribunal has also that interest is payable under Clause 60.8 from the dates on which the respective payments became due. The mere absence of elaborate reasoning on this aspect cannot warrant interference so long as the basis for the Tribunal's conclusion is discernible from the Award. As held in ***OPG Power Generation (P) Ltd*** *(supra)* and ***Dyna Technology Private Limited v. Crompton Greaves Limited***[54], a brief reasoning, where the underlying basis is apparent, is sufficient and does not invite interference under Section 34.

94. In view of the aforesaid, I find no infirmity in the award of interest. The Petitioner has not been able to demonstrate that the grant of interest is contrary to any provision of the Contract or suffers from any patent illegality or perversity warranting interference under Section 34 of the Act.

CONCLUSION

95. For all the aforesaid reasons, I find no merit in any of the grounds raised by the Petitioner. The Petitioner has essentially sought a re-appreciation of the terms of the Contract, the evidence and the conclusions drawn by the Tribunal. That is not the scope of interference under Section 34 of the Act. I find that the view taken by the Tribunal

[53] **2025:DHC:9222**
[54] **(2019) 20 SCC 1**

is a possible and plausible one and based on the material placed before it.

96. Insofar as Claim No. 1 is concerned, the Tribunal has returned a reasoned finding on the attribution of delay, and the Respondent's entitlement in terms of the clauses of the contract. The methodology also adopted for quantification cannot be said to be arbitrary or contrary to the Contract, nor does it suffer from any patent illegality.

97. In respect of Claim Nos. 3 and 4, the Tribunal has interpreted the relevant provisions of the Contract and finally determined the Respondent's entitlement, leaving only the ministerial exercise of verification and certification to the Engineer.

98. The petition is, accordingly, dismissed.

99. Pending application(s), if any, shall also stand disposed of.

100. There shall be no order as to costs.

OM PRAKASH SHUKLA, J.

AUGUST 18, 2026/*gunn*