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

Judgment reserved on: 10.09.2026
Judgment pronounced on: 03.11.2026

\# **CNR No. DLHC015922132015**
\+ O.M.P. (COMM) 13/2015

M/S WINNER CONSTRUCTION PVT. LTD. .....Petitioner
Through: Ms. Anusuya Salwan, Ms. Nikita Salwan and Mr. Rachit Wadhwa, Advocates.

versus

AGRICULTURAL PRODUCE MARKETING COMMITTEE .....Respondent
Through: Mr. CS Parasher, Mr. Ashish and Ms. Mona Sharma, Advocates with Mr. Kamal Kumar, Assistant Engineer.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% 03.11.2026

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996[1], challenging the Arbitral Award dated 28.09.2015[2] passed by the learned Sole Arbitrator, Justice S.K. Aggarwal (Retd.). By the impugned Award, the learned Arbitrator partly allowed the claims preferred by the Petitioner and rejected the counter-claim of Rs.1,50,10,388/- raised by the Respondent.

[1] "the Act" hereinafter
[2] "impugned Award" hereinafter

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2. The dispute between the parties arises out of a contract for construction of the New Office Building, NFM, Azadpur, Delhi, which was awarded to the Petitioner by the Respondent *vide* letter dated 30.10.2004.

3. Under the Contract, the work was to commence on 14.11.2004 and be completed by 13.11.2005. However, the work continued beyond the stipulated completion date and was eventually completed on 30.11.2006.

4. The Respondent granted an extension of time up to the actual date of completion, without levying any compensation for the delay. Upon completion, the work was recorded in the Measurement Book. Thereafter, a joint inspection was conducted on 19.03.2008, in which the Petitioner's performance was rated as "Very Good".

5. After completion of the work, differences arose between the parties regarding outstanding payments. The Petitioner initially raised a claim for labour escalation *vide* letter dated 11.02.2009. Thereafter, *vide* letter dated 09.08.2010, it raised further claims aggregating to Rs.1,75,52,560/-, including claims for escalation in the cost of labour and materials, amounts allegedly deducted from the final bill, and additional establishment expenses incurred during the extended period.

6. According to the Petitioner, the final bill was required to be paid within six months of completion of the work, i.e., by 31.05.2007.

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The final payment of Rs.1,20,91,212/-, however, was made only on 16.01.2009. On this basis, the Petitioner claimed interest on the alleged delay in payment of the final bill. The claims were reiterated *vide* letter dated 15.09.2010.

7. As the disputes remained unresolved despite the Petitioner's demands for payment, the Petitioner sought appointment of an Arbitrator *vide* letter dated 19.11.2010, followed by further correspondence dated 28.06.2011. Thereafter, the Petitioner approached this Court under Section 11 of the Act, pursuant to which the learned Sole Arbitrator was appointed *vide* order dated 13.03.2012.

8. The parties thereafter filed their respective pleadings before the learned Arbitrator. The Petitioner raised eight claims aggregating to Rs.1,75,52,560/-, together with interest and costs. The Respondent disputed the claims and also raised a counter-claim of Rs.1,50,10,388/-.

9. The Petitioner's principal case before the learned Arbitrator was that the delay in completion of the work beyond the stipulated date was attributable to the Respondent because of various hindrances encountered during execution. On this basis, the Petitioner sought escalation price in the cost of labour and materials, and additional establishment expenses for the extended period. It also contended that the Respondent had delayed payment of the final bill and was, therefore, liable to pay interest on the delayed payment.

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10. The Respondent disputed responsibility for the delay and contended that the Petitioner had failed to comply with the contractual requirements under Clauses 5.2 and 5.3 regarding sending notice of hindrances and extension of time. It further disputed the Petitioner's entitlement to escalation and additional establishment expenses, contending that Clause 10CC, which provided for price adjustment, had been deleted from the Contract.

11. After considering the pleadings, evidence and submissions of the parties, the learned Arbitrator allowed Claim No. 2 to the extent of Rs.22,37,935/- towards escalation arising from the statutory increase in minimum wages, in view of the Respondent's admission that the said amount had been recommended for payment. Claim No. 3, seeking Rs.2,32,474/- towards labour cess deducted from the final bill, was also allowed because the learned Arbitrator found that the Contract did not transfer liability to pay labour cess to the Petitioner.

12. On the other hand, the claim for Rs.35,41,897/- towards interest on delayed payment of the final bill (Claim No. 1) was rejected. The learned Sole Arbitrator held that Clause 7 of the General Conditions of Contract[3] barred a claim for interest in the circumstances found by him, namely, where the bill had been prepared by the Engineer-in-Charge after the Petitioner failed to submit it.

13. The learned Sole Arbitrator also rejected Claim Nos. 4 and 5,

[3] "GCC" hereinafter

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which sought escalation and additional establishment expenses for the extended contractual period. He found that the Petitioner had neither established that the delay was attributable to the Respondent nor shown that it had given timely notice of its intention to claim compensation on that account. Claim No. 6, seeking Rs. 15,34,307/- towards the increase in the cost of materials, was also rejected on the ground that the Petitioner had failed to establish any breach of the Contract by the Respondent.

14. In respect of Claim No.7, the learned Sole Arbitrator awarded interest at 10% per annum on the amounts allowed under Claim Nos. 2 and 3, with effect from 24.03.2011 until payment, provided that payment was made within three months of service of the impugned Award. In the event of default in payment within that period, interest was made payable at the enhanced rate of 15% per annum from the date of service of the impugned Award until payment.

15. In the present petition, the Petitioner challenges the findings in respect of Claim Nos. 1, 4, 5, 6 and 7.

SUBMISSIONS BEFORE THIS COURT

16. Learned Counsel for the Petitioner assailed the rejection of Claim No. 1 for interest on delayed payment of the final bill, contending that the learned Sole Arbitrator had wrongly relied on Clause 7, which, according to the Petitioner, governed interim running bills and did not apply to the final bill. It was further submitted that

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Clause 9 of the GCC, which stipulated that the final bill was to be paid within six months of its receipt, had not even been considered, despite the final payment having been made only on 16.01.2009.

17. Learned Counsel further submitted that the final bill had been prepared and jointly signed by the parties on 12.12.2007 and that the measurements had been recorded in the Measurement Book. Reliance was placed on the note-sheets (Ex. CW1/39) to contend that, although the bill had been cleared for payment, the actual release of payment was delayed for administrative reasons attributable to the Respondent.

18. Turning to the rejection of Claim Nos. 4, 5 and 6, learned Counsel submitted that the claims for escalation in the cost of materials and labour, as well as additional establishment expenses for the extended period, had been wrongly rejected. It was contended that the delay in execution of the work was attributable to the Respondent and that the learned Sole Arbitrator had failed to properly appreciate the material bearing on this issue.

19. In this regard, learned Counsel submitted that the learned Sole Arbitrator had failed to consider relevant correspondence, particularly the letters dated 13.02.2006, 20.05.2006, 21.06.2006 and 22.06.2006. According to the Petitioner, these letters recorded site hindrances and changes in the firefighting, acoustics and air-conditioning work, which had delayed execution of the Contract. It was, therefore, contended that the rejection of these claims was based on a failure to consider material evidence on record and warranted interference by this Court.

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Reliance was placed on ***PSA Sical Terminals (P) Ltd. v. V.O. Chidambranar Port Trust.***[4]

20. Learned Counsel further submitted that the Respondent's recommendation for payment under Clause 10C and the grant of extension of time without levy of compensation also supported the Petitioner's case that the delay was not attributable to it.

21. Lastly, learned Counsel challenged the impugned Award in respect of Claim No.7, contending that interest on the amounts awarded under Claims Nos.2 and 3 ought to have been granted from the date of completion of the work, i.e., 30.11.2006.

22. *Per contra*, learned Counsel for the Respondent supported the impugned Award and submitted that the Petitioner had neither placed the complete final bill on record nor explained why it had not submitted the bill upon completion of the work on 30.11.2006. It was contended that the learned Sole Arbitrator had correctly applied Clause 7, which, according to the Respondent, precluded a claim for interest where the Engineer-in-Charge had to prepare the bill because the contractor had failed to submit it.

23. In respect of Claims Nos. 4, 5 and 6, learned Counsel submitted that the Petitioner had failed to establish that the prolongation of the Contract was attributable to the Respondent. It was further contended that the alleged hindrances had neither been specifically pleaded in the

[4] **(2023) 15 SCC 781**

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Statement of Claims nor in the rejoinder, and that the details thereof were introduced for the first time through the affidavit of evidence dated 03.12.2012.

24. It was further submitted that neither the authenticity of the additional documents sought to be relied upon nor their service upon the Respondent had been established. Learned Counsel also emphasised that the Petitioner had not issued notices in terms of Clauses 5.2 and 5.3 or sought an extension of time in the prescribed manner during the execution of the work.

ANALYSIS

25. It is trite that the scope of interference under Section 34 of the Act is narrow and confined to the grounds enumerated therein. Where the challenge concerns interpretation of a contract, the Court must ordinarily respect a reasonable and plausible interpretation adopted by the arbitral tribunal after considering the material on record. In ***National Highways Authority of India v. Hindustan Construction Company Ltd.***[5], the Supreme Court held as follows:

> *"16. Now, we turn to the issue of whether the claim for the construction of embankment forms part of the activity of clearing and grubbing and was not payable as embankment work. We may note here that two expert members of the Arbitral Tribunal held in favour of the respondent on this point, whereas the third member dissented. There cannot be any dispute that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34*

[5] **(2024) 6 SCC 809**

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does not sit in appeal over the findings of the arbitrator."
(Emphasis supplied)

26. Similarly, in ***Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum Rajgurunagar***[6], the Supreme Court observed:

> *"45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one."*
>
> *(Emphasis supplied)*

27. It is clear from the above that the interpretation of the contract and the appreciation of evidence fall primarily within the domain of the learned Arbitrator. This Court cannot substitute its own interpretation or reassess the evidence merely because the Petitioner suggests a different contractual construction or an alternative inference. The question is not whether another view was possible, but whether the view adopted by the learned Arbitrator falls outside the range of permissible views or otherwise attracts any of the grounds for interference under Section 34 of the Act. At the same time, this limitation does not protect an award that disregards a binding contractual provision or rests on no relevant material.

28. It is in the light of this settled position that the objections raised in the present petition are to be examined.

[6] **(2022) 4 SCC 463**

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29. The challenge to the rejection of Claim No.1 rests primarily on the Petitioner's contention that the learned Arbitrator wrongly applied Clause 7 of the GCC, which, according to the Petitioner, concerns interim running bills and not the final bill. It was further contended that Clause 9 of the GCC, which specifically deals with payment of the final bill, was not even considered. The Petitioner also relied on the note-sheets (Ex. CW1/39) to contend that the delay in release of payment was attributable to budgetary constraints and administrative reasons on the part of the Respondent.

30. Before examining these contentions, it is necessary to notice the relevant findings and reasoning of the learned Arbitrator on Claim No.1, which read as follows:

> *"(iii) Law governing the award of interest from the date of cause of action till the date of the award, as provided under Section 31(7) of the Arbitration & Conciliation Act, 1996, has been settled by the recent Supreme Court's decision in Union of India Vs. M/s Bright Power Projects (1) P. Ltd., 2015 (7) SCALE 638, wherein it has been held as follows:*
>
> > *"14. Section 31(7) of the Act, by using the words "unless otherwise agreed by the parties", categorically specifies that the arbitrator is bound by the terms of the contract so far as award of interest from the date of cause of action to date of the award is concerned. Therefore, where the parties had agreed that no interest shall be payable, the Arbitral Tribunal cannot award interest."*
>
> *(iv) To find out what was the agreement between the parties about the payment of interest, it will be useful to recall clause 7 of the agreement, which governs payment of interest in the event of delay in making the payment by Respondents. The relevant portion of clause 7 reads as follows:*
>
> > *"For the works estimated to cost over Rs. Twenty*

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thousand the interim or running account bills shall be submitted by the contractor for the work executed on the basis of such recorded measurements on the format of the Department in triplicate on or before the date of every month fixed for the same by the Engineer-in-Charge..... In the event of the failure of the contractor to submit the bills, Engineer-in-Charge shall prepare or cause to be prepared such bills in which event no claims whatsoever due to delays on payment including that of interest shall be payable to the contractor. Payment on account of amount admissible shall be made by the Engineer-in-Charge certifying the sum to which the contractor is considered entitled by way of interim payment at such rates as decided by the Engineer-in-Charge....." (emphasis added)

(v) The use of the word "shall" in Clause 7 of the contract makes it mandatory for the contractor to submit the bill by the fixed date for the work done by them during the preceding month. It is only when the contractor fails to submit the bill by the fixed date, the Engineer-In-Charge becomes entitled to prepare or get the requisite bill for the work done by the contractor and not otherwise. But, in that event the clause provides that, contractor is not entitled to raise any claim, for delay in payment including interest, due to delay in payment.

(vi) CW 1 Mr. H S Pasricha, MD of claimant in his affidavit by way of evidence wrongly stated, "As per the provisions of the contract, the final bill was to be paid to the Claimant within six months of the above mentioned completion date i.e. by 31.5.2007. Copy of Clause 30.2.9 of the GCC is exhibited as Ex.CW1/8." Suffice it to say that 30.2.9 is part of CPWD Manual and is not the part of contract and the plea sought to be raised is liable to be rejected.

(vii) In this case, 14th & final running bill was admittedly not submitted by the contractor on completion of the work. It was got prepared by the Engineer of the respondent under the contract. The Claimant neither in the Statement of Claim nor in their evidence has stated as to why the final bill was not submitted by them immediately on completion of work on 30.11.2006 or any time thereafter. The Claimant for the first time vide their letter dated 9.8.2010 claimed interest along with the other claims (Ex.CW-1/13).

(viii) Learned counsel in the alternative argued that as per the information received under the RTI by the claimant, the final bill

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was prepared by the department on 12.12.2007 and payment was made only on 16.1.2009, i.e. after about one year. Therefore, at least for this period the claimant would be entitled to interest. This argument also cannot help because Clause 7 clearly provides that in case the bills are got prepared by the Engineer-in-Charge, the contractor will not be entitled to raise any claim whatsoever towards any interest for delayed payment. In view of the law laid down by the Supreme Court in UOI Vs. Bright Power Project (Supra), this contention is liable to be rejected."

FINDING:

(ix) For the foregoing reason, it is held that the Claimant is not entitled to Rs.35,41,897/- towards interest on the delayed payment of the 14th running bill. This claim is accordingly rejected.

(Emphasis supplied)

31. As Petitioner relied upon Clause 9, while the learned arbitrator relied upon Clause 7, the relevant clauses are reproduced hereinbelow for reference:

*"**CLAUSE-7***

No payment shall be made for work, estimated to cost Rs. Twenty thousand or less till after the whole of the work shall have been completed and certificate of completion given. For works estimated to cost over Rs. Twenty thousand, the interim or running account bills shall be submitted by the contractor for the work executed on the basis of such recorded measurements on the format of the Department in triplicate on or before the date of every month fixed for the same by the Engineer-in-Charge. The contractor shall not be entitled to be paid any such interim payment if the gross work done together with net payment/ adjustment of advances for material collected, if any, since the last such payment is less than the amount specified in Schedule 'F', in which case the interim bill shall be prepared on the appointed date of the month after the requisite progress is achieved. Engineer-in-Charge shall arrange to have the bill verified by taking or causing to be taken, where necessary, the requisite measurements of the work. ***In the event of the failure of the contractor to submit the bills, Engineer-in-Charge shall prepare or cause to be prepared such bills in which event no claims whatsoever due to delays on payment including that of interest shall be payable to the contractor.*** *Payment on account of amount admissible shall be made by the Engineer-in-Charge certifying the sum to which the contractor is considered entitled by way of interim payment at such rates as decided by the*

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Engineer-in-Charge. The amount admissible shall be paid by 10th working day after the day of presentation of the bill by the Contractor to the Engineer-in-Charge or his Asstt. Engineer together with the account of the material issued by the department, or dismantled materials, if any. In the case of works outside the headquarters of the Engineer-in-Charge, the period of ten working days will be extended to fifteen working days.

All such interim payments shall be regarded as payment by way of advances against final payment only and shall not preclude the requiring of bad, unsound and imperfect or unskilled work to be rejected, removed, taken away and reconstructed or re-erected. Any certificate given by the Engineer-in-Charge relating to the work done or materials delivered forming part of such payment, may be modified or corrected by any subsequent such certificate(s) or by the final certificate and shall not by itself be conclusive evidence that any work or materials to which it relates is/are in accordance with the contract and specifications. Any such interim payment, or any part thereof shall not in any respect conclude, determine or affect in any way powers of the Engineer-in-Charge under the contract or any of such payments be treated as final settlement and adjustment of accounts or in any way vary or affect the contract.

Pending consideration of extension of date of completion, interim payments shall continue to be made as herein provided without prejudice to the right of the department to take action under the terms of this contract for delay in the completion of work, if the extension of date of completion is not granted by the competent authority.

The Engineer-in-Charge in his sole discretion on the basis of a certificate from the Asstt. Engineer to the effect that the work has been completed up to the level in question make interim advance payments without detailed measurements for work done (other than foundations, items to be covered under finishing items) up to lintel level (including sunshade etc.) and slab level, for each floor working out at 75% of the assessed value. The advance payments so allowed shall be adjusted in the subsequent interim bill by taking detailed measurements thereof."

CLAUSE-9

Payment of Final bill

The final bill shall be submitted by the contractor in the same manner as specified in interim bills within three months of physical

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completion of the work or within one month of the date of the final certificate of completion furnished by the Engineer-in-Charge whichever is earlier. No further claims shall be made by the contractor after submission of the final bill and these shall be deemed to have been waived and extinguished. ***Payments of those items of the bill in respect of which there is no dispute and of items in dispute, for quantities and rates as approved by Engineer-in-Charge, will, as far as possible be made within the period specified hereunder, the period being reckoned from the date of receipt of the bill by the Engineer-in-Charge or his authorized Asstt. Engineer, complete with account of materials issued by the Department and dismantled materials.***

i) If the Tendered value of work is up to Rs.5 lakhs: 3 Months

ii) If the Tendered value of work exceeds Rs.5 lakhs: 6 Months"

32. A perusal of Clause 9, on which the Petitioner principally relies, shows that it requires the contractor to submit the final bill and the period for payment of the final bill is to be reckoned from the date of its receipt by the Engineer-in-Charge. On the other hand, Clause 7 specifically deals with a situation where the contractor fails to submit the bill and the Engineer-in-Charge prepares it.

33. The learned Sole Arbitrator found that the Petitioner had not submitted the final bill and that the "14th and final running bill", on which interest was claimed, had been prepared by the Respondent. The learned Sole Arbitrator, therefore, relied upon the Clause 7 which, in his view, applied to the circumstances of the case.

34. The Petitioner argues that Clause 7 concerns interim running bills and could not govern a claim for interest on the final bill. However, this contention does not displace the specific factual finding

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in the impugned Award that the bill was prepared by the Respondent because the Petitioner had not submitted it. The fact that the parties subsequently signed the bill jointly may evidence their acceptance of the recorded measurements or the amount stated therein. It does not, however, establish that the bill had initially been submitted by the Petitioner in the manner contemplated under Clause 9. Nor has the Petitioner identified any material to demonstrate that the finding as to the preparation of the bill by the Respondent was perverse or otherwise unreasonable.

35. In these circumstances, the Petitioner has failed to demonstrate that why Clause 9, which contemplates submission of the final bill by the contractor, should govern the present case. Reliance on Clause 6 or the CPWD Manual does not advance the Petitioner's case in the face of the specific finding recorded by the learned Arbitrator that: *"In this case, 14th & final running bill was admittedly not submitted by the contractor on completion of the work. It was got prepared by the Engineer of the respondent under the contract."*

36. It is true that the learned Sole Arbitrator did not separately discuss Clause 9. In this regard, the following observations of the Division Bench of this Court in ***National Highways Authority of India v. GVK Jaipur Expressway Pvt. Ltd.***[7], are relevant:

> *"26. In the opinion of this Court, the non-consideration of Clause 18.4 of the Concession Agreement cannot be said to be an error made by the arbitral tribunal which is opposed to the fundamental policy of Indian law, nor can the same be said to be*

[7] **2023 SCC OnLine Del 3790**

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patently illegal. The concession agreement is neither a statute, nor is it a law which protects the national interests of this nation and a mere failure of the arbitral tribunal to consider an argument on the same would not render the arbitral award in contravention of the fundamental policy of Indian law.

27. Similarly, the non-consideration of Clause 18.4 cannot be said to be an error that goes into the root of the award and thus cannot amount to a patent illegality. The reasoning given by the arbitral award, which is based upon an interpretation of Clause 18.1 is a plausible view, as taken by the majority of the Arbitral Tribunal. A perusal of the award shows that the Tribunal has gone through the clauses and has given interpretation on the scope of the agreement entered into between the parties and after examining various clauses of the contract came to the conclusion that there is an obligation of the concessionaire to operate and maintain the Project Highway and more particularly ensure smooth and uninterrupted flow of traffic during normal operating conditions. The Tribunal, therefore, held that whatever is required to be done to ensure uninterrupted flow of traffic during normal operating conditions was the obligation of the Respondent and the construction of the toll plazas cannot be considered as extra additional work requiring change of scope. The re-interpretation of Clause 18 of the Concession Agreement by the ld. Single Judge would amount to a re-appreciation of evidence which is impermissible under Section 34 of the Arbitration Act. The Ld. Single Judge had correctly in the Impugned Judgment observed that its disagreement with view of the arbitral tribunal pertaining to the interpretation of Clause 18.1 is beyond the scope of its jurisdiction under Section 34 of the Arbitration Act."

37. It emerges from the aforesaid decision that the non-consideration of a contractual provision does not, by itself, constitute patent illegality unless such omission goes to the root of the Award. In the present case, the learned Arbitrator applied Clause 7 upon finding that the final running bill had been prepared by the Respondent. Clause 9, on the other hand, provides for reckoning the period from the receipt of the final bill submitted by the contractor, a condition which was not fulfilled in the present case. Further, the Petitioner has not identified any express part in Clause 9 which grants an entitlement to interest in the circumstances found by the learned Arbitrator or to

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apply six months period when the bill at the first instance is not submitted by the Contractor.

38. Thus, the ultimate finding on Claim No. 1 cannot be said to be directly contrary to Clause 9 or to rest on an interpretation that no reasonable decision-maker could adopt. In view of the finding that the final running bill had been prepared by the Engineer-in-Charge upon the Petitioner's failure to submit it, the omission to separately discuss Clause 9 does not materially affect the basis of the decision. The omission, therefore, cannot be said to constitute an error going to the root of the impugned Award or render the finding perverse or patently illegal so as to warrant interference under Section 34 of the Act.

39. The reliance placed by the Petitioner on the note-sheets also does not alter this position. Even if the note-sheets indicate that payment was delayed for budgetary or administrative reasons after the bill had been cleared, they may explain the reason for non-release of payment but do not, by themselves, resolve the anterior contractual question of whether the Petitioner was entitled to interest where the bill had been prepared by the Engineer-in-Charge following its failure to submit the bill. Even if the delay in release of payment was attributable to the Respondent, that circumstance cannot, by itself, create an entitlement to interest contrary to the express bar on interest given in Clause 7.

40. In view of the above, this Court finds that the Petitioner has not been able to make out any ground for interference with the rejection of

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Claim No. 1 under Section 34 of the Act.

41. The challenge to the rejection of Claim Nos. 4, 5 and 6 is principally based on the alleged non-consideration of nine letters which, according to the Petitioner, recorded hindrances encountered during execution. The Petitioner also contended that, under Clause 5.4 of the Agreement, the Engineer-in-Charge could grant an extension even without an application by the contractor and that the absence of applications under Clauses 5.2 and 5.3 ought not to have been held against it, particularly when the extension was granted without levy of compensation.

42. In view of this Court, none of the objections raised by the Petitioner is sufficient to dislodge the findings in the impugned Award. A reading of the Award shows that the learned Arbitrator did not reject the claims merely on account of the Petitioner's failure to follow the procedure prescribed under Clauses 5.2 and 5.3. The principal finding in the impugned Award for rejection of Claim No. 4,5 and 6 was that the Petitioner had failed to establish that the delay for which compensation was sought was attributable to the Respondent. Without proof of that causal connection, the learned Arbitrator found no sufficient basis to hold the Respondent liable for the amounts claimed.

43. This finding is borne out by the manner in which the learned Arbitrator dealt with the evidence. The learned Arbitrator noted that the Petitioner referred to the alleged hindrances for the first time in his

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affidavit by way of evidence (examination-in-chief). Even then, the affidavit did not identify the dates or period during which the alleged hindrances delayed the work. The finding was not that no hindrances had occurred, rather, it was that the Petitioner had failed to "*prove that delay was caused on account of the hindrances attributable to Respondent*". The distinction between the occurrence of a hindrance and establishing its attribution to the Respondent and its impact on the completion of the work is central to the claims for prolongation costs. The Petitioner was required to establish not merely the occurrence of the hindrances, but also that they were attributable to the Respondent and had caused the delay for the period of which compensation was claimed. This is precisely what the Petitioner failed to do.

44. Nor does the reliance placed on Clause 5.4 advance the Petitioner's case. The fact that the Engineer-in-Charge was empowered to grant an extension even in the absence of an application by the contractor does not, by itself, determine who caused the delay. An extension may be granted to facilitate completion of the work without necessarily determining liability for the delay or the contractor's entitlement to compensation. This Court, in ***DDA v. Swastic Construction Co.***[8], has also taken the view that the grant of extension without levy of compensation may be a relevant circumstance, but cannot, by itself, be treated as an admission of responsibility for the delay.

45. A further circumstance considered by the learned Arbitrator was

[8] **2026 SCC OnLine Del 6892**

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the absence of contemporaneous notice of the Petitioner's intention to claim compensation for delay. The learned Arbitrator relied on ***General Manager, Northern Railway v. Sarvesh Chopra***[9], in which the Supreme Court considered Section 55 of the Indian Contract Act, 1872, and recognised the significance of notice of an intention to claim compensation where delayed performance is accepted.

46. Applying that principle, the learned Arbitrator found that the Petitioner had not given timely notice of its intention to claim compensation and had attributed responsibility for the delay to the Respondent only at a later stage, by way of its letter dated 09.08.2010. The absence of contemporaneous notice was not considered in isolation. It was examined along with the failure to identify the periods of hindrance and to establish that the Respondent was responsible for the delay in question. In that context, the learned Arbitrator treated the absence of timely notice as a relevant circumstance in rejecting Claim Nos. 4 and 5.

47. In the view of this Court, the approach adopted by the learned Arbitrator cannot be said to be contrary to the legal principles governing acceptance of delayed performance. The Petitioner has not demonstrated that the learned Arbitrator applied an incorrect legal principle or that the conclusion reached was one that no reasonable decision-maker could reach on the material before him. The findings regarding the absence of a demonstrated causal link, the failure to establish the periods during which the alleged hindrances affected the

[9] **(2002) 4 SCC 45**

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work, and the absence of contemporaneous notice, when considered together, provide a rational basis for rejecting Claim Nos. 4 and 5. The Court cannot reassess the relative weight of those circumstances as if hearing an appeal on facts.

48. The Petitioner seeks to overcome these findings by contending that the learned Arbitrator failed to consider nine letters concerning the hindrances encountered during execution of the work. Although the impugned Award does not discuss each letter separately, the mere absence of an item-by-item discussion does not, without more, warrant interference. As recognised in ***Supreme Advertising Private Limited v. Genus Power Infrastructures Limited***[10], the assessment of evidence and the weight to be attached to it ordinarily fall within the domain of the arbitral tribunal. The issue, therefore, is whether the documents contained material evidence of such significance that their omission undermines the reasoning or conclusion of the Award, and not merely whether each document finds separate mention in the Award.

49. The material question remains whether the delay in completion of the work was attributable to the Respondent. In this regard, the learned Arbitrator found that the extension applications dated 03.10.2006 and 24.11.2006 did not attribute the delay to the Respondent, whereas, the specific allegation that the Respondent was responsible for the delay was raised much later, in the letter dated 09.08.2010. This chronology was relevant to the learned Arbitrator's

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conclusion that the Petitioner failed to establish the Respondent's responsibility for the delay during execution of the work.

50. As regards the nine letters allegedly not considered by the learned Arbitrator, it is material to note that the evidence had concluded on 24.07.2013, whereas the Petitioner moved an application on 24.11.2014 seeking to bring 50 additional documents on record. *Vide* order dated 19.01.2015, the Petitioner was directed to file the relevant documents along with the original acknowledgements of receipt and/or postal receipts, supported by an affidavit. The Petitioner, however, failed to furnish the requisite receipts and therefore, its application was dismissed for want of proof that the said documents had been delivered to the Respondent's office.

51. Although the learned Arbitrator subsequently took the nine letters produced by the Respondent's representative on record, they remained subject to the Respondent's objections as to admissibility and evidentiary value. Therefore, their placement on record did not, by itself, establish that their contents had to be accepted as proof of the alleged hindrances.

52. Nevertheless, since the Petitioner relies on these letters as vital evidence, this Court has examined their contents to determine whether they undermine the findings in the impugned Award. Only four out of the nine letters relate to the period after the stipulated date of completion. Read cumulatively, they refer to certain hindrances, but do not establish conclusively that those hindrances were exclusively

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attributable to the Respondent or the period for which they delayed completion. It is pertinent to reiterate that the finding of the learned Arbitrator was not that no hindrances had occurred, but that the Petitioner had failed to establish that those hindrances were attributable to the Respondent. The letters do not, therefore, contradict the finding of the learned Arbitrator so as to render their non-consideration an omission to consider vital evidence warranting interference under Section 34 of the Act and reliance on ***PSA Sical Terminals (P) Ltd. (supra)*** is of no assistance.

53. On the contrary, these letters lend support to the finding of the learned Arbitrator that the Petitioner did not raise a contemporaneous claim for additional compensation on account of delay during execution of the work. A communication recording a site issue is not necessarily equivalent to a notice informing the employer that the contractor attributes the resulting delay to it and intends to claim compensation on that account.

54. In these circumstances, the absence of an individual discussion of each letter cannot be characterised as an error going to the root of the Award, particularly when their admissibility and evidentiary value remained disputed. The objection, therefore, does not disclose perversity or any other ground warranting interference under Section 34 of the Act.

55. The reliance placed by the Petitioner on the allowance of Claim No. 2 under Clause 10C is misplaced, as that claim was allowed on

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the basis of the Respondent's admission under the specific contractual provision. The allowance of that claim, therefore, does not establish that the Respondent was responsible for the hindrances or the resulting delay, nor does it dispense with the requirements of Clauses 5.2 and 5.3 for establishing the Petitioner's entitlement to compensation on that account.

56. In the absence of proof that the relevant delay was attributable to the Respondent, and in view of the findings concerning timely notice and the evidentiary value of the correspondence, no ground has been made out to find fault with the rejection of Claim Nos.4 and 5.

57. As to Claim No. 6, the learned Arbitrator relied upon the earlier finding that the delay was not attributable to the Respondent and held that the Petitioner had not established any breach of contract by the Respondent that caused or otherwise justified the claimed increase in material costs. The learned Arbitrator also took note of paragraph 2 of the letter of award dated 30.10.2004, which expressly provided that no extra payment would be payable to the contractor. The Petitioner has not demonstrated that this finding disregarded any applicable contractual provision entitling it to a price adjustment or was otherwise unsupported by the record. In substance, the challenge seeks a fresh assessment of the correspondence and a substitution of the factual inference drawn by the learned Arbitrator with that of this Court. Such an exercise is impermissible under Section 34 in the absence of a recognised ground for setting aside the Award. No such ground has been made out in respect of Claim No. 6.

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58. As far as Claim No. 7 is concerned, the Petitioner contended that interest ought to have been awarded from the date of completion of the project, i.e., 30.11.2006. However, it is well-settled that the award of pre-reference interest is not a matter of course and must be founded either on a contractual provision or other substantive legal basis[11]. The Petitioner has not identified a contractual provision or other substantive legal basis entitling it to interest from that date. Nor has it demonstrated that the date from which interest was awarded by the learned Arbitrator is contrary to the Contract or otherwise legally unsustainable. Therefore, no error can be found in the decision of the learned Arbitrator on this aspect warranting interference.

59. In ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO)***[12], the Supreme Court observed that the test of patent illegality must be applied with caution. Where the arbitrator has relied upon evidence that reasonably supports the conclusion reached, the Court cannot set aside the Award merely because another view of that evidence is possible. Interference is warranted only where the conclusion is such that it cannot reasonably be sustained on the evidence or on any permissible interpretation of the material on record. The relevant observations are as follows:

> *"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*

[11] North Eastern Electric Power Corporation Limited (NEEPCO) v Astra Construction Private Limited 2026 INSC 1036; Pam Developments Private Limited v. State of West Bengal and Another (2024) 10 SCC 715
[12] 2025 INSC 1457

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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."

60. Applying the aforesaid principles to the objections raised in this petition, this Court finds that the Petitioner has not established any ground under Section 34 for interference with the findings on Claim Nos. 1, 4, 5, 6 and 7. The findings are supported by the evidence and reflect a plausible view of the contractual provisions and evidence. This Court has also examined the principal contractual arguments, the note-sheets and the nine letters relied upon by the Petitioner. After such examination, this Court does not find that the learned Arbitrator has disregarded any vital evidence or contractual provision, arrived at a finding unsupported by evidence or adopted an interpretation of the Contract that is not reasonably possible. The objections, therefore, do not meet the applicable threshold for setting aside the impugned Award.

61. Accordingly, the present petition is dismissed.

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62. There shall be no order as to costs.

OM PRAKASH SHUKLA, J

NOVEMBER 03, 2026/at/gunn

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