THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-I

CA 90 of 2026

Under Rule 11 of the National Company Law Tribunal Rules, 2016

SAVRONIK BCC JV CONSTRUCTION PRIVATE LIMITED

...**Applicant**

V/s

IL&FS TRANSPORTATION NETWORKS LIMITED

…**Respondent**

In the matter of
COMPANY PETITION NO. 3638 OF 2018

UNION OF INDIA

…Petitioner

V/s

INFRASTRUCTURE LEASING & FINANCIAL SERVICES LIMITED & ORS

…Respondent

Order delivered on: 27.10.2026

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Shri Sushil Mahadeorao Kochey
Hon'ble Member (Judicial)

Appearances:

For the for Savronik BCC JV Construction Pvt Ltd.	:	Ms. Vinita Sathiya
For the Respondent No.1/ITNL	:	Mr. Karan Sanghani
For the Respondent No.2	:	Mr. Deep Roy,
For the Union of India	:	Ms. Onshi Jakhar

ORDER

1. This Company Application, CA 90/2026, was filed on 13.12.2025 under Rule 11 of the NCLT Rules, 2016, by Savronik BCC JV Construction Private Limited ("Applicant") in relation to its claim in the resolution process of IL&FS Transportation Networks Limited ("ITNL/Respondent No. 1"). The process is being carried out under interim order(s) passed in C.P. 3638 of 2018, filed by the Union of India under section 241(2) of the Companies Act, 2013, alleging mismanagement in the affairs of Infrastructure Leasing and Financial Services and its subsidiaries. The Applicant seeks the following reliefs:

    1. *Set aside the grossly erroneous determination/verification of claims submitted by the Applicant and hold that the amounts of claims submitted by the Applicant are admissible in their entirety without any set-off, deductions and adjustments, on facts of the case and in law;*
    2. *Set aside the erroneous determination/verification of claims submitted by the Applicant and direct Respondent No. 2/ CMA to re-evaluate/re-verify and admit claims submitted by the Applicant without any impermissible set-off, deductions or adjustments in a time bound manner in accordance with*

and to the fullest extent permissible under law based on submissions made herein and directions of this Hon'ble Tribunal;

3. *Pass appropriate orders for adjudication, determination/ verification and admission of claims submitted by Applicant in accordance with and to the fullest extent permissible under law;*
4. *Hold that setting-off, adjusting, withholding, or deducting any alleged counterclaims of Respondent No. 1/ITNL from/against claims submitted by Applicant is not permitted in law for the reason that such counterclaims were not even claimed/raised nor were ever adjudicated and determined by a competent forum in accordance with law before submission of Applicant's claim, and, accordingly, restrain Respondent No. 2/CMA and or Respondent No. 1/ITNL from exercising any such setting-off, adjusting, withholding, or deducting any alleged counterclaims of Respondent No. 1/ITNL from/against claims submitted by Applicant.*

5. *Hold that adjusting or withholding of payments allegedly made by Respondent No. 1/ ITNL to BCC subsequent to the date of assignment of receivables (29.04.2016) as payment against the Applicant's receivables is not permissible and is bad in law, in view of, inter alia, the absolute assignment of receivables duly executed between the Applicant and SSI and duly notified to Respondent No. 1/ ITNL long before the commencement of present insolvency proceedings.*
6. *Direct the Respondents that any amount admitted and determined as payable to the Applicant in respect of the*

assigned receivables be paid directly to SSI, being the lawful assignee thereof under the Assignment Agreement dated 29.04.2016.

7. *Restrain the Respondent No. 2/CMA from undertaking any re-evaluation or revision of the Applicant's claims except with the leave of this Hon'ble Bench or strictly in accordance with law.*
8. *Pass such other or further orders or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice, equity, and good conscience.*

2. The Applicant submits that Respondent No. 2/Claims Management Advisor's ("CMA") determination of its claim is not yet final, and that the assessment is neither correct nor complete. The CMA relied solely on an e-mail approval from ITNL dated 18.08.2017, admitting only the portion of the claim approved by ITNL and rejecting the remainder without examining its substance or the legal position applicable to each component. The CMA stated that the remainder is in dispute between Respondent No. 1/ITNL and the Applicant. The Applicant submits that the CMA cannot adjudicate a disputed claim and that this Tribunal must determine the dispute after considering the Applicant's submissions and objections to the CMA's assessment of each rejected component, as set out in this Application.
3. The Applicant has claimed the following amounts in this Application :
    a. interest on retention money amounting to Rs.93 lakhs, as against the admitted amount of Rs.59 lakhs;

b. Non-scheduled items (extra work) admitted for a sum of Rs.1,36,43,842/- as against the claimed amount of Rs.2,33,69,429/-, thus rejecting the claim of Rs. 97,25,587/-;
c. Amount of Rs.17,62,410/- admitted as a contingent claim on account of change in law;
d. Admission of claim Rs. 2,71,40,233/- against Rs.5,96,24,750/- withheld from running account bills, thus rejecting the claim of Rs.3,24,84,517/-;
e. Admission of claim Rs.1,41,29,781/- as against Rs.6,93,12,685/- on account of the claim for reimbursement of payment for supply of materials & services to 3rd parties on ITNL's instructions, thus rejecting the claim of Rs.32484517/-;
f. Liquidated damages amount to Rs.102965885/-, not admitted.
g. An amount of Rs.3.79 crores was wrongly deducted without any justification.
h. Admission of claim Rs.483885/- as against Rs.4953073/- on account of the claim for reimbursement of cost incurred for relocation of Batching Plant, thus rejecting the claim of Rs.4469188/-;
i. Claim for losses amounting to Rs.128651528/- suffered by Applicant due to scope reduction by ITNL.
j. Claim for losses amounting to Rs.441914121/- suffered by Applicant due to delay in work caused by ITNL;
k. Admission of Rs.15980498/- against Rs.558332345/- on account of interest on retention money, thereby rejecting the claim of Rs.542351847/-

l. Besides the aforementioned components, the Applicant has also stated that ITNL has failed to provide tax credit or TDS certificates to APPLICANT for TDS deducted from APPLICANT's dues.

4. The Applicant had earlier filed CA No. 1001 of 2020 in June 2020, seeking to restrain CMA from undertaking any form of re-evaluation or revision of the Applicant's admitted claim of Rs. 67,04,26,913.92/- and to direct that this admitted claim be treated as the final amount payable to the Applicant. In that application, the Applicant stated that, given the total claim of Rs. 1,53,91,45,509/-, the admitted amount was first shown as Rs. 19,33,26,338/- on a provisional basis, which rose to an admitted amount of Rs. 67,04,26,913.92/- as officially communicated to the Applicant, and is presently being shown as mere Rs. 11,20,94,567/- without any justification. As informed by the Claims Management Advisor, the admitted claim of Rs. 11,20,94,567/- corresponds to (i) retention money and (ii) money due on change in law. The application was withdrawn pursuant to the order dated 30.10.2025, the relevant part of which is reproduced below:

> *"1. In view of the changed facts and circumstances, whereby the CMA has already reevaluated their claim, the learned Counsel for the Applicant seeks to withdraw the present Application with a liberty to file a fresh Application raising all the contention in relation to their claim. Liberty is granted to file a fresh Application within 30 days."*

5. The Applicant submits that it completed work on a prestigious infrastructure project, the Chenani-Nashri Tunnel in J&K, and is

still fighting to recover its rightful dues, which remain unpaid despite ITNL's approval and CMA's verification. The Applicant further states that, based on additional documents belatedly introduced by ITNL, CMA reduced the admitted claim of Rs. 18 Crores, as detailed above, to Rs. 13 Crores, citing an alleged surplus of Rs. 5.34 Cr. paid by ITNL to the Applicant and treating payments made by ITNL as contractual dues. However, there is no surplus, and these claims should be rejected for lack of jurisdiction and as time-barred. CMA incorrectly counted direct payments (e.g., Rs. 80) and third-party payments (e.g., Rs. 20) against a net invoice value of Rs. 80 (i.e., Rs. 100-Rs. 80), resulting in the alleged surplus. Similar errors were made regarding disputed payments. Further, CMA verified amounts unrelated to APPLICANT.

6. The Applicant further submits that ITNL first raised new claims on 9.10.2024 as an afterthought, based on alleged payments made to BCC on Applicant's behalf. These claims are time-barred. ITNL's Application No. 10/2021 contained no such prayer. The claims should therefore be rejected for lack of jurisdiction and as time-barred. Further, any alleged payments were entirely illegal. On 29 April 2016, Applicant assigned receivables under the Construction Contract to Savronik Sistem India Private Limited ("SSI"), and ITNL accepted the assignment in its letter dated 5 May 2016. On 2.01.2017, SSI filed a suit for specific performance against ITNL and Applicant before the Court in J&K. The Court directed ITNL and Applicant to abide by the assignment of claim agreement and ITNL's letter, and restrained ITNL from making any payment to Applicant or Beigh Construction Company Private

Limited ("BCC"). ITNL conducted no verification, and Applicant's shareholders did not approve the alleged payment. The alleged payments related to BCC's work under other contracts at the same site, where ITNL had engaged many contractors, each of whom in turn had numerous subcontractors.

7. The Applicant specifically reiterates that ITNL first raised, during the hearing held on 7 January 2025, its claim to adjust or withhold the amount payable to Applicant for change in law, subject to the Developer/NHAI's approval. This claim was a mere afterthought and is time-barred. ITNL made no such prayer in its Application No. 10/2021. The claim should therefore be rejected for lack of jurisdiction and as time-barred. The Applicant further submits, without prejudice, that the Applicant has no privity of contract with the Developer. Under their contract, ITNL was required to pursue the corresponding claim against the Developer. ITNL cannot benefit from its own defaults or pass the resulting liabilities on to the Applicant.
8. The Applicant further submits that, if this Tribunal does not adjudicate the rejected and disputed claims and ITNL's cross-application, those matters will be subject to arbitration under clause 18.3 of the Construction Contract (p. 258 of the CA 10/2021 Application). The CMA must pay the admitted claims and refund or restore the Liquidated Damages deducted by ITNL without adjudication.
9. The Applicant further clarifies that, because it assigned the receivables under the Construction Contract to SSI and ITNL accepted the assignment, the admitted claim amount is to be paid directly to SSI rather than to the Applicant.

10. This tribunal heard extensive arguments from the learned Counsel for the Applicant, ITNL, and CMA in IA 1001 of 2020. After that application was withdrawn, they filed the present application to make a comprehensive case in support of their claim.

11. The learned Counsel for ITNL submits that the Applicant cannot raise fresh claims in this Application under the liberty granted by this Tribunal when it permitted the withdrawal of CA 1001 of 2020. Such claims must be examined independently for limitation, as the liberty granted by the Tribunal cannot create a fresh cause of action that relates to the filing date of the original application. In support, the learned Counsel relied on ***Abhiman Apartment Co-operative Housing Society Limited, Represented by Liquidator Sri. G.S. Bomme Gowda and Others Vs. Kasim Sab Peersab Nadaf & Others, 2023 SCC OnLine Kar 1578***, which held that "*26. In case liberty is granted to a party to file a fresh suit or a comprehensive suit, the order of granting liberty will never give rise to cause of action nor can it be construed so. Once a suit is finally adjudicated, any suit instituted subsequently by any of the parties or persons claiming title under the parties to the suit must plead independent cause of action, only when the court permits a plaintiff under sub rule (3) of rule 1 of Order 23 of CPC, to withdraw, the suit, he can bring a fresh suit in respect of same subject matter, but the fresh suit is also not immune to law of limitation*".

12. The learned Counsel for ITNL also raised an issue of limitation concerning a new component of the case and relied on the decision in ***Arifa and Others Versus Abhiman Apartment***

Co-operative Housing Society Limited and Others, 2025 SCC Online SC 1492, which held that "*8……. The specific averment regarding the cause of action, as stated in the plaint was extracted, which was the date on which the High Court had dismissed the second appeal and reserved such liberty. The limitation would commence from the date of execution of the agreements, the first two of which were in the year 1998. Though the two sale deeds in favour of the Society were thus executed, when the first suit was pending, the plaintiff did nothing to challenge the said conveyance. In the earlier suit, the defendant, in the written statement, had specifically pleaded regarding the conveyances, and the plaintiff admitted his knowledge of all the conveyances while verifying the 'record of rights'. No cause of action can be claimed on the liberty reserved, which is only on just exceptions including limitation, which in any event has to go by the period prescribed in the statute of limitation. The High Court has further found that there can also be no resort to Section 14 of the Limitation Act, since the suit already laid was not before a wrong forum but was not properly framed. Even when a suit is withdrawn with leave of the Court to file a fresh suit, under Order 23 Rule 1 of the CPC limitation applies with full force as per Rule 2 of Order 23.*"

13. Order 23 Rule 1 read with Rule 2 of the Code of Civil Procedure, 1908 ("CPC") expressly provides that where a plaintiff is permitted to withdraw a suit with liberty to institute a fresh suit in respect of the same subject-matter, the fresh suit remains subject to the law of limitation as if the first suit had not been instituted. Order 23 Rule 2 of the CPC is reproduced below:

"*In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted*."

14. Learned Counsel for the Applicant contends that CMA has never made a final determination of the claim. Instead, CMA has wrongfully permitted illegal set-offs from time to time without the adjudication required by law, as detailed in the following sub-paragraphs. Each instance has given the Applicant a fresh cause of action, making this a continuing wrong. Further, CMA has never rejected the balance of the claim; it has consistently maintained that the balance requires adjudication. The Applicant accepts that the prayer in Application CA 1001 sought a restraint order against the impermissible re-evaluation of the admitted claim of Rs. 67 Crores (which claim was allegedly admitted erroneously by the CMA, per its own admission, and was disclosed to the Applicant only after the Application CA 1001 was filed). The Applicant distinguishes that prayer from the prayer in Application (CA 90), stating that the present application seeks a final determination of the Applicant's claims as required by law, without any illegal set-off in the absence of adjudication of ITNL's set-off/counterclaim, as settled law requires.

15. In the present case, the Applicant sought only a direction that the admitted claim of Rs. 67,04,26,913.92/-, which included claims for Retention Money, Change in Law, and Interest, be treated as the final amount payable to the Applicant, and that CMA not carry out any further revaluation. CMA removed the interest claim, leaving only Retention Money and Change in Law.

Accordingly, the dispute in CA 1001 of 2020 was limited to the admission of the Change in Law claim as a contingent claim and the interest claim. During arguments in CA 1001 of 2020, CMA admitted portions of the claims for Non-Scheduled Item, Payment of Supplied Material & Services, Relocation of Batching Plant, and Withheld Payments. It also readmitted the interest claim to the extent of Rs. 1,59,80,498/-, bringing the total admitted claim to Rs. 18,34,71,012/-. The present application was filed pursuant to the liberty granted by this Tribunal to the Applicant to file a fresh Application raising all the contentions in relation to their claim, after observing that CMA has already re-evaluated the Applicant's claim during the proceedings in CA 1001 of 2020.

16. Admittedly, in CA 1001 of 2020, the Applicant did not challenge the rejection of claims under heads other than Retention Money, Change in Law, and Interest. The Applicant merely pleaded that "there are other claims under different heads which are also legally due and payable based on the documents in support thereof submitted by the Applicant including correspondence from ITNL admitting the liability", referring to other components of the total claim of Rs. 153.91 crores. In other words, the Applicant did not challenge the earlier rejection of claims under "Liquidated damages, Undue deductions, Scope Reduction, and Delay of work", and those claims have not since been re-evaluated or revised. Accordingly, the Applicant's contention that the re-examination of its claims in April 2024 and October 2024 gives rise to a fresh cause of action has no merit insofar as these heads are concerned; hence, the Applicant's claim under "Liquidated damages, Undue deductions, Scope Reduction,

and Delay of work", being barred by limitation as on the date of filing of CA 90 of 2026, cannot be adjudicated by this Tribunal. Nonetheless, the applicant shall be at liberty to initiate arbitration proceedings in relation to these heads of the claim, if such arbitration proceedings are otherwise permissible under the relevant contract and the law governing the limitation in arbitration.

17. Insofar as the claims under the heads Non-Scheduled Item, Payment of Supplied Material & Services, Relocation of Batching Plant, and Withheld Payments are concerned, it is relevant to note that these claims under these heads were initially rejected in whole. As regards these heads, it is noted that the re-examination of the applicant's claims in April 2024 and October 2024 did not relate to them; instead, ITNL's Counter Claim against the applicant was admitted by the CMA in those re-examination exercises. However, part of these claims were admitted pursuant to the direction of this Tribunal for re-verification during the pendency of CA 1001 of 2020 and additional material indicating the reasons for rejection of the remaining part of the claims under these heads led to the applicant's request for filing a fresh application for admission of such portion of the rejected claim. Admittedly, the applicant has raised claims in relation to these heads afresh. They were not part of the prayers in CA 1001 of 2020; however, considering that additional material being placed on record by ITNL/CMA had led to the discovery of fresh grounds for claiming the amounts under these heads beyond what got admitted during the pendency of CA 1001 of 2020, we are of the considered view that the claims under these heads cannot be said

to be barred by limitation, particularly when this Tribunal had allowed the applicant to raise all contentions in relation to their claim.

18. In view of the aforesaid, the parties were asked to make their submissions in relation to the Applicant's prayer in relation to their claim under the heads, namely, "Retention Money, Change in Law, Non-Scheduled Item, Payment of Supplied Material & Services, Relocation of Batching Plant, Withheld Payments, and Interest, for examination thereof on merits based on the material available before us.

19. In relation to 'Non-scheduled Items', the Applicant submits that ITNL made the Applicant do extra work (Rs. 11.87 Crores) and gave only partial approval (Rs. 11.05 Crores) and partial payment (Rs. 9.68 Crores) while disputing rates and has not fully paid the partially approved amount also till date despite its own approval on 18.08.2017. The Applicant had no choice but to perform extra work pending approval of the rates under Clause 12.3. The Applicant had submitted cost analysis justifying rates for ground beam/abutment concrete, ET road lean concrete and RBM and gave rates worked out based on MoRTH Standard Data Book, but ITNL did not approve claimed rates.

20. In relation to 'Withheld Payment', the Applicant submits that ITNL made withholdings (Rs. 8.55 Crores) from running account bills across the contract period and gave only partial approval (Rs. 2.71 Crores) while alleging deficiencies and has not fully paid the partially approved amount also till date despite its own approval on 18.08.2017. The Applicant made good all

deficiencies and achieved completion on 31.03.2017 to the satisfaction of ITNL. A taking-over certificate confirming completion on 31.03.2017 was issued on 13.06.2017; the defect liability period expired on 31.03.2018; and the bank guarantees were also released. ITNL cannot make unauthorised deductions if the developer has not made any deductions for the said deficiencies.

21. In relation to 'Payment for supply of materials & services to 3rd parties', the Applicant submits that ITNL made the Applicant do extra work (Rs. 9.91 Crores) and gave only partial approval (Rs. 4.5 Crores) and partial payment (Rs. 3.09 Crores) while disputing rates and quantities and has not fully paid the partially approved amount also till date despite its own approval on 18.08.2017. Applicant had supplied materials and services to 3rd parties on ITNL's instructions and submitted details of daily supplies, but ITNL failed to check and approve as committed in its e-mail approval dt 18/08/2017 (Pg 84-85-CA90). ITNL should be asked to check and approve the quantities of extra supplies and also provide the quantities they obtained under contract with the developer or third party. The same must be passed on to Applicant on an equitable basis.

22. In relation to 'Relocation of Batching Plant', the Applicant submits that this is an extra work done by Applicant on the instructions of ITNL. Applicant had submitted costs incurred and cost analysis (Pg 168-201-CA90), but ITNL has not provided approval. When concrete produced from the batching plant was used for extra work (including 3rd party supplies) done for ITNL, the cost of shifting should be borne by ITNL. ITNL is required to

pass on the benefit it has derived from the developer or third parties from concrete supplied from the batching plant operated by Applicant.

23. After hearing the parties, this Tribunal had required ITNL, via order dated 29.7.2026, to clarify as regards partial admission of claims under the heads namely "Non-Scheduled Item, Payment of Supplied Material & Services, Relocation of Batching Plant, Withheld Payments", in their written submissions *whether (i) the additional work done by applicant was charged by ITNL from their clients; (ii) whether the defects/ short comings for which deductions were rectified by the Applicant and if any deduction was made by the client in relation to such defect/ shortcoming from their bills; and (iii) whether the material supplied to the third parties and relocation of batches had resulted into any corresponding benefit in monetary terms to ITNL, and such material and relocation was required for execution of the work.*

24. In relation to Non-Scheduled Items, Payment of Supplied Material & Services, and Relocation of Batching Plant, ITNL submits in their written submissions that "*As per the letter dated January 12, 2017, addressed by ITNL to Savronik, it has been stated that the rates were finalized by both parties, and it has been further mentioned that Savronik failed to justify the excess quantity claimed by it in respect of nonscheduled items and payments for supply of materials and services to third parties. From the said letter, it is evident that claims for non-scheduled items, payments for supply of materials and services to third parties, and relocation of batching plant remained disputed between both parties and that there was no unilateral treatment by ITNL".* It further submits that

"*On the specific query of whether ITNL received any corresponding monetary benefit, and the amounts it charged its clients in this regard, it is respectfully submitted that ITNL has not been able to cross-verify the exact rates and quantities it charged Chenani Nashri Tunnelway Limited ("CNTL") for these claims from its available records, as the matters in question are historical, dating back close to a decade, It is further relevant to note that Savronik was only one of several sub-contractors engaged by ITNL, which makes it particularly difficult to retrieve itemized, sub-contractor wise information on the charges levied upon CNTL.*

25. In relation to withheld payment, ITNL submits in their written submissions that "*It follows, then, that the issuance of the take-over certificate cannot by itself answer the question of whether the defects were in fact rectified. This is precisely the clarification this Hon'ble Tribunal sought by its order dated July 29, 2026, namely, whether the defects/shortcomings for which deductions were made were rectified by Savronik, and whether any deduction was made by the client in relation to such defect/shortcoming from their bills. In answer to that query, it is submitted that the letter dated March 29, 2017 addressed by ITNL to Savronik makes it evident that, on account of Savronik's failure to rectify the defects, ITNL was compelled to engage third parties to carry out the rectification para 3".*

26. In relation to Non-Scheduled Items, Payment of Supplied Material & Services, and Relocation of Batching Plant, ITNL has expressed its inability to ascertain from its records whether any corresponding benefit was received from them or whether they had raised any corresponding claim upon the developer or a third

party. It is noted that the Applicant has provided comprehensive details in relation to its claim under these heads; hence, it has discharged the initial onus in this regard, thereby shifting the onus upon ITNL. In view of ITNL's failure to discharge its onus, we are of the considered view that the Applicant's claim under these heads deserves to be admitted on equitable grounds, as ITNL cannot take advantage of its own wrong, i.e., failure to cross-verify the corresponding receipt of material/services by third parties provided by the Applicant to them on ITNL's instructions. It is for ITNL to disprove the Applicant's claim on the basis of cogent evidence(s), and it cannot do so in the absence of cogent evidence demonstrating that the Non-scheduled work was not executed, that material/services to third parties were not supplied on its instructions, or that the relocation of the batching plant was not at its instruction. Since the rate for such work or material/services was to be approved by ITNL, the rate as finally approved by ITNL for each work/service shall be applied to the quantities/measurement claimed by the Applicant for admission of the Applicant's claim under these heads.

27. As regards admission of claim dispute in relation to interest payable on Retention Money, it is noted that CMA has admitted claim for interest on delay in release of retention money w.e.f. from June 12, 2018 as against from March 31, 2018 claim by the applicant. Applicant submits that, as per the Taking Over Certificate dated 13 June 2017, ITNL had stated that taking over requirements (i.e. achievement of completion certificate as per Clause 10.1 of the agreement was fulfilled by the applicant on 31 March 2017, therefore, as per Clause 12.7

read with Clause 1.1 and 10.1 of the agreement, the retention money was to be released upon completion of the defect liability period being 12 months (i.e. 31 March 2018) from the date of completion (i.e. 31 March 2017). Per contra, CMA submits that the Taking-Over Certificate for the Project was issued on June 13, 2017; and according to Appendix 6 of the contract, the Taking-Over Certificate can only be issued after receipt of inter alia the completion certificate; therefore, on the date of issuance of the Taking-Over Certificate, the Completion Certificate will already have been issued, hence, it can be said that the Completion Certificate was issued on the same date, i.e. 13.06.2017. It is noted that Take Over Certificate dated 13.06.2017 clearly states that "*taking over requirement fulfilled by M/s Savronik-BCC Construction Pvt Ltd on 31st March 2017, in accordance with clause 10.1 of the contract*", hence, CMA's assumption that *completion would have be on date of issuance of Taking Over Certificate* is contrary to the statement in the taking over certificate itself as well as CMA's own assumption that the Completion Certificate will already have been issued on or before issuance of Take Over Certificate. Accordingly, we are of the considered view that the interest on Retention is payable from 31st March 2018, and not from 13.06.2018, as determined by the CMA. Accordingly, the Applicant's claim in relation to the Interest on Retention Money shall be recomputed and admitted.

28. As regards admission of claim under the head Change in Law as contingent claim, it is noted that Clause 12.19 of the Construction Contract makes the addition or reduction in the contract price subject to provisions of Article 41 of the concession agreement dated June 28, 2010. Further, Article 41 requires NHAI's approval for an increase in cost arising from a change in law, and ITNL is stated to have written to NHAI vide letter dated 19.01.2018 for increased costs due to Change in Law, which the NHAI has yet to acknowledge. Since the claim of the Applicant under this head is like a pass-through obligation on the part of the ITNL, the admission of the claim under these heads as contingent does not warrant any interference; however, ITNL shall reasonably and diligently follow up with NHAI and shall keep the Applicant in the loop of all such follow-up communications, and, if required, shall authorise the Applicant's representative to follow up with NHAI on behalf of ITNL.

29. As regards downward revision of admitted interest claim on delayed payments under the contract, the Applicant submits that CMA has wrongly computed interest from the date of ITNL's e-mail approval (18.08.2017) whereas the interest on claims other than retention money was required to be calculated from the date of claim made by APPLICANT (Final claim made on 16.12.2016). The Applicant had claimed, vide its letter dated 16.12.2016, interest @ 18% p.a. on its claim under various heads amounting to Rs 558,633,209.73, the details

of which are reproduced hereinbelow, besides its claim for delay of work :

Nos	Claim	Total Amount
1	Non- scheduled work items	₹ 41.783.744,82
2	Supplied Material and Services to ITNL	₹ 71.577.163,95
3	Withheld Payments	₹ 95.676.767,42
4	Liquidate Damages	₹ 103.316.905,06
5	Unduly Deductions from RABs	₹ 90.683.229,92
6	Batching Plant Relocation	₹ 18.564.506,29
7	Loss due to descoping	₹ 116.156.222,58
8	Delay of PQC Works	₹ 14.507.000,00
9	Gantry Dismantling	₹ 4.478.400,00
10	Change in law	₹ 1.889.269,69
Grand Total		₹ **558.633.209,73**

30. While the applicant has claimed interest from the date of its letter making additional claims, i.e., 16.12.2026, the CMA admitted interest on the admitted claims under these heads w.e.f. the date of approval received from ITNL, i.e., 18.08.2017. The CMA states that, pursuant to clause 22.9 of the Construction Contract, in case of a delay in payment by ITNL beyond the due date of such payment, the Applicant would have a right to claim interest on such unpaid amounts due from ITNL. Therefore, the CMA proceeded with the calculation of interest on the amounts admitted above on a best estimate basis, up to the Cut-off date. It is further stated by the CMA that the applicant had shared interest computations with the CMA via email dated 11.12.2019, wherein interest was calculated after considering (a) payments received against older outstanding invoices, (b) the rate and quantity used to compute the outstanding amount were not

approved by ITNL, (c) the outstanding amount was a sum of individual claim components, part of which were not admitted, and (d) interest calculated @ 18% as against the rate mentioned in clause 29.2, i.e., SBI-LLR + 2%. On further seeking details of computation, the applicant sent the interest workings on a consolidated basis via email dated 8.5.2020 instead of providing the same separately for each claim component. Accordingly, the applicant was again asked via email dated 10.08.2020 to provide (a) detailed interest workings for each claim component on a standalone basis, specifically for the amounts accepted by ITNL in its approval letter, and (b) rationale for claiming 18% interest instead of the rate provided in clause 29.2. However, the CMA did not receive a response from the Applicant; it therefore calculated interest on the amounts admitted on a best-estimate basis.

31. Per contra, the Applicant states that interest on delayed payment cannot be denied merely because ITNL approved the additional claim amounts belatedly.

32. Clause 22.9 of the Contract provides for Interest on Delayed Payment and states that "*If payment under the Contract is delayed beyond the due date, the non-defaulting Party is entitled to receive interest on the amount unpaid during the period of delay at the rate of [two] percent per annum above the base lending rate of [SBI-PLR] both before and after any judgment or award. The non-defaulting Party is entitled to the payment without formal notice and without prejudice to any other right*". The rate of interest is clearly

provided in clause 29.2 of the contract; hence, the interest can only be claimed @ SBI PLR +2% and not 18%.

33. Further, clause 12.4 of the Contract provides that "*In case mutually agreeable settlement of rates is not arrived at between Developer's Representative and the Contractor, the Contractor shall be bound to carry out the Works at rates to be decided by Developer's Representative. In the absence of a finalized rate for a new item, Developer's Representative shall be entitled to certify payment to the Contractor based on a provisional rate fixed by Developer's Representative for the work done under the new item. This shall be subject to upward or downward adjustment after the rate is finalized by Developer's Representative for that item*". This Clause, therefore, requires ITNL to pay the amounts on a provisional basis. Accordingly, ITNL was obligated to make payment on a provisional basis pending approval, and the said payment was subject to adjustments upon final approval; hence, the delay in approval on the part of ITNL cannot disentitle the Applicant from claiming interest on amounts that had provisionally become due.

34. Further, interest on claims under 'Non-Scheduled Items', 'Payment for supplied material and services' and 'Relocation of batching plant', which were not part of the contract scope, should be computed from the date of the claim, which was found admissible in terms of final approval, and not from the date of final approval. As regards interest

on withheld payments, interest should be paid from the date ITNL received the intimation for rectified work from the Applicant. As regards interest on amounts due under the "Change in Law' head, since these amounts were payable on receipt of approval from NHAI, no interest can be claimed unless NHAI approval is on record, which has not yet been received. Further, interest on amounts not admitted as payable by CMA does not become payable unless the principal amount is found payable; accordingly, interest on amounts not admitted under various heads cannot be claimed, and there is no infirmity in CMA's action in restricting interest on the admitted claims. Since ascertaining the exact dates for these components may require further inquiry, and the Applicant has made claims for these heads vide letter dated 16.12.2016, we consider it appropriate to direct computation of interest payable on the admitted amounts of claims under these heads w.e.f. 16.12.2016 @ SBI PLR +2%.

35. In terms of the above, CA 90 of 2026 is partly allowed and disposed of.

-Sd/-
Prabhat Kumar
Member (Technical)

-Sd/-
Sushil Mahadeorao Kochey
Member (Judicial)