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

\# **CNR No. DLHC010593122023**

\+ O.M.P. (COMM) 40/2024 & I.A. 1326/2024

AIRPORTS AUTHORITY OF INDIA .....Petitioner

Through: Mr. Digvijay Rai, SC with Mr. Archit Mishra, Mr. Gagan Kochar, Senior Manager (Law)-AAI.

versus

VIDYA INFRABUILT PVT LTD .....Respondent

Through: Mr. Pulkit Gupta, Mr. Pranshu Paul, Mr. Karan Jain, Advs.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% 27.10.2026

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996[1], challenging the arbitral award dated 20.09.2023[2] passed by the learned Sole Arbitrator for disputes between the parties.

2. The Petitioner is the Airports Authority of India[3], i.e., a statutory body constituted by virtue of the Airports Authority of India Act of 1994; whereas the Respondent is engaged in the business of infrastructure development.

3. By way of the impugned award, the learned Arbitrator awarded Rs. 1.41 crores (approx.) in favour of the Respondent by allowing 11 out of 18 claims preferred by the Respondent.

[1] "Act" hereinafter
[2] "impugned award" alternatively
[3] "AAI" hereinafter

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4. The learned Arbitrator primarily held that the work was delayed on account of AAI since it failed to provide the work fronts in a continuous and obstruction-free manner to the Respondent in accordance with the contract and that some segments were even provided after the stipulated date of completion. The learned Arbitrator placed reliance on Clause 15.1 of the Special Conditions of Contract ("SCC") which explicitly stipulated that the worksite belonged to AAI.

5. The brief factual backdrop of the matter is captured in the following paragraphs.

6. AAI floated e-tenders dated 23.03.2016 for *"Extension of Runway and Strengthening/ Resurfacing of existing Runway along with Constitution of Isolation Bay, Pavement against Blast Erosion & RESA and other allied works at Rajahmundry Airport. SH: Construction of Operational Wall and Property Boundary Wall"*[4].

7. The Respondent's bid came to be accepted by letter of award dated 07.08.2016 with the contract price of Rs. 19,33,61,080. The completion date was envisaged to be 06.11.2017 (as recorded by the learned Arbitrator). A formal contract in this regard came to be executed on 12.08.2016, whereby 06.11.2017 was the stipulated date of completion.

8. It is borne from the record that on 30.08.2016, the Respondent sent a Time Chart/Bar Chart to AAI setting out the intended sequence

[4] "work" or "project" hereinafter

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of the work, which was purportedly in a continuous and streamline manner and not in isolated patches. In this regard, the Respondent also wrote to AAI on 14.09.2016 and 28.09.2016 seeking reference points for initiating the work. However, as maintained by the Respondent, it was only after a meeting held on 03.10.2016, that AAI informed the Respondent to begin the process of demarcating the boundary wall for the project. In this regard, a joint survey was conducted on 06.10.2016.

9. It further appears from the record that the work was extended by AAI. It issued a completion certificate dated 10.04.2019. The gross value of the completed work, including escalation and GST was recorded as Rs.24,23,29,016/-. However, AAI subsequently foreclosed the contract and declared the work as complete as on 28.09.2018.

10. Resultingly, the Respondent sought to invoke arbitration aggrieved by the failure of AAI to provide complete and unhindered work site, resulting in loss to the Respondent. The Respondent was also aggrieved by *inter alia* the purported change and reduction in the scope of work by AAI along with foreclosure of the contract and delay in payment of the final bill.

11. AAI, on the other hand, maintained before the learned Arbitrator that the non-availability of land was because of litigation and certain other third-party obstructions which were beyond its control and hence, it extended the time for completion without levy of any compensation by letter dated 04.04.2019. In this regard, AAI placed reliance on a letter dated 20.03.2017 by the District Magistrate, East Godavari District to the Superintending Engineer, Irrigation,

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Dowleswaram stating that the Pushkara canal and its distributaries posed as a major hindrance. It was further made out that AAI had paid Rs. 24,23,29,016/- including escalation and GST to the Respondent, which was undoubtedly more than the contract price and that this final amount was accepted by the Respondent on 23.05.2019 without any protest. Pertinently, AAI maintained that as per Clause 18 and Schedule F of the contract, it was the contractual responsibility of the Respondent to arrange and deploy the requisite machinery. Reliance was also placed on Clause 12 of the General Conditions of Contract ("GCC"), to contend that the change in scope of work was contractually permissible. It also sought to justify the foreclosure with reference to Clause 13 of GCC. AAI contended that the Respondent invoked arbitration in 2021, i.e., after two years, only as an afterthought. Additionally, AAI purported that recovery of mobilization advance was rescheduled at the request of the Respondent itself.

12. Accordingly, the learned Arbitrator came to allow 11 of the 18 claims raised by the Respondent. It framed two issues, as follows:

(i) "*Whether the delay in the execution of the contract works was occasioned due to non-availability of contiguous stretches of land as per the time charge submitted by the claimant to the respondent on 30.08.2016?*" ***Decided in favour of the Respondent herein.***

(ii) *"Whether the claimant executed the works and maintained the office and the staff till March 2019?"* ***Decided in favour of AAI.***

13. The learned Arbitrator held that AAI made available the worksite in fragments, some of which were also separated by

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considerable distance. Further, it was found that some portions of the site were handed over to the Respondent after the stipulated completion date. It was observed that AAI sought to attribute the delay to the State Government of Andhra Pradesh, however, the learned Arbitrator placed reliance upon Clause 15.1 of SCC which stipulated that the worksite indeed belonged to AAI. Accordingly, it was found that such a representation was binding upon AAI.

14. The learned Arbitrator rejected the claim of the Respondent that it remained deployed at the worksite until March 2019 on the ground that there was no evidence establishing that any further construction was executed after the foreclosure. It observed that the last recorded diesel purchase was dated 16.09.2018 and that while other documentary evidence demonstrated that machinery charges extended to different dates such as December 2018, however, the same was not sufficient to establish that construction continue till March 2019. It was also observed that the Director's residence was paid till November 2018. Notably, the Employees Provident Fund contributions and certain salary records continued into March 2019. In this regard, the learned Arbitrator found that permanent employees could in fact remain on a contractor's roles, even after the site operations cease.

15. In this view of the matter, the learned Arbitrator went on to individually examine the monetary claims and rendered the following award:

Monetary Claims Raised by the Claimant

Claim	*Nature of Claim*	*Amount (₹)*	*Awarded Amount*
A	*Salaries and wages during extended contract period*	*50,01,465*	*INR 42,80,690.00*

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B	*Rent paid during extended period*	*1,96,417*	*INR 1,96,417.00*
C	*Cost of extending two bank guarantees*	*7,86,260*	*INR 3,33,913.00*
D	*Interest paid on margin money deposited with banks*	*8,15,281*	*Nil*
E	*Insurance premium for extended period*	*3,79,654*	*INR 13,335.00*
F	*Interest paid on mobilisation advance*	*18,88,134*	*Nil*
G	*TDS amount allegedly not credited*	*64,636*	*Nil*
H	*Increase in material prices during extended period*	*37,69,853*	*INR 34,67,401.00*
I	*Loss of bulk purchase discount*	*17,05,175*	*Nil*
J	*Additional travelling expenses*	*5,49,703*	*Nil*
K	*Increase in diesel prices*	*9,17,524*	*INR 9,17,524.00*
L	*Machinery deployed during extended period*	*51,70,000*	*Nil*
M	*Hiring of additional machinery*	*13,94,407*	*INR 5,88,074.00*
N	*Hiring of additional machinery during 2017-2019*	*25,01,902*	*INR 24,04,969.00*
O	*Hiring charges for trolleys and tankers due to scattered work front*	*20,77,983*	*INR 20,77,983.00*
P	*Loss of opportunity/profit calculated at 10% of receipts*	*2,01,19,671*	*Nil*
Q	*Interest on claims up to filing of Statement of Claim*	*3,65,11,218*	*"simple interest @ 8% per annum from 01.12.2018 till date of payment should be paid by the Respondent to the Claimant"*
R	*Pendente lite and post-award interest at 18% per annum with monthly rests*	*Not quantified*	

16. Succinctly put, Claim A regarding salaries and wages was allowed up to 25.10.2018, with the reasoning that since Issue No. (ii) was decided against the Respondent, the salaries could not be reimbursed after October 2018. However, it considered that a few days after the date of foreclosure i.e., 25.10.2018, was reasonable to wind up the affairs. The salaries claimed for November 2018 into March 2019 were rejected. Claim B was allowed since the record supported extension of the Director's resident rent till November

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2018. It was found that approximately one month from the foreclosure was a reasonable period for vacating the premises.

17. Claim C was allowed to a certain extent observing that AAI's delay, necessitated extension of the bank guarantees beyond the original contractual period, while also excluding certain charges pertaining to the defect liability period of the bank guarantees. Claim D was rejected since the financial loss was not established. Claim E was partly allowed, to the extent of expenditure pertaining to the workmen's compensation insurance, especially since both the compensation policies were taken before the contract was foreclosed.

18. Claim F for interest on mobilization advance was rejected since it was observed that the Respondent only sought such recovery from the fourth and fifth RA bills, and it was reasoned that the Respondent could have sought the recovery from the earlier bills; however, the failure to do so was considered to be indicative of an understanding between the parties that the recovery could be deferred. Claim G regarding TDS was also rejected.

19. Claim H concerning escalation during the extended contract period was substantially allowed. In this regard, AAI had relied on Clause 10CA which permitted lower of the two indices to be adopted. With respect to the time. Up to November 2017, the learned Arbitrator held that AAI was entitled to correct its calculations by applying lower indices as per Clause 10CA. However, for November 2017 into October 2018, it was held that AAI could not freeze the indices at November 2017 for the work undertaken during the extended period.

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The learned Arbitrator, in this regard, examined monthly indices for cement and steel to arrive at its own computation by relying on the quantities of cement and steel stipulated in the Respondent's tabulation, since these quantities were not disputed by AAI.

20. Claim I was rejected on account of lack of sufficient evidence. Claim J was rejected due to lack of corroborative material. Claim K for increase in diesel prices came to be allowed in its entirety in view of breach of the contract. Claim L for machinery deployed at the site was rejected due to lack of evidence and since the last recorded diesel purchase was on 16.09.2018. Claim M was partly allowed for hiring charges of additional machinery based on the invoices placed on record by the Respondent. The learned Arbitrator excluded the expenses attributable to the original contractual period. Claim N was also substantially allowed based on the invoices brought on record, the invoices pertaining to expenditure preceding the completion date were excluded. It was observed that certain expenditure after the foreclosure could still be recoverable since the contractor may have already undertaken binding commitments with third parties.

21. Claim O was allowed in full. Claim P was rejected for warrant of corroboration and proof. Under Claim Q, for pre-award interest, the learned Arbitrator directed payment of simple interest at 8% per annum from 01.12.2018 till the date of payment.

22. Aggrieved thereby, AAI preferred the instant objection petition.

Submissions

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23. At the outset, Mr. Digvijay Rai, learned Standing Counsel appearing for the AAI, submitted that he is not pressing its challenge to Claims A and E. It was submitted that Mr. Rai largely seeks to challenge Claims H, M, and O; whereas the learned Counsel appearing for the Respondent has candidly conceded that Claim C may be set aside.

24. Mr. Rai submitted that in 27.09.2018, the Respondent itself contacted AAI informing that 98% work was completed and requesting if AAI could give the remaining 2% land. Accordingly, taking cognizance of this letter, extension was granted without any damages. However, on 25.10.2018, the work was foreclosed from 28.09.2018 because the said 2% land was not given to the Respondent. It was further highlighted that when the Respondent filed its claims after 2 years, it filed for March 2019.

25. Learned Standing Counsel submitted that the final bill was settled in April 2019, for which AAI paid Rs. 24 crores (approx.) with escalation, which undoubtedly exceeded the contract price of Rs. 19 crores (approx.). Mr. Rai stressed that the Respondent did not protest this at the time, however, in July 2021, the Respondent invoked the dispute resolution clause without specifying its claims or grievance etc. It was further submitted that the learned Arbitrator only did not address the issue that the final bill was already paid with escalation charges.

26. Mr. Rai highlighted that the land of the Rajahmundry Airport in Andhra Pradesh was to be handed over by the Government of Andhra

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Pradesh as per a Memorandum of Understanding[5] and that it was on the strength of the said MOU that AAI floated its tender.

27. *Qua* Claim B, it was submitted that Respondent maintained before learned Arbitrator there was understanding between AAI and itself due to which AAI undertook to reimburse charges of the Respondent's Director. This understanding, it was submitted, was devoid of any evidence and hence, baseless.

28. Apropos Claim H for escalation, it was submitted that there were two escalation bills, one for Rs. 4 lakhs and the other for Rs. 29 lakhs. It was submitted that AAI paid escalation to Respondent, however, once it realised that it overpaid the Respondent, it conducted an audit and recovered Rs. 36 lakhs. Learned Standing Counsel submitted that the learned Arbitrator, in this regard, adopted a methodology alien to the contract, which renders the award liable to be set aside on account of patent illegality.

29. Regarding Claim K, Mr. Rai disputed the quantity of diesel utilised by the Respondent and argued that this claim was wrongly allowed despite deletion of Clause 10CC from the contract. Reliance was also placed on the Respondent's letter dated 27.12.2018, whereby it undertook that it would not claim escalation under the said Clause for the extended period till 20.09.2018.

30. Mr. Rai also challenged Claims M and N on the ground that the contract required the contractor to provide equipment and machinery and the invoices did not, by themselves, prove that the expenditure

[5] "MOU" hereinafter

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was additional, necessary or caused by the alleged delay. He submitted that the contractor did not show that the equipment could not be used elsewhere.

31. With respect to Claim O, Mr. Rai placed reliance on the learned Arbitrator's own observation that there was no pleading to the effect as to how many tankers, tractors and trolleys would have been required if the work fronts are made available continuously. It was argued that despite identifying such deficiency in the pleadings of the Respondent, the learned Arbitrator allowed the full amount on a different basis, particularly that the expenditure was incurred during the extended period. Mr. Rai also contended that the interest awarded could not survive to the extent that the underlying claims are set aside. Therefore, according to Mr. Rai, the direction for 8% interest p.a. must be confined to the claims being held legally tenable.

32. *Per contra*, learned Counsel for the Respondent supported the impugned award, save for Claim C.

33. The learned Counsel submitted Claim B pertaining to rent was an ordinary cost incurred within the stipulated contract period which was supported by invoices, which the learned Arbitrator found to be cogent. According to the learned Counsel, interference with the said claim would amount to re-appreciation of evidence, impermissible under Section 34.

34. With respect to Claim H, it was submitted that Clause 10CA provides for variation in the contract prices which is entirely different from damages. The quantities and the indices were entirely taken from

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the record itself and not extraneous at all. It was submitted that the indices were taken from notifications of the Government and PWD and that the learned Arbitrator found that the quantities were not disputed by AAI. This, according to the learned Counsel, was purely a finding of fact by the learned Arbitrator, which cannot be interfered with.

35. Learned Counsel submitted that Claim K warranted no interference. It was submitted that this Claim arose from breach of contract, therefore, the deletion of Clause 10CC did not adversely impact the claim. Reliance was placed on ***AAI v. URC Construction***[6], to submit that damages could be duly sought and it was the prerogative of the Respondent that it chose to seek damages as per Clause 10CA. The same would not mean that Clause 10CA was applicable in the form of a contractual entitlement for price variation.

36. It was further argued that AAI's contention that they did not object to the final bill of 2019 was belied in view of the fact that AAI itself conducted an audit and raised a new bill in 19.11.2020. Reliance was placed on ***Bharat Coking Coal Ltd. v. Annapurna Construction***[7].

37. Related to Claims M, N and O, the learned Counsel submitted that the claims were supported by invoices, bank records and the documentary material. The learned Arbitrator allowed the claims only for the periods and amounts that were proven and rejected other parts of the claims. Therefore, these claims warrant no interference under

[6] **OMP (COMM.) 348/2019**, decided on 09.02.2026; paras 117 to 119
[7] **(2003) 8 SCC 154**

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Section 34 of the Act. It was further averred that the findings were entirely factual and the same came to allowed due to prolongation of the contract, simply because, had the contract not been extended, these costs would not have been incurred. Reliance was placed on Section 55 of the Indian Contract Act, 1872[8].

38. In rebuttal, Mr. Rai submitted that the arbitral award shall speak for itself and the Respondent cannot give it an entirely different construction. It was submitted that learned Arbitrator did not refer to Section 73 of the Indian Contract Act of 1872 at all and only refers to Section 55, which does not deal with damages. Apropos Claim H, it was submitted that if the Respondent was only claiming damages then there was no occasion to rely on the escalation clause in its Statement of Claim and seek Rs. 37 lakhs in furtherance thereof. It was also submitted with regard to Claim H that the learned Arbitrator rendered contradictory findings. By placing reliance on para 9(xviii) of the impugned award, it was averred that the learned Arbitrator could not filled in the lacunae in the pleadings of the Respondent. Reliance was placed on a decision of this Court in ***NHAI v. Larsen and Tourbo Ltd.***[9].

39. It was also averred that the reliance placed on ***AAI (supra)*** was of no avail since an appeal was pending against the said decision.

Analysis and Reasoning

40. I have heard the learned Counsel for the parties and perused

[8] "ICA" hereinafter
[9] **OMP (COMM.) 363/2022**, decided on 17.10.2025

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material on record.

41. Before proceeding further, it is pertinent to note at this stage that on account of the waiver of Claims A, C and E, the controversy that remains is whether the impugned award under Claims B, H, K, M, N and O and the consequential direction for interest, disclose any ground for interference under Section 34 of the Act.

42. This Court is conscious that these proceedings are not an appeal against the impugned award. This Court will neither re-appreciate evidence nor will it substitute the award merely because another view is plausible. Interference will only be warranted if the impugned award satisfies the grounds prescribed by Section 34 of the Act. Pertinently, the Arbitral Tribunal derives its authority from the arbitration agreement and must decide the dispute in accordance with the contract and the law. However, mere incorrect application of law is not sufficient for this Court to intervene, such infirmity must travel to the root of the dispute.

43. An arbitral award that ignores an express contractual stipulation, rewrites the contractual bargain, or grants compensation in a manner that is impossible to reconcile with the contract may be riddled with patent illegality as stipulated in Section 34 of the Act.

44. In ***OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd.***[10], the Hon'ble Supreme Court articulated the grounds to challenge an arbitral award, as follows:

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

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*"**Patent illegality***

65. Sub-section (2-A) of Section 34 of the 1996 Act, which was inserted by the 2015 Amendment, provides that an arbitral award not arising out of international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is visited by patent illegality appearing on the face of the award. The proviso to sub-section (2-A) states that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

66. In Saw Pipes [ONGC Ltd. v. Saw Pipes Ltd., (2003) 5 SCC 705] , while dealing with the phrase "public policy of India" as used in Section 34, this Court took the view that the concept of public policy connotes some matter which concerns public good and public interest. ***If the award, on the face of it, patently violates statutory provisions, it cannot be said to be in public interest. Thus, an award could also be set aside if it is patently illegal. It was, however, clarified that illegality must go to the root of the matter and if the illegality is of trivial nature****, it cannot be held that award is against public policy.*

67. In Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , this Court held that an award would be ***patently illegal, if it is contrary to****:*

> ***(a) substantive provisions of law of India;***
> ***(b) provisions of the 1996 Act; and***
> ***(c) terms of the contract*** *[See also three-Judge Bench decision of this Court in* ***State of Chhattisgarh v. SAL Udyog (P) Ltd****., (2022) 2 SCC 275 : (2022) 2 SCC (Civ) 776].*

*The Court clarified that if an award is contrary to the substantive provisions of law of India, in effect, it is in contravention of Section 28(1)(a) ["28. Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated in India—(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;***(2)***(3) While deciding and making an award, the Arbitral Tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction."(As substituted by Act 3 of 2016 w.e.f. 23-10-2015)Prior to substitution by Act 3 of 2016, sub-section (3) of Section 28 read as under:"28. (3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."] of the 1996 Act. Similarly, violating terms of the contract, in effect, is in contravention of Section 28(3) of the 1996 Act.*

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> *68. In Ssangyong [Ssangyong Engg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131 : (2020) 2 SCC (Civ) 213] this Court specifically dealt with the 2015 Amendment which inserted sub-section (2-A) in Section 34 of the 1996 Act. It was held that* ***"patent illegality appearing on the face of the award" refers to such illegality as goes to the root of matter, but which does not amount to mere erroneous application of law.*** *It was also clarified that what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to "public policy" or "public interest", cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality [See Ssangyong Engg. case, (2019) 15 SCC 131, para 37 : (2020) 2 SCC (Civ) 213]. Further, it was observed, reappreciation of evidence is not permissible under this category of challenge to an arbitral award [See Ssangyong Engg. case, (2019) 15 SCC 131, para 38 : (2020) 2 SCC (Civ) 213]."*
>
> ***(emphasis supplied)***

45. Therefore, there is no dispute that patent illegality must go to the root of the matter, and that a Tribunal cannot disregard the express provision of the contract or create a new contract altogether. It is also well settled that interference by a Court exercising jurisdiction under Section 34 of the Act must remain within the statutory limits and must not undertake a merits review.

46. Mr. Digvijay Rai, learned Standing Counsel for the Petitioner premises his challenge to the impugned award primarily on the ground that the learned Arbitrator ought to have adjudicated the dispute within the contractual bargain and cannot disregard the explicit provisions of the contract or award compensation materially different from the what was actually pleaded. Mr. Rai argued that the learned Arbitrator cannot, under any circumstance, improve the case of a claimant.

47. On the other hand, learned Counsel for the Respondent largely contended that the learned Arbitrator correctly attributed the delay to

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AAI and consequently, damages must follow. It was argued that the findings of the learned Arbitrator with respect to the monetary claims were entirely findings of fact, which cannot be re-opened under Section 34 of the Act.

48. Pertinently, the learned Arbitrator concluded that the work fronts were made available in bits and pieces, that some portions were handed over after the stipulated completion date, and that the delay was occasioned by non-availability of continuous stretches of land. Accordingly, the learned Arbitrator awarded certain claims in favour of the Respondent and directed AAI to pay simple interest at 8% per annum from 01.12.2018 until payment on the sums held payable. It was reasoned that November 2018 was a reasonable period for the parties to work out claims after culmination of the contract and the parties were directed to bear their own costs of the arbitration.

49. For adjudication of the dispute at hand, it is pertinent to reiterate that a claim for damages must have a rational nexus with the breach found, the loss said to have resulted from such breach, and the amount so awarded. In this regard, Section 73 of ICA permits compensation for loss arising naturally "in the usual course of things from such breach" of a contract or which the parties knew to be likely when they made the contract. It does not, in no ambiguous words, authorise reimbursement of every expense incurred without a finding that the such expense is inextricably linked to the loss caused by the breach. Whilst proof of payment may establish the expenditure, it does not invariably establish that the entire expenditure incurred was a loss resulting from the breach, for which the other party is legally

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responsible.

50. The computation of damages cannot be whimsical, as cautioned by the Hon'ble Supreme Court in ***Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd.***[11]. A Division Bench of this Court in ***Union of India v. Ahluwalia Contracts (India) Ltd.***[12] reiterated that to claim loss of profits or overheads due to prolongation of contract, evidence must be led to establish the loss incurred.

51. These principles must be applied with care. Where the Tribunal has examined the evidence, identified the relevant period, and reached a plausible conclusion i.e., ascertained damages caused by the prolongation, the Court cannot set aside the award merely because it would have weighed the evidence differently. An inquiry may be made into the tenability of the findings of the learned Arbitrator in this regard.

52. Finally, a defective part of an award may be set aside without disturbing the rest if it is distinct and severable. In ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***[13], while cautioning that the power to modify an arbitral award must be exercised judiciously and within the confines of Section 34 of the Act, the Hon'ble Supreme Court also recognised the power to sever an invalid part of an award from a valid and independent part, provided the two are not legally or practically inseparable. This principle is particularly relevant to the present dispute because the challenged claims are separately pleaded and quantified.

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[11] **(2024) 2 SCC 375**
[12] **2025 SCC OnLine Del 4066**

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53. Keeping the aforesaid position of law in mind, I shall proceed with the findings rendered by the learned Arbitrator.

54. At the outset, I deem it fit to first examine the most crucial issue framed by the learned Arbitrator i.e., which party is responsible for the delay in the work.

55. The learned Arbitrator's finding that non-availability of continuous work fronts caused delay is based on the correspondence referred to in Paragraphs 7(ii) and 7(iii) of the arbitral award. The learned Arbitrator found that the Respondent vehemently raised the issue of disconnected stretches being provided by AAI. It was also found that AAI approached the State authorities for assistance in this regard. However, the learned Arbitrator placed reliance on Clause 15.1 of SCC, which made it explicitly clear that the work site did, in fact, belong to AAI.

56. In view thereof, this Court is not persuaded by AAI's contention that the tender was floated in pursuance of an MOU. This is neither persuasive in face of Clause 15.1, nor is it reflected in the impugned award. It is only reasonable to assume that the bidders would have submitted their bid on the strength of the said provision. Consequently, this particular finding of the learned Arbitrator does not warrant interference since it squarely falls within the ambit of the contract between the parties.

57. This Court is also not deciding whether every expense asserted

[13] **(2025) 7 SCC 1**

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by the Respondent was, as a matter of fact, incurred. The adjudication by this Court in the paragraphs to follow is limited to whether the reasons delineated in the arbitral award for allowing claims are legally sustainable under Section 34 of the Act. This distinction is important because a finding that AAI caused the delay in the project does not automatically establish every item of damages claimed by the Respondent. There can be no quarrel with the position that while it may be found that the employer is responsible for delay, it cannot dispense with the need to plead and prove the resulting loss.

58. I shall proceed with the findings rendered by the learned Arbitrator for individual claims.

Claim B – Rent For The Extended Period From November 2017 Till March 2019

59. Claim B amounts to Rs.1,96,417/- and comprises of two components i.e., Rs.44,817/- deducted from running bills as licence fee for land allotted by AAI and Rs.1,51,600/- said to have been paid for accommodation used by the Director supervising the site. It was noted that the last RA bill was dated 07.08.2018, however, the Respondent claimed that it continued to work at the site till March 2019. It was also noted that the rent paid for the accommodation rent ran only till November 2018. The learned Arbitrator considered that after a sudden foreclosure, it could not be expected that the Director of the project would leave immediately and hence, one month was considered to be a reasonable period to vacate after the foreclosure. Accordingly, this claim was allowed in its entirety.

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60. In this regard, Clause 6 of SCC, which required the contractor to pay a licence fee for land allotted for purposes connected with the contract, assumes significance. It is reproduced hereinbelow:

> *"6. LICENSE FEE FOR LAND ALLOTTED BY AAI*
>
> *6.1 The contractor shall not be permitted to enter in (other than for inspection purpose) or take possession of the site until instructed to do so by the Engineer-in-Charge in writing. The portion of the site to be occupied by the contractor shall be defined and/or marked on the site plan, failing which these shall be indicated by the Engineer-in-Charge at site and the contractor shall on no account be allowed to extend his operations beyond these areas. In respect of any land allotted to the contractor for purpose of or in connection with the contract, the contractor shall be issued a license subject to the following and such other terms and conditions as may be imposed by the licenser: -*
>
> *(i) That he shall pay a nominal license fee for land allotted by AAI for installation of Plants, Labour Camp (if provided), Cement Godown and site office, license fee from contractor is chargeable for land @ Rs. 325/- per sqm per annum compounding @ 7.5% annually on April' 1st. A security deposit of Rs. 500/Sqm in the form of Cash/DD/BG is also to be obtained from the contractor for this purpose. This security deposit can be released only after ensuring that allotted land has been vacated and Engineer-in-charge to certify this fact in the final bill. Land used for stacking of material to the extent available is, however, provided at free of cost, with the approval of Project/Airport In-charge. Land used for site office for AAI's use will be free of cost. The allotment of land for purpose of or in connection with the contract subject to the following and such other terms and conditions as may be imposed by the licenser:*
>
> *(ii) That such use or occupation shall not confer any right of tenancy of the land: to the contractor.*
>
> *(iii) That the contractors shall be liable to vacate the land on demand by the Engineer-in-Charge.*
>
> *(iv) That the contractor shall have no right to any construction over this land without the written permission of the Engineer-in-Charge. In case, he is allowed to construct any structure he shall have to demolish & clear the same before handling over the completed work unless agreed to the contrary.*
>
> *6.2 The contractor shall provide, if necessary, or if required on*

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the Site, all temporary access thereto and shall alter, adapt and maintain the same as required from time to time and shall take up and clear them away as and when no longer required and as and when ordered by the Engineer-in-Charge and make good all damage done to the Site.

6.3 Land for Labour Camps: No Labour camps will be permitted within the operational area and the contractor shall make the necessary arrangement, at his own cost with prior approval of the Engineer-in-Charge in setting the camps outside operational area in AAI land at prescribed charges or at private land."

61. The abovementioned Clause establishes the contractor's obligation to pay the agreed fee for land actually allotted. It does not, however, expressly state that the contractor must bear, without any possible claim for damages, every additional month of such fee where prolongation is caused by a breach attributable to AAI. Therefore, these are two distinct aspects, i.e., the contractually payable licence fee, and an additional expense in form of damages caused by a breach. Therefore, once the learned Arbitrator found that the delay was attributable to AAI, the additional expenditure incurred by the Respondent on account of such prolongation was capable of being recoverable, subject to proof of the expenditure and its connection with the breach.

62. The learned Arbitrator did not declare Clause 6 of SCC as inapplicable. Instead, the learned Arbitrator considered the deductions reflected in the RA Bills and the documentary material concerning the rent paid for the Director's accommodation. It is also to be noted that the claim was not allowed mechanically for the entire period up to March 2019. Rather, the learned Arbitrator restricted the award to the amounts mentioned in the record and considered one month after

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foreclosure to be a reasonable period for vacating the accommodation. The mere fact that the licence fee was payable under Clause 6 of the SCC does not render the resulting expenditure irrecoverable as damages where the same is found to have been suffered due to AAI's breach.

63. In the absence of anything to the contrary, and given the learned Arbitrator's categorical factual finding on delay and its causation with resulting damages, AAI's objection cannot be sustained as it would require this Court to re-assess the connection between the prolongation of the work and rent incurred. Accordingly, the award under Claim B does not meet the threshold for interference under Section 34.

64. The challenge to Claim B is therefore rejected.

Claim H – Escalation in Price of Construction Material During Extended Period from November 2017 till March 2019

65. As regards Claim H is concerned, it is not simply a question of whether materials became more expensive. This claim amounts to Rs. 37,69,857/-.

66. Apropos this claim, the Respondent argued before the learned Arbitrator that it could not make purchases at the relevant time due to piecemeal handing of the work site and that due to such deferred purchases, the prevailing market rates increased with time. It was also argued that the bid was submitted with regard to the market rates and anticipated inflation within the contractual period of the project and

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that the extension of work beyond 30 months was not reasonably foreseeable. It was argued that AAI did not have the power under the contract to freeze the indices.

67. On the other hand, AAI resisted this claim on the ground that the project was foreclosed on 28.09.2018 and thus, there was no question for compensation beyond this date. AAI further argued that escalation as per Clause 10CA was calculated and paid to the Respondent along with the 20th and 23rd RA bills. AAI also averred that since Clause 10CC was deleted from the contract, no escalation was payable.

68. It is pertinent to note that the contract contains a specific formula for the calculation of price variation for materials listed in Schedule F and Clause 10CA provides that if the price of specified materials increases or decreases after the tender date, the contract amount is to be varied in accordance thereof. More importantly for the present dispute, it states that for work done during a period extended under Clause 5, without action under Clause 2, the variation is limited to the index prevailing the stipulated date of completion or the index prevailing for the period under consideration, whichever is less.

69. Notably, the date of stipulated completion was 06.11.2017. The extension was granted by AAI without levy of compensation, and the award itself treated the later period as an extended period.

70. The contractual formula, therefore, required a comparison for each relevant material and period. It is the index applicable at the

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stipulated completion date (06.11.2017) that had to be compared with the index for the period under consideration, and the lower index had to be used. The Clause does not permit the later index to be used simply because the material was purchased or brought to site after the stipulated date.

71. The impugned award, at paragraph 9(xviii), sets out the monthly indices for cement and steel from November 2017 to October 2018. For cement, the index recorded for November 2017 was 93.49, the subsequent figures in the award's table were higher, including 100.15 for December 2017 and January 2018, 116.47 for February 2018 and 122.14 for October 2018. On the plain wording of Clause 10CA, the November 2017 index would be the cap for those later periods if the contract's extension proviso applies, because the stipulated-completion index is the lower figure. The same comparison had to be made for steel, including any months in which the index for the period under consideration was lower than the stipulated-completion index. Further, the learned Arbitrator correctly recognised that AAI was entitled to rework the earlier escalation calculation by applying the contractual limit up to the stipulated completion date.

72. However, the learned Arbitrator held that for the period after November 2017, AAI could not freeze the indices as of November 2017. This conclusion cannot be reconciled with the explicit wording of Clause 10CA. The said Clause expressly addresses the very situation of work done during a justified extension and prescribed the lower of two indices method. It does not envisage a different method for the period after the original completion date.

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73. By refusing to apply the contractual cap to the extended period, the impugned award did not merely choose one plausible interpretation over another, it departed from an express stipulation governing the claim. Such error undoubtedly goes to the root of the issue.

74. It appears from the record that the sum of Rs. 34,67,401/- was calculated by reference to indices for the later months and the impugned award does not demonstrate which quantities were valued using the lower index required by Clause 10CA.

75. Undoubtedly, this Court can neither perform a fresh month-by-month valuation or substitute its own calculation in Section 34 proceedings, nor can it identify a severable amount that is demonstrably payable as per the formula.

76. Claim H is, therefore, patently illegal for want of application of the governing contractual formula and is set aside in its entirety.

Claim K – Increase in Price of Diesel During the Extended Period till March 2019

77. This claim amounts to Rs. 9,17,524/-. The learned Arbitrator reasoned that the prices were not subject to any escalation during the contract period and that *"A claim beyond the contract period upon proof of default by the other party is a claim not made under the contract but is a claim made under law arising out of the breach of the*

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contract.". Therefore, the learned Arbitrator drew a distinction between contractual escalation and damages due to breach of contract.

78. The impugned award reflects that the relevant documents depicted diesel purchases from November 2017 to September 2018. This claim was allowed in its entirety on the reasoning that a claim for a period beyond the contractual period, if caused by the other party's default, could be made under general law, even if the contract did not contain a price-escalation clause.

79. The difficulty with that reasoning is that the period in respect of which the claim was allowed was the extended contractual period ending on 28.09.2018, and not a period after that final extended date. Significantly, the original stipulated completion date was 06.11.2017, but the contract had been extended thereafter and foreclosed on 28.09.2018. The invoices identified by the learned Arbitrator pertain to November 2017 through September 2018. The description of the claim as one for a period beyond the contractual period does not resolve the effect of the express contractual arrangements governing escalation during the extended period.

80. Undisputedly, Clause 10CC, which provided a general mechanism for escalation in prices of materials not covered by Clause 10CA, was not retained as an operative price-adjustment provision in the contract.

81. Further, it is borne out from the record that by letter dated 27.12.2018, the Respondent gave an undertaking that it would not

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claim escalation under Clause 10CC on account of the final extension of time up to 28.09.2018. This undertaking also finds mention in the Statement of Defence of AAI. The undertaking is material because it relates to the very period for which the diesel escalation claim was made. The award does not discuss the undertaking in its analysis of Claim K or explain why, on the face of it, the same price increase is recoverable under the guise of damages. The said undertaking is reproduced hereinbelow:

> *"दिनांक/Date: 27.12.2018*
>
> *To*
> *Joint General Manager (Engg-C),*
> *Airports Authority of India,*
> *Rajahmundry Airport,*
> *Rajahmundry.*
>
> *Name of Work: Extension of Runway and Strengthening / Resurfacing of Existing Runway along with Construction of Isolation Bay, Pavement against Blast Erosion & RESA and other allied Works at Rajahmundry Airport.*
>
> *SH: Construction of Operational wall and Property Boundary wall at Rajahmundry Airport. Undertaking regarding escalation under 10CC*
>
> *Agmt No:AAI/CHQ/Engg/SR/RJY/2016/W-2, Dt:12.08.2016*
>
> *Dear Sir,*
>
> *May please recall the discussion had with us. We have submitted application for extension of time on 19.12.2018. With request for sanction of Final EOT up to 28.09.2018 without levy of compensation. That is for 455 days beyond stipulated date of completion due to various reasons which are beyond our control. In this regard we would like to submit further our undertaking that we will not claim escalation under clause 10CC of contract agreement due to said Final Extension of contract period to 28.09.2018.*
>
> *Thanking you and assuring our best service always.*
>
> *Yours faithfully,*

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Sd/-
(Girisj Jaggi)
Managing Director,
M/s Vidya Infrabuilt Pvt. Ltd.,
Gurgaon-122018 (Haryana)"

82. It is definitely not the case that a contractor can never recover damages for breach merely because the contract lacks a general escalation clause. There may be a properly pleaded and proved claim for a distinct loss caused by an employer's breach. The problem in the instant matter is narrower. Claim K was a claim for the increased price of diesel during the extended period and the record contains an express undertaking not to claim escalation under Clause 10CC for such extension. The learned Arbitrator converted the same escalation into a claim under general law without identifying a separate loss or explaining why that would not defeat the undertaking and the parties' allocation of the risk of escalation during the extended period.

83. The impugned award also does not explain how the invoices for diesel purchases establish the amount of the incremental loss, as distinct from the cost of diesel that would have been required to execute the work in any event. An invoice proves that a purchase was made. To establish damages for a rise in price, the impugned award must go one step further to identify a contractual provision by which that amount is to be calculated or identify the additional amount i.e., the loss caused due to the price increase, having a link with the breach.

84. The impugned award grants the full amount claimed without analysing the effect of the undertaking, the causation between the

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breach and the resultant loss, etc. The failure to consider a material contractual undertaking, coupled with the absence of a reasoned basis for the amount allowed as damages, renders the impugned award to the extent it allows Claim K as unsustainable in light of Section 34 of the Act.

85. Accordingly, the award of Rs. 9,17,524/- under Claim K is set aside.

Claim M – Expenses for Hiring Extra Machinery From November 2017 to March 2019

86. Claim M amounts to Rs. 13,94,407/-. It was observed that this claim, although pleaded as up till March 2019, only extended till February 2018 as per the record. It was reasoned that the instant claim for extra machinery could not be sustained for the duration of the contract i.e., the period prior to 06.11.2017. Accordingly, the learned Arbitrator did not allow the full amount claimed and excluded hire charges for period before 06.11.2017 and allowed only those charges which, as per the invoices, related to the period after the stipulated completion date. The learned Arbitrator identified the machinery owners, the months of hire and the relevant amounts supported by invoices, arriving at Rs. 5,88,074/-.

87. In this context, AAI submitted that the contract required Respondent to provide machinery and that the contractor did not prove that the machinery could not be used elsewhere. The said objection is not sufficient to fall in the narrow compass of Section 34. It does not establish that the learned Arbitrator ignored the contract or awarded a

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sum for machinery owned by Respondent without cogent proof.

88. The claim was, in fact, allowed in light actual proof i.e. invoices, and the learned Arbitrator restricted the period of the claim by excluding the subsisting period of the contract. Further, the question whether the hired equipment could have been used in another project does not, without more, disprove the liability to pay the third-party hire charges for the prolongation period identified in the invoices i.e., after 06.11.2017.

89. The learned Arbitrator had already found that the work was prolonged because the required work fronts were not made available by the AAI. The acceptance of the invoices as proof of the actual hire charges is a factual assessment by the learned Arbitrator.

90. AAI has not demonstrated that the expenditure allowed was unrelated to the prolongation, that the invoices were unreliable, or that the award travels beyond the contractual bargain to attract any of the grounds under Section 34.

91. The challenge to Claim M is, therefore, rejected.

Claim N – Extra/Unplanned Expenditure for Hiring Extra Machinery and Vehicle Usage From November 2017 to March 2019

92. Claim N amounts to Rs.25,01,902/- and concerns the hire charges for an ‘Ajax’ machine and for certain cars, namely, ‘Bolero’ and ‘Swift’. This claim was partly allowed.

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93. Claim L, pertaining to machinery deployed during November 2017 to March 2019, assumes significance in this regard. This claim was not allowed on account of lack of evidence or any other corroboration.

94. The learned Arbitrator observed that Claim N need not have been raised as distinct from Claim L. It was noted that under Claim L, the Respondent claimed hire charges for an Ajax machine were placed, which was rejected for want of supporting material. However, under Claim N, the Respondent again claimed expenditure incurred for an Ajax machine, but this time, the same was supported by invoices. The reasons for this inconsistency are best known to the Respondent.

95. The Claim N was allowed on account of the fact that it was accompanied by supporting evidence i.e. invoices. The learned Arbitrator reasoned that a contractor may remain liable to third parties after a contract is abruptly foreclosed. Accordingly, the learned Arbitrator found that hire charges for a reasonable period after the foreclosure of the contract could be recoverable due to third-party obligations of the contractor.

96. This Court finds no infirmity in the aforesaid reasoning. The learned Arbitrator had already returned a finding that the delay in execution of the works was attributable to AAI. The expenditure claimed was supported by invoices raised by the respective third parties, and the learned Arbitrator excluded the amounts which were not supported by the requisite material or pertained to the period prior to the stipulated date of completion. The allowance of expenditure for

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a reasonable period beyond foreclosure, in view of the existing third-party commitments, cannot be said to be an unreasonable conclusion.

97. Accordingly, in the considered view of this Court, the finding of the learned Arbitrator is based on the material placed on record and does not suffer from any patent illegality warranting interference under Section 34 of the Act.

98. The challenge to Claim N is accordingly rejected.

Claim O – For Charges for Tollies and Tankers on Account of Work Site Being Made Available in Fragments

99. This Claim amounts to Rs. 20,77,983/-. In this regard, the Respondent had furnished the relevant invoices and payments made for the extended period of contract, i.e., from November 2017 to October 2018.

100. The learned Arbitrator, however, also expressly observed that the pleadings of the Respondent did not say how many tankers, tractors and trolleys would have been deployed if the work fronts had been made available continuously, and that only if such information was provided, could the extra equipment deployed because of the scattered work fronts be identified. While allowing this claim, the learned Arbitrator held as follows:

> *"Para(xxix) …Not for the reasons stated in the pleadings, but for the reasons which are self-evident from the tabulation of the claim, the claim is allowed because it is actually a claim for deployment of tractors/ trollies and tankers during the extended period of contract and has been proved through invoices raised and bank*

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statement of accounts showing payment made. For Claim No. O INR 20,77,983.00 is awarded to the Claimant against the Respondent."

101. The aforesaid reasoning, in the considered view of this Court, cannot be sustained. Despite identifying the deficiency in the pleadings of the Respondent, the learned Arbitrator proceeded to allow the claim in its entirety for deployment of tractors, trolleys and tankers during the extended period. Notably, the claim as pleaded was for the additional expense said to have arisen because the locations were broken and far apart. However, the claim as allowed was the entire hire expenditure incurred during the extended period, without a finding as to what part of that expenditure was over and above the expenditure that would have been incurred to perform the contract in the ordinary way. This is not a minor error of quantification but a fundamental discrepancy in the quantification of the claim, going to the root of the claim.

102. It is trite that proof of expenditure does not, by itself, establish a corresponding entitlement to damages. The invoices and bank statements may establish that the Respondent incurred the expenditure, but they do not establish that the entire expenditure constituted an additional loss attributable to AAI. Tractors, trolleys and tankers would have been needed to execute the works even if the work fronts had been continuous. The material questions were *inter alia* whether the scattered locations caused Respondent to incur additional hire charges and, if so, what was the additional amount incurred.

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103. In the absence of this essential comparison, the entire expenditure incurred during the extended period could not have been treated as damages arising from AAI's breach. As already noted, Section 73 of the ICA does not authorise reimbursement of every expenditure incurred during the period of prolongation, without establishing that the expenditure was occasioned by the breach.

104. Having identified that the causal and quantitative basis of the claim was not established, the learned Arbitrator could not have awarded the entirety of the expenditure by treating the invoices as a general expense of the extended period, without determining the additional loss (if any) attributable to the breach as required by Section 73 of the ICA or without identifying a contractual entitlement to blanket reimbursement of all such costs. The impugned award, therefore, proceeds on a basis unsupported by the pleadings and fails to establish the necessary nexus between the breach and the amount awarded.

105. Therefore, the award of Rs. 20,77,983/- under Claim O suffers from patent illegality and is, accordingly, set aside.

Claim Q – Interest

106. The learned Arbitrator directed simple interest at 8% per annum from 01.12.2018 until payment on the sums held payable. This cannot be construed as a separately quantified award that can be assessed in isolation from the principal claims. It attaches to the amounts allowed under the various claims. Consequently, the interest direction must

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also be set aside to the extent that it operates on the amounts awarded under Claims C, H, K and O, which either conceded or have been set aside in this judgment.

Conclusion

107. While Claims C, H, K and O are set aside in view of the foregoing discussion, Claims A, B, E, M and N remain undisturbed.

108. The direction for interest at 8% per annum from 01.12.2018 until payment shall therefore continue to operate on those surviving claims in accordance with the terms of the arbitral award. No fresh calculation of interest on the surviving claims is undertaken by this Court.

109. For the reasons stated above, the petition is partly allowed in the aforesaid terms.

110. The petition is therefore disposed of. Pending applications are also disposed of. No order as to costs.

OM PRAKASH SHUKLA, J

OCTOBER 27, 2026/*at/gunn*

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