



2026:DHC:5868



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

% Judgement reserved on: **20.07.2026**
Judgement delivered on: **23.07.2026**

+ O.M.P.(COMM) 161/2026, I.A. 8758-59/2026 & I.A. 16856/2026

NATIONAL HIGHWAYS AUTHORITY OF INDIAPetitioner

versus

ATLANTA INFRA ASSETS LIMITEDRespondent

Advocates who appeared in this case:

For the Petitioner : Mr. Gopal Singh, Advocates.

For the Respondent: Dr. Amit George, Mr. Chirag M. Shroff, Mr. Dushyant K. Kaul, Ms. Rupam Jha, and Mr. Vaibhav Gandhi, Advocates.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "*the Act*") seeking partial setting aside of the arbitral award dated 22.11.2025 (hereinafter referred to as "*impugned award*") passed by the learned Arbitral Tribunal in the matter of arbitration between "*Atlanta Infra Assets Limited vs. National Highway Authority of India*" allowing claim no.1 of the respondent, out of a total of five (5) claims of the respondent, and rejected both the counter-claims of the petitioner.

2. It is stated that the disputes between the parties arise out of a Concession



2026:DHC:5868



Agreement dated 09.12.2005 executed between the petitioner, National Highway Authority of India (“NHAI”) and Balaji Tollways Limited, (the respondent company, now Atlanta Infra Assets Limited) for the improvement, operation and maintenance of the existing 2-lane road, including its strengthening and widening into a 4-lane dual carriageway, from km 9.200 to km 50.000 of NH-6 (Nagpur-Kondhali Section) in the State of Maharashtra on a Build, Operate and Transfer (“BOT”) basis. Pursuant to the Letter of Acceptance dated 22.09.2005, the bid was accepted for a positive grant of INR 57.11 Crores, for a concession period of 20 years commencing from the appointed date i.e., 05.06.2006, which also included a construction period of 30 months. The concession period was scheduled to expire on 05.06.2026.

3. It is stated that on account of the impact of COVID-19, the respondent had requested NHAI for an extension of the concession period by 53 days, however, it was granted an extension of only 25 days as per Clause 29.6(c) of the Concession Agreement on account of Force Majeure due to COVID-19, against the demanded 53 day period. It is also stated that the respondent wrote a letter dated 06.02.2023 to NHAI informing it about the inauguration of the Samruddhi Expressway Mahamarg (Nagpur-Shirdi-Mumbai) by the Hon'ble Prime Minister on 11.12.2022, due to which toll revenue had decreased on account of diversion of traffic from and to Nagpur via the Samruddhi Expressway Mahamarg, and thereby sought an extension of the concession period by 675 days under the provisions of Article 8 of the Concession Agreement.

4. It is the case of NHAI that upon getting the said request analysed by the Independent Consultant (“IC”), it was found that the said expressway does not fall under the category of “Additional Tollways” as stipulated under Article 8 of the



2026:DHC:5868



Concession Agreement. It was only by mistake that the IC issued a letter on 21.04.2023 recommending an extension of 661 days of the concession period, however, the same was immediately withdrawn by the IC on the same day upon realizing its mistake.

5. Thereafter, the respondent, *vide* letter dated 02.06.2023, invoked the dispute resolution clause and raised both the issues of “extension of concession period by 53 days on account of COVID-19” and “the issue that the said expressway falls under the ‘Additional Tollways’ as per Article 8 of the Concession Agreement”. Subsequently, the respondent approached the Indian Council of Arbitration (“ICA”), invoking the arbitration clauses, and the Arbitral Tribunal was thereafter constituted on 22.04.2024 under Rule 24 of the ICA Rules, 2022.

6. In the said arbitration proceedings before the learned Arbitral Tribunal, altogether five (5) claims were sought by the respondent herein, and two (2) counter claims were sought by the NHAI. The claims and counter claims preferred by the both parties are as under:-

Claims of the respondent/claimant	
Description of Claims	Amount claimed/Extension days claimed
Claim No. 1: Issue of extension of concession period of 53 days from 30.06.2023 to 21.08.2026 (inclusive) as relief measure to the Claimant due to impact of Covid-19 and notification thereof in the Gazette of Government of India well before 05.06.2026 (end of the present notification to collect toll) or in the alternative commensurate compensation of Rs.10,54,88,372/-, if the Respondent fails to notify extension of 53 days well before 05.06.2026.	Rs.10,54,88,372/- or 53 days



2026:DHC:5868



Claim No. 2: Issue of extension of concession period of 675 days i.e. upto 26.06.2028 due to Additional Tollways (Sarmuddhi ExpresswayMahamarg) inaugurated by Hon'ble Prime Minister on 11 .12.2022 and notification of the same in the gazette of Government of India or in the alternative, commensurate compensation of Rs.161,66,06,808/- in case of failure to notify the extension of 675 days well before 05.06.2026.	Rs. 161,66,06,808/-
Claim No. 3: Reimbursement of stamp duty amounting to Rs. 2,51,99,900/- as already deposited with the Registrar Bombay High Court, Nagpur Bench and further declaratory award for reimbursement of penalty of Rs. 9,17,27,640/- (or amount of penalty as decided by Hon'ble Bombay High court Nagpur Bench or any other appellate court), with interest.	Rs. 9,17,27,640/-
Claim No. 4: Cost of Arbitration Claim No. 5: Pre-Suit, Pendente Lite and Future Interest	Rs. 1,55,42,999/-
Counter Claims of the NHAI/petitioner	
Counter Claim No.1: Claim of Rs.18,75,02,002/- along with interest @SBI PLR + 2% from the date of Provisional Commercial Operation Date till the date of payment on account of De-Scoping of work under the Agreement.	Rs. 18,75,02,002/-
Counter Claim No.2: Cost of Arbitration	-

7. *Vide* the impugned award, the learned Arbitral Tribunal allowed claim no.1 of the respondent, and rejected both the counter claims of the NHAI. Amongst other claims, this petition pertains only to challenging the rejection of the two counter claims of NHAI, and the allowance of claim no.1 of the respondent.

CONTENTIONS ON BEHALF OF NHAI:

8. Mr. Gopal Singh, learned counsel appearing for NHAI submitted that the impugned award has been assailed in respect of two issues (i) the extension of the concession period granted for a period of 53 days on account of impact of COVID-19 pandemic for the period of complete suspension of Toll collection for 25 days,



2026:DHC:5868



as well as subsequent period of 28 days when there was fall of revenue with effect from 30.06.2026 to 21.08.2026; and (ii) the rejection of the counter claim no.1 whereby the NHAI sought refund of an amount of Rs.18,75,02,002/- alongwith interest from the date of Provisional Commercial Operation Date till the date of payment on account of de-scoping of work under the Concession Agreement.

9. In respect of issue no. (ii) regarding rejection of counter claim no.1 of the NHAI, learned counsel contended that rather than giving appropriate, cogent and justifiable reasons for refusal of such claim, the learned Arbitral Tribunal simply rejected the said counter claim predicated on the Settlement Agreement recorded in the procedural order dated 24.02.2020 of the 2nd arbitration proceedings between the parties.

10. He contended that as per the Settlement Agreement, some part of the service roads were completed between August, 2017 and January, 2020 leaving a balance of 7.615 kilometers. While the NHAI had recommended de-scoping of 4.62 kilometers, it left a balance of 2.99 kilometers or 3 kilometers approximately. It was further agreed that the respondent would complete the balance works of 3 kilometers on the basis of settlement without any requirement for making additional payment to the respondent. He would stoutly contend that the learned Arbitral Tribunal has clearly overlooked the fact that the counter claim no.1 arises out of the de-scoping of 4.62 kilometers which was not adjudicated or considered either in the 2nd arbitration proceedings or any time thereafter.

11. Thus, according to learned counsel, the settlement executed between the parties would clearly bind the parties only to the extent of the terms recorded therein, and not to matters which were not covered by the covenants of the Settlement Agreement. Predicated on the above, learned counsel would submit that



2026:DHC:5868



the award being non-speaking, and based on misapplication of facts having no concern or impact on the counter claim no.1, the same ought to be set aside.

12. So far as issue no.1 in respect of the extension of concession period by a total of 53 days granted by the learned Arbitral Tribunal to the respondent is concerned, learned counsel for NHAI would contend that in accordance with Clause 29.6(c) of the Concession Agreement dated 09.12.2005, the NHAI had in fact agreed to the extension of 25 days under the said clause. However, with respect to the subsequent period of 28 days granted by the learned Arbitral Tribunal is concerned, learned counsel would contend that the basis on which the 28 days extension was granted, was not available under the Concession Agreement dated 09.12.2005. He would contend forcefully that the learned Arbitral Tribunal proceeded on an erroneous assumption that the policy letter dated 26.05.2020 was applicable to the respondent's claim. He categorically pointed out that the extension in concession period on account of partial collection of fee where the daily collection is less than 90 per cent of the Average Daily Fee was available and applicable only and only to all BOT (Toll) projects where the concessionaire and the authority have entered into a Concession Agreement based on the Model Concession Agreement (hereinafter referred to as "MCA").

13. In support of the aforesaid contention, learned counsel invited attention of this Court to para V of the policy letter dated 26.05.2020, which clearly proscribes the applicability of the policy to those agreements which contain provisions different from the MCA. He stoutly contended that when the policy letter dated 26.05.2020 itself limited its application only to those agreements which were based on MCA with a clear proscription, the learned Arbitral Tribunal could not have gone beyond either the Concession Agreement or the policy letter. In other words,



learned counsel would contend that the learned Arbitral Tribunal has committed a gross error in re-writing the contractual terms, which is not within the scope or jurisdiction of the Tribunal.

14. He also invited attention of this Court to Clause 29.6(c) of the Concession Agreement dated 09.12.2005 to contend that there is no such specification or provision which granted the authority or jurisdiction to the NHAI to extend the period of the Concession Agreement on any grounds other than the suspension of collection of fee during the period of Force Majeure Event. Thus, according to learned counsel, even on this ground, the learned Arbitral Tribunal could not have awarded an extension of 28 days to the respondent.

15. Learned counsel prayed that the impugned award in respect of the aforesaid two issues may be set aside.

CONTENTIONS ON BEHALF OF THE RESPONDENT:

16. *Per contra*, Dr. George, learned counsel appearing for the respondent refutes the submissions advanced on behalf of the NHAI.

17. So far as the submissions in respect of counter claim no.1 of the NHAI pertaining to refund of Rs.18,75,02,002 on account of de-scoping of work is concerned, he emphatically contended that the issue of de-scoping, its effect and impact was the subject matter of the 2nd arbitration between the parties. He would submit that during the pendency of the 2nd arbitration, the parties arrived at a Settlement Agreement which was recorded in the procedural order dated 24.02.2020, which clearly recorded not only the manner in which a length of 4.62 kilometers was de-scoped from a total of 7.615 kilometers, but also the manner in which the respondent was to complete the work relating to remaining 2.99 kilometers or 3 kilometers approximately. He also emphasized that the remaining 3



kilometers were to be completed by the respondent without any additional payments to be made by the NHAI. He contended that it was in that background that the procedural order dated 24.02.2020 noted that the counter claim no.7 would no longer survive. It was this observation which was noted by the learned Arbitral Tribunal to conclude that once the parties have settled the matter without any reservation to raise any claims in future, the counter claim no.1 of the NHAI would not survive.

18. Apart from the above, he would also submit that in terms of the Settlement Agreement, the respondent indeed completed the works in respect of the 3 kilometers referred to above. He also emphatically submitted that apart from the completion of the balance 3 kilometers by the respondent, the NHAI issued a completion certificate on 08.03.2021 to the respondent which itself demonstrated that there is no claim or counter claim remaining after the Settlement Agreement was executed.

19. Based on the aforesaid submissions, learned counsel would submit that in so far as the counter claim no.1 of the NHAI is concerned, the learned Arbitral Tribunal decisively rejected it in para 122 of the impugned award.

20. In so far as the issue no. (i) regarding extension of concession period of 28 days is concerned, learned counsel would contend that the learned Arbitral Tribunal had rendered a purposive construction of Clause 29.6(c) of the Concession Agreement executed between the parties, read with the purport and intent of the policy letter dated 26.05.2020. He would contend that the policy letter deals with COVID-19 pandemic as a Force Majeure Event, which is also covered under Clause 29.6(c), and provides for extension of concession period as a relief measure while accepting the debilitating impact of COVID-19 pandemic.



2026:DHC:5868



21. Learned counsel would submit that in terms of Clause 29.12 of the Concession Agreement, the respondent had sought extension of the concession period by 53 days which included 25 days of complete suspension of Toll collection, and 28 days of partial Toll collection owing to the significantly reduced footfall. He would contend that the respondent would be entitled to the 28 days' period of extension for the reason that the reduction in Toll collection was purely on account of the COVID-19 pandemic. In support thereof, he would stoutly contend that though the NHAI had opened the Toll collection, however, as travel was discouraged by the Central and the State Governments, that too, for ensuring control of spread of COVID-19 pandemic, the Toll collection of the respondent had drastically reduced. He submitted that there is no dispute that the Toll collection had drastically reduced during the said period.

22. He invited attention to the letter dated 23.12.2022 issued by the NHAI and taken note of by the learned Arbitral Tribunal, to contend that the learned Arbitral Tribunal had categorically observed that (i) the NHAI failed to bring any material on record to reflect that the Concession Agreement between the parties is not in alignment with the MCA; (ii) the NHAI itself applied the policy letter while granting respondent an extension of concession period for 25 days, and consequently, is estopped by its conduct; and (iii) that the policy circular itself clearly recognizes COVID-19 pandemic as a Force Majeure Event resulting in applicability of Clause 29.6(c) of the Concession Agreement.

23. Learned counsel further emphasized that the learned Arbitral Tribunal was well within its jurisdiction to interpret and construct the terms of the Concession Agreement executed between the parties, and the policy letter dated 26.05.2020 in a manner which would align with the aims and object of both documents. He



contended that the provisions in the policy letter dated 26.05.2020 was issued only on account of relief measures due to COVID-19 pandemic as also on account of loss of collections below 90 per cent which entitled the concessionaires to an extension of concession period which was in complete alignment with the provisions of Clause 29.6(c) of the Concession Agreement.

24. While referring to various paragraphs of the impugned award, learned counsel would submit that the learned Arbitral Tribunal has given a purposive interpretation to the policy letter dated 26.05.2020, and aligned it with the purpose for which Clause 29.6(c) was engrafted in the Concession Agreement executed between the parties. He further submitted that the learned Arbitral Tribunal has the necessary jurisdiction to interpret not only the terms of the Concession Agreement, but also any policy decision of the NHAI, incidental or relatable to or impacting the Concession Agreement executed between the parties.

25. On the aforesaid anvil, learned counsel would contend that the learned Arbitral Tribunal has acted within its jurisdiction, and the award is neither perverse nor violative of or contrary to the fundamental policy of India.

ANALYSIS AND CONCLUSION:

26. There is no cavil that the scope, ambit and jurisdiction of this Court exercising jurisdiction under section 34 of the Act is extremely circumscribed not only by the Legislature but also *stare decisis*. The Supreme Court in ***Consolidated Construction Consortium Ltd. v. Software Technology Parks of India, (2025) 7 SCC 757*** held as under:

“46. Scope of Section 34 of the 1996 Act is now well crystallised by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in sub-sections (2) and (2-A) of Section 34. It is



the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the Arbitral Tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the Arbitral Tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged under Section 34 of the Act. The court exercising powers under Section 34 has per force to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement.

47. Therefore, the role of the court under Section 34 of the 1996 Act is clearly demarcated. It is a restrictive jurisdiction and has to be invoked in a conservative manner. The reason is that arbitral autonomy must be respected and judicial interference should remain minimal otherwise it will defeat the very object of the 1996 Act."

27. It is thus clear that unless the impugned arbitral award is perverse or is infected with patent illegality, it cannot be interfered with by this Court.

28. The NHAI had assailed the findings recorded by the learned Arbitral Tribunal so far as the counter claim no.1 is concerned, to submit that the same is unreasoned, cryptic, and fundamentally perverse as it completely overlooked the fact that in the 2nd arbitration proceedings the Settlement Agreement was completely silent about the claim that may arise out of the de-scoping of 4.62 kilometers from 7.615 kilometers of the works not completed by the respondent. In other words, NHAI had argued that since the effect of de-scoping of work was not considered or gone into in the 2nd arbitration proceedings, and the terms of the settlement concentrated only on what work would be de-scoped, the claim for refund of the payment made towards the de-scoped work would be available to the



2026:DHC:5868



NHAI to raise subsequently in the arbitral proceedings under challenge.

29. This Court is unable to countenance the aforesaid argument. For the purposes of understanding the reasons rendered by the learned Arbitral Tribunal, it would imperative to extract hereunder the relevant paragraphs of the impugned award:

“99. The Tribunal will now consider the Claims made in the Counter Claim by the Respondent.

Counter Claim No. 1

Directions to the Claimant to pay an amount of Rs. 18,75,02,002/- along with interest @SBI PLR + 2% from the date of Provisional Commercial Operation Date till the date of payment on account of De-Scoping of work under the Agreement.

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Findings of the Tribunal

118. The Counter- Claim made by the Respondent pertains to the claim for payment of INR 18,75,02,002/- on account of De-scoping of work under the Agreement. The issue of de-scoping of works was the subject matter of adjudication before the Hon'ble Arbitral Tribunal in the Second Arbitration.

119. In the Second Arbitration, both the Parties entered into a Settlement Agreement on 24.02.2020, wherein the parties settled on the issue of de-scoping.

120. The Settlement notes that the parties reached an understanding on De-scoping of the works, and that in view of the Claimant agreeing to carry out the specified remaining works, Counter-Claim No. 7 does not survive. It is pertinent to note that, at the time of entering into the settlement, the Respondent did not raise, reserve or assert any claim for monetary compensation on account of the said de-scoping.

The relevant extract from the Settlement Agreement, recorded in Procedural Order dated 24.02.2020 of the 2nd Arbitration is extracted hereinbelow:

“As regards, Service Roads which is one of the component of this claim, parties after addressing submissions and reflecting thereon reached an



understanding which is being recorded.

1. *Out of the 23.67 km. of Service Roads, 15.6 km. had been completed as on the date of invocation of arbitration as on 1st August, 2017. Some part of the Service Roads was done between August, 2017 and January, 2020 leaving a balance of 7.615 km. The NHAI has recommended descopeing of 4.62 km. leaving a balance of 2.99 km or 3 km. approximately. It has been specifically agreed by the respondents that this length of service roads on which standard width of 7 meters is not available may be carried out on the width as available on the basis of approved drawings to be made available within 10 days from today. The claimants undertake to complete the work within 3 months of the drawings including all the related works as given under the heading remaining works.*

In this view of the matter, since the counter claim is based on, the estimated cost of balance work as per the punch list A and B, Claimant having agreed to carry out the remaining works as detailed below and as required by the respondent, the counter claim no. 7 does no longer survive.”

It is evident from a perusal of the Settlement Agreement that both the parties mutually agreed to resolve the issue of de-scoping on the above terms. The Claimant agreed to complete the balance works (approximately 3Kms) on the basis of the Settlement, without any requirement for making any additional payments to the Respondent.

121. Once the Parties have settled the matter without any reservation to raise any claims in future with respect to the same cause of action, the present Counter Claim of the Respondent would not survive.

122. It is further undisputed that pursuant to the settlement arrived at between the Parties, the Claimant constructed the balance Service Roads. The Respondent issued a Completion Certificate on 08.03.2021. This shows that the Claimant completed its part of the obligation under the Settlement. The Respondent cannot now be allowed to re-open the said issue which has already been determined by the Ld. Tribunal in the Second Arbitration.

123. In view of the above, the Counter Claim of the Respondent does not survive, and is disposed of accordingly.”

30. Clearly, the learned Arbitral Tribunal has found as a fact that the parties had



2026:DHC:5868



settled the disputes without any reservation to raise any claims in future; coupled with the fact that the respondent had indeed completed the balance work of 3 kilometers of service roads without any additional payment to be made by NHAI; and the issuance of completion certificate by it, all of which propelled the learned Arbitral Tribunal to conclude that NHAI cannot be allowed to re-open an issue which was already determined by the tribunal in *seisin* of the 2nd arbitration. The learned Arbitral Tribunal has also noted that on account of the understanding reached by the parties on de-scoping, the 2nd arbitration tribunal had clearly noted in the procedural order dated 24.02.2020 that counter claim 7 would not survive. The learned Arbitral Tribunal appears to have been of the considered opinion that the said issue pertaining to the de-scoping of the works having been subsumed within the terms of settlement recorded in the Settlement Agreement and having acted upon by the parties, re-opening of the issue determined, by way of the counter claim no.1, was impermissible.

31. It cannot be gainsaid that parties to a *lis* cannot be permitted to re-open issues which have been determined by way of a Settlement Agreement lest it may lead to uncertainty, inconsistency, and lack of finality to disputes. The findings of the learned Arbitral Tribunal in this context do not suffer from any perversity and are clearly plausible, and within its domain. In any case, findings of fact do not warrant interference under Section 34 of the Act. Thus, the challenge in issue (ii) fails, and is rejected.

32. So far as issue (i) regarding extension of concession period for 28 days is concerned, learned counsel for NHAI had stoutly argued that the policy letter dated 26.05.2020 itself proscribed its applicability to any Concession Agreement other than the one modelled on the MCA, and by importing the said policy into the



Concession Agreement executed between the parties, the learned Arbitral Tribunal has traveled beyond the Concession Agreement, which is impermissible and by virtue whereof, re-written the terms of the Concession Agreement, which too, is impermissible.

33. Learned counsel for the NHAI had also forcefully contended that the learned Arbitral Tribunal had laid no basis for the computation of 28 days and arriving at the figure has no foundational facts, thus, perverse.

34. In this regard it may be relevant to extract the relevant findings of the learned Arbitral Tribunal on claim no.1, the same is extracted hereunder:-

“45. The present claim is for extension of tire Concession Period by a total of 53 days from 30.06.2026 to 21.08.2026, on account of the impact of the COVID-19 pandemic, for the period of complete suspension of Toll collection for 25 days, as well as subsequent period of 28 days' when there was an alleged fall of revenue, which is termed by the Claimant as "partial suspension".

46. Clause 29.6(c) of the Concession Agreement dated 09.12.2005 provides that during the subsistence of a Force majeure Event, the Concession Period shall be extended by the period during which collection of Toll Fees remained suspended.

Clause 29.6(c) of the Concession Agreement reads as under:

“29.6 Effect of Force Majeure Event after Financial Close: Upon occurrence of any Force Majeure Event prior to Financial Close, the following shall apply:

.....

(c) Where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to collect Fees, but if he is unable to collect Fees during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which collection of Fees remains suspended on account thereof;”

47. The Policy Circular dated 26.05.2020 issued by the Respondent- NHAI, provides for extension of the Concession Period as a relief measure. The said



2026:DHC:5868



Circular contemplates two situations in which such extension shall be granted: (i) where the toll collection was suspended on account of COVID-19 from 26.03.2020 to 19.04.2020, and (ii) where the toll collection was less than 90% of the Average Daily Fee.

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49. With respect to the period from 26.03.2020 to 19.04.2020, when there was a complete suspension of Toll collection, in terms of Clause 29.6(c) of the Concession Agreement, and the Circular issued by NHAI granting Relief measures to the BOT (Toll) Concessionaires from the impact of COVID 19, the Claimant/Concessionaire has been granted extension of 25 days' of the Concession period by NHAI.

50. The NHAI however declined the Claimant's request for extension of additional 28 days on the ground that there was no clarity regarding the applicability of Point No. II of the Circular dated 26.05.2020. The relevant extract from the letter of NHAI dated 23.12.2022 reads as under:

“(d) On going through the circular dated 26/05/2020, it is understood that there are two parts in it

- 1. Extension for period where toll was suspended and C).*
- 2. The period where toll fee collections were less than 90%*

(e) As per agreement the provisions related to Force Majeure is given under Clause 29.6(c) which states as under; -

"Where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to collect Fees, but if he is unable to collect Fess during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the periodfor which collection ofFees remains suspended on account thereof; and"

*(f) Considering the above facts, as there is a provision given in Concession Agreement regarding measures to be taken on account of Force Majeure and **there is no clarity regarding the applicability of Point No. 11 of Circular dated 26/05/2020 stated above, it is opined that the concession period shall be extended by 25 days; the period when the toll was suspended from 26/03/2020 to 20/04/2020.** However, the*



Concessionaire has demanded an extension of 53 days period during which toll collection was suspended and partial collection of fees.

In view of the above, the proposal for extension of the concession period for 25 days is recommended herewith as per Clause 29.6(c) of Concession Agreement on account of Force Majeure due to COVID- 19 and extension of 53 months is not felt considerable as Para V of the Circular clearly states that applicability of the circular is for Concession Agreement based on Model Concession Agreement and provision of this Concession Agreement is different from the Model Concession Agreement”

51. The purpose and intent of the NHAI Policy Circular dated 26.05.2020 was to provide relief to Concessionaires for loss of toll fee revenue caused by the unforeseen force majeure event of COVID 19. The Circular provides relief where toll collections were either fully suspended, and also where the Toll fee collection was below 90% of the average daily fee, to ensure that Concessionaires were not unduly disadvantaged for events beyond their control.

52. The Respondent’s contention that the said Circular applies only to projects governed by the Model Concession Agreement appears to be an arbitrary distinction. No material has been placed on record by the Respondent to show the distinction between the provisions of the present Concession Agreement, and those of the Model Concession Agreement, which would justify denial of benefit of the Circular to the Concessionaire. The Respondent in its letter dated 23.12.2022 (supra) has acknowledged that there was no clarity regarding the applicability of Point No. (ii) of the Circular dated 26.05.2020”

35. It is clear from the aforesaid authoritative pronouncement of the Supreme Court in ***Consolidated Construction Consortium*** (supra) that the jurisdiction of a Court exercising powers under Section 34 of the Act is highly circumscribed. In that, clearly a Court under Section 34 does not exercise powers as a Court of first appeal to re-appreciate evidence or findings recorded by the learned Arbitral Tribunal. From the arguments of the learned counsel for NHAI it is manifest that the ground on which the award is assailed in the aforesaid claim is that the award is



2026:DHC:5868



vitiated by patent illegality as also perversity. Learned counsel for NHAI had contended that the learned Arbitral Tribunal had incorporated the terms of the policy letter dated 26.05.2020 into the Concession Agreement executed between the parties contrary to the terms of the said policy letter which proscribed applicability to agreements other than MCA.

36. This Court is unable to appreciate the contention of the learned counsel for NHAI. This is for the reason that the learned Arbitral Tribunal had taken note of the fact that COVID-19 pandemic was an unforeseen Force Majeure event, which disrupted toll operations across all projects irrespective of the nature of Concession Agreement. In fact, it was also noted that the underlying rationale of the policy letter was actually to compensate Concessionaires for loss of revenue not only due to suspension, but also reduction in toll collection. The learned Arbitral Tribunal had also taken note of the undisputed fact that the respondent demonstrated by way of documentary evidence that the toll revenue had been severely reduced due to impact of COVID-19.

37. It is in the light of the aforesaid facts, that the learned Arbitral Tribunal had aligned the beneficial provisions of the policy letter dated 26.05.2020 with Clause 29.6(c) of the Concession Agreement executed between the parties. Clause 29.6(c) of the Concession Agreement clearly postulated a situation where a concessionaire is unable to collect fees during subsistence of a Force Majeure event, the concession period shall be extended by the period for which collection of fee remained suspended. It is not disputed by NHAI that the respondent had provided sufficient data to it of the significant reduction in toll collection even after the toll collection was opened for the reason that the Central or State Governments had actively discouraged travel and there were significant travel restrictions on the



2026:DHC:5868



highways. All that the learned Arbitral Tribunal did was to align the relevant conditions of the policy letter dated 26.05.2020 with Clause 29.6(c) of the Concession Agreement, and grant the benefit of extension of 28 days of concession period bearing in mind that the Force Majeure event i.e. COVID-19 pandemic was common to both, the Concession Agreement as also the policy letter dated 26.05.2020.

38. This Court is of the considered opinion that while concluding as above, learned Arbitral Tribunal neither acted perversely nor had re-written the terms of the Concession Agreement. To this Court, it appears that the learned Arbitral Tribunal has only granted benefit extended by the NHAI to all concessionaires, even to the respondent, on the anvil of aforesaid facts and findings. This Court has no reason to conclude that the learned Arbitral Tribunal had acted beyond the jurisdiction vested in it or had re-written the contractual terms of the Concession Agreement or misinterpreted the policy letter dated 26.05.2020. It is not disputed that the policy letter dated 26.05.2020 was a beneficial policy meant to provide succour to all the concessionaires who were impacted by COVID-19 pandemic, i.e. the Force Majeure event.

39. It was also argued that there is no basis or computation applied in the impugned award for concluding extension of concession period to the extent of 28 days, and thus, such grant is without any foundation and cannot be sustained. On a query by this Court, learned counsel for NHAI fairly stated that if one were to compute the extension in terms of the policy letter dated 26.05.2020 on the basis of toll fee collections being under 90 per cent, the result would be 27 days. If that be so, no error has been committed, muchless a fatal error, by the learned Arbitral Tribunal in granting 28 days extension of concession period.



2026:DHC:5868



40. Thus, the issue (i) is rejected.

41. Consequently, the petition under Section 34 of the Act has no merit and is dismissed.

42. Keeping in view the urgency and nature of the judgment, the same be transmitted to NHAI by Special Messenger forthwith.

**TUSHAR RAO GEDELA
(JUDGE)**

JULY 23, 2026

yrj/sumit/rl