Neutral Citation No. (2025:HHC:36449)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Arb. Appeal No. 01 of 2023
Reserved on 21.08.2025
Pronounced on: 31.10.2025

Himachal Pradesh Road and other Infrastructure Development Corp. Ltd *.....Appellant*

Vs.

M/s C & C Construction Ltd.

....Respondent

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting? Yes

For the Appellant : Mr. J.S. Bhogal, Senior Advocate with Mr.Tarunjeet Singh Bhogal, Ms. Srishti Verma and Ms. Swati Verma, Advocates.

For the respondents: Mr. Navin Kumar, Ms. Surbhi Aggarwal, Mr. Deepal Hoda and Mr. Rohit, Advocates.

G.S. Sandhawalia, Chief Justice.

Challenge in the present Civil Arbitration Appeal is laid to the judgment dated 05.12.2022, passed by the learned Single Judge in Civil Arbitration Case No. 1 of 2020, titled *Himachal Pradesh Road and other Infrastructure Development Corp. Ltd vs M/s C & C Construction Ltd.* whereby the Award

dated 17.08.2019, passed by the three Member Arbitral Tribunal in favour of the respondent herein has been upheld.

2. The appellant herein is a Infrastructure Corporation having its registered office at Nirman Bhawan Shimla and respondent on the other hand, is a construction company registered under The Companies Act, 1956 and having its registered office at Plot No. 79, Sector 32 Gurgaon, in the State of Haryana.

3. Apparently, appellant had awarded the Contract on 29.02.2008 to the respondent, whereby the respondent agreed to execute the works relating to widening and strengthening of Una-Barsar-Jahu-Kalkhar-Nerchowk Road, Section Una to Barsar from Km 45+000 to Km 90+800. The parties in terms of the aforesaid agreement *inter se* entered into a Contract on 6th of May, 2008 which was numbered as Contract No. PW -SRP/ RIDC/ Procurement-ICB-3/2008 for the execution of the aforesaid work. There was delay in execution of the work since the work was to be completed in 33 months from 07.05.2008 by March, 2011 however, the appellant decided to grant extension of time till the completion of the work which was on 31.10.2014. After making the entire payments with regard to the execution of the work to the respondent, the respondent invoked the arbitration agreement with respect to its claim for damages for prolongation of the Contract. The respondent

nominated Shri Ashok Khurana, Director General (Retd.), CPWD, as its Arbitrator nominee. On receipt of such notice of invocation of the arbitration, the appellant also nominated Shri R.K. Sharma, Engineer-in-Chief (Retd.) IPH, Himachal Pradesh as its Arbitrator nominee and they both nominated Hon'ble Mr. Justice Devinder Gupta, former Chief Justice as the Presiding Arbitrator and the constitution of the Tribunal was completed on 24.02.2018.

4. The claimant/respondent herein put forth its all claims before the Tribunal and appellant herein replied to the said claim by taking objections with regard to maintainability of the claim petition, including the claim petition being hopelessly time barred as also the authority of the person who had filed the claim. Thereafter, the issues were framed by learned Tribunal and the parties led their respective evidence. The learned Arbitrator, after considering the pleadings of the parties and documents placed on record, has passed the award in favour of the claimant in the following terms.

> "*(i) An amount of Rs.11.70 Crore under claim No. 1.*
>
> *(ii) An amount of Rs. 13.60 Crore under claim No.2*
>
> *iii) Under Claim No.3, the Claimant is held entitled to Rs.6.07 Crore towards simple interest 12% per annum from 07.04.2016, the date when cause of action arose to the Claimant till 07.04.2018 the date of filing of*

statement of claim on the awarded amount of Rs.25.30 Crore.

(iv) Claimant is also held entitled to Rs.4.12 Crore towards pendente lite interest @ 12% per annum on the awarded amount of Rs.25.30 Crore from 08.04.2018 to 17.08.2019 the date of award.

(v) The Claimant is also held entitled to future interest @ 12% per annum from the date of award till payment on Rs.35.49 Crore, the awarded amount of (Rs.25.30 Crore+Rs.6.07 Crore pre-litigation interest+ Rs.4.12 Crore pendente lite interest). In case payment, including interest is made within three months from the date of Award no future interest will be payable.

(vi) The Claimant is held entitled to proportionate costs of the proceedings from the respondent, as provided under Section 31 (a) of the Act, qualified at Rupees Eighty Lakh only, which includes the fee payable by the Claimant to the Arbitrators, the unpaid amount of fees, which was payable by the Respondents and was ordered to be paid by the Claimant and the expenses of the Arbitrators including their travel and hotel expenses paid by the Claimant."

5. The learned Single Judge did not interfere with the Award of the learned Arbitral Tribunal and upheld the said

Award, while placing reliance on the judgments rendered by the Apex Court in ***MMTC Ltd vs. Vedanta Ltd.*** **(2019) 4 SCC 163** holding that the High Court should not sit in appeal over the Arbitral award and may interfere on merits on the limited grounds provided under Section 34 (2) (b). ***K. Sugumar and another vs. Hindustan Petroleum Corporation Ltd. and another*** **(2020) 12 SCC 539** was referred to holding that interference with the Arbitral Award would be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms, including exercise of legal perversity by the arbitrator. Similarly, ***Dyna Technologies Pvt. Ltd vs. Crompton Greaves Ltd.*** **(2019) 20 SCC 1** and ***Parsa Kente Collieries Ltd vs. Rajasthan Rajya Vidyut Utpada Nigam Ltd.*** **(2019) 7 SCC 236,** were cited whereby it has been held that a possible view by the Arbitrator, on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his Arbitral Award. Lastly reference was made to ***UHL Power Company Ltd. vs. State of Himachal Pradesh*** **(2022) 4 SCC 116,** a three Judge Bench reiterating the legal position under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”) that the High Court cannot re-appreciate the findings returned by the learned Arbitral Tribunal and take a different

view with regard to interpretation of relevant clauses of the agreement governing the parties and that the High Court as such cannot act as a Court of appeal as the powers under Section 34 of the 1996 Act are very narrow.

Reasons of judgment of the learned Single Judge.

6. The learned Single Judge while going through the Award held that the each claim of the Claimant had been treated as separate issue and four more points were formulated for determination. The Contract period for 33 months was awarded on 29.02.2008, which has been formalized on 06.05.2008 and the total Contract value was Rs.103,93,81,256/- for the stretch of 45.8 km of the Road, which had been widened and strengthened of Barsar-Jahu Section, which was part of Una-Ner-Chowk Road. The completion of work had been delayed due to various reasons attributable to the appellant-Corporation and which had led to the Contractor overstaying at the site with all requisite men and machinery resulting incurring substantial losses and resultantly due to prolongation of the Contract, nine extensions of time had been granted due to which the arbitration Clause had been invoked. The stand of the appellant-Corporation was that Monthly Progress Reports (MPRs), the Claimant has repeatedly been mentioning the claim as ‘Nil’ and therefore,

the plea is barred by limitation. Resultantly, it has been held that delay was caused on account of events which are either mentioned in the Contract itself or which are permissible for additional costs under the law.

7. Thus, findings were recorded for an amount of Rs.11.70 crore awarded under claim No.1 was justified which was only additional cost incurred due to prolonged detention of the equipment to the extent period. Similarly, the amount of Rs.13.60 crore under Claim No.2, the additional costs over at the cost during the extended period were on account of time costs incurred with the passage of time and also regarding Head Office overhead costs, which provided necessary support to project management and providing such support incurring expenses under Claim No.2. Resultant, interest element duly compounded monthly basis on the unpaid due to delayed interest was also accordingly upheld. The Tribunal had allowed simple interest @ 12% per annum from 07.04.2016 i.e. the date when the cause of action was accrued to the Claimant upto 07.04.2018 when the claim came to be filed. Similarly, *pendente lite* interest was also allowed @12% per annum from 08.04.2018 to 17.08.2019 till the date of the Award and the future interest was held to be payable on the awarded sum from 17.08.2019 till the date of actual payment of 10% per annum was held to be justified while dilating on the issue of

claim period within limitation. It was held that the claim was within three years as the invocation had been done on 13.09.2017 and the statement of Claimant had been filed on 07.04.2018 being within three years from the date of rejection on 17.05.2016 and 20.05.2017, while relying upon the judgment of Apex Court in ***Inder Singh Rekhi Vs. Delhi Development Authority, AIR 1988 SCC 1107.***

8. The objection of duly authorized person not filing the claim was held that objection was not pressed on account of resolution which had been placed on record on 18.01.2016 in favour of Deepal Hooda, along with Board's earlier Resolution dated 13.01.2014.

9. The additional issue, the claim was not maintainable for want of notice and in view of the terms of Clause 20.1 of GCC, which restricted the enforcement of a party's right and the various extensions for time which had been given led to the Tribunal finding that it violated Section 28 of the The Indian Contract Act, 1872 and was upheld.

10. The objection taken under Additional Issue-(d) that entry against claim has been shown 'Nil' in the Monthly Progress Reports (MPRs) were shown as by the Engineer and not by the Company and it is in format as such given by the Engineer in hand and therefore, keeping in view of law under Section 34 of the Arbitration and Conciliation Act that the

Tribunal had referred to all the documents and given valid reasoning and concededly evidence had been led by them to substantiate their contentions led to the Award being upheld. The learned Single Judge came to the conclusion that the findings were not so perverse so as to shake the judicial conscious and simple findings of fact had been so returned after appreciating respective stand of the parties as also the evidence led by them and the Court would not re-appreciate the evidence and the Tribunal was ultimate master of the quantity and quality of evidence being relied upon by the parties.

Arguments of counsel for the appellant.

11. Mr. J.S. Bhogal, learned Senior Counsel for the appellant has vehemently submitted that there was no material as such to show that party has suffered any loss. Accordingly, it is submitted that the claims were not substantiated before the Arbitrator for prolonged detention of equipment. Reliance was placed upon the judgment in Civil Appeal arising out of SLP No.8791 of 2020 titled ***M/s Unibros Vs. All India Radio*** decided on 29.10.2023 to argue that they has to be contemporaneous evidence that other potential projects were there in the hand of the Contractor and they could not be undertaken and the total number of tendering opportunities that the Contractor had received but declined owing to the

prolongation of the contract. The financial statements, or any clauses in the contract related to delays, extensions of time and other pieces of evidence to put all the credibility of the case and other claims. Accordingly, it was argued that additional overhead costs on the basis of the DVD placed on record which included Rs.3,82,55,974/- for Head Office expenses running without any books of the accounts being produced had been accepted as 'Gospel Truth' by their Arbitral Tribunal and upheld by the learned Single Judge. He relied upon the judgment of the Apex Court in ***State of Rajasthan and Another Vs. Ferro Concrete Construction Private Limited (2009) 12 SCC 1,*** and ***Batliboi Environmental Engineers Limited Vs. Hindustan Petroleum Corporation Limited and Another (2024) 2 SCC 375*** to supplement and buttress his arguments.

12. Similarly, on the issue of limitation, it was argued that claims were not pressed and raised during the pendency of the works and it was a recurring cause of action, for which nine extensions had been granted without any claims of costs, while relying upon the judgment of Apex Court in ***State of Gujarat Vs. Kothari Associates 2016 14 SCC 761.*** He tried to lay special stress on the claim of the Head Office expenses in the claim petition which had been claimed based on a Chartered Accountants certificate who had never been

produced and therefore, it was contended that nobody as such from the Head Office had also been produced to show that any such expenses were incurred and the liability of the normal running of the Head Office could not have been fastened upon the appellant-Corporation by the Contractor.

13. While placing reliance upon ***Metal Box Co. Vs. Their Workmen AIR 1969 SC 612*** and ***Parsa Kente Collieries Limited case (supra),*** while pointing out from para 34 of the Award of the Tribunal, where facts as such have been reproduced and while referring to paragraph 62, it had been held out by the appellant-Corporation and specifically denied every computation of the cost made in Appendix I/A. It was accordingly, sought to be highlighted that the Head Office expenses to the tune of Rs.3,82,55,974/- had been put upon the appellants out of under Claim No.2 while awarding Rs.13,07,10,223/- and even interest had been accordingly levied on the said amount without any basis or evidence led on record. While arguing that Head Office was being maintained in a normal manner for functioning of the Companies and the expenses under the said head was not justified. Resultantly, it was argued that there was no specific resolution and only an earlier resolution had been passed on 13.02.2014 on the basis of the claim which had been filed on 17.04.2018.

14. As per Clause 20.1 GCC as such that the notice was required to be given as soon as practicable and not later than 28 days after the Contractor became aware, or should have become aware, of the event or the circumstance and if the Contractor failed to give notice of a claim within such period of 28 days, the time for completion shall not be extended and the Contractor was not entitled to additional payment. Resultantly, it was argued that the learned Single Judge erred is not interfering with the Award of the Tribunal.

Arguments of Counsel for the respondent:-

15. Mr. Navin Kumar, learned counsel for the respondent on the other hand stressed on the legal position as such laid down by the Apex Court in several occasions regarding the non-interference in the scope under Section 37 of the Arbitration and Conciliation Act, 1996, keeping in view that it was the unanimous Award therefore, the concurrent findings could not liable to be disturbed. Reliance was placed upon the judgment of Apex Court in ***K. Sugukumar case (supra)*** that if there is a possible and reasonable conclusion, the High Court should not re-appreciate the evidence to come to a contrary finding and it had not sit in appeal. Similarly, while placing reliance upon the judgment of Apex Court in ***Reliance Infrastructure Ltd. Vs. State of Goa AIR 2023 SC 2280,*** it was argued that High Court could not step into the issues

raised by the Arbitral Tribunal and it is not ordinary adjudication to be interfered with. While referring to ***Somdatt Builders-NCC-NEC(JV) Vs. National Highways Authority of India and Others MANU/SC/0109/2025,*** it was sought to be highlighted that an Arbitral award would be set aside only if illegality goes to the root of the matter and the re-appreciation of evidence cannot be permitted under the ground of patent illegality and the interference with arbitral award would defeat the very purpose of the 1996 Act.

16. To rebut the arguments as such of limitation of Clause 30.1, it has been held that this is contrary to Section 28 of the Indian Contract Act, 1872 and resultantly reliance was placed upon ***Balakrishna Savalram Pujari Waghmare Vs. Shree Dhyaneshwar Maharaj Sansthan and Others AIR 1959 SC 798*** and the judgment of the Apex Court in ***Samruddhi Co-Operative Housing Society Ltd. Vs. Mumbai Mahalaxmi Construction Pvt. Ltd. (2022) 4 SCC 103*** in this context to argue that the land had not been made available to the Contractor and resultantly reference to para 82 of the Award of the Tribunal was made to point out that various details had been given that they were existence of trees, cleaning of the choked water ways of the crusher, stoppage of work by stake holders because of non-payment of compensation to them, very frequent shifting of Centre line

delayed out work planning, not arranging of realignment plants and profiles by the Engineer, not arranging the NOC from the Forest Department for cutting of plants of girth less than 300mm by the Engineer, non-shfiting of water supply line/Telephone cables by the Department/Employer, non-shifting of electric poles by the Electrical Department/Employer. Earlier reference having been made to various communications had been pressed as such by inter se the hindrances in the milestones which had been existing and there was increase in work. It is argued that once the Tribunal had noticed all this material on record then there is no justification to interfere and learned Single Judge had also kept in mind Section 28 of the Indian Contract Act, 1872. While referring to the judgment of the Apex Court in ***Union of India and Another Vs. IndusInd bank Limited and Another (2016) 9 SCC 720*** that the Engineer had been notified about the fact of such events and the entitlement which factually had not been denied by the respondents. Similarly, it was pointed out that the issue of 'Nil' claims as such had been duly considered by the Tribunal and the said claims had been shown 'Nil' not by the Claimants but by the Engineer. It is thus case of Mr. Navin Singh, learned counsel for the respondent that as per Section 19 sub-Clause 4(b), the Tribunal had considered all the admissible and relevant material and the weight of the

evidence to grant the necessary relief and the documents supporting the claim. The affidavit of Sukhdev Singh (CW-2) Manager (Planning and Billing) had been duly considered and he had been duly cross-examined in such context. It is sought to be argued that interference would not be justified as had been put-forth by the learned Senior Counsel for the appellant-Corporation.

Settled position of Law.

17. The position of law as has been succinctly put by both sides is beyond an anvil of doubt that interference under Section 37 of the Arbitration & Conciliation, Act, 1996 has been minimized by the Apex Court. Reliance can be placed upon the judgment in the case of ***Haryana Tourism Limited vs. Kandhari Beverages Ltd. (2022) 3 SCC 237,*** wherein it has been held that the High Court should not set aside the Award until it is found contrary to fundamental policy of Indian Law and the interest of India Justice or Morality; if it is patently illegal. Therefore, on the said grounds, it is within those parameters one has to examine the issue as there is further narrow scope of appeal and only when the Court is shocked with the illegality which travels to the root of the matter, the Award is liable to be interfered with. A possible view taken by an Arbitrator is not to be interfered at the asking with the consistent view and the Court is not to sit in appeal specifically

under Section 37 of the Arbitration Act, wherein it is all the more circumscribed as held by the Apex Court in ***UHL Power Company Ltd. case (supra)***. The possibility of interference would only arise if there is patent illegality and it is in such legal background while examining the issue, as noticed also by the learned Single Judge, we have to proceed.

Reasons for interference partly.

18. Only, the amount awarded for the Head Office claim to the extent of Rs.3,82,55,5,974/- under Claim No.2 will come up for consideration due to the fact that their seems to be no plausible evidence on record or material to show that the said expenses as such was incurred on account of any fault on behalf of the appellant-Corporation. It is settled principle that while making out a claim at least the basic averments had to be made as to how as such a huge amount was incurred and whether the liability could be fastened upon the Corporation for that amount and since the running of the Head Office had nothing to do as such with working of the Contract and the delay. The Claimant had to specially put-forth the case of additional staff recruited for the purpose of the said Contract and to put-forth some evidence in the said form giving the details of the said persons employed for the purpose solely for the project. The absence of any such specific averments made and the evidence in view of the law laid down by the Apex

court in ***M/s Unibros case (supra)*** would come into play and one has to look at the claim petition. The necessary averments under Claim No.2 is given which read as under in para 62:-

> ***"Off-Site Overheads:***
> *a. Head Office expenses relating to project.*
> *b. Management, Monitoring and supervisions charges including Head Office Staff/Officer's expenses.*
> *61. These costs are time related costs which were ear-marked for the contract period only and any extension/prolongation of the contract period would result in an increase in the aforesaid cost, which was certainly not factored by the Claimant in its bid. Since the contract has been prolonged due to reasons attributable to the Respondents, the additional cost incurred by the claimant on account of overheads as stated above has to be compensated by the Respondent to the Claimant.*
>
> *62. In accordance with the various provisions of the Contract and other applicable laws governing the Contract, the Claimant is legitimately entitled for reimbursement of these additional costs. The details of the additional costs already incurred by the Claimant towards overhead costs during the extended period of the project are enclosed herewith as* ***Appendix-II*** *amounting to* ***Rs.16,04,45,466/-*** *(Onsite supervision expenses) +* ***Rs.3,82,55,974/-*** *(Head Office Expenses) and* ***Rs.33,02,807/-*** *(lease money paid) i.e. a total of* ***Rs.20,20,04,247/-.***
>
> *63. Accordingly, the Claimant seeks total payment of* ***Rs.20,20,04,247/-*** *in respect of additional overheads costs incurred and lease money paid to landowner during the period from 14.02.2011 to 31.10.2014."*

19. A perusal of the Appendix-II as mentioned in paragraph 62 would go on to show that the Head Office expenditure from 14.02.2011 to 31.10.2014 was calculated on the basis of certain percentage ranging between 3.11 percent and going upto 5.42 of the total expenditure of the Head Office during the said financial years by relating it to the turn-over of the said project and the overload as such. The said details are given as under:-

"C&C Constructions Ltd (Jahu-Bhota-Barsar Project)

Details of Head office Expenditure as per company policy

From 14.02.2011 to 31.10.2014

Sl No.	**Description**	**Financial Year/Period**					**Remarks**
		01.07.2010 to 30.06.2011	**01.07.2011 to 30.06.2012**	**01.07.2012 to 30.06.2013**	**01.07.2013 to 30.06.2014**	**01.07.2014 to 30.06.2015**	
A	Turn over of the company	12,90,26,87,965	11,48,19,33,331	10,00,49,49,827	12,82,53,01,062	10,13,43,23,802	
B	Total expenditure of the Head office during the financial year	49,01,02,835	62,18,08,028,	39,20,55,457	39,87,50,431	42,55,62,803	
C	Percentage of Head office on overhead w.r.t. total turn over of the Company	3.80%	5.42%	3.92%	3.11%	4.20%	C=(B/A)%
		14.02.2011 to 30.06.2011	**01.07.2011 to 30.06.2012**	**01.07.2012 to 30.06.2013**	**01.07.2013 to 30.06.2014**	**01.07.2014 to 31.10.2014**	
D	Turn over of the Jahu-BHota-Barsar Project during the period.	12,52,50,070	34,17,91,191	17,19,58,541	14,28.68,113	9,06,90,434	
E	Head office overhead loaded on Barsar-Bhota-Jahu Project during the period.	47,57,568	1,85,09,819	67,38,393	44,41,901	38,08,293	E=C*D
Total amount of Head Office Expenditure on BARSAR-BHOTA-JAHU Project during the EOT period.						**3,82,55,974**	

20. The same was further supported by a certificate of the Chartered Accountant to justify the same which reads as under:-

"Bedi Saxena & Company
Chartered Accountants

TO WHOMSOVER IT MAY CONCERN

Based on its books of accounts and other published information authenticated by it, thus is to certify that C&C Construction Limited was engaged by Construction of Widenining and Strengthening of Una-Barsar-Bhota-Bhamla-Kalkhar-Nerchowk road Section Barsar-Bhota-Jahu from Km.45+000 to Km.90+000. The company has incurred following expenditure during the extended period from 14th Februrary, 2011 to 31st October, 2014:

S.No.	***Particulars***	***Amount (in Rs.)***

1.	*Allocation of Head Office Overheads incurred during the period from 14th February, 2011 to 31st October, 2014*	*3,82,55,974.00*

Details of the above said allocation of Head Office expenditure are attached herewith as per Annexure-A

For Bedi Saxena&Company
Chartered Accountants
FRN:000776C

per Keshav Kumar
(Partner)
M.No.530728

Place: New Delhi
Date: 06.04.2018"

21. The said Chartered Accountant has also as per **Annexure-A,** calculated the same amount which reads as under:-

"Bedi Saxena Company
Chartered Accountants
C & C CONSTRUCTIONS LTD (Jahu-Bhota-Barsar Project)
Details of Head Office Expenditure as per company policy
From 14.02.2011 to 31.10.2014

Sl No.	**Description**	**Financial Year/Period**					**Remarks**
		01.07.2010 to 30.06.2011 (Amt. in Rs.)	**01.07.2011 to 30.06.2012 (Amt. in Rs.)**	**01.07.2012 to 30.06.2013 (Amt. in Rs.)**	**01.07.2013 to 30.06.2014 (Amt. in Rs.)**	**01.07.2014 to 30.06.2015 (Amt. in Rs.)**	
A	Turn over of the Company	12,902,687,965	11,481,933,331	10,004,949,827	12,825,301,062	10,134,323,802	
B	Total expenditure of the Head office during the financial year	490,102,835	621,808,028	392,055,457	398,750,431	425,562,803	
C	Percentage of Head office on overhead w.r.t. total turn over of the Company	3.80%	5.42%	3.92%	3.11%	4.20%	C=(B/A)%
		14.02.2011 to 30.06.2011 (Amt. in Rs.)	**01.07.2011 to 30.06.2012 (Amt. in Rs.)**	**01.07.2012 to 30.06.2013 (Amt. in Rs.)**	**01.07.2013 to 30.06.2014 (Amt. in Rs.)**	**01.07.2014 to 31.10.2014 (Amt. in Rs.)**	
D	Turn over of the Jahu-Bhota-Barsar Project during the period.	125,250,070	341,791,191	171,958,541	142,868,113	90,690,434	
E	Head office	4,757,568	18,509,819	6,738,393	4,441,901	3,808,293	E=C*D

	overhead loaded on Barsar-Bhota-Jahu Project during the period.						
Total amount of Head Office Expenditure on BARSAR-BHOTA-JAHU Project during the EOT period.						**38,255,974**	

22. The said Chartered Accountant apparently, did not appear in the witness-box to justify the amount so calculated, which would be clear from the fact that the only evidence given in the support as such.

23. The specific reply was made by the appellant-Corporation that it denied each and every computation of the alleged cost made in the said appendix. The relevant paragraph of the statement of defence which reads as under:-

> *"Para 60 to 63. In reply to paras 60 to 63 pertaining to the claim for the alleged additional overheads for the extended period, it is submitted that the respondent has already given a detailed reply to the allegations of delay being alleged by the claimant. Moreover the respondent specifically denies each and every computation of the alleged cost made in Appendix II."*

24. The statement of CW-1 Sh. Ashwani Kumar Dogra regarding this extent as per his affidavit on the said claim is in accordance with the claim petition as such which is reads as under:-

> ***"Off-Site Overheads:***
>
> *a. Head Office expenses relating to project.*
> *b. Management, Monitoring and supervisions charges including Head Office Staff/Officer's expenses.*
> *10. I say that these costs are time related costs which were ear-marked for the contract period only and any*

extension/prolongation of the contract period would result in an increase in the aforesaid cost, which was certainly not factored by the Claimant in its bid. Since the contract has been prolonged due to reasons attributable to the Respondents, the additional cost incurred by the Claimant on account of overheads as stated above has to be compensated by the Respondent to the Claimant.

11. I say that in accordance with the various provisions of the Contract and other applicable laws governing the Contract, the Claimant is legitimately entitled for reimbursement of these additional costs. The details of the additional costs already incurred by the Claimant towards overhead costs during the extended period of the project are enclosed to the Statement of Claim as ***Appendix-II*** *amounting to* ***Rs.16,04,45,466/-*** *(Onsite supervision expenses) +* ***Rs.3,82,55,974/-*** *(Head Office Expenses) and* ***Rs.33,02,807/-*** *(lease money paid) i.e. a total of* ***Rs.20,20,04,247/-.*** *The same has been calculated on the basis of the invoices and the records maintained by the Claimant Company which have been placed on record as Volume C-3 (Part A) [already marked as* ***Exhibit CW1/291****] and in the form of DVD marked as* ***Exhibit CW2/1.***

25. The affidavit of CW-2-Sukhdev Singh working as Manager (Planning and Billing) of the claimant Company who has filed his affidavit dated 14.08.2018 regarding the said expenses of Head Office and he had deposed as under:-

"Off-Site Overheads:

a. Head Office expenses relating to project.b. Management, Monitoring and supervisions charges including Head Office Staff/Officer's expenses.

10. I say that these costs are time related costs which were ear-marked for the contract period only and any extension/prolongation of the contract period would result in an increase in the aforesaid cost, which was certainly not factored by the Claimant in its bid. Since the contract has been prolonged due to reasons attributable to the Respondents, the additional cost incurred by the Claimant on account of overheads as stated above has to be compensated by the Respondent to the Claimant.

11. I say that in accordance with the various provisions of the Contract and other applicable laws governing the Contract, the Claimant is legitimately entitled for reimbursement of these additional costs. The details of

> *the additional costs already incurred by the Claimant towards overhead costs during the extended period of the project are enclosed to the Statement of Claim as* ***Appendix-II*** *amounting to* ***Rs.16,04,45,466/-*** *(Onsite supervision expenses) +* ***Rs.3,82,55,974/-*** *(Head Office Expenses) and* ***Rs.33,02,807/-*** *(lease money paid) i.e. a total of* ***Rs.20,20,04,247/-.*** *The same has been calculated on the basis of the invoices and the records maintained by the Claimant Company which have been placed on record as Volume C-3 (Part A) [already marked as* ***Exhibit CW1/291****] and in the form of DVD marked as* ***Exhibit CW2/1.***

26. He was specifically cross-examined regarding this aspect by the counsel for the Corporation and expressed his inability to have any personal knowledge and stated that the information had been gathered from the Head Office and he had not personally seen the relevant record.

> *Q.26 What was the extent of the overheads costs catered for by the claimant at the time of submitting its bid?*
>
> *A. I am not aware.*
>
> *Q.27. Did you see any record related to the head office overheads before filing your affidavit?*
>
> *A. I had gathered information from the head office on the basis of which details were mentioned in a tabulated chart which is at page 69 of the statement of claim. However, I have not personally seen the relevant record.*

27. The Tribunal in a cursory manner did not deal with this aspect and while deciding Claim No.2 awarded the same by the following observations:-

> ***"Off-Site Overheads:***
>
> *a. Head Office expenses relating to project.*
>
> *237. These costs are time related costs which were earmarked for the contract period only and any*

extension/prolongation of the contract period would result in an increase in the aforesaid cost, which was certainly not factored by the Claimant in its bid. Since, the Contract has been prolonged due to reasons attributable to the Respondent, the additional cost incurred by the Claimant on account of overheads has to be compensated by the Respondent to the Claimant.

238. It was submitted that in accordance with various provisions of the Contract and other applicable laws governing the Contract, the Claimant is legitimately entitled for reimbursement of these additional costs. The details of the additional costs already incurred by the Claimant towards overhead costs during the extended period of the project are enclosed to the Statement of Claim as ***Appendix-II*** *amounting to* ***Rs.16,04,45,466/-*** *(Onsite supervision expenses) +* ***Rs.3,82,55,974/-*** *(Head Office Expenses) and* ***Rs.33,02,807/-*** *(lease money paid) i.e. a total of* ***Rs.20,20,04,247/-.*** *The same has been calculated on the basis of the invoices and the records maintained by the Claimant Company which have been placed on record in the form of DVD.*

239. Accordingly, the Claimant is seeking total amount of ***Rs.20,20,04,247/-*** *in respect of additional overheads costs incurred and lease money paid to landowner during the period from 14.02.2011 to 31.10.2014.*

TRIBUNAL'S OBSERVATIONS & QUALIFICATION

240. Actual expenses incurred at site have been claimed based on the invoices and records maintained by the Claimant and produced before the Tribunal in the form of DVD. Under this head additional costs have been claimed for running and maintenance of site office/establishments including accommodation, transport charges, other enabling works, office stationery, consumables, power, electricity, telephone and other enabling services; management and supervision including salaries and wages to staff/officers.

241. After duly appreciating the submissions made by the parties during oral arguments as well as in the written synopsis, the Tribunal is of the view that overhead costs are time related costs which are incurred with the passage of time and are not dependent on the value of work or quantum of work executed during the relevant period. The Tribunal has already held that the Claimant is entitled for 'cost' incurred during the extended period of the Contract and the 'cost' covers all expenditure incurred whether

on or off site, including overhead charges. The site expenses were provided by the Claimant to the Respondent for its inspection at the material time, but no objection was raised at the relevant time. As regards Head Office Overhead Cost, it is not uncommon that Head office provides necessary supports to project management and providing such support incur expenses to the Contractor. Since Head Office is not an earning unit it recovers its cost from the revenue/turnover generated by the projects executed by the Contractor. Such cost incurred in extended period is covered in the definition of 'Cost' therefore Claimant is entitled to for its head office overhead cost incurred in the extended period of the Contract.

242. Head Office overhead expenses have been worked as per the invoices and records maintained by the Claimant and produced before the Tribunal in the form of DVD.

243. The Tribunal is of the considered view that the method adopted by the Claimant in computing Head office overhead cost is appropriate, acceptable and justified. However as regards the extended period the Tribunal will take the percentage of the total extended period, which has been arrived at while dealing with Claim No.1 as 64.12%.

244. The additional costs incurred towards overhead costs is detailed in the Statement of Claim as ***Appendix-II*** *amounting to Rs.****16,04,45,466/-*** *(Onsite supervision expenses) +* ***Rs.3,82,55,974/-*** *(Head Office Expenses) and* ***Rs.33,02,807/-*** *(lease money paid) i.e. a total of* ***Rs.20,20,04,247/-.***

Overhead Costs (Onsite supervision expenses):
Rs.16,04,45,466/-

Head office expenses :	Rs.3,82,55,974/-
Total :	Rs.19,87,01,440/-
Percentage of total extended period:	64.12
Justified amount:	Rs.12,74,07,363/-
Lease money paid:	Rs.33,02,807/-

Total justified amount under claim No.2: Rs.13,07,10,223/-

245. The Tribunal is of the considered view that an amount of Rs.13,07,10,223/- is justified and accordingly allows Claim No.2 to that extent. The Claimant thus is held entitled to recover from the Respondent an amount of Rs.13.07 Crore from the Respondent under Claim No.2."

28. It is thus, apparent that the Tribunal had recorded the findings that the Head Office Overhead expenses had worked as per the invoices record maintained by the claimant and produced before the Tribunal in the form of DVD and since providing the necessary support of management it is not a earning unit and therefore, the cost incurred covered in the definition of the 'Cost' and the Claimant was entitlement for its Head Office or its Cost incurred. As noticed it is on the basis of percentage of the costs being incurred maintained by Head Office and as per the certificate furnished by the Chartered Accountant. The Chartered Accountant was expected to be produced before the Tribunal in support of on the what basis he arrived at the said conclusion of the percentage variance as noticed from Rs.3.82 crore and Rs.33,02,807/- as lease money.

29. In view of the law laid down in ***Batliboi Environmental Engineers Limited case (supra),*** and ***Metal Box Co. case (supra),*** we are of the considered opinion that in the absence of corroboration of the certificate from the Chartered Accountants and the absence of any qualified person putting in appearance the cursory manner in which the sum of Rs.3.82 Cores along with Rs.33,02,807/- as lease money has been awarded along with interest as such was not justifiable. It goes to the root of the matter and it is patent illegality and an

arbitrary method by which the Tribunal as such awarded the amount while awarding total of Rs.13.07 crore under Claim No.2. The findings of the learned Single Judge that there was sufficient evidence on record and to that extent on the basis of which the award was made is not substantiated as such and counsel for the respondent could not also rebut the same that any one from the Chartered Accountants office had put in appearance to support the claim of the Contractor to that extent and to make himself available for cross-examination. Once, nobody from the Office of the Chartered Accountant appeared to verify for the certificate and explain as such the methodology on which the huge amount of Rs.3.8 Crore had been calculated and how the sum of lease money was being foisted upon the appellant. We are of the considered opinion that the Tribunal as such erred, while awarding the said amount along with the interest from the date of the claim petition and the *pendente* lite interest and the future interest on the same.

30. Reference can be made to ***Metal Box Co. case (supra),*** wherein the issue was regarding burden of proof on the amount of depreciation claimed by the Company in accordance with the Income Tax Act which had been challenged and the onus as such was thus on the company to discharge the same on the issue which arose on account of the payment of Bonus Act. Resultantly, it was held that mere production of

auditor's certificate was not admitted by the labour and the employees of the company had not admitted the same to have been prepared with them then, an opportunity should be given to the employees to verify such figures by cross-examination of the employer or his witnesses who have calculated the depreciation amount. An amount of Rs.28.82 lacs was being certified by the auditors in the said case and accordingly keeping in view that the company had deducted the depreciation, it was held that mere production of the said certificate would not suffice and some legal evidence should have been produced to prove its claim for depreciation. Relevant portion of the said judgment reads as under:

> *"8.....The necessity of proper proof of the correctness of statements in the balance sheet was repeated in Petlad Turkey Red Dye Works Co., Ltd. v. Dyes & Chemical Workers; Union, 1960-2 SCR 906 at p. 909=(AIR 1960 SC 1006 at p. 1007). These observations made with regard to balance-sheets and P. & L. Accounts would equally apply to statements made in the auditors; certificates prepared on the instructions and information supplied to them by employers. Mere production of auditors; certificate, especially when it is not admitted by labour, not by the auditors but by the employees of the company who admitted not to have been concerned with its preparation or the calculations on which it was based would not be conclusive. We do not say that in such a case the Tribunal should insist upon proof of depreciation on each and every item of the assets. It should, however, insist on some reasonable proof of the correctness of the figure of depreciation claimed by the employer either by examining the auditors who calculated and certified it by*

some other proper proof. Depreciation in some cases would be of a large amount affecting materially the available surplus. Fairness, therefore, requires that an opportunity must be given to the employees to verify such figures by cross-examination of the employer or his witnesses who have calculated depreciation amount. Notwithstanding the Unions; challenge to the figure of depreciation claimed by the company, the only thing that the company did was to examine Verma, who admittedly had nothing to do with its calculation, and to produce through him the said certificate. In our view, that was neither proper nor sufficient. The proper course for the Tribunal in such a case was to insist upon the company adducing legal evidence in support of its claim instead of taking the figure of depreciation from the P.L. Account which was not worked out in accordance with the Income-tax Act but under Section 205 of the Companies Act, and saying that the Company had failed to prove that it was a mistaken figure. In our view, the question as to the correct amount of depreciation must go back to the Tribunal for a fresh decision. The Tribunal should give opportunity to the Company to prove its claim for depreciation by reasonable proof and to the Unions to test such evidence by cross-examination or otherwise..."

31. In ***Bharat Cooking Coal Limited vs. L.K. Ahuja*** **(2004) 5 SCC 109**, it was held that there has to be material on record and in absence of the same, arbitrator could not have awarded the same. Relevant para of the said judgment reads as under:

"24... It is not unusual for the contractors to claim loss of profit arising out of diminution in turnover on account of delay in the matter of completion of the work. What he should establish in such a situation is that had he received the amount due under the contract, he could have utilised the

> *same for some other business in which he could have earned profit. Unless such a plea is raised and established, claim for loss of profits could not have been granted. In this case, no such material is available on record. In the absence of any evidence, the arbitrator could not have awarded the same." (emphasis ours)"*

32. In ***Ferro Concrete Construction's case*** (supra), while allowing the appeal and modifying the judgment of the High Court, the Apex Court came to the conclusion that if the arbitrator makes an award on the basis of the amount claimed in the claim statement without any evidence, the same would be invalid under the said head and wholly illegal and unsustainable. Relevant portion of the said judgment reads as under:

> *"55.While the quantum of evidence required to accept a claim, may be a matter within the exclusive jurisdiction of the arbitrator to decide, if there was no evidence at all and if the arbitrator makes an award of the amount claimed in the claim statement, merely on the basis of the claim statement without anything more, it has to be held that the award on that account would be invalid. Suffice it to say that the entire award under this head is wholly illegal and beyond the jurisdiction of the arbitrator, and wholly unsustainable."*

33. In ***Parsa Kente Collieries Ltd.*** (supra), it was noticed that except the Chartered Accountants certificate, no further evidence had been led with respect to actual loss for which 78 crores have been claimed under claim No. 2 and had been set aside by the High Court. On the said basis, it was held

that the award was contrary to the evidence on record. The relevant portion of the judgment reads as under:

> *"11.2 Now so far as claim no.2- "fixed costs" and an amount of Rs.78 crores awarded by the learned arbitrator with respect to compensation of loss is concerned, having gone through the relevant material on record, we are of the opinion that the High Court has rightly set aside the award passed by the learned arbitrator with respect to claim no.2. Except the CA's certificate, no further evidence had been led with respect to actual loss. Considering the material on record, it is on the contrary found that in the relevant year the quantity of the coal lifted by the respondent was much above the fixed quantity. Thus, the award passed by the learned arbitrator with respect to claim no.2 was contrary to the evidence on record and therefore is rightly set aside by the High Court."*

34. In ***Batliboi Environmental Engineers Limited,*** (supra), it was held that the contractor has to prove from the books of account to demonstrate a drop in turnover, result was from the particular delay and the findings of the award was bereft of analysis and examination of facts and contentions and conclusion arrived without any discussion and reasons, it would violate the mandate of sub-Section 3 of Section 31 of the Arbitration and Conciliation Act. In those circumstances, the order of the Division Bench of the High Court was upheld which had set aside the award to be unsustainable, while exercising the powers under Section 37 read with Section 34 of the said Act. Relevant paras of the said judgment read as under:

"7.We have intentionally quoted the entire findings and reasoning accorded by the learned arbitrator, while allowing the Claim Nos. 1,2 and 4 of BEEL. The first egregious and obvious flaw in the award is, the omnibus finding and conclusion that HPCL (referred to as the owner and the respondent in the quoted portion of the award) was fully responsible for the inordinate delay that had occurred by not taking proper and timely action in removal of various impediments and obstacles that stood in the way of completing the project within the stipulated period of 18 months. This finding, in our opinion, is bereft of analysis and examination of facts and contentions. The relevant and material facts and the respective stances of the parties are neither decipherable nor evaluated and no reason has been given for arriving at the conclusion. A conclusion without any discussion and reasons, is non-compliant and violates the mandate of sub - section (3) of Section 31 of the A& C Act, an aspect we would examine subsequently.

8 to 22. xxx xxx xxx

23. Ordinarily, when the completion of a contract is delayed and the contractor claims that s/he has suffered a loss arising from depletion of her/his income from the job and hence turnover of her/his business, and also for the overheads in the form of workforce expenses which could have been deployed in other contracts, the claims to bear any persuasion before the arbitrator or a court of law, the builder/contractor has to prove that there was other work available that he would have secured if not for the delay, by producing invitations to tender which was declined due to insufficient capacity to undertake other work. The same may also be proven from the books of accounts to demonstrate a drop in turnover and establish that this result is from the particular delay rather than from extraneous causes. If loss of turnover resulting from delay is not established, it is merely a delay in receipt of money, and as such, the builder/ contractor is only entitled to interest on the capital employed and not the profit, which should be paid."

35. Lastly, on this point in ***M/s Unibros vs. All India Radio Civil Appeal*** arising out of ***SLP (Civil) No. 8791/2020,*** the appeal filed was dismissed against setting aside of the Arbitral award regarding loss of profits on the ground that the appellant/claimant No. 12 lacked sufficient evidence and it was held that contemporaneous evidence as such would have to be produced which could demonstrate that if there was loss of profit and the contractor would have secured supplementary profits utilizing his existing resources elsewhere and credible evidence has to be led to satisfy the said claim. In the absence of the same, the interference in the award as such was held to be justified. Relevant paras of the said judgment reads as under:

> *"16. To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere. 17. One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays, the total number of tendering opportunities that the contractor*

> *received and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim."*

36. In such circumstances, we are of the considered opinion that the said amount awarded under the Head Office expenses and the lease money would fall within the provisions as such of Section 34 of the Arbitration Act, where the interference could have been done by the learned Single Judge as apparently, the Award being in-conflict with the Public Policy of India as the amount has to be covered as per judicial approach in compliance with natural justice and the fundamental policy of Indian Law Statutes and Judicial precedents, and cannot be against public interest. Reliance can be placed upon the judgment of Apex Court in ***Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd (2003) 5 SCC 705,*** wherein the definition of Public Policy of India has been elaborated as a claim which has not been proved as such and the evidence has not been led by the party. Thus, a party would have to suffer and it is against the basic notions of justice or morality, which is a valid ground to set aside the same as it suffers from patent illegality from the bare reading the Award.

A bald averment having been made and accepted in the manner which the Tribunal had done. So all the amounts and the consequential fact of the interest on the same has a cascading effect on the appellant-Corporation. In the format of claim as such the Contractor cannot take an advantage and claim an amount on his asking without producing a semblance of evidence to substantiate his claim. As noticed firstly the specific pleadings should have been in place regarding the overhead costs and the number of persons who had been recruited to look after the project or and above the regular staff and how extra lease money had been paid in question. The Claimant company as such in the statement of claim having failed to put forth the said material on record cannot thus justify the amount which has been awarded therefore, we are not in a position as such to approve the award of the said amount. Resultantly, the said amount awarded under claim No.2 for Head Office expenses and lease money is not sustainable.

37. In ***Vedanta Limited case (supra),*** the principles were laid down as such in which circumstances, the awards can be interfered with under Section 34 of the Act while placing reliance on the earlier judgment in ***ONGC Ltd. Vs Saw Pipes Ltd.*** *(supra)* and after keeping in mind 2015 amendment. The relevant paras of the said judgment reads as under:

"12.It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts. (See Associate Builders v. DDA. Also see ONGC Ltd. v. Saw Pipes Ltd.5; Hindustan Zinc Lid. v. Friends Coal Carbonisation; and McDermott International Inc. v. Burn Standard Co. Ltd.").
13. It is relevant to note that after the 2015 Amendment to Section 34, the above position stands somewhat modified. Pursuant to the insertion of d Explanation 1 to Section 34(2), the scope of contravention of Indian public policy has been modified to the extent that it now means fraud or corruption in the making of the award, violation of Section 75 or Section 81 of the Act, contravention of the fundamental policy of Indian law, and conflict with the most basic notions of justice or morality. Additionally, sub-section (2-A) has been inserted in Section 34, which provides that in case of domestic e arbitrations, violation of Indian public policy also includes patent illegality appearing on the face of the award. The proviso to the same 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.

14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court

> *must be 9 extremely cautious and slow to disturb such concurrent findings."*

38. Similarly in ***Haryana Tourism Limited, (supra),*** it was again held that until the award is contrary to the fundamental policy of Indian Law, interest of India; Justice or Morality; and if it is patently illegal, the High Court would not enter into the merits of the claim. As noticed, the cursory manner in which the head office expenses have been claimed without any evidence and the Chartered Accountant having not been produced in cross-examination and the witnesses not knowing the position to explain as to how the amount was calculated has led us to interfere in the principles laid down against the public policy to award amount which was not tenable as such.

39. Regarding the other aspects as noticed, the Tribunal has gone into all the issues in detail as noticed by the learned Single Judge and also firstly framed the following thee claims which read as under:-

> *"201. The Claimant has made the following claims under three different heads:-*
>
> ***Claim I:*** *Additional Cost incurred due to prolonged retention of the Equipment during extended period.*
>
> ***Claim II:*** *Additional Overhead Costs during Extended Period.*

> ***Claim III:*** *Towards Interest on the above claimed amounts of Prolongation Cost calculated as per clause 14.8 of GCC."*

40. Keeping in view of all the terms of the Contract and the evidence and the correspondence *inter se* the parties it had gone on to record that there were various hindrances of the site due to which nine extensions have been granted and resultantly, while dealing with each claim of the Claimant under the four issues were also formulated four more points as per its order dated 14.07.2018 which are as under:-

> ***"Issues***
>
> *10. On the basis of the pleadings of the parties, it was ordered by the Tribunal that each claim of the Claimant will be treated as a separate issue. In addition, the following points were formulated for determination:-*
> *a. Whether the claims are within the period of limitation? (onus on the Claimant)*
> *b. Whether the claims have been filed by a duly authorized person on behalf of the Claimant? (onus on the Claimant)*
> *c. Whether the claims are not maintainable for want of notice in terms of Clause 20.1 of GCC, as alleged? (onus on the respondent)*
> *d. Whether the Claimant is precluded from filing the claims after stating in the Monthly Progress Reports the claims as "NIL, as alleged? (onus on the Respondent)"*

41. Thus, it has dealt extensively by each of the claims apart from the issues in question on the point of limitation and the duly authorized persons and claims of maintainability and on account of the preclusion from filing the claim as on account of showing Monthly Progress Reports (MPRs) for claim being 'Nil'. The Tribunal as thus duly noted that the Monthly Progress

Reports (MPRs) duly forwarded by the Engineer and it was a recurring cause of action and in view of the provisions of Section 28 of the Contract Act could not be held to be time barred. It specifically noted that in view of the acquisition proceedings the compensation having not been paid physical possession could not had been taken and therefore the work could not have been executed. The actual hindrances were their on the site was also noticed by the World Bank team and existed on the site and the existing road had to be widened from two lanes and to be strengthened. The said conclusions were arrived on the basis of the material placed on record as per the claim petition and the correspondence *inter se* the parties and the rejection and also noticed that the meetings had been taken between the parties and the World Bank team on 25.04.2009 with a direction to completely stop the work, till completion of the acquisition proceedings. Vide letter dated 25.06.2009, whereby the possession was handed over in respect of Milestone-IV and for completion of the Project and there was a dispute regarding the said aspect and as noticed that the factual matrix as such had been taken into account.

42. In ***Kothari Associates, (supra),*** the argument was raised that the claim for damages have been abandoned and the issue of limitation was wrongly decided without any basis. It was noticed that the work was to be done under the

work order dated 24.09.1976 and to be completed on 31.03.1978. The extension had been granted upto 14.06.1978 and the issue pertained to various seasons and the 4th seasons was only completed on 24.06.1980. It was accordingly held that the suit was filed on 25.01.1985 after the limitation period of three years for the breaches which had been caused earlier in 1979, 1980, 1981 and 1982 and in such circumstances, it was held that the suit had not been filed within the prescribed period of limitation, which is not the factual position herein.

43. Keeping in view the fact that jurisdiction is circumscribed as such, in view of Section 37 of the Arbitration Act, 1996 and it has been held that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34, as this Court is not sitting over the said finding as a Court of Appeal, since the jurisdiction is conferred on Courts under Section 34 of the Arbitration Act, 1996 and is fairly narrow. It has been held in ***MMTC Limited Vs. Vedanta Limited case (supra)*** that the Court will not travel beyond the limits drawn under Section 37 of the Arbitration Act and not take any independent assessment of the merits of the award and must only ascertain that the exercise of power by the Tribunal has not exceeded the scope of the provision.

44. Recently in ***AC Chokshi Share Broker Pvt. Ltd. vs. Jatin Pratap Desai and another*** **(2025) 5 SCC 321**, the

Apex Court has also laid down the same proposition that finding of fact arrived at and to take an alternative view while re-appreciating the evidence is not permissible under Section 37 of the Act and the Award can only be set aside on the basis of perversity or patent illegality. The determination is only whether the Court under Section 34 of the Act has exercised jurisdiction properly and rightly which provides that if the finding is not based on evidence and the Arbitral Tribunal takes something irrelevant into account and ignores vital evidence, only then the jurisdiction can be exercised. Relevant paras of the said judgment read as under:

> *"29.The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award.26 The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the arbitral tribunal. The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope.*
>
> *30. xxx xxx xxx*
>
> *31.The term "public policy" in Section 34(2)(b)(ii) has been interpreted by this Court as meaning (a) the fundamental policy of Indian law, or (b) the interest of India, or (c) justice or morality. In ONGC v. Saw Pipes, this Court further held that an arbitral award can be set aside as being contrary to public policy if it is patently illegal. The illegality must go to the root of the matter and must be so unfair and unreasonable that it shocks the court's conscience; it cannot be of a trivial nature. Such patent illegality*

> *includes a situation where the award is in contravention with substantive law.*
>
> *32.Further, an award can be set aside as being opposed to the "fundamental policy of India" if it is perverse, i.e., the finding is not based on evidence, or the arbitral tribunal takes something irrelevant into account, or ignores vital evidence. However, an award is not perverse if the finding of fact is a possible view that is based on some reliable evidence."*

45. It is in such circumstances, we are of the considered opinion that the learned Single Judge has failed to exercise jurisdiction keeping in view the fact that there was no evidence on record regarding the claim of head office expenses which could have been duly proved by examination of person from the office of the Chartered Accountant, who could have been cross-examined by the appellant-Corporation as to on what basis, the claim as such had been put forth. It is settled principle of law that onus at the first stage is upon the contractor and having not led evidence, we do not find any plausible reason that the matter is to be remanded back on any account.

46. Resultantly, the contentions raised by Mr. J.S. Bhogal, learned Senior Counsel on the merits of the case, on the other aspects as such that there was no material on record is without any basis and the same as such is on the basis of proper appreciation by the Tribunal and it has been proved beyond the anvil of doubt that there was a delay and over runs

in completion due to the fault of the appellant-Corporation and in such circumstances, time and again, it has been held while applying the *Hudson's formula,* the Arbitrator as such has to arrive at final compensation to assess the loss of profit and it is on that basis the Award as such was passed on account of the prolonged retention and additional cost. The statement of claim giving the details of additional expenses incurred, equipment charges and the operation expenses, equipment and machines used in the project and the ancillary benefits of interest as such have been awarded on the amount quantified and as such is thus not liable to be interfered, on the other counts.

47. Resultantly, the present Arbitration appeal is partly allowed to the extent that the Award of the Tribunal dated 17.08.2019, whereby under Claim No.2 a sum of Rs.13.06 Crore has been awarded is liable to be reduced by Rs.3,82,55,974/- and Rs.33,02,807/-. Similarly the claim No.3, whereby the interest was awarded from 07.04.2016 at simple interest @ 12% per annum from the cause of action till the filing of the claim petition dated 10.04.2018 and similarly the *pendente lite* interest @ 12% from 08.04.2018 to 17.08.2019 and the resultant future interest @ 12% from the date of the payment of the Award is set aside on the above principal amount.

48. It is to be noticed that the learned Single Judge had directed the amount awarded to be deposited within a period of four weeks and the execution of the Award was to be remained stayed on that condition as per order dated 17.03.2020. The amount was duly deposited as per order dated 26.05.2020 and thereafter the stay was confirmed. Thereafter, the outstanding fees as such of the Arbitrators were directed to be released as per order dated 19.04.2022 before the dismissal of application being CARAP No.03 of 2023 in CARBC No.01 of 2020 filed by counsel for the respondent-applicant on 08.12.2022 under Section 34 of the Arbitration and Conciliation Act, 1996. It was also noticed by the learned Single Judge that there was a stay operating in view of the orders passed by the Division Bench on 14.06.2024 whether the amount was to be released only on furnishing solvent security. The learned Single Judge thereafter disposed of the application.

49. Thus, the parties are free to make a mention for listing of the application and it is open to the parties as such to seek the execution and release of the amount in the above said terms subject to decision of any further appeal.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

October 31, 2025.
(munish thakur/cm)