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

Judgment reserved on: 11.08.2026

Judgment pronounced on: 04.11.2026

\# **CNR No. DLHC010037122017**

\+ O.M.P. (COMM) 27/2017, I.A. 6628/2018, I.A. 8715/2024, I.A. 17060/2025, I.A. 29910/2025, I.A. 30313/2025 & I.A. 1234/2026

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Petitioner

Through: Ms. Tanu Priya Gupta and Ms. Khushi Sharma, Advs.

versus

ATLANTA INFRA ASSETS LIMITED FORMERLY KNOWN AS BALAJI TOLLWAYS LIMITED .....Respondent

Through: Dr. Amit George, Mr. Chirag Shroff and Mr. Zubin John, Advs.

\# **CNR No. DLHC013429322016**

\+ O.M.P. (COMM) 51/2017

ATLANTA INFRA ASSETS LTD. .....Petitioner

Through: Dr. Amit George, Mr. Chirag Shroff and Mr. Zubin John, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA .....Respondent

Through: Ms. Tanu Priya Gupta and Ms. Khushi Sharma, Advs.

\# **CNR No. DLHC010925302018**

\+ OMP (ENF.) (COMM.) 58/2018, EX.APPL.(OS) 629/2019, EX.APPL.(OS) 1015/2019, EX.APPL.(OS) 3839/2022, EX.APPL.(OS) 1218/2023, EX.APPL.(OS) 2074/2024, EX.APPL.(OS) 415/2025, EX.APPL.(OS) 1018/2025, EX.APPL.(OS) 452/2026 & EX.APPL.(OS) 3776/2022

ATLANTA INFRA ASSETS LTD. .....Decree Holder

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Through: Dr. Amit George, Mr. Chirag Shroff and Mr. Zubin John, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

.....Judgement Debtor

Through: Ms. Tanu Priya Gupta and Ms. Khushi Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 04.11.2026

O.M.P. (COMM) 27/2017 & O.M.P. (COMM) 51/2017

A. INTRODUCTION

1. The present dispute arises out of a Build Operate Transfer[1] highway concession awarded by National Highway Authority of India[2] to Atlanta Infra Assets Limited[3] for widening and improving approximately 40.8 km of the Nagpur–Kondhali section of National Highway-6 from two lanes to four lanes, at a project cost of Rs.168 crore with NHAI for grant of Rs.57.11 crore.

2. The present cross objections under Section 34 of the Arbitration and Conciliation Act, 1996[4] have been filed both by Atlanta and NHAI challenging the Award dated 29.09.2016.

[1] "BOT" hereinafter
[2] "NHAI" hereinafter
[3] "ATLANTA" or "Atlanta" hereinafter
[4] "the Act" hereinafter

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3. Shorn of unnecessary details, this is a case of competing attribution of delay, where each side seeks to place responsibility for the prolonged completion of the project upon the other. Additionally, the present controversy also pertains to award of substantial prolongation compensation to ATLANTA by the Arbitral Tribunal.

4. ATLANTA attributes the delay to NHAI, whereas NHAI maintains that the delay was occasioned by the ATLANTA's own shortcomings. The dispute, therefore, essentially turns on the question of causation and responsibility for the delay for the 1021 days delay in achieving the Provisional Commercial Operation Date[5] and the consequential award of prolongation compensation in favour of ATLANTA.

5. As the scheduled COD of 05.12.2008 had already lapsed and the project remained incomplete, ATLANTA had begun raising its claims before the Independent Consultant and NHAI from 12.03.2009.

6. Thereafter, on 04.09.2011/07.09.2011, ATLANTA formally sought amicable resolution, which was a contractual precondition to arbitration under Article XXXIX of the Concession Agreement.

7. The dispute further crystallised when NHAI levied damages for delayed PCOD and continued to attribute the delay to ATLANTA. After the contractual resolution mechanism failed, ATLANTA invoked arbitration on 29.11.2012 under Clause 39.4.

[5] "PCOD" hereinafter

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B. FACTUAL MATRIX

8. Following dates are relevant for the purpose of adjudicating the matter:

> *"i. 09.12.2005 – Execution of the Concession Agreement.*
> *ii. 06.06.2006 – Appointed Date and commencement of the Concession Period*
> *iii. 05.12.2008 – Scheduled Commercial Operation Date [6]/ stipulated date for completion of the Project*
> *v. 22.09.2011 – PCOD achieved*
> *vi. 1021 days – Delay in achieving the PCOD beyond the stipulated COD"*

9. The delay in achieving PCOD was 1021 days. The concession period was 20 years from the Appointed Date.

10. The following clauses of concession agreement dated 22.11.2005 are relevant to the issues of present controversy.

> *"1.2* ***Interpretation***
>
> *In this Agreement, unless the context otherwise requires,*
>
> *(k) the schedule to the Agreement form an integral part of the Agreement and will be in full force and effect as though they were expressly set out in the body of the agreement.*
>
> *1.4* ***Priority of Contract Documents and Errors/Discrepancies***
>
> *1.4.1- The several documents forming this Agreement are to be taken as mutually explanatory to one and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall, in the event of any conflict between them, be in the order they are set out;*
>
> *(i) this Agreement;*
>
> *(ii) all other documents forming part of this Agreement.*

[6] "COD" hereinafter

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i.e., documents at (i) above shall prevail over the documents at (ii) above.

1.4.2 In case of ambiguities or discrepancies within this Agreement, the following shall apply:

(i) between two clauses of this Agreement, the provisions of the specific clause relevant to the issue under consideration shall prevail over those in other clauses;

(ii) between the Clauses and the Schedules, the Clauses shall prevail, save as otherwise expressly set forth in Clause 1.4.1;

(iii) between the written description on the Drawings and the specifications and standards, the latter shall prevail.

II. SCOPE OF PROJECT

2.1 The Project shall be executed on the Site, which is described in Schedule 'A' of this Agreement. The Scope of the Project shall include performance and execution by the Concessionaire of all design, engineering, maintenance of the Project Highway as described in Schedule 'B' and Schedule 'C' of this Agreement. It shall include improvement, operation and maintenance including strengthening and widening of existing 2-lane road to 4-lane dual carriageway from km 9.200 - km 50.000 of NH-6 (Nagpur - Kondhali Section) in the State of Maharashtra in accordance with the Specifications and Standards set forth in Schedule 'D' and operation and maintenance thereof in accordance with Schedule 'V'. It shall also include the performance and fulfilment of other obligations by the Concessionaire under this Agreement.

The Concessionaire shall undertake its obligations at its own cost and risk.

CHAPTER-III OBLIGATIONS AND UNDERTAKINGS

IX. OBLIGATIONS OF THE CONCESSIONAIRE

9.1 The Concessionaire shall, at its own cost and expense, observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

(xxiv) after receiving possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;

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(xxviii) work in optimizing the use of existing Right of Way handed over to them. Identify and submit proposal for acquisition of additional land in accordance with the requirement of concerned State Government revenue department or the relevant LA Act, and pursue with the GOMH for early accomplishment of Land Acquisition;

(xxix) make all necessary arrangements for accomplishing the tasks of physical removal of the encroachments at his own cost;

(xxx) cut the trees and carry out compensatory afforestation and assist NHAI in obtaining the environmental clearances and permits for the Project Highway and shall do all legwork required in this connection;

(xxxi) carry out shifting of utility services.

X. OBLIGATIONS OF NHAI

10.1 NHAI agrees to observe, comply and perform the following:

(i) enable access to the Site to the Concessionaire, free from all Encumbrances, in accordance with this Agreement;

(ii) permit peaceful use of the Site by the Concessionaire as licensee under and in accordance with the provisions of this Agreement without any let or hindrance from NHAI or persons claiming through or under it;

(ix) operate and maintain the Project Highway during the Development Period, at its own cost and expense, in a manner that the level of service is at no time inferior to the level prevailing on the date when bids were received for this Concession;

(x) observe and comply with its obligations set forth in this Agreement;

(xi) take all necessary steps towards accomplishment of acquisition of additional land. NHAI shall bear the cost of additional land;

(xii) coordinate with GOMH authorities for completing the legal requirements and maintaining law and order during removal of encroachments by the Concessionaire;

(xiii) provide necessary support to the Concessionaire in obtaining necessary clearances/permissions/permits in respect of tree cutting, compensatory afforestation, shifting of all types of utility services,

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construction of ROB/RUB on Railway lines and rehabilitation and resettlement;

(xiv) bear all expenses as per demand note raised by the concerned government or other agencies in respect of environmental clearances, tree cutting, compensatory afforestation, shifting of all types of utility services, construction of ROB/RUB on Railway lines and rehabilitation and resettlement;

(xvi) obtain all necessary environmental clearances/permissions in respect of Environmental Clearances.

XII. DISCLAIMER

12.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the traffic volumes, Specifications and Standards, Site and all the information provided by NHAI and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

12.2 The Concessionaire acknowledges and hereby accepts the risks of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 12.1 above and hereby confirms that NHAI shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium Members or their associates.

CHAPTER-IV

PROJECT DEVELOPMENT AND OPERATIONS

XIII. USE AND DEVELOPMENT OF THE SITE

13.2 NHAI hereby grants to the Concessionaire for the Concession Period the right and licence to enter upon all real estate comprised in the Site briefly described in Schedule 'A' and to survey, design, engineer, procure, construct, operate and maintain the Project Highway including the Project Facilities in accordance with the provisions of this Agreement. Such right and licence of the Concessionaire to use the Site shall be subject to:

13.2.1-……
13.2.2-……..

***Clause 13.5.1 - Existing Right of Way**:*

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Existing Right of Way to the Site shall be made available to the Concessionaire pursuant hereto by NHAI free from all encumbrances and without the Concessionaire being required to make any payment to NHAI on account of any costs, expenses and charges for use of such sites for the duration of the Concession Period, save and except as otherwise expressly provided in this Agreement. NHAI shall procure for the Concessionaire access to the Existing Right of Way, free from encumbrances, not later than 150 (one hundred and fifty) days from the date of this Agreement. Provided, however, if NHAI does not enable such access to any part or parts of the Existing Right of Way for any reason other than a Force Majeure Event or breach of this Agreement by the Concessionaire, NHAI shall pay to the Concessionaire damages at the rate of Rs. 1000 (Rupees One Thousand) per month per 1000 (one thousand) sq. meters or part thereof, if such area is required by the Concessionaire for Construction Works. Such damages shall be raised to Rs. 2000 (Rupees Two Thousand) per month after COP if such area is essential for the smooth and efficient operation of the Project Highway. Provided further that the Completion Certificate or the Provisional Certificate, as the case may be, for the Project Highway shall not be affected or delayed as a consequence of such parts of the Existing Right of Way remaining under construction after the Scheduled Project Completion Date.

Clause 13.5.2 - Additional Right of Way:

Additional ROW shall be made available to the Concessionaire as per the Handing Over Schedule 'H' free from all encumbrances and without the Concessionaire being required to make any payment to NHAI on account of any costs, expenses and charges for the use of such AROW for the duration of the Concession Period, provided the Concessionaire has fulfilled his obligations pursuant to Clause 9.1 (xxviii). On or after the Appointed Date, the Concessionaire shall commence, undertake and complete all Construction Works on the Project Highway in accordance with this Agreement.

CHAPTER-VII

SUSPENSION AND TERMINATION

XXX. MATERIAL BREACH AND SUSPENSION

30.1 If the Concessionaire shall be in Material Breach of this Agreement, NHAI shall be entitled, in its sole discretion and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (i) suspend all or any of the rights of the Concessionaire under this Agreement including the Concessionaire's right to collect and appropriate all Fees...

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XXXI. COMPENSATION FOR BREACH OF AGREEMENT

31.1 In the event of the Concessionaire being in material default of this Agreement and such default is cured before Termination, the Concessionaire shall pay to NHAI as compensation all direct additional costs suffered or incurred by NHAI arising out of such material default by the Concessionaire, in one lump-sum within 30 (thirty) days of receiving the demand or, at the Concessionaire's option, in 3 (three) equal semi-annual instalments with interest @ SBIPLR plus 2% (two percent).

31.2 In the event of NHAI being in material default of this Agreement and such default is cured before Termination, NHAI shall pay to the Concessionaire as compensation all direct additional costs suffered or incurred by the Concessionaire arising out of such material default by NHAI, in one lump-sum within 30 (thirty) days of receiving the demand or, at NHAI's option, in 3 (three) equal semi-annual instalments with interest @ SBIPLR plus 2% (two percent).”

11. Following were the issues framed before the Arbitral Tribunal:

*“1: **Compensation on account of delay in handing over existing row(EROW).***

(a): Whether the delay in completion of the work was caused on account of breaches of terms and conditions of the Concession Agreement (CA) and act of omissions by the Claimant or by the Respondent?

(b): Whether Concessionaire has submitted any programme/ plan in the first year of commencement of work?

(c): Depending on answer to Issue 1(a) and (b) above, whether the Claimant is entitled to Claim Nos. 1, 3, 4, 5, 6, 8, and 10 and if so, to what extent?

2(a): Whether the Respondent delayed payment of the maintenance work for a period of 40 months?

2(b): If the answer to 2(a) is in the affirmative, whether the Claimant is entitled to get interest on delayed payment as claimed by it in Claim No. 7, and if so, for what amount?

3(a): Whether the Respondent unilaterally reduced toll length and toll fees dehors the terms of the CA?

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3(b): If the answer to 3(a) is in the affirmative, whether the Claimant is entitled for compensation on account of loss in Toll revenue due to reduction in toll fee as claimed in Claim No. 9 by it, and if so, to what extent?

4(a): Whether the Respondent has delayed the disbursement of Grant in terms of conditions of CA?

4(b): If the answer to 4(a) is in the affirmative, whether Claimant is entitled to Claim No. 2, and if so, to what amount?

5: Whether the claims made by the Claimant are time barred?

6: Whether the Claims made by the Claimant are not maintainable on the facts and in the circumstances of the case?

7: Whether the Claimant is entitled to interest and cost as claimed by it in Claim Nos. 11 and 12 respectively?"

C. FINDINGS OF THE ARBITRAL TRIBUNAL

12. In order to decide the above issues, the Arbitral Tribunal instead of deciding issues forming every claim in isolation, at the outset, determined the overarching questions concerning responsibility for the 1021-day delay i.e. (i) timely availability of the Additional Right of Way, (ii) compliance by ATLANTA with its obligations relating to land acquisition under Clause 9.1(xxviii), (iii) attribution of delays arising from forest land and shifting of utilities, (iv) NHAI's entitlement to levy damages under Clause 15.4, (iv) the existence of any valid right of termination, (iv) and the effect of the ATLANTA's alleged failure to submit a revised construction programme.

13. The findings related to above issues constituted the factual and contractual foundation for the subsequent claim wise adjudication.

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14. Accordingly, after deciding these common issues, the Tribunal proceeds to conclusively examine ATLANTA's entitlement under Claim Nos. 1, 3, 4, 5, 6, 8 and 10 in light of the observation already reached. These relevant findings which formed the basis of claim wise adjudication by the learned Arbitral Tribunal are reproduced below:

> *"7.04 The Claimant made an allegation about a discrepancy/tampering in one of the documents relied upon by the Respondent, and in that respect stated, "The Claimant, in the interest of transparency and justice, intends to initiate appropriate proceedings separately". It has been noted that the Respondent is silent about the allegation. Under the circumstances the matter of tampering, if any, has not been adjudicated by this Tribunal.*
>
> *7.05 The Respondent, during the course of arguments, did not press the issue as to whether the Claims were time barred or not. Issue no. 5 therefore stands deleted.*
>
> *7.06 The Concession Agreement Article XXXIX "Dispute Resolution" provides for the procedure of Amicable Resolution and thereafter Arbitration in accordance with the Arbitration and Conciliation Act 1996. It appears that the Claimant had raised disputes, attempted for amicable resolution and thereafter invoked arbitration.*
> *Inviting reference to the provision of the Limitation Act, 1963, it has been noted that the Claims, allowed hereunder, are not time barred under the circumstances of the cases.*
>
> *8.01 The Claimant contended that the Respondent employed the Independent Consultant (IC) after a delay of approximately 140 days. As the activities of Construction are to be done with prior approval/ consent of the IC the delay in appointment of IC had caused delay in execution of important activities. The Clause 20.1 of Concession Agreement (CA) says that the IC is to be appointed not later than 120 days of the date of Agreement, i.e., on or before 08.04.2006. But the IC was appointed on 29.08.2006.*
>
> *8.02 In accordance with the provisions of the Contract, the schedule of handing over of the Site was mentioned. In terms of Clause 13.5.1 of the Concession Agreement "... NHAI shall procure for the Concessionaire access to the Existing Right of Way, free from Encumbrances, not later than 150 (one hundred and fifty) days from the date of this Agreement. Provided however, that if NHAI does not enable such access ...." In view of such provision it appears that*

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NHAI had agreed to handover the Existing Right of Way 30 days before the Financial close. In terms of Clause 13.5.2, "Additional Right of way shall be made available to the Concessionaire as per the Handing over Schedule 'H' free from all encumbrances ...", and as stated in the Schedule 'H' the Additional Right of Way was agreed to be made available within 12 months from the date of signing the Concession Agreement. Accordingly, it was agreed by the parties that the Additional Right of Way was to be made available before expiry of approximately 6 months from the stipulated date of Financial Close subject to certain obligations to be fulfilled by the Claimant pursuant to Clause 9.1(xxviii)[7].

8.03 It has been noted that the "Appointed date" means the date 180 days after signing of the Concession Agreement and shall be deemed to be the date of Commencement of the Concession period. The Respondent contended that, as the conditions precedent are to be satisfied before the Appointed date, the very declaration of Appointed date as 06.06.2006 is an indication that the obligations from the Respondent side are fulfilled for the commencement of work. The Claimant, citing the provisions of clauses 13.5.1 & 13.5.2, Schedule "A", Site handing over Schedule "H", Article X i.e, Obligations of NHAI etc., has contended that it was the failure of the Respondent which resulted in non-availability of Site in accordance with the Schedule given in the Contract.

8.04 In accordance with the Concession Agreement Clause 13.5.1, the Existing Right of Way, free from encumbrances, was required to be made available to the Claimant not later than 150 days from the date of the Agreement. Accordingly, the latest date of making available the Existing Right of Way was 08.05.2006.

8.05 The Claimant contended that the Respondent handed over the Existing Right of Way on paper on 12.01.2006, but actually the Site was full of encroachments/structures/ utilities which were not possible to be removed resulting in non-availability of land on Existing Right of Way in accordance with the Schedule 'A'. The Respondent contended that the Claimant failed to appreciate the true meaning of the word 'encumbrances', which, as per Agreement, means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance

[7] 9.1(xxviii) work in optimizing the use of existing Right of Way handed over to them. Identify and submit proposal for acquisition of additional land in accordance with the requirement of concerned State Government revenue department or the relevant LA Act, and pursue with the GOMH for early accomplishment of Land Acquisition

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policy pertaining to the Project Highway. As stated by the Respondent, the Claimant has failed to understand the meaning of the word encumbrances and attempted to establish that encumbrances are same as encroachment which is not correct. Inviting reference to the Clause 9.1 (xxiv) the Respondent contended that it was the responsibility of Claimant to remove all types of encroachments/ structures/utilities. The Clause 9.1 (xxiv) reads as follows:

"IX. OBLIGATIONS OF THE CONCESSIONAIRE

9.1 The concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations set out elsewhere in this Agreement, the following:

(i)
….. ……

(xxiv) after receiving possession of the site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachment, if any" (emphasis supplied)

The Respondent submitted that they had extended necessary administrative support by writing number of letters to district administration and police authorities. Respondent stated, "In any case, the bogey of encroachments or physical obstructions is grossly exaggerated and there are plenty of fronts available to begin with and also to progress very well.... EROW was very much available between chainage +33.600 and +34.150 and +47.000 and +48.500 since the same was handed over long ago. As said earlier, the problem of encroachment or physical obstructions pertains to only 5.41 Kms out of 40 Kms and nothing prevented the Claimant to take up the work on the remaining lands."

8.06 After perusing the other correspondences made by the Independent "Consultant and the Respondent, it has been found that there was a delay in removal and shifting of some of the utilities, religious structures etc., from the existing carriageway due to non availability of Additional land where those could be relocated. But as discussed in the succeeding paragraphs the Respondent has been held responsible for the delay in acquisition/ handing over of the Additional land for AROW.

8.07 Therefore, the Respondent is being held responsible for the delay in shifting and relocation of such utilities for which additional land was necessary, and in turn responsible for delay in completion of the Project.

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8.08 In accordance with the Agreement the Respondent was liable to pay damages to the Claimant for delay in handing over the Existing ROW. In the Contract documents the Respondent had included Schedule A i.e., Site of the Project wherein the average land width of Existing Right-of-Way (ROW) was mentioned at different old chainages. It was envisaged that additional land would be required to complete the Project. The available Av. Land width on EROW (old chainage) was mentioned in the Schedule A with a disclaimer[8] that the Respondent shall not be held responsible for any inaccuracy in the information provided. With regard to the Claimant's quantification of area of EROW the Respondent stated, "Table in Pg. 10 of SOC is not proved; quantification statement in Pg. 70 of SOC, Annexure-l, is not proved by any authentic record or joint measurement". It appears that all over the length of the Existing ROW, except for the chainages where realignment of the road was required, some activity/ work was possible to be taken up by the Claimant depending upon the actual width of land available on EROW. It has also been noted that at the portion, where the realignment was to be done, the (non) availability of EROW was irrelevant. It is a matter of fact that there was inadequacy and/or mistake in the data made available by the Respondent about the average land width available on EROW. But the Claimant by the Disclaimer referred above had agreed not to make liable the Respondent for such mistakes/ inadequacies. Under such circumstances the Claimant cannot be held entitled for any damages on account of non-availability of EROW during the period of construction. Besides, there is no record stating essential

[8] 3 XII. DISCLAIMER
12.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an Independent evaluation of the traffic volumes, Specifications and Standards, Site and all the Information provided by NHAI and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire In the course of performance of its obligations hereunder.
12.2 The Concessionaire acknowledges and hereby accepts the risks of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 12.1 above and hereby confirms that NHAI shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium Members or their associates.
Schedule A, 1.2, Disclaimer
The data presented in this schedule is for an initial understanding and guidance of the Concessionaire. The data Is based on DPR prepared by the design consultant during 2002-2003. NHAI will not be responsible for any Inaccuracy in the Information provided and shall not be liable for or be bound by the data used by the Concessionaire in evaluating the project viability. The concessionaire will carry out his own independent surveys for assessing actual position of the project corridor.
The concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has satisfied himself (based on his own Independent assessment) of the survey data, specifications and standards, site and all information provided by the NHAI. The concessionaire acknowledges and accepts the difficulties, risks and hazards likely to arise during the course of performance of his obligations hereunder.

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requirement of any area on EROW for the smooth and efficient operation of the Project Highway after the Provisional COD.

In view of the above it has been held that the Claimant is not entitled to its Claim No. 1 and the same is being rejected.

8.09 The Claimant referred to a letter written by The Respondent on 07.12.2010, which stated:
"Optimization of Existing Right of Way:

It is identified the stretches where the 4-laning works (only) can be carried out by the Concessionaire by optimizing the use of existing ROW. As can be seen from the following table, the Concessionaire can complete 4-laning works for a length of 36.571 Km. out of a total length 40.441 Km. within existing ROW.

The list of works, which require additional land, is as of 30.11.2010 follows.

	Item	*Location*	*Unit*	*Total Qty*
1	*Main Carriageway*	*Km. 16.000 to Km. 16.500 BS;* *Km. 33.280 to Km. 34.440 BS;* *Km. 46.920 to Km. 48.300 BS;*	*Km.*	*3.04*
2	*Service Roads and structures in service road portion*	*Km. 9.200 to Km. 12.950 BS;* *Km. 13.950 to Km. 14.300 RHS;* *Km. 14.300 to Km. 16.300 RHS;* *Km. 18.350 to Km. 16.300 BS;* *Km. 21.700 to Km. 22.450 BS;* *Km. 23.300 to Km. 24.000 BS;* *Km. 25.900 to Km. 27.000 BS;* *Km. 29.700 to Km. 30.400 BS;* *Km 33.500 to Km. 34.500 BS;* *Km. 47.400 to Km. 49.100 BS;*	*Km.*	*21.07*
3	*Underpass*	*Bazargoon village*	*Nos*	*1*
4	*Flyover*	*At Kondhali*	*Nos.*	*1*
5	*Truck lay By*		*Nos*	*6*
6	*Bus Lay By*		*Nos.*	*12*

The Concessionaire could have completed all the other works except the above, well within the Schedule Project Completion Date."

8.10 In view of above it appears that sufficient width of land to accommodate the entire width of the Project facilities was not available within the actual existing ROW. The Respondent contended that "for construction of 4-Lane Project Highway, 23 m to 30 m width is quite adequate". But, it has been noted that the Schedule B of Concession Agreement, the typical cross section drawings TCS 1 and TCS 2, shows the required formation width of

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Project Highway as 24.000 meter and 45.000 meter respectively which exclude the sloping portion of the embankment, the side drains, facilities like Truck lay by, Bus bay, land width required for plantation if any, etc. In view of this it does appear that considerable area of additional land (Additional Right of Way-AROW) was required to be acquired to accommodate the proposed Project facilities.

8.11 The Site handing over schedule as per Schedule H of the Agreement has been reproduced below:
"Schedule-H
II. SITE HANDING OVER SCHEDULE
The Site shall be handed over as below from the date of signing the Concession Agreement:

Stretch	*Length*	*Remarks*
(Refer Design Chainage) *Existing ROW*	*40.441 Km*	*Within one month*
Additional Land wherever required for the Project Highway including Land for Base Camp		*Within 12 months*

Note: The above Handling over Schedule is subject to accomplishment of all obligations of the Concessionaire as mentioned in the Request for Proposal(RFP) Document."

The Respondent contended that "even without fulfilling these requirements, Respondent had handed over above land in the interest of the project." But it was not clarified which obligations of the RFP Document was not fulfilled by the Claimant.

8.12 It is undisputed fact that the required Additional land was not available to the Claimant in accordance with the Schedule H. However, the Respondent contended that the delay in acquisition of the Additional ROW was consequential to the lapses of the Claimant and the Respondent was not responsible for the delay.

8.13 The Scope of the Project has been stated in Schedule 'B' of the Agreement. Clause 8.1 of Schedule 'B' reads as under:

> *"8 Pre-Construction Activities*
> *8.1 Land Acquisition (LA)*

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The additional land acquisition in few isolated stretches is foreseen on this project. The cost of LA as intimated by the concerned agencies shall be borne by NHAI. However, the Concessionaire shall be involved pro- actively in this regard submitting relevant LA proposals as per NH Act- 1956 and pursuing the matter with the concerned State Govt. Revenue Departments and the concerned private people whose land is to be acquired. NHAI shall provide all necessary administrative support in this regard."

The provisions of the Chapter-Ill of the Agreement, i.e., Obligations and Undertakings are as follows:

"IX. OBLIGATIONS OF THE CONFESSIONAIRE

9.1 The Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

(xxviii) work in optimizing the use of existing Right of Way handed over to them. Identify and submit proposal for acquisition of additional land in accordance with the requirement of concerned State Government revenue department or the relevant LA Act, and pursue with the GOMH for early accomplishment of Land Acquisition;"

8.14 After perusing the Statement of Defense and other documents submitted/ relied upon by the Respondent, it does appear to us that the Claimant did not commit any default in performing its obligation to optimize the use of the existing ROW.

8.15 The Claimant had submitted a Land acquisition proposal to the Respondent on 13.06.2006 stating, "Dear Sir, Please find enclosed the details (3 sets) of land to be acquired for the above Project. The survey numbers along with area statement to be acquired are indicated therein. You are requested to take early action for 3a & 3A Notification please". After perusing the said proposal dated 13.06.2006 along with the maps and statements showing village, Taluka, Dist, Survey no., area required in hectors, and type of land, it has been observed that the Claimant had identified the additional land required and submitted the LA proposal in line with the requirement under the NH Act 1956. The names of villages mentioned by the Claimant were, 1 Wadi, 2 Vad Dhamna, 3 Surabuldi, 4 Gondkhairi, 5 Chichbhuvan, 6 Pethdongari, 7 Linga, 8 Mohegao (Khu), 9 Mohegao (Bhu), 10 Satnavri, 11 Panchnavari, 12 Bazargao, 13 Chakdoh, 14 Ringnabuldi, 15 Hardoli, 16 Panjarakate, 17 Dudhala, 18 Kondhali. However, the Claimant had submitted the said proposal on 13.06.2006 i.e., 6 months and 4 days

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after the date of signing the Concession Agreement. It was also noted that the additional land was required to be handed over by the Respondent within 12 months from the date of signing the Concession Agreement subject to the fact that the Claimant had fulfilled its obligation under Clause 9.1(xxviii) of the Agreement (Refer Clause 13.5.2 reproduced below).

> *"Clause 13.5.2 Additional Right of Way Additional ROW shall be made available to the Concessionaire as per the Handing over Schedule 'H' free from all encumbrances and without the Concessionaire being required to make any payment to NHAI on account of any costs, expenses and charges for the use of such AROW for the duration of the Concession period provided Concessionaire has fulfilled his obligations pursuant to Clause 9.1 (xxviii). On or after the Appointed date, the Concessionaire shall commence, undertake and complete all Construction works on the Project Highway in accordance with this Agreement."*

8.16 From the voluminous correspondences submitted by both the Claimant and the Respondent few extracts have been reproduced below:

On 08.05.2006 the Claimant wrote, "Please find enclosed a copy of Gazette Notification issued by Gazette of India under 3(a) for the above project which include 8 villages. We have sent another letter to NHAI dated 06.12.2005 copy enclosed, seeking for inclusion of additional villages. So far no action has been taken by NHAI HQ. We now enclose list of structures involved for acquiring/removal in the stretch KM 9.00 to 50, for further necessary action in the matter please."

On 18.10.2006 a Notification under Section 3(A) was published by MOSRTH notifying a total area of 484725 sqm.

On 08.12.2006, during the Review meeting between Independent Consultant, Respondent, and Claimant, it was recorded that "9. The Land Acquisition matters (3A) has been published in the local papers on 18/11/06;... and 13. The Concessionaire informed that there is no FOREST LAND involved in the land to be acquired for widening of the project."

On 11.01.2007 the Respondent wrote to the Superintendent of Land Record, Spl. Land Acquisition Officer (General), and S.D.O. Arvi, "It is brought out by our Concessionaire that, there is huge mismatch/ discrepancy especially in Nagpur district in respect of existing Right of Way (EROW) as per EROW plans available with PWD (the then project caretaker organization) & road width data available with TILRs. It indicates that last acquisition is not being

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considered by TILR while preparing new acquisition details... In view of above, please ensure that the existing right of way marked is correct while preparing J.M.Sheet."

On 17.01.2007 the Respondent wrote to the Claimant, "It is regretted to note that you have chosen to remain absent despite undersignees request during one of our very crucial stage of Land Acquisition i.e., "3C Hearing of Objections" which has resulted in postponement of the date for 2nd time which is nothing but gross non compliance of concessionaires obligation as per C.A. Cl no. 9.1-xxviii...."

On 25.01.2007 the Claimant wrote to the Respondent referring a letter dated 17.01.2007, "... We assure that we will take care of all necessary precautions while executing the work."

On 10.10.2007 a Notification under 3(D) was published notifying a total area of 97686.80 Sqm against 484725 sqm in 3(A).

On 28.08.2008 the Respondent wrote to SLAO confirming that the land measuring on higher side as per the JMR were entirely deleted in the notification 3D. The Respondent stated that a supplementary notification under 3A was in progress.

On 19.02.2009 the Respondent replied to Claimant's letter dated 22/01/2009, stating "... Since, the Land acquisition plan including draft 3(a) Notification and 3(A) Notification proposal were initially prepared and submitted by the Concessionaire, the responsibility for omission of name of village Waddhamana from land acquisition in 3(a) Notification and its amendment, 3(A) Notification and 3(D) Notification lies with the Concessionaire only..."

But, as stated above, the name of village 'Vaddhamana' was there in the Claimant's proposal for LA dated 13.06.2006. Thus, it appears that the allegation of the Respondent vide its letter dated 19.02.2009 was not correct.

8.17 The Respondent described about the status in the light of the provisions of the NH Act 1956 and contended that the Claimant was responsible for the delay in acquisition of AROW. The Respondent stated, "Land acquisition under NHAI Act 1956 is initiated with notification under section-3(A) of the Act. This notification should contain details of the land to be acquired with brief description. It was the responsibility of Concessionaire to prepare a draft which has to be issued as notification under 3(A) of the Act in the official Gazette. Claimant had prepared 3(A) Draft Notification for a land area of 485600 Sqm. The same was published. Next step in the land acquisition is to conduct survey and measures, take levels, setting

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out boundaries and intended lines of work etc., under section-3(B) of NHAI Act 1956, by any authorized person of the Central Govt. and in this case it is the Claimant himself. Once this exercise is complete, public objections are invited under section 3(C) of the Act. Thereafter, Competent Authority under section-3(D) would declare vesting of land in Govt. of India and this gives right to enter the land. Relevant provision reads as under:

> *'3-F- Right to enter into the land where land has vested in the Central Government-*
> *Where the land has vested in the Central Government under section 3-D, It shall be lawful for any person authorized by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith."*

In our view the NH Act 1956, Sec.3D is not to be read independently and has to be read along with Sections 3E, 3G and 3H of the Act. It is after the compensation payable to the land owner is determined (Sec.3G) paid to him (Sec.3H) that provision of Sec.3E come into operation. Sec.3E provides for power to take possession of the land so acquired regarding which compensation has been determined and paid to the land owner. It is only after when compensation has been paid to the land owner that competent authority may by notice in writing direct the land owner or any other person who may be in possession of such land to surrender or deliver the possession thereof to the competent authority or any person authorised by it in this behalf within 60 days of the service of notice. If there is failure on the part of the land owner or any other person in possession of land then possession can be taken over by competent authority with police help by using force.

8.18 The Respondent submitted that "in the process of verification under section 3(B), it was found that draft notification prepared by Claimant under 3(A) is defective. Detail of one Revenue village was totally missing and several new areas of land were added during 3(B) process which was not included in 3(A) Notification. With the result, 3(D) notification could be finalized only for 94,105 Sqm as against 485600 Sqm notified under section 3(A). This clearly betrays how negligent the Claimant was in preparing such an important notification. As said earlier, it is the duty of Concessionaire under section 9.1(xxviii) to submit the proposal for acquisition of additional land in accordance with the relevant Land Acquisition Act. If this is the type of proposal prepared by the Claimant, it is amusing how the Claimant could allege that there was delay on the part of NHAI in giving the additional land. Respondent further

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submits that to cure the above defect, it had taken 30 months to re-notify and acquire the deficit land. Therefore, it is incorrect to allege that respondent is liable for delay incurred for curing the defects of Claimant." The Claimant while denying the contentions of the Respondent put them to the strict proof as to the allegation that the draft of notification under section 3(A) was defective, missing of one revenue village, addition of several new areas of land. The Claimant has also put the respondent to strict proof as to the allegation that as result of omission and commission by the Claimant, the 3D notification could be finalized for 94105 sqm as against 485600 Sqm and that there was no valid reason behind taking 30 months time to re-notify and acquire the deficit land by the Respondent. The Claimant submitted that the draft 3D notification prepared by the Claimant contained the statement of area 485600 Sqm which was scrutinized and forwarded by the IC and the Project Director of the Respondent to the Respondent's HQ in New Delhi for Issue in the Gazette. The Claimant contended that the HQ of the Respondent at New Delhi deleted the land measuring on higher side as per the JMR viz.a.viz 3A notification. The Claimant had referred to its letter dated 03.03.2009 in this regard.

8.19 After perusing the various correspondences with regard to acquisition of land for additional ROW, it appears to us that the Claimant had performed its obligation towards identification and submission of additional land and submission of LA proposal in accordance with the NH Act/relevant LA Act, and pursued with the GOMH for early accomplishment of land acquisition.
8.20 It has also been noted that the Respondent had undertaken the obligation to take all necessary steps towards accomplishment of acquisition of additional land in the following provision of the Concession Agreement:

> *"X. OBLIGATIONS OF NHAI*
>
> *10.1 NHAI agrees to observe, comply and perform the following:*
> *(i) enable access to the Site to the Concessionaire, free from all Encumbrances, in accordance with this Agreement;*
>
> *(ii) permit peaceful use of the Site by the Concessionaire as licensee under and in accordance with the provisions of this Agreement without any let or hindrance from NHAI or persons claiming through or under it;*
> *…….*
> *…….*
>
> *(x) observe and comply with its obligations set forth in this Agreement;*

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(xi) take all necessary steps towards accomplishment of acquisition of additional land. NHAI shall bear the cost of additional land;"

8.21 Under the circumstances it appears to us that the delay in acquisition of additional land (AROW-Additional Right of Way) required for the Project was due to the procedural activities and delays at different stages of the GOMH and the Respondent for which the Claimant cannot be held responsible.

8.22 The Required AROW at Km. 16 to Km. 17 for proposed realignment of 4- lane Highway included certain area which was under possession of the Forest Department. The Claimant contended that The Respondent did not disclose the existence of Forest land and referred the Schedule 'A' of the Agreement. The Concession Agreement, Schedule 'A', clause 2.4, Table A-3: Abutting land use, says,

SI No.	*Section (old chainage)*			*Land Use (Sqm)*	
	Ch. From (Km)	*Ch. To (Km)*	*Road Length (Km)*	*Left*	*Right*
3	*15.000*	*16.000*	*1.000*	*Agriculture*	*Agriculture*
4	*16.000*	*16.200*	*0.200*	*Agriculture*	*Agriculture*
5	*16.200*	*16.900*	*0.700*	*Agriculture*	*Agriculture*
6	*16.900*	*17.100*	*0.200*	*Agriculture*	*Agriculture*
7	*17.100*	*17.600*	*0.500*	*Agriculture*	*Agriculture*
8	*17.600*	*20.300*	*2.700*	*Agriculture*	*Agriculture*
9	*20.300*	*22.100*	*1.800*	*Agriculture*	*Agriculture*
10	*22.100*	*44.100*	*22.000*	*Agriculture & Forest*	*Agriculture & Forest*

8.23 Referring to an MoM dated 09.01.2007 the Respondent stated, "Claimant was at first categorical in the meeting held on 09.01.2007 that there was no forest land to be acquired for working of the project as stated". But, the MoM held between the Respondent Project Director, Claimant, Consultant Team leader on 09.01.2007 paragraph 7.0 says, "The Concessionaire reiterated their stand that there is FOREST LAND involved in the land to be acquired for widening of the project". Thus, it appears to us that the Claimant was not at fault with regard to their intimation about Forest land by MoM dated 09.01.2007.

8.24 It appears from the correspondences that initially the Claimant was under the wrong information that no forest land was required to be acquired for the proposed Project Highway. The Respondent on 17.01.2007 informed about the Forest land. The claimant submitted the requirement of land within the Forest land

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on 22.03.2007 requesting the Respondent to take necessary action. Thereafter due to different procedural delays the land was possible to be made available on 03.09.2009.

8.25 The Article IV, Conditions Precedent, of the Concession Agreement includes the following provision:

"4.1 Conditions Precedent
Save and except as provided in Articles IV, V, and XXII, the rights and obligations of the Concessionaire under this Agreement are subject to the satisfaction in full of the following conditions precedent to be fulfilled on or before Financial Close unless any such condition has been waived as provided in Clause 4.2:

(b) the Concessionaire shall have been granted way leaves required in connection with the Project including:

(i) right of way of the existing alignment of the Project Highway free from all encumbrances;

(ii)rights of way from public roads to the Site; and

(iii) permission/ license to enter upon and utilize the Site for the construction pursuant to and in accordance with this Agreement.

(c) The Concessionaire shall have been granted all Central Government clearances and permits under the Applicable Laws relating to environmental protection and conservation from the Ministry of Environment and Forest;

4.2 Any of the conditions precedent set forth in Clause 4.1, save and except condition of Sub-clause (b) and (c) thereof, may be waived fully or partially by NHAI at any time in its sole discretion."

Accordingly, it has been noted that the above paragraph (c) is mandatory and cannot be waived by the Respondent or any other Authority.

8.26 From the Drawings attached with the Agreement it has been noted that in between Km. 16 to Km. 17 a realignment of road was envisaged by the parties at the time of entering into the Agreement.
8.27 The Claimant referred to the Respondents' letter dated 17.01.2007, which, inviting reference to Forest Dept. letter dated 06.01.2007, states, "Please find enclosed herewith ref. letter received from forest dept. You are hereby instructed to remain within project boundaries & not to cross the forest boundaries." The contents of the Forest Dept. letter dated 22.02.07 addressed to the Respondent's Project Director has been given below:

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"As you are aware, widening of existing 2-lane road to 4-lane National Highway no. 6 passing through Nagpur Forest Division involved the forest as well as non Forest lands. For acquisition of Forest Land, you have not submitted any forest proposal under forest conservation Act 1980 to this Division so far and even not intimated to this Division and started works on Non Forest land. As per guidelines issued by the Ministry of Environment & Forest Govt of India, 'If a project involves Forest as well as Non Forest land, work should not be started on Non-forest till approval of the Central Govt. for release of forest land under the Act has not been given.'

Therefore, it is requested to stop the work immediately and submit a proposal under forest conservation Act 1980. In case of any delay on your part for submitting the Forest proposal this Office will not be responsible."

8.28 The Respondent contended that it was the Claimants' duty to identify the forest land and to assist NHAI to get necessary clearance. As stated earlier the Claimant had identified the requirement of additional land and intimated to the Respondent on 13.06.2006. It was noted that according to the Agreement the Claimant was responsible to submit LA proposal in line with the NH Act, concerned State Government revenue Department, or the relevant LA Act, and pursue with the GOMH for early accomplishment of Land acquisition. It was also noted that the Claimant was not responsible for the forest land acquisition as it was under the control of the Central Government and the Ministry of Environment and Forest (MoEF).

8.29 The Respondent further contended that "the Claimant prepared a faulty proposal for acquisition of 2.75 hectres while the requirement was 4.75 hectres.... Initially, Claimant prepared proposals for removal of forest cover at 14 Kms to 18 Kms on Left hand Side (LHS). Later this was found to be incorrect and forest land was existing only between 16 and 17 Kms on RHS. This led to lot of delay in getting the permits for cutting the trees in the Forest Land. There is total failure on the part of the Concessionaire to approach the Forest Department at the earliest possible time for identification of forest land in the total Project Corridor..."

8.30 The Claimant stated, "The Respondent's contention that the Claimant prepared a faulty proposal for the acquisition of 2.75 Hectres while the requirement was for 4.75 hectres is again devoid of merit since the Claimant had initially proposed acquisition for 45 Mt. width by optimizing for four lane carriageways plus embankment slopes and 3 Mt. from toe for utility carriageway. This could easily accommodate the proposed four lane carriageway.

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However, the same was amended at the instance of the Respondent to acquire 60 Mr width considering future expansion."

8.31 It appears to us that the Claimant had initially proposed to acquire 2.75 hector land considering the minimum land area required to accommodate the Instant four lane road Project, but, the Respondent for its future provision sought proposal/approval for 4.75 hectors.

8.32 In view of the circumstances, the terms of the Agreement, evidence on record, and submission of the Parties it has been held that the Respondent is responsible for the delay in acquisition of the forest land which was required for the proposed Project facilities.

8.33 It is apparent that at some locations the shifting of utilities and avenue plantation were delayed due to delay in acquisition of additional ROW where these could be relocated/planted. As the delay in acquisition of additional land has been found to be attributable to the Respondent, the delay in shifting of these utilities and avenue plantation, for which additional land was required, also stands attributable to the Respondent.

8.34 As per the Concession Agreement Clause 23.1 The Respondent agreed to provide to the Concessionaire cash support by way of an outright Grant of Rs. 57.11 Crores.

8.35 Inviting reference to a letter dated 10.09.2007 the Claimant stated that they requested the Respondent to release the first tranche of Grant amounting to Rs. 27.16 Crores, which was paid by the Respondent on 20.02.2008. The Claimant stated that the delay to the extent of 5 months was attributable to the Respondent only. Inviting several other correspondences, the Claimant stated that there was a delay of 7 months in releasing the second tranche of 14.90 Crores, delay of 3 months in releasing the third tranche of 12.33 Crores and non-payment of the fourth tranche Rs. 3.43 crores till date. The Respondent contended that the first three tranches were paid well in time after making sure of compliance of contractual obligations. The first tranche was delayed, as contended by the Respondent, due to inadequate documentation furnished by the Claimant. The Respondent stated that the fourth tranche of Rs. 3.43 Crores was held back and was adjusted towards the liquidated damages and 50% share of IC's remuneration payable by the Claimant. It further stated that, once damages have been imposed according to the terms of the contract, due amounts are recoverable from the amounts of concessionaire available as due to the Claimant. The Respondent contended that there was nothing illegal or un-contractual for non-release of the fourth tranche of grant.

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> *8.36 The Scheduled project completion date was 05.12.2008. The Provisional COD was achieved on 22.09.2011, l.e., after a delay of 1021 days. The Respondent contended that the delay was solely attributable to the Claimant and therefore the Respondent had rightly imposed the Liquidated damages as well as other damages in accordance with the provisions of the Concession Agreement.*
>
> *8.37 As discussed above it has been held that the Respondent was solely responsible for the delay in acquisition of additional land for execution of the Project highway. The Respondent's delay in acquisition of additional ROW had caused the delay in achieving PCOD by the Claimant. Therefore, imposition of any damages against the Claimant on account of the same delay would not be justifiable.*
>
> *8.38 Under the circumstances it is being held that the delay in completion of the work was caused on account of breaches of terms and conditions of The Concession Agreement (CA) and acts or omissions by the Respondent as the Respondent NHAI had failed to acquire the AROW which was required to accommodate the proposed Project facilities within the time mentioned in the schedule given in the Agreement"*

15. Having gone through the above finding, it is pertinent to note that Atlanta's challenge is confined to the portions of the Award adverse to it i.e. principally the rejection under award of Claims 3, 4, 5, 6, 7 and 9, the interest awarded under Claim 2, the rejected post PCOD components of Claim 6, and the computational/clerical errors which it had sought to correct under Section 33.

16. NHAI, on the other hand, challenges the Award insofar as it allows Claims 5, 6 and 8, principally by assailing the Arbitral Tribunal's finding that the 1021 days delay and non-availability of Additional Right of way[9] were attributable to NHAI.

[9] "AROW" hereinafter

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17. Since, both the parties have partially challenged the arbitral award, this court would restrict its examination relevant to the controversy raised by the respective party, needless to say, with the lens of section 34 and to the extent of disputed portions.

D. DISCUSSION AND FINDINGS

18. Claim No. 6 was Atlanta's claim for prolongation related losses arising from the extended construction period. This court is of the view that as Claim No. 6 is the most direct consequence of the Arbitral Tribunal's finding that NHAI was responsible for the entire 1021-day delay and it also raises the threshold question of whether ATLANTA deserves any compensation for prolonged execution of the concession agreement, claim no.6 ought to be pivotal for adjudication at the threshold.

19. On Claim No. 6, the Arbitral Tribunal's approach was that Atlanta was entitled to compensation for the additional costs caused by the prolonged construction period, but not to the full amount claimed.

20. The Tribunal first accepted Atlanta's basic case that the project, which was scheduled to be completed by 05.12.2008, continued until PCOD on 22.09.2011 because NHAI had failed to make the required AROW available in accordance with the contractual schedule.

21. It treated this as a material default by NHAI. On that foundation, it examined separately the three components of Claim No. 6 i.e. (i) overheads/profit, (ii) plant and machinery, and (iii) price escalation.

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22. For the first component, Atlanta claimed Rs.69.19 crores towards loss of overheads and profit arising from the EPC Contractor's extended stay.

23. Atlanta's case before the Arbitral Tribunal was that the EPC Contractor had mobilised its establishment, senior personnel and resources on the assumption that construction would finish within 30 months, but because the project continued for another 34 months over and above the stipulated 30 months, it was forced to maintain that establishment and lost the opportunity to deploy its resources profitably elsewhere.

24. However, the Tribunal accepted only the additional overhead aspect. It specifically declined to compensate the aspect of anticipated profit, reasoning that the EPC contract had continued and had not been illegally terminated.

25. According to the Tribunal, loss of anticipated profit did not require reimbursement and it considered "obvious" that the EPC Contractor would have incurred additional overhead costs by remaining on site for the extended period. The Tribunal accepted Atlanta's statement that it had to compensate the EPC Contractor for those additional costs. It therefore treated the additional overhead expenditure as a direct loss to Atlanta.

26. The Tribunal did not accept Atlanta's own computation of Rs. 69.19 crore. It referred to the Emden and Hudson formulae and to the

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judgment of the Hon'ble Supreme Court in ***McDermott International v. Burn Standard***,[10] observing that such formulae could provide a reasonable method of assessing delay damages.

27. It then referred to the MoRTH[11] Standard Data Book, which contemplated approximately 8% overhead for road projects. Therefore, the Tribunal, instead of relying on the Atlanta's alleged EPC contract value of Rs. 207.63 crore and its substantially higher overhead percentage, used the Rs. 168 crore "project cost" appearing in the Concession Agreement and adopted an 8% rate. Its calculation as can be curled out from the Award was as follows:

> *"In our opinion the Respondent had committed material default under the Contract by not handing over the AROW in accordance with the schedule given in the Contract, which caused delay in completion of the project. Therefore, we are of the opinion that the loss towards underutilization of plant, equipment and machinery for extended stay is a direct loss incurred by the Claimant arising out of such material default by the Respondent. It has also been noted that the Claimant had given cogent reasons and method of calculating the loss incurred towards underutilization of plant, equipment and machinery for extended stay. The Claimant had claimed that the total cost of deployment of plant, equipment and machinery was 10% of the value of work awarded to the EPC Contractor. In our opinion the cost of deployment of plant, machinery and equipment could be considered as 8% of the total project cost mentioned in the Agreement to meet the ends of Justice. Considering the project cost of Rs. 168 Cr., the Claimant has been held entitled to the following amount on this ground.*
>
> *Estimated project cost = Rs. 168 Cr.*
>
> *Stipulated time for completion = 30 months.*
>
> *Estimated cost of deployment of plant equipment and machinery = 168 X 8% = Rs. 13.44 Cr.*

[10] **(2006) 11 SCC 181**

[11] Ministry of Road Transport and Highways, Government of India

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Plant, equipment and machinery deployment cost per month = 13.44/30 = Rs. 0.448 Cr per month.

Extended stay compensation was claimed for 34 months.

Additional cost due to deployment of Plant, equipment and machinery during the period of extended stay = 34 X 0.448 = Rs. 15.232 Cr.

With regard to extended stay after the PCOD it has been noted that the Claimant had started collecting toll for 39.841 Km of road out of 40.441 Km and the value of the work to be done under punch list B has not been indicated by either party. As such the claim for the loss due to deployment of Plant, equipment and machinery after 22.09.2011 is not admissible in favour of the Claimant. It has also been noted that the parties had agreed by mutual consent to complete the balance work under punch list B under a supplementary agreement dated 22.09.2011.

The Claimant submitted that the EPC Contractor had incurred additional cost on account of escalation in prices of material, POL, Labour, etc., for the work executed during the extended period from 05.12.2008 to till date. The Claimant contended that the delay was attributable solely to the Respondent. The Claimant claimed Rs. 15.74 Cr on this ground and stated that part of the amount had already been paid to the EPC Contractor. The Respondent had flatly denied the Claim as well as the calculation submitted by Claimant in Annexure 6(C), however, there was no comment with regard to the weightage of different cost components and rate of increase of different inputs during the extended period. As such the reply of the Respondent has been considered as vague and not admissible.

We are of the opinion that the Respondent had committed material default by not acquiring the required land on AROW in accordance with the schedule given in the Contract. This has caused delay in completion of the project requiring the Claimant to execute part of the work during the extended period of 05.12.2008 to 22.09.2011. We appreciate that the market price of different inputs had increased and additional cost was incurred for the same. The method of calculation submitted by the Claimant appears to be reasonable except for the values of work executed during the extended period. It has been noted that the Respondent vide its reply para 8.0 stated, "It is submitted that the work executed as on scheduled project completion date (SPCD) is hardly 58.76%." As such considering the total project cost as Rs. 168 Cr., the amount of price escalation for executing the work beyond the

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Stipulated Project Completion Date (SPCD) has been calculated as follows:

Total Project cost = Rs. 168 Cr.

Executed upto SPCD 58.76% of 168 = Rs. 98.71 Cr.

Value to be executed after SPCD = 168 - 98.71 = Rs. 69.29 Cr.

As per the Claimant the value of work executed after SPCD = 41.152 + 56.374 = Rs. 97.526 Cr., for which Rs. 15.747 Cr has been claimed.

Proportionately the Claimant has been considered as entitled for a compensation of (15.747/97.526) X 69.29 = Rs. 11.18 Cr.

As discussed above, the Claimant has been held entitled to a compensation of Rs. 15.232 Cr. + 15.232 Cr. + Rs. 11.18 Cr. = Rs. 41.644 Cr.

Inviting reference to Clause no. 31.2 of CA, the rate of interest admissible to the Claimant is SBI PLR plus 2% w.e.f. PCOD till 15.08.2016 (date of Award). The Interest works out to Rs. 32.64 Cr.

Thus the Claimant becomes entitled to compensation for a total amount under the claim no. 6 i.e., loss of overheads, loss of ROE, increase of rates during extended period, under-utilisation of machinery and equipment, etc., amounting to Rs. 41.644 Cr + Rs. 32.64 Cr. = Rs. 74.284 Cr"

28. Thus, against Atlanta's Rs.69.19 crore claim for overheads/profit, the Tribunal allowed only Rs.15.232 crore towards additional overheads and did not separately allow loss of profit.

29. The Tribunal also rejected Atlanta's request for continuing overhead damages of Rs. 1.88 crore per month after PCOD. Its reasoning was that after 22.09.2011 Atlanta had begun collecting toll on 39.841 km of the road and neither party had established the value of the remaining Punch List B works and, importantly, under the Supplementary Agreement dated 22.09.2011 the parties had mutually

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agreed that the balance Punch List B works would be completed subsequently. Therefore, the Tribunal considered additional overheads after PCOD inadmissible.

30. The second component concerned underutilisation of plant, machinery and equipment. Atlanta claimed Rs. 25.39 crore for the same, asserting that machinery and equipment deployed for the project remained tied up and remained committed to the present project, during the extended period because of NHAI's delay. It also sought continuing damages at Rs. 0.69 crore per month after 01.10.2011.

31. NHAI had specifically disputed this claim. Its case was that the project was itself delayed because Atlanta had not deployed adequate plant and machinery. Therefore, Atlanta could not simultaneously claim that its machinery was underutilised. NHAI also disputed whether Atlanta had actually paid the EPC Contractor the claimed amount and asserted that there were no proper cost records establishing the plant and machinery deployed or the amount of actual loss.

32. The Tribunal nevertheless accepted Atlanta's entitlement in principle. It reasoned that because NHAI had committed a material default by failing to provide AROW in time, the resultant extended deployment or underutilisation of machinery was a direct loss arising from NHAI's default. The Tribunal also stated that Atlanta had provided "*cogent reasons and method*" for calculating that loss.

33. However, again the Arbitral Tribunal did not accept Atlanta's figures. Atlanta had apparently calculated machinery deployment cost

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at approximately 10% of the EPC work value. However, the Tribunal instead considered 8% of the Rs. 168 crore project cost reasonable "*to meet the ends of justice*." Consequently, it applied exactly the same calculation as for overheads.

34. Thus, against the Rs.25.39 crore claimed by Atlanta, the Tribunal awarded Rs.15.232 crore for plant, machinery and equipment.

35. The third and the last component was price escalation. Atlanta claimed Rs.15.747 crore for increases in the prices of materials, POL/fuel, labour and other inputs because a substantial part of the work had to be executed after the Scheduled Project COD of 05.12.2008.

36. The Tribunal accepted Atlanta's entitlement to escalation in principle. It expressly found that NHAI's failure to provide AROW caused the project to continue into the extended period and stated that it appreciated that market prices of various inputs had increased during that period. It also considered Atlanta's method of calculation broadly reasonable.

37. However, Arbitral Tribunal disagreed with the value of work on which Atlanta had calculated escalation. Atlanta's calculation assumed that Rs.97.526 crore worth of work had been executed after the Scheduled Completion Date and claimed Rs.15.747 crore escalation on that basis. The Tribunal instead relied upon NHAI's own pleading that only 58.76% of the work had been completed by the Scheduled Project Completion Date.

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38. Ultimately, the Tribunal allowed Rs. 11.18 crore under the escalation component.

39. The principal amount awarded under Claim No. 6 was consequently Rs. 41.644 crore.

40. The Tribunal then applied Clause 31.2 of the Concession Agreement and awarded interest at SBI PLR + 2%, calculated from PCOD until the date used by it for the award computation.

41. It calculated interest at Rs.32.64 crore. Consequently, the total amounted awarded along with interest was Rs.74.284 crore under Claim No. 6.

Rival Submissions before this Court

42. Ms. Tanu Priya Gupta, learned Counsel appearing for NHAI submitted that there is no proof that Atlanta actually suffered or paid the alleged losses under Claim No.6.

43. According to her, Claim No. 6 substantially represented losses said to have been suffered by the EPC Contractor, which was a separate entity. Further, Atlanta did not prove that it had actually paid, or had become legally liable to pay, those amounts to the EPC Contractor.

44. According to Ms. Gupta, a third party's alleged expenditure could not automatically be treated as Atlanta's own loss.

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45. Ms. Gupta submits that NHAI had specifically objected that there were no proper EPC records such as proof of actual overhead expenditure, plant and machinery cost/deployment details, or other cogent material substantiating the amounts claimed. she has vehemently contended that despite recording these objections, the Tribunal proceeded to award compensation.

46. It was further submitted that the Tribunal referred to Hudson and Emden formulae and ***McDermott (supra)*** while assessing overhead losses. Ms. Gupta raises the objection that Atlanta itself had not made its claim on the basis of those formulae and according to her, the Arbitral Tribunal introduced a new methodology of its own to construct the damages instead of deciding the claim on the evidence actually produced.

47. Succinctly put, contention of NHAI is that a normative percentage or formula could not establish that Atlanta had actually incurred those losses in the first place as the existence of the loss had first to be proved independently and then only the quantum of losses could be assessed.

48. The next plank of submission raised by Ms. Gupta is that the Tribunal treated NHAI's failure to provide AROW as the material default causing the extended period and, on that basis, regarded overheads, machinery costs and escalation as compensable direct losses.

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49. Ms. Gupta challenges that foundational finding and submits that Atlanta itself was responsible for delay because of inadequate mobilisation, manpower, machinery and progress. Therefore, according to NHAI, the very basis for awarding prolongation costs under Claim No. 6 disappears if the delay finding is set aside.

50. *Per contra*, Mr. Balbir Singh, learned Senior Counsel appearing for Atlanta submits that Atlanta supports the Tribunal's finding that it was entitled to compensation under Claim No. 6. However, he challenged the reduction and computation of the amount awarded, including the 8% methodology, and the rejection of post PCOD continuing losses coupled with interest calculation.

51. Mr. Singh submitted that although the Tribunal accepted its entitlement to prolongation compensation, it wrongly restricted overheads under Claim 6(A) by applying 8% to the Rs. 168 crore project cost, instead of considering the higher EPC contract value of Rs. 207.63 crore and the actual overhead/profit claim placed through Annexure 6(A).

52. According to Mr. Singh, once the Tribunal accepted that the EPC Contractor remained deployed during the extended period because of NHAI's default, the compensation ought not to have been artificially curtailed by adopting a lower normative base.

53. Under Claim 6(B), Mr. Singh challenged the Tribunal's decision to again restrict compensation to 8% of Rs. 168 crore, resulting in Rs. 15.232 crore.

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54. Mr. Singh relied upon NHAI's own Policy Matters i.e. Technical Circular dated 17.01.2013, which contemplated 15% of project cost for plant, machinery and spares, whereas Atlanta itself had claimed only 10%. Mr. Singh therefore contended that reducing the claim to 8% was unjustified once the Tribunal had accepted that underutilisation of machinery was a direct consequence of NHAI's default.

55. Mr. Singh further challenged the Tribunal's refusal to award continuing compensation after PCOD on 22.09.2011. It had claimed continuing overhead damages of Rs.1.88 crore per month and continuing plant/machinery damages of Rs. 0.69 crore per month from 01.10.2011 until COD/change in scope, on the ground that the EPC Contractor was still required to remain mobilised for Punch List B works because the entire AROW had not been made available.

56. According to him, commencement of toll collection over 39.841 km did not eliminate the continuing costs of maintaining resources for the unfinished works.

57. Under Claim 6(C), Mr Singh contended that Atlanta had claimed Rs. 15.747 crore towards additional costs of labour, material, POL and other inputs during the prolonged period, but the Tribunal proportionately reduced this to Rs. 11.18 crore by adopting Rs. 168 crore as the project cost and recalculating the value of work executed after the Scheduled Completion Date. It was contended that the Tribunal, having accepted both the fact of escalation and NHAI's responsibility for the prolongation, ought to have allowed the amount

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actually demonstrated as paid/payable to the EPC Contractor rather than substituting its own reduced computation.

58. Lastly, according to the Learned Sr. Counsel, the manner in which interest was calculated on Claim No. 6 was challenged. Atlanta's original claim sought 18% per annum compounded monthly, whereas the Tribunal awarded interest at SBI PLR + 2% and restricted the relevant period/computation. Atlanta therefore seeks correction/re-computation of interest consistent with the amounts which, according to it, ought properly to have been awarded under Claims 6(A), 6(B) and 6(C).

Analysis

59. This court believes that before adjudicating whether Atlanta is entitled to claim No. 6 at all, it is important to decide the threshold question as to who was responsible for the 1021 delay prolongation from the scheduled COD of 05.12.2008 to the PCOD of 22.09.2011.

60. The Tribunal held that the delay was essentially attributed to NHAI because NHAI failed to make the required additional land available in accordance with the contractual schedule, which in turn delayed utility shifting, realignment, and completion of work. On that basis, the Arbitral Tribunal treated claim no. 6 as losses flowing from NHAI's material default.

61. The following reasoning was given by the arbitral tribunal on this aspect , the relevant extract of which is reproduced as follows:

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"8.04 *In accordance with the Concession Agreement Clause 13.5.1, the Existing Right of Way, free from encumbrances, was required to be made available to the Claimant not later than 150 days from the date of the Agreement. Accordingly the latest date of making available the Existing Right of Way was 08.05.2006.*

8.05 *The Claimant contended that the Respondent handed over the Existing Right of Way on paper on 12.01.2006, but actually the Site was full of encroachments/structures/utilities which were not possible to be removed resulting in non-availability of land on Existing Right of Way in accordance with the Schedule 'A'. The Respondent contended that the Claimant failed to appreciate the true meaning of the word 'encumbrances', which, as per Agreement, means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Highway. As stated by the Respondent, the Claimant has failed to understand the meaning of the word encumbrances and attempted to establish that encumbrances are same as encroachment which is not correct. Inviting reference to the Clause 9.1 (xxiv) the Respondent contended that it was the responsibility of Claimant to remove all types of encroachments/structures/utilities. The Clause 9.1 (xxiv) reads as follows:*

> *"IX. OBLIGATIONS OF THE CONCESSIONAIRE*
> *9.1 The concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations set out elsewhere in this Agreement, the following:*
> *(xxiv) after receiving possession of the site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachment, if any" (emphasis supplied)*

The Respondent submitted that they had extended necessary administrative support by writing number of letters to district administration and police authorities. Respondent stated, "In any case, the bogey of encroachments or physical obstructions is grossly exaggerated and there are plenty of fronts available to begin with and also to progress very well. ... EROW was very much available between chainage +33.600 and +34.150 and +47.000 and +48.500 since the same was handed over long ago. As said earlier, the problem of encroachment or physical obstructions pertains to only 5.41 Kms out of 40 Kms and nothing prevented the Claimant to take up the work on the remaining lands."

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8.06 *After perusing the other correspondences made by the Independent Consultant and the Respondent, it has been found that there was a delay in removal and shifting of some of the utilities, religious structures etc., from the existing carriageway due to non-availability of Additional land where those could be relocated. But as discussed in the succeeding paragraphs the Respondent has been held responsible for the delay in acquisition/handing over of the Additional land for AROW.*

8.07 *Therefore, the Respondent is being held responsible for the delay in shifting and relocation of such utilities for which additional land was necessary, and in turn responsible for delay in completion of the Project.*

8.08 *In accordance with the Agreement the Respondent was liable to pay damages to the Claimant for delay in handing over the Existing ROW. In the Contract documents the Respondent had included Schedule A i.e., Site of the Project wherein the average land width of Existing Right-of-Way (ROW) was mentioned at different old chainages. It was envisaged that additional land would be required to complete the Project. The available Av. Land width on EROW (old chainage) was mentioned in the Schedule A with a disclaimer[3] that the Respondent shall not be held responsible for any inaccuracy in the information provided. With regard to the Claimant's quantification of area of EROW the Respondent stated, "Table in Pg. 10 of SOC is not proved; quantification statement in Pg. 70 of SOC, Annexure-I, is not proved by any authentic record or joint measurement". It appears that all over the length of the Existing ROW, except for the chainages where realignment of the road was required, some activity/work was possible to be taken up by the Claimant depending upon the actual width of land available on EROW. It has also been noted that at the portion, where the realignment was to be done, the (non)availability of EROW was irrelevant. It is a matter of fact that there was inadequacy and/or mistake in the data made available by the Respondent about the average land width available on EROW. But the Claimant by the Disclaimer referred above had agreed not to make liable the Respondent for such mistakes/inadequacies. Under such circumstances the Claimant cannot be held entitled for any damages on account of non-availability of EROW during the period of construction. Besides, there is no record stating essential requirement of any area on EROW for the smooth and efficient operation of the Project Highway after the Provisional COD.*

8.09 *The Claimant referred to a letter written by The Respondent on 07.12.2010, which stated:*

" Optimization of Existing Right of Way:

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It is identified the stretches where the 4-laning works (only) can be carried out by the Concessionaire by optimizing the use of existing ROW. As can be seen from the following table, the Concessionaire can complete 4-laning works for a length of 36.571 Km. out of a total length 40.441 Km. within existing ROW.

The list of works, which require additional land, is as of 30.11.2010 follows.

	Item	*Location*	*Unit*	*Total Qty*
1	*Main Carriageway*	*Km. 16.000 to Km. 16.500 BS; Km. 33.280 to Km. 34.440 BS; Km. 46.920 to Km. 48.300 BS;*	*Km.*	*3.04*
2	*Service Roads and structures in service road portion*	*Km. 9.200 to Km. 12.950 BS; Km. 13.950 to Km. 14.300 RHS; Km. 14.300 to Km. 16.300 RHS; Km. 18.350 to Km. 16.300 BS; Km. 21.700 to Km. 22.450 BS; Km. 23.300 to Km. 24.000 BS; Km. 25.900 to Km. 27.000 BS; Km. 29.700 to Km. 30.400 BS; Km 33.500 to Km. 34.500 BS; Km. 47.400 to Km. 49.100 BS;*	*Km.*	*21.07*
3	*Underpass*	*Bazargoon village*	*Nos*	*1*
4	*Flyover*	*At Kondhali*	*Nos.*	*1*
5	*Truck lay By*		*Nos*	*6*
6	*Bus Lay By*		*Nos.*	*12*

The Concessionaire could have completed all the other works except the above, well within the Schedule Project Completion Date."

8.10 *In view of above it appears that sufficient width of land to accommodate the entire width of the Project facilities was not available within the actual existing ROW. The Respondent contended that "for construction of 4-Lane Project Highway, 23m to 30m width is quite adequate". But, it has been noted that the Schedule B of Concession Agreement, the typical cross section drawings TCS 1 and TCS 2, shows the required formation width of Project Highway as 24.000 meter and 45.000 meter respectively which exclude the sloping portion of the embankment, the side drains, facilities like Truck lay by, Bus bay, land width required for plantation if any, etc. In view of this it does appear that considerable area of additional land (Additional Right of Way-AROW) was*

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required to be acquired to accommodate the proposed Project facilities.

8.11 *The Site handing over schedule as per Schedule H of the Agreement has been reproduced below:*

"Schedule-H

II. SITE HANDING OVER SCHEDULE

The Site shall be handed over as below from the date of signing the Concession Agreement:

Stretch	*Length*	*Remarks*
(Refer Design Chainage) *Existing ROW*	*40.441 Km*	*Within one month*
Additional Land wherever required for the Project Highway including Land for Base Camp		*Within 12 months*

Note: The above Handing over Schedule is subject to accomplishment of all obligations of the Concessionaire as mentioned in the Request for Proposal (RFP) Document."

The Respondent contended that "even without fulfilling these requirements, Respondent had handed over above land in the interest of the project." But it was not clarified which obligations of the RFP Document was not fulfilled by the Claimant.

8.12 *It is undisputed fact that the required Additional land was not available to the Claimant in accordance with the Schedule H. However, the Respondent contended that the delay in acquisition of the Additional ROW was consequential to the lapses of the Claimant and the Respondent was not responsible for the delay.*

8.13 *The Scope of the Project has been stated in Schedule 'B' of the Agreement. Clause 8.1 of Schedule 'B' reads as under:*

> *"8 Pre-Construction Activities*
>
> *8.1 Land Acquisition (LA)*
>
> *The additional land acquisition in few isolated stretches is foreseen on this project. The cost of LA as intimated by the concerned agencies shall be borne by NHAI. However, the*

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Concessionaire shall be involved pro-actively in this regard submitting relevant LA proposals as per NH Act-1956 and pursuing the matter with the concerned State Govt. Revenue Departments and the concerned private people whose land is to be acquired. NHAI shall provide all necessary administrative support in this regard."

The provisions of the Chapter-III of the Agreement, i.e., Obligations and Undertakings are as follows:

"IX. OBLIGATIONS OF THE CONCESSIONAIRE

9.1 The Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

(xxviii) work in optimizing the use of existing Right of Way handed over to them. Identify and submit proposal for acquisition of additional land in accordance with the requirement of concerned State Government revenue department or the relevant LA Act, and pursue with the GOMH for early accomplishment of Land Acquisition;"

8.14 *After perusing the Statement of Defense and other documents submitted/relied upon by the Respondent, it does appear to us that the Claimant did not commit any default in performing its obligation to optimize the use of the existing ROW.*

8.15 *The Claimant had submitted a Land acquisition proposal to the Respondent on 13.06.2006 stating, "Dear Sir, Please find enclosed the details (3 sets) of land to be acquired for the above Project. The survey numbers alongwith area statement to be acquired are indicated therein. You are requested to take early action for 3a & 3A Notification please". After perusing the said proposal dated 13.06.2006 alongwith the maps and statements showing village, Taluka, Dist, Survey no., area required in hectors, and type of land, it has been observed that the Claimant had identified the additional land required and submitted the LA proposal in line with the requirement under the NH Act 1956. The names of villages mentioned by the Claimant were, 1 Wadi, 2 Vad Dhamna, 3 Surabuldi, 4 Gondkhairi, 5 Chichbhuvan, 6 Pethdongari, 7 Linga, 8 Mohegao (Khu), 9 Mohegao (Bhu), 10 Satnavri, 11 Panchnavari, 12 Bazargao, 13 Chakdoh, 14 Ringnabuldi, 15 Hardoli, 16 Panjarakate, 17 Dudhala, 18 Kondhali. However, the Claimant had submitted the said proposal on 13.06.2006 i.e., 6 months and 4 days after the date of signing the Concession Agreement. It was also noted that the additional land*

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was required to be handed over by the Respondent within 12 months from the date of signing the Concession Agreement subject to the fact that the Claimant had fulfilled its obligation under Clause 9.1(xxviii) of the Agreement (Refer Clause 13.5.2 reproduced below).

> *"Clause 13.5.2 Additional Right of Way Additional ROW shall be made available to the Concessionaire as per the Handing over Schedule 'H' free from all encumbrances and without the Concessionaire being required to make any payment to NHAI on account of any costs, expenses and charges for the use of such AROW for the duration of the Concession period provided Concessionaire has fulfilled his obligations pursuant to Clause 9.1 (xxviii). On or after the Appointed date, the Concessionaire shall commence, undertake and complete all Construction works on the Project Highway in accordance with this Agreement."*

8.16 *From the voluminous correspondences submitted by both the Claimant and the Respondent few extracts have been reproduced below:*

On 08.05.2006 the Claimant wrote, "Please find enclosed a copy of Gazette Notification issued by Gazette of India under 3(a) for the above project which include 8 villages. We have sent another letter to NHAI dated 06.12.2005 - copy enclosed, seeking for inclusion of additional villages. So far no action has been taken by NHAI HQ. We now enclose list of structures involved for acquiring/removal in the stretch KM 9.00 to 50, for further necessary action in the matter please."

On 18.10.2006 a Notification under Section 3(A) was published by MOSRTH notifying a total area of 484725 sqm.

On 08.12.2006, during the Review meeting between Independent Consultant, Respondent, and Claimant, it was recorded that "9. The Land Acquisition matters (3A) has been published in the local papers on 18/11/06; …. and 13. The Concessionaire informed that there is no FOREST LAND involved in the land to be acquired for widening of the project."

On 11.01.2007 the Respondent wrote to the Superintendent of Land Record, Spl. Land Acquisition Officer (General), and S.D.O. Arvi, "It is brought out by our Concessionaire that, there is huge mismatch/discrepancy especially in Nagpur district in respect of existing Right of Way (EROW) as per EROW plans available with PWD (the then project caretaker organization) & road width data available with TILRs. It indicates that last acquisition is not being

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considered by TILR while preparing new acquisition details … In view of above, please ensure that the existing right of way marked is correct while preparing J. M. Sheet."

On 17.01.2007 the Respondent wrote to the Claimant, "It is regretted to note that you have chosen to remain absent despite undersignees request during one of our very crucial stage of Land Acquisition i.e., "3C - Hearing of Objections" which has resulted in postponement of the date for 2nd time which is nothing but gross non compliance of concessionaires obligation as per C.A. Cl no. 9.1-xxviii …."

On 25.01.2007 the Claimant wrote to the Respondent referring a letter dated 17.01.2007, "… We assure that we will take care of all necessary precautions while executing the work."

On 10.10.2007 a Notification under 3(D) was published notifying a total area of 97686.80 Sqm against 484725 sqm in 3(A).

On 28.08.2008 the Respondent wrote to SLAO confirming that the land measuring on higher side as per the JMR were entirely deleted in the notification 3D. The Respondent stated that a supplementary notification under 3A was in progress.

On 19.02.2009 the Respondent replied to Claimant's letter dated 22/01/2009, stating "… Since, the Land acquisition plan including draft 3(a) Notification and 3(A) Notification proposal were initially prepared and submitted by the Concessionaire, the responsibility for omission of name of village Waddhamana from land acquisition in 3(a) Notification and its amendment, 3(A) Notification and 3(D) Notification lies with the Concessionaire only …"

But, as stated above, the name of village 'Vaddhamana' was there in the Claimant's proposal for LA dated 13.06.2006. Thus, it appears that the allegation of the Respondent vide its letter dated 19.02.2009 was not correct.

8.17 *The Respondent described about the status in the light of the provisions of the NH Act 1956 and contended that the Claimant was responsible for the delay in acquisition of AROW. The Respondent stated, "Land acquisition under NHAI Act 1956 is initiated with notification under section-3(A) of the Act. This notification should contain details of the land to be acquired with brief description. It was the responsibility of Concessionaire to prepare a draft which has to be issued as notification under 3(A) of the Act in the official Gazette. Claimant had prepared 3(A) Draft Notification for a land area of 485600 Sqm. The same was published. Next step in the land acquisition is to conduct survey and measures, take levels, setting*

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out boundaries and intended lines of work etc., under section-3(B) of NHAI Act 1956, by any authorized person of the Central Govt. and in this case it is the Claimant himself. Once this exercise is complete, public objections are invited under section 3(C) of the Act. Thereafter, Competent Authority under section-3(D) would declare vesting of land in Govt. of India and this gives right to enter the land. Relevant provision reads as under:

> *3-F- Right to enter into the land where land has vested in the Central Government-*
>
> *Where the land has vested in the Central Government under section 3-D, It shall be lawful for any person authorized by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.'"*

In our view the NH Act 1956, Sec. 3D is not to be read independently and has to be read along with Sections 3E, 3G and 3H of the Act. It is after the compensation payable to the land owner is determined (Sec. 3G) paid to him (Sec. 3H) that provision of Sec. 3E come into operation. Sec. 3E provides for power to take possession of the land so acquired regarding which compensation has been determined and paid to the land owner. It is only after when compensation has been paid to the land owner that competent authority may by notice in writing direct the land owner or any other person who may be in possession of such land to surrender or deliver the possession thereof to the competent authority or any person authorised by it in this behalf within 60 days of the service of notice. If there is failure on the part of the land owner or any other person in possession of land then possession can be taken over by competent authority with police help by using force.

8.18 *The Respondent submitted that "in the process of verification under section 3(B), it was found that draft notification prepared by Claimant under 3(A) is defective. Detail of one Revenue village was totally missing and several new areas of land were added during 3(B) process which was not included in 3(A) Notification. With the result, 3(D) notification could be finalized only for 94,105 Sqm as against 485600 Sqm notified under section 3(A). This clearly betrays how negligent the Claimant was in preparing such an important notification. As said earlier, it is the duty of Concessionaire under section 9.1(xxviii) to submit the proposal for acquisition of additional land in accordance with the relevant Land Acquisition Act. If this is the type of proposal prepared by the Claimant, it is amusing how the Claimant could allege that there was delay on the*

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part of NHAI in giving the additional land. Respondent further submits that to cure the above defect, it had taken 30 months to renotify and acquire the deficit land. Therefore, it is incorrect to allege that respondent is liable for delay incurred for curing the defects of Claimant." The Claimant while denying the contentions of the Respondent put them to the strict proof as to the allegation that the draft of notification under section 3(A) was defective, missing of one revenue village, addition of several new areas of land. The Claimant has also put the respondent to strict proof as to the allegation that as result of omission and commission by the Claimant, the 3D notification could be finalized for 94105 sqm as against 485600 Sqm and that there was no valid reason behind taking 30 months time to re-notify and acquire the deficit land by the Respondent. The Claimant submitted that the draft 3D notification prepared by the Claimant contained the statement of area 485600 Sqm which was scrutinized and forwarded by the IC and the Project Director of the Respondent to the Respondent's HQ in New Delhi for issue in the Gazette. The Claimant contended that the HQ of the Respondent at New Delhi deleted the land measuring on higher side as per the JMR viz-a-viz 3A notification. The Claimant had referred to its letter dated 03.03.2009 in this regard.

8.19 *After perusing the various correspondences with regard to acquisition of land for additional ROW, it appears to us that the Claimant had performed its obligation towards identification and submission of additional land and submission of LA proposal in accordance with the NH Act/relevant LA Act, and pursued with the GOMH for early accomplishment of land acquisition.*

8.20 *It has also been noted that the Respondent had undertaken the obligation to take all necessary steps towards accomplishment of acquisition of additional land in the following provision of the Concession Agreement:*

> *"X. OBLIGATIONS OF NHAI*
>
> *10.1 NHAI agrees to observe, comply and perform the following:*
>
> *(i) enable access to the Site to the Concessionaire, free from all Encumbrances, in accordance with this Agreement;*
>
> *(ii) permit peaceful use of the Site by the Concessionaire as licensee under and in accordance with the provisions of this Agreement without any let or hindrance from NHAI or persons claiming through or under it;*

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(x) observe and comply with its obligations set forth in this Agreement;

(xi) take all necessary steps towards accomplishment of acquisition of additional land. NHAI shall bear the cost of additional land;"

8.21 *Under the circumstances it appears to us that the delay in acquisition of additional land (AROW- Additional Right of Way) required for the Project was due to the procedural activities and delays at different stages of the GOMH and the Respondent for which the Claimant cannot be held responsible.*

8.22 *The Required AROW at Km. 16 to Km. 17 for proposed realignment of 4-lane Highway included certain area which was under possession of the Forest Department. The Claimant contended that The Respondent did not disclose the existence of Forest land and referred the Schedule 'A' of the Agreement. The Concession Agreement, Schedule 'A', clause 2.4, Table A-3: Abutting land use, says,*

SI No.	*Section (old chainage)*			*Land Use (Sqm)*	
	Ch. From (Km)	*Ch. To (Km)*	*Road Length (Km)*	*Left*	*Right*
3	*15.000*	*16.000*	*1.000*	*Agriculture*	*Agriculture*
4	*16.000*	*16.200*	*0.200*	*Agriculture*	*Agriculture*
5	*16.200*	*16.900*	*0.700*	*Agriculture*	*Agriculture*
6	*16.900*	*17.100*	*0.200*	*Agriculture*	*Agriculture*
7	*17.100*	*17.600*	*0.500*	*Agriculture*	*Agriculture*
8	*17.600*	*20.300*	*2.700*	*Agriculture*	*Agriculture*
9	*20.300*	*22.100*	*1.800*	*Agriculture*	*Agriculture*
10	*22.100*	*44.100*	*22.000*	*Agriculture & Forest*	*Agriculture & Forest*

8.23 *Referring to an MoM dated 09.01.2007 the Respondent stated, "Claimant was at first categorical in the meeting held on 09.01.2007 that there was no forest land to be acquired for working of the project as stated". But, the MoM held between the Respondent Project Director, Claimant, Consultant Team leader on 09.01.2007 paragraph 7.0 says, "The Concessionaire reiterated their stand that there is FOREST LAND involved in the land to be acquired for widening of the project". Thus, it appears to us that the Claimant was not at fault with regard to their intimation about Forest land by MoM dated 09.01.2007.*

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8.24 *It appears from the correspondences that initially the Claimant was under the wrong information that no forest land was required to be acquired for the proposed Project Highway. The Respondent on 17.01.2007 informed about the Forest land. The claimant submitted the requirement of land within the Forest land on 22.03.2007 requesting the Respondent to take necessary action. Thereafter due to different procedural delays the land was possible to be made available on 03.09.2009.*

8.25 *The Article IV, Conditions Precedent, of the Concession Agreement includes the following provision:*

"4.1 Conditions Precedent

Save and except as provided in Articles IV, V, and XXII, the rights and obligations of the Concessionaire under this Agreement are subject to the satisfaction in full of the following conditions precedent to be fulfilled on or before Financial Close unless any such condition has been waived as provided in Clause 4.2:

(b) the Concessionaire shall have been granted way leaves required in connection with the Project including:

(i) right of way of the existing alignment of the Project Highway free from all encumbrances;

(ii) rights of way from public roads to the Site; and

(iii) permission/license to enter upon and utilize the Site for the construction pursuant to and in accordance with this Agreement.

(c) The Concessionaire shall have been granted all Central Government clearances and permits under the Applicable Laws relating to environmental protection and conservation from the Ministry of Environment and Forest;

4.2 Any of the conditions precedent set forth in Clause 4.1, save and except condition of Sub-clause (b) and (c) thereof, may be waived fully or partially by NHAI at any time in its sole discretion."

Accordingly, it has been noted that the above paragraph (c) is mandatory and cannot be waived by the Respondent or any other Authority.

8.26 *From the Drawings attached with the Agreement it has been noted that in between Km. 16 to Km. 17 a realignment of road was envisaged by the parties at the time of entering into the Agreement.*

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8.27 *The Claimant referred to the Respondents' letter dated 17.01.2007, which, inviting reference to Forest Dept. letter dated 06.01.2007, states, "Please find enclosed herewith ref letter received from forest dept. You are hereby instructed to remain within project boundaries & not to cross the forest boundaries." The contents of the Forest Dept. letter dated 22.02.07 addressed to the Respondent's Project Director has been given below:*

> *"As you are aware, widening of existing 2-lane road to 4-lane National Highway no. 6 passing through Nagpur Forest Division involved the forest as well as non Forest lands. For acquisition of Forest Land, you have not submitted any forest proposal under forest conservation Act 1980 to this Division so far and even not intimated to this Division and started works on Non Forest land. As per guidelines issued by the Ministry of Environment & Forest Govt of India, 'If a project involves Forest as well as Non Forest land, work should not be started on Non-forest till approval of the Central Govt. for release of forest land under the Act has not been given.'*
>
> *Therefore, it is requested to stop the work immediately and submit a proposal under forest conservation Act 1980. In case of any delay on your part for submitting the Forest proposal this Office will not be responsible."*

8.28 *The Respondent contended that it was the Claimants' duty to identify the forest land and to assist NHAI to get necessary clearance. As stated earlier the Claimant had identified the requirement of additional land and intimated to the Respondent on 13.06.2006. It was noted that according to the Agreement the Claimant was responsible to submit LA proposal in line with the NH Act, concerned State Government revenue Department, or the relevant LA Act, and pursue with the GOMH for early accomplishment of Land acquisition. It was also noted that the Claimant was not responsible for the forest land acquisition as it was under the control of the Central Government and the Ministry of Environment and Forest (MoEF).*

8.29 *The Respondent further contended that "the Claimant prepared a faulty proposal for acquisition of 2.75 hectres while the requirement was 4.75 hectres. ... Initially, Claimant prepared proposals for removal of forest cover at 14 Kms to 18 Kms on Left hand Side (LHS). Later this was found to be incorrect and forest land was existing only between 16 and 17 Kms on RHS. This led to lot of delay in getting the permits for cutting the trees in the Forest Land. There is total failure on the part of the Concessionaire to approach the Forest Department at the earliest possible time for identification of forest land in the total Project Corridor ..."*

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8.30 *The Claimant stated, "The Respondent's contention that the Claimant prepared a faulty proposal for the acquisition of 2.75 Hectres while the requirement was for 4.75 hectres is again devoid of merit since the Claimant had initially proposed acquisition for 45 Mt. width by optimizing for four lane carriageway plus embankment slopes and 3 Mt. from toe for utility carriageway. This could easily accommodate the proposed four lane carriageway. However, the same was amended at the instance of the Respondent to acquire 60 Mtr width considering future expansion."*

8.31 *It appears to us that the Claimant had initially proposed to acquire 2.75 hector land considering the minimum land area required to accommodate the instant four lane road Project, but, the Respondent for its future provision sought proposal/approval for 4.75 hectors.*

8.32 *In view of the circumstances, the terms of the Agreement, evidence on record, and submission of the Parties it has been held that the Respondent is responsible for the delay in acquisition of the forest land which was required for the proposed Project facilities.*

8.33 *It is apparent that at some locations the shifting of utilities and avenue plantation were delayed due to delay in acquisition of additional ROW where these could be relocated/planted. As the delay in acquisition of additional land has been found to be attributable to the Respondent, the delay in shifting of these utilities and avenue plantation, for which additional land was required, also stands attributable to the Respondent.*

8.34 *As per the Concession Agreement Clause 23.1 The Respondent agreed to provide to the Concessionaire cash support by way of an outright Grant of Rs. 57.11 Crores[4].*

8.35 *Inviting reference to a letter dated 10.09.2007 the Claimant stated that they requested the Respondent to release the first tranche of Grant amounting to Rs. 27.16 Crores, which was paid by the Respondent on 20.02.2008. The Claimant stated that the delay to the extent of 5 months was attributable to the Respondent only. Inviting several other correspondences the Claimant stated that there was a delay of 7 months in releasing the second tranche of 14.90 Crores, delay of 3 months in releasing the third tranche of 12.33 Crores and non-payment of the fourth tranche Rs. 3.43 crores till date. The Respondent contended that the first three tranches were paid well in time after making sure of compliance of contractual obligations. The first tranche was delayed, as contended by the Respondent, due to inadequate documentation furnished by the Claimant. The Respondent stated that the fourth tranche of Rs. 3.43 Crores was held back and was adjusted towards the liquidated damages and*

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50% share of IC's remuneration payable by the Claimant. It further stated that, once damages have been imposed according to the terms of the contract, due amounts are recoverable from the amounts of concessionaire available as due to the Claimant. The Respondent contended that there was nothing illegal or un-contractual for non-release of the fourth tranche of grant.

8.36 *The Scheduled project completion date was 05.12.2008. The Provisional COD was achieved on 22.09.2011, i.e., after a delay of 1021 days. The Respondent contended that the delay was solely attributable to the Claimant and therefore the Respondent had rightly imposed the liquidated damages as well as other damages in accordance with the provisions of the Concession Agreement.*

8.37 *As discussed above it has been held that the Respondent was solely responsible for the delay in acquisition of additional land for execution of the Project highway. The Respondent's delay in acquisition of additional ROW had caused the delay in achieving PCOD by the Claimant. Therefore, imposition of any damages against the Claimant on account of the same delay would not be justifiable.*

62. Thus, it can be made out that the focal point of the reasoning given by the Arbitral Tribunal is that Atlanta had performed its obligation as per the contractual mechanism i.e. to identify and submit proposal for additional land and pursue the State Government for land acquisition.

63. The Arbitral Tribunal relied on Clause 10.1(xi), under which NHAI had to "*take all necessary steps*" for acquisition and it concluded that the acquisition delay arose from procedural delays of the Government of Maharashtra and NHAI for which Atlanta could not be held responsible.

64. Ms. Gupta has challenged these finding alleging that the arbitral tribunal ignored the vital evidence indicating Atlanta's own delay pertaining to AROW.

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65. The law pertaining to ignoring of vital evidence is settled. The Apex Court in the decision of ***Ramesh Kumar Jain v. Bharat Aluminium Company Ltd. (BALCO)***[12]**,** has observed the following on the aspect of ignorance of vital evidence:

> *"35. Considering the aforesaid precedents, in our considered view, the said terminology of 'patent illegality' indicates more than one scenario such as the findings of the arbitrator must shock the judicial conscience or the arbitrator took into account matters he shouldn't have, or he must have failed to take into account vital matters, leading to an unjust result; or the decision is so irrational that no fair or sensible person would have arrived at it given the same facts. A classic example for the same is when an award is based on "no evidence" i.e., arbitrators cannot conjure figures or facts out of thin air to arrive at his findings. If a crucial finding is unsupported by any evidence or is a result of ignoring vital evidence that was placed before the arbitrator, it may be a ground the warrants interference. However, the said parameter must be applied with caution by keeping in mind that "no evidence" means truly no relevant evidence, not scant or weak evidence. If there is some evidence, even a single witness's testimony or a set of documents, on which the arbitrator could rely upon or has relied upon to arrive at his conclusions, the court cannot regard the conclusion drawn by the arbitrator as patently illegal merely because that evidence has less probative value. This thin line is stood crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence."*

66. It could be well understood that the apex court held that a Section 34 court cannot interfere merely because it considers the evidence weak, or capable of supporting a different conclusion. The apex court has reiterated that interference is justified only when the arbitral tribunal's finding cannot be supported by any reasonable or permissible reading of the evidence on record.

[12] **2025 INSC 1457**

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67. Briefly put, if the tribunal's view is one that a reasonable person could reach, the award must stand, even if the court would have reached another view, but where vital evidence is ignored to such an extent that the tribunal's conclusion becomes logically incompatible with the record, the finding may be treated as perverse or patently illegal. The apex court observed that the thin line is crossed only when the arbitral tribunal's conclusion cannot be reconciled with any permissible view of the evidence.

68. In view of the above, this court has to be decide whether the thin line, as understood above, is crossed by the learned Arbitral Tribunal while concluding that the delay in handing over AROW is attributable to NHAI.

69. In order to ascertain, whether the thin line has been crossed, let us examine closely the findings of the arbitral tribunal on this particular aspect. This court shall examine the evidentiary and the factual route taken by the arbitral tribunal and try to understand whether such a view could be adopted.

70. In paras 8.06 and 8.07, the Tribunal noticed from the Independent Consultant's and NHAI's correspondence that shifting of utilities and religious structures had been delayed because there was no additional land available to relocate them. It then said that, since NHAI was being held responsible for acquisition/handing over of that additional land, the consequential utility-shifting delay and therefore the delay in project completion would also be attributable to NHAI.

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71. The Tribunal then addressed NHAI's argument whether substantial work could be done within the Existing ROW, it considered NHAI's letter dated 07.12.2010 saying that approximately 36.571 km out of 40.441 km could be four-laned within the existing ROW. However, after examining the contractual scheme, the Tribunal held that the existing width was not sufficient to accommodate the entire project facilities. It noted that the contractual formation widths themselves did not include other requirements such as embankment slopes, side drains, truck lay-bys, bus bays and plantation. From this, it was concluded that a considerable quantity of AROW was genuinely required for completion of the contracted project.

72. In para 8.12, it recorded that it was an "undisputed fact" that the required additional land was not available to Atlanta in accordance with Schedule H. NHAI blamed that the delay in acquisition resulted from Atlanta's own lapses. Thereafter, the Tribunal examined as to who was contractually required to do what.

73. Under Schedule B, Clause 8.1, additional land acquisition was expressly contemplated. The cost of acquisition was to be borne by NHAI. Atlanta was required to participate proactively by submitting the relevant land-acquisition proposals and pursuing the matter with the State Government/revenue authorities, while NHAI was to provide the necessary administrative support.

74. This was reinforced by Clause 9.1(xxviii) as Atlanta had obligations concerning optimisation of the existing ROW, identification of the additional land, preparation/submission of the acquisition proposal and pursuit of the acquisition process. Importantly, therefore,

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the Tribunal did not proceed on the basis that Atlanta had no role whatsoever in land acquisition.

75. However, Clause 13.5.2 provided that the Additional ROW was to be made available to the Concessionaire in accordance with Schedule H, free from encumbrances, subject to Atlanta having fulfilled its Clause 9.1(xxviii) obligations.

76. NHAI specifically argued before the tribunal that Atlanta had prepared defective acquisition proposals and that those defects delayed acquisition.

77. The Tribunal went on to examine that allegation against the correspondence and ultimately held that Atlanta had performed its part of the contractual bargain as it had (i) identified and submitted the additional land requirement, (ii) submitted the Land Acquisition proposal in accordance with the relevant acquisition legislation, and pursued the Government of Maharashtra for early acquisition.

78. Having perused the findings arrived by the learned Arbitral Tribunal, this court is of the considered view that in lieu of the contemporaneous record, particularly the letter dated 03.03.2009, it cannot readily be contended that the finding of the learned Arbitral Tribunal attributing the delay in acquisition and availability of the Additional Right of Way ("AROW") to NHAI was based on no evidence or was rendered by ignoring vital evidence.

79. The tribunal had factual basis for the case that the Concessionaire had identified and submitted the requisite land acquisition proposals

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and that the subsequent discrepancies and delays in the statutory acquisition process, including the variation between the area notified under Sections 3A and 3D, were attributable to NHAI and/or the concerned governmental authorities.

80. Thus, the Tribunal had material before it on the basis of which it could reasonably conclude that Atlanta had discharged its contractual obligations relating to identification, submission and pursuit of the acquisition proposal, and that the subsequent delay in making the AROW available was not attributable to Atlanta.

81. In such circumstances, a challenge to this finding would, to that extent, tend to involve a reappreciation of competing evidence rather than establish a case of a finding rendered without evidence or in disregard of vital evidence.

82. Additionally, even if this court feels that a different view is possible on the same record, or the evidence is weak, or capable of supporting a different conclusion, the same would also not attract this court's interference under the limited scope of interference under section 34 of the Act. As discussed above, interference is justified only when the arbitral tribunal's finding cannot be supported by any reasonable or permissible reading of the evidence on record.

83. Having gone through the material based on record, this court is of the view that the findings rendered by the arbitral tribunal was based on and are plausible from the record placed before it. It is rather difficult to subscribe to the view that the reasoning adopted by the arbitral

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tribunal was an impossible one or is divorced from the material placed on record.

84. Thus having affirmed, the tribunal's attribution of delay to NHAI for providing AROW, this court shall proceed to examine the next plank of NHAI's submissions.

85. With respect to Claim No.6 , NHAI contended that Atlanta has not proved any payments being made to the EPC contractor and the loss was incurred by the EPC contractor and not Atlanta.

86. On the other hand, Atlanta contended that Annexure 6(A) contained the details of amounts paid to the EPC contractor, and CW-1 also gave evidence regarding those payments. It is further contended that NHAI cross-examined CW-1 on the EPC claim and his alleged interest, but did not successfully discredit his evidence.

87. In view of this contrasting stance, the issue which needs attention is that whether the existence of the underlying loss, if any, was proved or not.

88. This court is of the view that there was at the very least, some material showing that the EPC contractor had actually mobilised resources for the project i.e. Manpower, machinery, site establishment and senior personnel. The Independent Consultant’s correspondence was relied by the learned tribunal to support the fact that mobilisation had taken place and that the contractor was working on the project.

89. Additionally, the project admittedly continued well beyond the original deadline. In these circumstance, Tribunal had already found

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that this prolongation was attributable to NHAI, and as a consequence it could possibly infer that resources which had been mobilised for 30 months had to remain deployed for a substantially longer period.

90. It cannot be said that the above finding existed in a vacuum, as rightly argued, CW-1 gave evidence that the EPC contractor had incurred such additional costs and that Atlanta had compensated or borne those costs. That evidence may be criticised but it was still evidence before the Tribunal. Further, annexure 6(A) gave a computation of the overhead/profit claim, the quality of such evidence can be argued but it was nevertheless material placed before the Tribunal identifying the loss claimed and its basis.

91. Thus, the thin line of "no evidence" doesn't seem to have been breached or crossed by the arbitral tribunal.

92. Moving to Sub-claim 6(B) related to compensation for the alleged under-utilisation of plant, machinery and equipment during the prolonged construction period. Atlanta's case was that the EPC contractor had mobilised the necessary machinery for completion of the project within the original 30-month period, but because completion was delayed for reasons attributable to NHAI, that machinery had to remain deployed for much longer without being fully productive, causing additional financial loss. Atlanta quantified this at about Rs. 25.39 crore on a 10% basis and also relied on the fact that its own claim was lower than the 15% figure reflected in NHAI's later technical circular.

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93. NHAI, on the other hand, disputed both the fact and quantum of the alleged under-utilisation, contending that Atlanta had not proved which machinery remained idle or under-utilised, and that Annexure 6(B) was only an internal computation unsupported by any records. NHAI also maintained that available work fronts existed and therefore mere continued presence of machinery did not establish NHAI caused loss.

94. Admittedly, the Tribunal did not accept Atlanta's 10% computation as such, but treated prolonged deployment of machinery as a direct consequence of NHAI's delay and awarded approximately Rs.15.23 crore by applying an 8% rate to the Rs. 168 crore total Project Cost.

95. The question to be determined in this subclaim is whether there was material before the Tribunal from which it could reasonably be deciphered and inferred under-utilised deployment attributable to NHAI.

96. Insofar as sub-Claim No. 6(B) is concerned, there exists a recognizable evidentiary route before the learned Arbitral Tribunal for arriving at the conclusion that the Respondent had suffered loss on account of the prolonged deployment and under-utilisation of plant, machinery and equipment.

97. The record, as relied upon by the ATLANTA, indicates that the EPC Contractor had mobilised the requisite plant, machinery, equipment and manpower for execution of the project within the stipulated period. ATLANTA had relied upon its contemporaneous

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request seeking release of the EPC Contractor until the entire AROW was made available, which request was allegedly not accepted by NHAI.

98. These circumstances, taken cumulatively, constituted material from which the Tribunal could infer the existence of loss arising from prolonged and unproductive deployment. The absence of machine utilisation records, vouchers, invoices or other primary accounting material may bear upon the weight or sufficiency of the evidence, but would not, by itself, render the finding one based on "no evidence".

99. On the aspect of quantification, the law governing the assessment of damages by an arbitral tribunal is well-settled. In ***McDermott International Inc. v. Burn Standard Co. Ltd.*** **(supra)** the Supreme Court held that different formulae may be applied depending on the unique circumstances of a case. Consequently, choosing the appropriate method of computation, with due regard to the facts, falls entirely within the domain of the arbitrator.

100. In ***NHAI v. Patel-KNR (JV[13])***, this court held that a standard formula may validly be adopted for quantification provided there is sufficient empirical material to apply it.

101. In ***Batliboi Environmental Engineers Ltd. v. HPCL***[14], the Supreme Court interfered with an award for idle machinery where the amount had been fixed merely on the arbitrator's *ipse dixit*, without disclosing any reason or basis for the figure, it was emphasised that

[13] 2018 SCC OnLine Del 9089
[14] (2024) 2 SCC 375

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complete absence of justification for the method of computation renders the quantification vulnerable.

102. Thus, it could be well understood that while mathematical precision is not required and the arbitrator enjoy considerable latitude in adopting a reasonable methodology, the figure ultimately awarded must have an intelligible and rational nexus with the evidentiary material on record and cannot be an unexplained or arbitrary estimate.

103. Applying the same to the facts of the present case, the learned Arbitral Tribunal did not award lump sum under sub-Claim No. 6(B) on its whims and fancies.

104. This court is of the view that the Tribunal took note of Annexure 6(B) and the ATLANTA's pleaded methodology, and thereafter moderated the ATLANTA's proposed 10% machinery component to 8% of the Rs. 168 crore Total Project Cost.

105. It then worked out the deployment cost at Rs. 13.44 crore for the stipulated 30-month period, i.e. Rs. 0.448 crore per month, and multiplied the same by the 34-month extended period to arrive at a figure of Rs. 15.232 crore. Thus, unlike a case where the arbitrator merely selects an amount without any disclosed basis, the impugned Award can be said to have at the very least some foundational basis. In the considered view of this court, quantification in the impugned award is difficult to be characterised as unsupported by an any intelligible evidentiary route.

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106. Now, coming to the third aspect of claim no.6, Claim No. 6(C) concerned price escalation during the extended period of the project.

107. Under Claim No. 6(C), the Tribunal awarded Rs. 11.18 crore towards price escalation during the extended period, as against Atlanta's claim of Rs. 15.747 crore.

108. NHAI attacks this finding on the ground that the alleged escalation was not proved by contemporaneous evidence of actual increase in the prices of material, POL, labour or other inputs, and that Annexure 6(C) was again, just like sub-claim A and B, merely a self-generated computation. According to NHAI, the Tribunal could not infer escalation merely from the fact that work continued during the extended period and thereafter devise a proportionate formula based on the Rs. 168 crore Total Project Cost and the figure of 58.76% work completed.

109. Atlanta, on the other hand, attacks the Award from an opposite direction. It contends that once the Tribunal accepted that NHAI was responsible for the delay and also accepted that escalation had actually been incurred during the extended period, there was no justification for reducing the claimed amount of Rs. 15.747 crore to Rs. 11.18 crore by substituting NHAI's 58.76% progress figure and proportionately recalculating the claim.

110. In ***K.N. Sathyapalan (Dead) by LRs. v. State of Kerala***[15], the Supreme Court held that where one contracting party fails to discharge its obligations and such failure has a direct bearing on the work to be

[15] **(2007) 13 SCC 43**

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executed by the other party, the arbitrator is competent to compensate the latter for the additional costs incurred as a consequence thereof. The Court expressly recognised that escalation in the prices of materials, labour and transportation during an extended contractual period may be awarded even in the absence of an escalation clause where the extension is attributable to the employer.

111. Thus, it is settled that once prolongation is caused by the employer, and the consequential incidence of escalation are established, the arbitral tribunal enjoys latitude in quantifying the resulting loss, provided the methodology adopted is intelligible and founded upon material available on record.

112. In the present case, the learned Arbitral Tribunal had already found that the extended period from 05.12.2008 to 22.09.2011 resulted from NHAI's failure to make the requisite AROW available and further accepted that the prices of material, POL and labour had increased during such extended period, thereby resulting in additional cost.

113. The Tribunal, however, did not mechanically accept Atlanta's claim of Rs. 15.747 crore, instead it took NHAI's own pleaded figure that only 58.76% of the work stood completed as on the Scheduled Project Completion Date, and determined that the remaining 41.24% of the Rs. 168 crore Total Project Cost, i.e. approximately Rs.69.29 crore, was required to be executed during the extended period, and proportionately reduced Atlanta's escalation claim from Rs.15.747 crore, calculated on Rs.97.526 crore of work, to Rs. 11.18 crore by applying the formula Rs.15.747/Rs.97.526 × Rs.69.29.

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114. Having examined the findings of the arbitral tribunal on the same, this court on the evaluation of the material relied upon by the arbitrator is of the considered view that no interference is warranted under the limited jurisdiction of section 34 of the Act.

115. The learned arbitral tribunal was well within its domain to calculate the damages and adopt a methodology. The methodology adopted by the learned Arbitral Tribunal does not seem to be one which is not reconcilable or plausible with the facts and the record.

116. In view of the aforesaid reasons, the findings of the learned Arbitral Tribunal pertaining to claim no.6 are upheld in their entirety.

Claim No. 5: loss of toll revenue caused by the delayed achievement of PCOD.

Findings of the Arbitral Tribunal

117. Claim No. 5 was Atlanta's claim for loss of toll revenue caused by the delayed achievement of PCOD. Atlanta's case was that, had the project been completed by the Scheduled COD of 05.12.2008, it would have commenced toll collection much earlier and since PCOD was achieved only on 22.09.2011, allegedly due to NHAI's failure to make the required AROW available, Atlanta lost toll income during that extended period.

118. The Tribunal ultimately accepted the basic entitlement of ATLANTA, and assessed the projected lost toll revenue at about Rs. 69.26 crore. However, the tribunal pragmatically reduced it by 50%

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because Atlanta had not separately quantified the operation and maintenance expenses it would have incurred while earning that toll, thus, resulting in about Rs. 34.63 crore as principal. Thus, the total amount along with interest, under Claim No. 5 has been roughly calculated for an amount of Rs. 61.77 crore. The relevant findings on this claim are as follows:

> ***"10.05 Claim no. 5 :- ON ACCOUNT OF LOSS OF TOLL REVENUE FOR THE DELAY IN ACHIEVING COD (I.E., FOR THE PERIOD FROM STIPULATED COD 05.12.2008 TO ACTUAL COD 04.10.2011)***
>
> *The claim pertains to loss of toll revenue by the Claimant due to the delay in achieving COD for the material default committed by the Respondent by not making available the additional ROW in accordance with the Schedule given in the Agreement. The Claimant stated that it had envisaged, as expressed in the financial document, an earning of toll revenue totalling to Rs. 70.11 Crores as below:*

Period from	***Period to***	***Net amount of toll revenue as claimed (Rs. In Crores)***
05.12.2008	*31.03.2009*	*6.73*
01.04.2009	*31.03.2010*	*23.41*
01.04.2010	*31.03.2011*	*25.66*
01.04.2011	*03.10.2011*	*14.31*
Total (Rs. In crores)		***70.11***

> *The Respondent denied the claim contending the same as fanciful, fictitious and anything mentioned in financial documents cannot be the basis for estimation of loss of toll revenue.*
>
> *It has been noted that the Respondent had committed material default under the Contract by delaying availability of the requisite area of AROW by 6 years or more and thereby causing impossibility for the Claimant to achieve PCOD before 22.09.2011, which was stipulated to be achieved on or before 05.12.2008. Therefore the delay in achieving PCOD was 2 years 9 months 17 days (1021 days). It has also been noted that although the date of start of toll collection*

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is being delayed by 1021 days due the delay in achieving PCOD which is attributable to the material defaults committed by the Respondent, the end date of period of Concession i.e., 05.06.2020 remains unaltered in accordance with the terms of the Contract between the Parties. Therefore the Claimant is being deprived from collecting the toll revenue during the period 05.12.2008 to 22.09.2011, i.e., 1021 days on account of the delay attributable to the Respondent. It is also a matter of fact that in the same period of 1021 days the Claimant had saved the cost towards operation & maintenance of the Proposed Project Highway.

In terms of the Contract if NHAI commits material default, it will compensate the additional direct cost incurred by the Claimant on account of the default.

But, the loss of opportunity to earn toll revenue cannot be calculated like a direct cost incurred by the Claimant. However, the Claimant having undertaken a BOT Contract had obviously considered to be compensated towards the cost of execution of the Project, other direct costs, interests, and expected profit out of the toll revenue only. In this case due to the material default committed by NHAI by not handing over the AROW within the stipulated time the Claimant has been deprived from earning the toll revenue for the initial 2 years 9 months 17 days (1021 days) which could have compensated part of its cost of execution, other direct costs, interest, and profit. Under the circumstances we are of the opinion that the Respondent NHAI is liable to compensate the Claimant on account of loss of opportunity of earn toll revenue for the said period from 05.12.2008 to 22.09.2011.

It has been noted that there is no agreement between the parties from where the loss of opportunity to earn the toll revenue could be calculated. However as admitted by the Respondent, the Financial documents submitted by the Claimant envisaged certain break-up of toll revenue. Apart from flatly denying the claim against loss of opportunity to earn the toll revenue, stating it to be fictitious & fanciful, NHAI did not say anything of material justifiable to contradict the claim.

Under the circumstances, it has been held that the Claimant is entitled to the following compensation-

Toll revenue from 05.12.2008 to 31.03.2009 = Rs. 6.73 Cr.

Toll revenue from 01.04.2010 to 31.03.2011 = Rs. 23.41 Cr.

Toll revenue from 01.04.2010 to 31.03.2010 = Rs. 25.66 Cr.

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Toll revenue from 01.04.2011 to 22.09.2011 = 13.46 Cr.

Total = Rs. 69.26 Cr.

The Claimant did not give any figure about how much he would have saved towards cost of Operation & Maintenance of the Proposed Project Highway for the delay in achieving PCOD by 1021 days. In our view half of the above amount shall meet the ends of justice.

In view of above the claimant will be entitled to a compensation of Rs. 34.63 Cr. The Claimant will also be entitled to interest @ SBI PLR plus 2% w.e.f. 22.09.2011 till 15.08.2016 (date of Award). The interest works out to Rs. 27.14 Cr.

Thus the Claimant is being held entitled to Rs. 34.63 Cr. + Rs. 27.14 Cr. = Rs. 61.77 Cr., on account of loss of opportunity to earn toll revenue under Claim no. 5.

Rival Submissions

119. On behalf of NHAI, it is submitted that the award under Claim No. 5 proceeds on conjecture rather than proof. According to NHAI, having itself noticed that the alleged loss of toll revenue could not be determined as a direct cost under the contractual framework, the learned Arbitral Tribunal nevertheless adopted the toll projections contained in the Respondent's financing documents and projected Profit and Loss Statement, which were merely estimates prepared at the stage of financial closure and had been specifically disputed by NHAI as fanciful and fictitious.

120. According to NHAI, the Tribunal effectively reversed the burden of proof by accepting those projections merely because NHAI had not produced a competing calculation.

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121. It is further contended that the figures relied upon in the Award contain apparent inconsistencies and unexplained entries, thereby undermining the reliability of the computation itself.

122. NHAI also assailed the Tribunal's decision to reduce the projected revenue by exactly 50% towards unquantified operation and maintenance expenses, contending that the figure was adopted without any evidentiary or mathematical basis and merely "*to meet the ends of justice*".

123. Lastly, NHAI submits that actual toll collection had commenced on 04.10.2011, prior to filing of the Statement of Claim, and therefore actual toll data constituted the best available evidence for testing the projections.

124. *Per contra*, on behalf of the Atlanta, it is submitted that the Tribunal's quantification under Claim No. 5 was founded upon cogent documentary and oral evidence and does not warrant interference under Section 34.

125. According to Atlanta, the project was awarded on a BOT basis, under which toll revenue constituted the principal means of recovering the Concessionaire's investment and meeting its operation and maintenance expenses, and the projected toll revenues therefore formed an integral part of the project's financial viability.

126. According to Atlanta, the projections relied upon by the Tribunal were not unilateral figures prepared for the arbitration and formed part

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of the Lender's Appraisal Note and financing documents submitted to NHAI under Clause 9.5 of the Concession Agreement well before disputes arose, receipt whereof was duly acknowledged by NHAI.

127. Atlanta contends that such contemporaneous financial projections constituted relevant and reliable material for assessing loss of toll revenue. It is further submitted that NHAI did not place any alternative methodology for revenue computation before the Tribunal and merely denied the claim, and that CW-1's evidence regarding the financing documents and projected toll revenue was not effectively controverted in cross-examination.

128. According to Atlanta, the Tribunal did not mechanically award the entire projected revenue of Rs. 69.26 crore, according to them, the tribunal made a substantial 50% deduction to account for operation and maintenance expenditure which would otherwise have been incurred, thereby awarding only the net opportunity loss on a conservative basis.

Analysis

129. Having perused the record, and the rival submissions made before this court, the limited issue which warrants this court's consideration is whether the learned arbitral tribunal correctly estimated the toll revenue.

130. It is already ascertained above that an arbitral tribunal is entitled to estimate and quantify a proved loss on the basis of relevant contemporaneous material and a reasonable methodology, and a

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Section 34 Court cannot substitute its own assessment merely because another computation may appear preferable.

131. Needless to state, interference would arise only where the quantification lacks any evidentiary foundation, or proceeds on irrelevant material, ignores vital evidence, or is so arbitrary or irrational that it ceases to be a permissible assessment of damages.

132. Keeping in mind the above settled principles, the quantification under Claim No. 5 cannot be said to have been undertaken in the complete absence of material, since the learned Arbitral Tribunal relied upon the Lender's Appraisal Note and the financing documents containing projected toll revenues, which had been prepared contemporaneously at the stage of financial closure.

133. According to this court, the Tribunal had relevant material from which the probable toll revenue during the period of delayed commercial operation could be estimated, and the mere fact that such figures were projections rather than actual receipts would not, by itself, render the quantification impermissible.

134. It cannot be ignored that the Tribunal did not award the entire projected revenue of approximately Rs. 69.26 crore but reduced the same by 50% on the footing that Atlanta would necessarily have incurred operation and maintenance expenses, had the tolling commenced during the relevant period, thereby awarding approximately Rs. 34.63 crore as principal.

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135. The limited and relevant enquiry under Section 34 remains whether the Tribunal's estimation, viewed in light of the contemporaneous financial projections and the material before it, possessed a rational evidentiary nexus. This court exercising Section 34 jurisdiction cannot undertake a fresh calculation merely because another methodology or a different percentage of deduction may appear more accurate.

136. Although this court cannot deny that better quality evidence may have been available i.e. actual toll collection data, having become available after commencement of tolling.

137. However, the mere availability of better evidence does not by itself justify interference by a court exercising Section 34 jurisdiction. The arbitral tribunal is a master of the quality and quantity of evidence. It is very well settled that as long as the Tribunal's finding represents a possible view on the record, the Court cannot reappreciate the record merely because it considers another source of evidence more reliable.

138. Thus, in the considered view of this court, no ground of interference is made out on the findings of claim No.5.

Claim No. 2,8 and 10

139. As far as Claims 2,8 and 10 are concerned, since the foundational finding attributing the AROW delay to NHAI has been upheld, there is hardly any scope to interfere with the Tribunal's consequential findings.

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140. Thus, no interference is warranted in award of Claim no. 2,8 and 10.

INTEREST AWARDED

141. As regards the award of future interest, NHAI contends that out of the total awarded amount of Rs. 145.214 crore, approximately Rs 63.65 crore already represents pre-award interest, and therefore, the grant of future interest at 18% per annum on the entire amount effectively amounts to interest upon interest.

142. It is further contended that the rate of 18% is excessive and disconnected from prevailing commercial rates.

143. *Per contra*, Atlanta submits that Section 31(7) of the Arbitration and Conciliation Act empowers the Arbitral Tribunal to award interest in the absence of any contractual prohibition and that the unamended Section 31(7)(b) itself contemplated post-award interest at 18% per annum. Reliance was placed upon ***Deepa Bhargava v. Mahesh Bhargava,*** (2009) 2 SCC 294, and ***NHAI v. R.N. Shetty & Company***, (2015) 220 DLT 19.

Finding of the arbitral tribunal

144. The Arbitral Tribunal, having awarded an aggregate sum of Rs.145.214 crore, comprising principal and pre-award interest, directed payment of future interest at 18% per annum on the entire awarded sum until payment.

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145. Thus, the issue is whether the grant of post-award interest on the aggregate amount, including the pre-award interest component, and the rate of 18% disclose any ground for interference under Section 34 of the Act.

Analysis

146. The law pertaining to the grant of post-award interest on the aggregate amount, including the pre-award interest component, is well settled.

147. In ***Hyder Consulting (UK) Ltd. v. Governor, State of Orissa***[16], the Supreme Court, while interpreting Section 31(7) of the Arbitration and Conciliation Act, 1996, held that the expression "*sum directed to be paid by an arbitral award*" under Section 31(7)(b) includes not merely the principal amount but also the interest awarded under Section 31(7)(a) for the period preceding the award.

148. The Supreme Court clarified that once such interest is awarded, it becomes part of the aggregate sum payable under the award, and post-award interest may consequently be granted on that aggregate amount.

149. Adverting to the facts of the case, the Arbitral Tribunal awarded an aggregate sum of Rs. 145.214 crore, which included approximately Rs. 63.65 crore towards pre-award interest and directed payment of future interest at 18% per annum on the entire awarded amount.

[16] **(2015) 2 SCC 189**

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150. In view of the law laid down in ***Hyder Consulting(supra)***, the inclusion of the pre-award interest component in the sum carrying post-award interest cannot be characterised as patently illegal.

151. Further, the unamended Section 31(7)(b) expressly contemplated post-award interest at 18% per annum, unless the award otherwise directed. Therefore, subject to the applicability of the unamended provision and the absence of any relevant contractual restriction, neither the grant of post-award interest on the aggregate awarded sum nor the rate of 18% per annum, by itself, furnishes a ground for interference under Section 34 of the Act.

152. Thus, NHAI's challenge to the interest awarded is hereby rejected.

Summary & Conclusion

153. As regards the attribution of delay in providing the Additional Right of Way (AROW), the said finding is based on the Tribunal's assessment of the documentary and other evidence before it. It cannot be said that the finding is based on no evidence or that it is one which no reasonable person could have arrived at. Accordingly, no ground for interference under Section 34 of the Arbitration and Conciliation Act, 1996, is made out.

154. As far as Claim No. 6(A), pertaining to overhead expenses and loss of anticipated profit, is concerned, the finding of the Arbitral Tribunal does not exist in a vacuum. CW-1 had adduced evidence in support of the claim, and Annexure 6(A) contained the computation of

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the amount claimed. The quality, and probative value of such evidence may certainly be questioned. However, it cannot be said that there was no material whatsoever before the Tribunal. The Arbitral Tribunal is the final judge of the quality and quantity of evidence, and the distinction between a finding based on insufficient evidence and one based on no evidence must be maintained.

155. As regards Claim No. 6(B), concerning the underutilisation of plant, machinery and equipment, the choice of an appropriate method for assessing damages falls within the domain of the Arbitral Tribunal. The Tribunal is entitled to adopt a reasonable formula for quantification, provided that the methodology bears a rational nexus with the material placed on record and is not arbitrary or wholly speculative. In the present case, the Tribunal, adopted its own methodology for determining the amount payable. The methodology cannot be characterised as so unreasonable from the record as to warrant interference under Section 34.

156. Insofar as Claim No. 6(C), relating to price escalation, is concerned, the Tribunal had already found that the execution of the project was prolonged on account of delays attributable to NHAI. The Tribunal independently assessed and applied its own computation and awarded a reduced amount. The finding thus reflects an application of mind to the evidence and the circumstances of the case. It cannot be said that the award under this sub-claim suffers from such patent illegality as would justify interference under Section 34.

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157. As far as Claim No. 5, pertaining to loss of toll revenue, is concerned, the Tribunal relied upon the financial projections and other material placed before it to assess the loss suffered by the Claimant. Although better or more reliable evidence, including actual toll collection data, may have been available, the mere availability of such evidence does not, by itself, constitute a ground for setting aside the award. The Court, while exercising jurisdiction under Section 34, cannot substitute its own assessment of the quality of evidence for that of the Arbitral Tribunal.

158. As regards Claim Nos. 2, 8 and 10, the principal challenge raised by NHAI proceeds on the foundational contention that the delay in providing AROW was wrongly attributed to it. Since the finding of the Arbitral Tribunal attributing such delay to NHAI has already been upheld, the challenge to these claims, insofar as it is founded upon the said contention, cannot survive.

159. Accordingly, the challenges raised by NHAI are rejected.

160. The impugned Arbitral Award as a consequence is upheld.

161. The present petitions are disposed of in the aforesaid terms.

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162. List on 06.01.2027.

OM PRAKASH SHUKLA, J

NOVEMBER 4, 2026*/gunn/at*

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