



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4171 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL

**and
HONOURABLE MR.JUSTICE D.N.RAY**

=====

Approved for Reporting	Yes	No

=====

GUJARAT HOUSING BOARD

Versus

M/S. CUBE CONSTRUCTION ENGINEERING LIMITED

=====

Appearance:

MR YN RAVANI(718) for the Appellant(s) No. 1

MR. MANISH BHATT, SENIOR ADVOCATE with MR. NISARG DAVE with
MUNJAAL M BHATT(8283) for the Defendant(s) No. 1

=====

**CORAM: HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL**

and

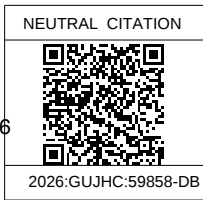
HONOURABLE MR.JUSTICE D.N.RAY

Date : 18/09/2026

ORAL JUDGMENT

**(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA
AGARWAL)**

1. Having heard learned counsels for the parties and perused the record, we may note that the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 has been filed by the Gujarat Housing Board challenging the judgment and order dated 18.04.2026 passed by the Judge, Commercial Court, in dismissing the



application under Section 34 of the Arbitration and Conciliation Act, 1996 namely the Commercial Civil Application No. 12 of 2024 which was directed against the award dated 11.08.2023 rendered by three members arbitral tribunal panel.

2. A bare reading of the judgment impugned indicates that all the submissions made by the learned counsel for the appellant before the Court under Section 34 were directed on the merits of the award. It was argued by the learned counsel for the applicant therein, in the proceedings under Section 37 of the Act, 1996 that the Arbitral Tribunal had lost sight qua the fact that the site of work was situated at Bhuj, which is under seismic Zone-5 and all the responsibilities qua preparation of drawings, designs, approvals from the competent authority and all the statutory permissions were on the shoulder of the contractor. The work was to be completed within 15 months commenced from 13.02.2014, as per the work order issued on 12.02.2014.

3. It was also contended therein that the periodical



extensions sought by the contractor/claimant were granted by the appellant herein. However, since there was a huge delay in completion of the work, the appellant sent a letter dated 03.05.2017 to complete the work, otherwise it shall impose penalty thereon. Ultimately, the work was completed on 24.08.2017 and the project was physically handed over to the respondent.

4. It was argued that there was a clear delay of nearly two years which was attributed to the opponent - contractor, as it was beyond the reasonable extension of 120 days permitted, out of delay of 823 days. It was also argued that because of the delay in completion of the work, the reputation of the appellant - Gujarat Housing Board was severely affected and the counter claim to realize the liquidated damages as per clause 2 of the tender was, therefore, put forth. No issues, however, have been framed on the counter claim of the appellant herein.

5. It was also argued that as against the total claim of Rs. 12 Crore and odd, the arbitral tribunal had partially awarded claim of Rs. 3,97,13,669/- which would itself mean



that the whole claim of the contractor was unjustified. The arbitration cost imposed upon the appellant was also assailed before the Court under section 34 of the Act. It was also argued that the arbitral tribunal had committed an error of law in awarding interest at the rate of 10% p.a. on the awarded amount. The award of claim of extra work and extra cost was challenged on the premise that they were outside the scope of agreement.

6. All these arguments were considered by the Court under Section 34 and exhaustive findings in paragraph nos. 9 to 37 are:-

9. I have considered the submissions made by both the sides and perused the entire material produced on record. Also considered the relevant citations.

10. First of all, before entering into the merits and demerits of the case, it is to be seen for what purpose the A&C Act has been enacted. An aim of A&C Act is to have expeditious and effective resolution of dispute between the parties by their nominated or chosen or appointed arbitrators as judge and by keeping as much as far the intervention of the Courts.

11. Further, as per section 28(3) of the A&C Act, the duty is cast upon Ld. AT who shall decide the case in accordance with the terms of the contract and shall take into consideration the usage of the trade applicable to the transactions.

12. Further, in this particular case, it is also undisputed fact that the present applicant appointed the panel of 03 Learned Arbitrators comprising of Mr. Ashok B. Desai (Former Chief Engineer, Sardar Sarovar [Narmada] Project, Govt. of Gujarat), Presiding Arbitrator and Mr. Ashwin P. Bhavsar (Former Secretary, Irrigation, Govt. of Gujarat) & Mr. Subhash I. Patel (Former Secretary, R&B, Govt. of Gujarat). That means, all the 03 members of the Learned AT were no alien, but belong to the same fraternity of various departments of Govt. of Gujarat and are having equipped with giant experience in the same field and having expertise in their technical world. Here, not a single finger of suspicion has been raised by the applicant against the Learned AT. At this juncture, the judgment of our own Hon'ble Gujarat High Court, in the case of **Kheda Nagar Palika Vs. Shri Brahmani Construction**, delivered in **R/Firstppeal No.4116 of 2023**, decided on **16.04.2024**, wherein it was inter-alia, observed that "the Award passed by the Ld. AT cannot be scrutinized in the same manner as of prepared by the legally trained mind. Unless the same is based on patent illegality or interpretation of facts and terms are perverse, it cannot be interfered with."

13. Now, it is also undisputed that by detailed discussions, observations, analysis and findings by the Learned AT in its Award, the method of submission of tender, scope of work under the contract number of stories (floors) envisaged under the contract, introduction of PMC (Project Management Consultant) and qua various prayers, the conclusion arrived at and thereby, out of **Rs.12,00,55,671/-, only a sum of Rs.3,97,13,669/- was awarded**. At this juncture, it was the argument of the Learned Advocate for the applicant that the Learned AT has not believed the huge claim amount of Rs.12,00,55,671/- and which would not be believed justified. But, mere the claim was made for huge amount and only certain amount came to be awarded, is not a sole ground to interfere with the Award, which ultimately sound and in consonance with the substantive law. In other words, it is the duty of the applicant to show the Award is

vitiated or suffered from patent illegality, against substantive laws, against the public policy and outside the scope of the agreement between the parties.

14. In the present Award, following four claims were partly allowed by the Learned AT. Naturally, the applicant's grievance qua these four reliefs. It is also important to note that the applicant filed Counter Claim to the tune of Rs.2,99,10,000/- before the Learned AT, but the same was dismissed, but those findings have not been challenged by the applicant nor filed separately.

<i>Claim Nos. and its particulars</i>	<i>Claimed Amount (Rs.)</i>	<i>Awarded Amount (Rs.)</i>
<i>Prayer (b) - Respondent was not entitled to deduct any amount under RA Bills & Claim No.1</i>	<i>1,15,94,296/-</i>	<i>62,54,467/-</i>
<i>Prayer (e) On account of extra works done by the claimant & Claim No.3</i>	<i>9,96,78,313/-</i>	<i>3,35,09,202</i>
<i>prayer (g): 18% interest on the amounts claimed and also GST Interest</i>	<i>@ 8%</i>	<i>1,84,74,645/-</i>
<i>Prayer (g): 18% interest on the amounts claimed and also GST Interest</i>		<i>33,22,500/-</i>

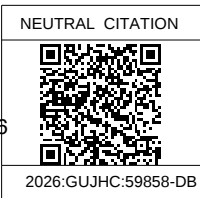
15. So far as the prayer (b) by which an amount of

Rs.62,54,467/- which was deducted towards RA Bill is concerned, it is stated in the written submissions, at page No.9, para (iii) by the applicant that, there was no sufficient material to show that such amount was pending. Now, this aspect is also made clear from para-38.7 at page No.65 of the Award, wherein Engineer in-charge addressed a letter dated 24.2.2021, wherein it is mentioned that an amount of Rs.47,83,521/- is reported, but in case, time limit is approved without imposing penalty by the competent authority, an amount of Rs.62,54,467/- will be required to be paid to the contractor. **Now, on that admission of the concerned Engineer in-charge of the applicant Board, the Learned AT awarded the said amount, which is not required to be interfered with or held to be erroneous.** Therefore, this Court is not in agreement with the arguments advanced by the Learned Advocate for the applicant that without sufficient material, the Learned AT has partly allowed the claimant's prayer (b).

16. Now, other prayer (e), by which, Rs.9,96,78,313/- towards the extra work was claimed and against the same, Rs.3,35,09,202/- was awarded by the Learned AT. Now, this claim contains the following heads:-

Claim Nos.	Claimed Amount in (Rs.)	Awarded Amount in (Rs.)
3.1	2,88,14,695.55ps	2,49,60,195/-
3.2	85,49,007/-	85,49,007/
3.3.	10,02,668.50ps.	Rejected
3.4	38,56,785.88ps	Rejected
3.5	5,74,55,156.55	Rejected

Hence, the applicant has raised grievance qua the awarded amount i.e. 3.1 and 3.2, and therefore, that would be required to be discussed herein.



17. The claimant has asked for extra work which was not only limited, but included structural change due to curtailment of work and idling of manpower and machinery charges due to delay in completion of work. Here, two main impediments for the claimant i.e. in the beginning, G+3 design was given, but the same was not approved due to site was situated in Seismic Zone, and therefore, the project was curtailed to G+2 only. Of course, due to change of the design and delay, which were solely attributed to the applicant-GHB. How much difficulty, hardships were caused, it can only the Learned AT would feel and which would be reflected in the whole Award. The Learned AT belongs to the same fraternity and has consumed remarkable years of their life in such field. Now, under that various heads, only two claims were allowed..Hence, the applicant has raised grievance qua the awarded amount i.e. 3.1 and 3.2, and therefore, that would be required to be discussed herein.

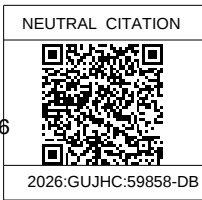
18. At this juncture, Learned Advocate for the applicant-GHB has also mentioned in the written submissions at page No.10, para (iv) that for the purpose of extra work executed by the claimant, whatever the amount is awarded, was not part of the agreement and thus, the Learned AT has traveled beyond the scope of the agreement. There were main following contentions were raised:-

(i) Finding on PMC discussed at para-34.2 of the Award is contrary to the agreement between the parties.

(ii) Finding of delay attributed to the applicant-GHB is factually incorrect at para-36.2.

(iii) Interpretation of section 46 of the Contract Act, 1872 is incorrect.

iv) Specific time limit of 15 months which is not appreciated correctly.



(v) Wrong interpretation of clause 13 about the scope of reduction of work interpreted at para-41.7.

(vi) Failed to interpret clause 2 of the Agreement, even though there was delay of 820 days which was not condonable and justified till in completing the work.

(vi) The claim awarded by the Learned AT in using idle machinery as well as idle manpower due to delay caused, without any evidence and only guesswork against ratio laid down by the Hon'ble Apex Court, in the case of Batliboi (Supra).

(vii) There are GDCR norms, hence no question for allowing claim for extra work.

(viii) The project was for Turnkey basis. There is a gross delay of around 835 days.

19. Now, looking to the above contentions in mind as raised by the Learned Advocate for the applicant-GHB, first of all it is undisputed that the tender for Bhuj site was accepted and time limit was for 15 months, the applicant expressed its intention for construction of DUs having G+3 floor. Even Engineer in-Charge of the applicant-GHB instructed on dated 12.3.2015 to keep the work on hold till permission granted for G+3 floor. The work was commenced on 12.2.2014, but the intention of the applicant-GHB to construct G+3 floor which was also found by the Learned AT.

20. The Learned AT has also found that whatever the plea of the opponent/original claimant that possession of the site was handed over on dated 15.4.2014 was not believed due to no evidence. Hence, the Learned AT came to the conclusion at page No.41 of the Award that the date of commencement of the project was from 13.2.2014 and within 15 months, the date of completion shall be 12.5.2015. At this juncture, the contract consists "scope of the works" which is also narrated in the Award at page No.41 which is verbatim reproduced here-in-below :-



(i) execution of the works shall be "as per direction of the Engineer-in-Charge",

(ii) structural drawing shall be approved as specified by GHB,

(iii) water supply lines shall be laid as per scheme prepared and submitted by the contractor and approved as specified by the GHB,

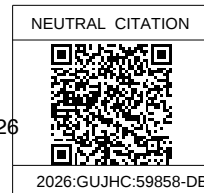
(iv) planning, designing and construction/installation of underground reservoirs, water gallery pump houses for water supply, for fire fighting tank including installing pumps, standby pumps, DG sets, etc. as per approved drawings/specifications or as directed by Engineer in Charge,

(v) the landscaping shall be as per specification and drawing approved by the competent authority of GHB,

(vi) planning, designing and construction of boundary wall for the whole scheme area, MS gate, dustbin, sign boards, guide map, location boards, numbering of housing etc. all complete as per drawing approved by GHB.

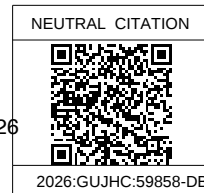
(vii) the contractor shall be responsible for executing all the items required for completing the houses in all respect, to make the dwelling units habitable and ready for occupation and also all services, make the environment-fit for habitation with electrical, horticultural, rainwater harvesting works complete as per direction of Engineer in charge.

21. Hence, Project Management Committee (PMC) has no way defined in the tender. At this juncture, Learned Advocate for the applicant-GHB has taken stand that there is no proper appreciation of clause 13 of the condition of contract, Part- II. Therefore, the same is reproduced here-in-below:

**Clause 13 of the Contract**

"All work under or in course of execution or executed in pursuance of the contract shall at all times be open to the inspection and supervision of the Chief Engineer, Superintending Engineer, CTE/TE of SVC, Chief Engineer (Quality Assurance), GHB, or by the officer of Vigilance of the authority and Executive Engineer, EE (elect.)/DD (hort.) and their subordinates including any government or reputed private institution appointed by the Engineer-in-Charge as third party quality assurance and the contractor shall at all times during the usual working hours and at all other times at which reasonable notice of the intention of the Executive Engineer or his Subordinate to visit the works shall be given to the contractor(s) either himself / themselves be present to receive orders and instructions or have a reasonable responsible agent duly accredited in writing present for that purpose. Orders given to the contractor(s) agent shall be considered to have the same force as if they had been given to the contractor(s) himself/themselves. The Executive Engineer may require the contractor(s) to dismiss any person in the contractor(s) employment upon the works who may be incompetent or misconduct himself, and the contractor(s) is/are forthwith to comply with such requirements."

22. Thus, the above-said clause 13 also makes it very much clear that the work executed or to be executed, could be inspected and supervised by Engineer In-charge (EIC) or reputed private institution as appointed by the EIC as third party quality assurance. Here, the main thing is "inspection and supervision" for the purpose of assurance may be by the Government or third party as appointed by the EIC. But here there is no any wordings of PMC. On the contrary, PMC's role was also for administration of the contract. Even, PMC was not mentioned in bid, but later on, introduced while awarding the contract vide Work Order. Therefore, there is no substance in the argument made by the



Learned Advocate for the applicant-GHB that there was no proper appreciation of clause 13 of the concerned rules/contract.

23. Now, for understanding the delay aspect, various dates are very much important, which are also mentioned the Award and they are reproduced here-in-below:-

<i>Bid submitted by the claimant was</i>	<i>.....12.02.2014</i>
<i>accepted and awarded the Work vide</i>	
<i>Work Order</i>	
<i>Date of commencement of Work</i>	<i>..... 13.02.2014</i>
<i>Time for completion of Work</i>	<i>..... 15 months</i>
<i>Date of Completion of Work as per</i>	<i>..... 12.05.2015</i>
<i>Tender</i>	
<i>Request for Extension of Time (EOT)</i>	<i>..... 26.03.2015</i>
<i>by the claimant</i>	
<i>Issue of Notice under clause-2</i>	<i>.....03.05.2017</i>
<i>Building Use Permission by Bhuj</i>	<i>.....</i>
<i>Authority</i>	<i>23.08.2017(R-946)</i>
<i>Physical Completion of the Work</i>	<i>..... 24.08.2017</i>
<i>Inauguration of the Project Work</i>	<i>..... 26.08.2017</i>
<i>Request for EOT by the claimant</i>	<i>..... 13.10.2017</i>
	<i>(R-948)</i>
<i>Issuance of Completion Certificate</i>	<i>.....24.01.2018</i>
<i>certifying Completion of Work on</i>	<i>(R-951)</i>
<i>24.08.2017</i>	
<i>Proposal by Engineer-in-Charge for</i>	<i>..... 24.01.2018</i>
<i>EOT</i>	<i>(R-955)</i>
<i>Decision by Committee on Extension of</i>	<i>..... 14.05.2018</i>
<i>Time.</i>	<i>(R-959)</i>
<i>Invocation of the arbitration</i>	<i>..... 08.08.2018</i>
	<i>(C-623)</i>
<i>Legal Notice for arbitration</i>	<i>.....10.01.2020</i>
<i>Reminders for arbitration</i>	<i>.....05.02.2020</i>
	<i>& 18.05.2020</i>



*Resolution by Respondent on the 26.02.2019
proposal of the Claimant for an
Extension of time*

*Issue of Notice under clause 2 for06.06.2020
depositing Rs. 299.10 lakh as (R-968)
compensation for delay*

24. Thus, it is undisputed that the work was delayed from 12.5.2015 to 24.8.2017 i.e. for 835 days, but the applicant, as per its case, calculated the delay of 823 days and considered entitlement of 120 days and for the rest period, i.e. 703 days' delay was attributed upon the opponent/ claimant and thereby, the applicant-GHB directed to deposit Rs.299.10 lakhs as compensation for delay.

25. The Learned AT observed clause 5 which was for "time and extension for delay". In clause 5.4, there was verbatim wordings at page No.46 of the Award, which are as under:-

5.4 In any such case the authority may give a fair and reasonable extension of time and reschedule the milestones for completion of work. Such extension shall be communicated to the contractor by the authority in writing, within 3 months of the date of receipt of such request. Non application by the contractor for extension of time shall not be a bar for giving a fair and reasonable extension by the authority and this shall be binding on the contractor."

26. The claimant sought extension of time on dated 26.5.2015 and 1.9.2015. Ultimately, on dated 24.8.2017, the claimant/opponent completed the work. Even thereafter also even after completion of work on dated 24.08.2017, extension was sought for on dated 13.10.2017 for the purpose of releasing the amount which was retained by the applicant. The applicant issued Completion Certificate on 24.1.2018 and on



dated 6.6.2020, held 703 days not justified. That means, more than 60 months from requests for extensions and 33 months after completion of work, time was taken by the applicant-GHB for justifying delay. Hence, under these circumstances, the Learned AT observed the following verbatim facts, which emerge from Award and the same is reproduced here-in-below :

36.4 In any contract work, the contractor would be required to complete the work within a given target date for completion and if such target date is going to be vitiated for certain reasons, the next target date should be in vogue to enable the contractor to plan its resources accordingly to complete the work within such extended date and minimize/mitigate its losses on account of levy of liquidated damages if any. In the present case, the claimant came to know the extension of time which it was entitled to, much after the completion of the Works. According to the AT, such grant of extension of time, in the first place, deprives the claimant to know beforehand, what is the intended/extended date of completion due to the delays that have affected the scheduled completion dates. Further the respondent is required to determine extended completion date well in advance to afford the claimant an opportunity to complete the Work within such extended time and by specific notice to make such extended date as of the essence, failing which the claimant would have been levied upon the Delay Damages. This is the requirement under the Contract, as well as law, as it is well established that the party to suffer is entitled to adequate notice for his right to mitigate his losses: and at the same time the party also has an obligation to mitigate its losses, even if the same are adjudicated in its favour.

Therefore, the action of the respondent, to grant extension of time, which should have been given at least before the scheduled completion of the Works

on 12.05.2015, was in fact given on 06.06.2020 i.e. more than five (05) years after the completion of Works. Such action of the respondent is not only in violation of the terms of the contract, but also defies the logic.

It is further evident that in spite of the repeated application/request made by the claimant, before the scheduled date of completion for an extension of time, the time for performance of the balance work was not specified by the respondent or the Engineer in Charge/PMC, thereby the time for performance was rendered uncertain, the contract was not revalidated and the claimant was allowed to continue to perform the contracted works. As per Section 46 of the Indian Contract Act, 1872, when no time for performance is specified, the work should be performed/completed within reasonable time. Such situation in construction law comes when "Time is set at large", i.e. there is no specific time limit and the Work is expected to be completed within reasonable time.

*27. Hence, in these circumstances, it was held by the Learned AT that due to introduction of PMC, repeated requests for extension by the opponent/claimant, **due to halt of the project, there were uncertainty qua G+2 or G+3 in the mind of opponent/claimant by surrounding evidence, Learned AT applied section 46 of the Contract Act, 1872 and section 46 of the Contract Act, is qua performance of the contract when it is uncertain.** In other words, no time limit was ascertained. Hence, there is no perversity or patent illegality or any contravention of substantive law in attributing the delay solely on the applicant-GHB. **Ultimately, the parties to the Contract cannot adjudicate the delay, albeit in presence of clause qua the same; that should be also adjudicated on the basis of surrounding circumstances, which is not done in the present case. Hence, there is no any illegality. Further, being the Court hearing***

the application under Sec.34 of the A&C Act is not supposed to enter into the re-appreciation of the evidence.

28. Now, coming to the quantification qua idle of machinery charges due to delay to the tune of Rs.2,88,14,694.55.ps., against which, an amount of Rs.2,49,60,195/- was awarded. At this juncture, clause 14 of the condition of the contract is very much important to consider the said claim, which is also reproduced at page No.72 of the Award, as under:-"

14. The contractor(s) is/are not to vary or deviate from the approved drawings, specifications or instructions to execute any extra work of any kind whatsoever unless the authority of the Executive Engineer to be sufficiently shown by an order in writing or by any plan or drawing expressly given and signed by him as an extra, or variation, or by subsequent return approval signed by him. If compliance with the Executive Engineer's aforesaid said order, plan or drawing, or approval involves extra work, and/or expenses beyond that involved in the execution of the contract works, then unless the same were issued in consequence of some breach of this contract on the part of the contractor(s), the later shall be paid the price of the said work (to be valued as hereinafter provided) and/or the expense aforesaid.

29. Thus, the contract itself takes care of compensation in case variation of extra work. Here, it is undisputed that the applicant-GHB since the beginning intended for G+3 project. Even at the relevant time insisted the opponent/original claimant to keep the work on halt, as necessary approvals were remained due to location situated in seismic zone. Ultimately, on non succeeded to get approval for G+3, variations took place towards G+2. Here the main thing is that the opponent/original claimant made several requests to release the amount

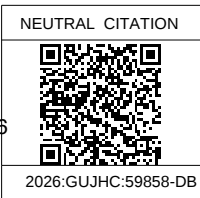
of Rs.9,96,78,312/- including the claim under this head to the applicant-GHB on dated 1.9.2016, 21.12.2026 and even after completion of work too on 5.2.2018. Even the opponent/original claimant had shown its willingness to withdraw the same subject to decision of authority in minutes of the meeting, ultimately, delay occurred, the opponent/original claimant invoked an arbitration clause. Hence, on the part of the applicant-GHB, the delay was occurred solely, no direction of liquidated damages can be sustainable. Even that finding has also not been challenged by the applicant-GHB. Hence, by considering the Work Order value of Rs.34,90,29,720/- and value of deployment of machinery of the said work to the tune of Rs.5,94,36,829/-, the calculation is being made by the Learned AT, ultimately, who is an expert in their respective fields, having giant experience. Even the claimant requested to consider the work on the amount of Rs.40,23,99,180/-, but the Learned AT believed and taken the amount which is shown in the Work Order, by deducting necessary salvage/re-use value of machinery by considering two months' time for planning and design and minimum cost per day came to be concluded at the rate of Rs.42,557/-. As the work was completed on 24.8.2017 and Learned AT believed the deployment of machinery up to June 2017 and by calculating the time from extended period i.e. 13.5.2015 to 30.6.2017, there would be 780 days and even 25% towards mitigation of losses, 585 days were considered and thereby it cannot be quantified of Rs.2,49,60,195/-. It is important to note that the datas and details of deployment of machinery was already submitted to applicant-GHB at the relevant time which was never be questioned nor challenged. Even before the Learned AT, the same situation is there. Nothing is challenged nor denied qua the deployment of machinery lying at the site. Hence, at this surrounding evidence, the Learned AT awarded a sum of Rs.2,49,60,195/- against the claimed amount of Rs.2,88,14,694.55ps. Hence, there is no substance in the argument made by the Learned Advocate for the applicant that the awarded

amount is outside the scope of contract and thereby, the Learned AT has traveled beyond the ambit of the agreement.

*At this juncture, Learned Advocate for the applicant has heavily placed reliance on the judgment in the case of **Batliboi Environmental Engineers Ltd. (supra)**, but in that case, the contractor was restrained from further executing the contract on termination the agreement and on that ground, it was held that for loss of profitability, evidence or proof thereof is mandatory requirement. But in the present case, no such case is. Hence, it is not applicable.*

30. So far as Claim No.3.2 is concerned, it is asked for idling manpower and fixed overheads additionally expenses for Rs.85,49,007/-. At this juncture, the finding of Learned AT at page para-41.3.2 of the Award is very much important which is reproduced as under:-

41.3.2 It is a Trade Practice that the total overhead cost is spread over the Prime Cost (i.e. direct cost) of the contract and therefore are expressed in terms of percentage of the Prime Costs, and therefore is spread uniformly, at that said rate of percentage, over all items of the works. The contractor would incur this cost while executing the work, and will get it recouped, at the same rate of percentage, in proportion of work done from the receipt of payment against that work done. Thus, when whole of the work under the contract gets completed within the time limit stipulated for that contract, the contractor also would have recovered the total element of the overhead expenses by the said period. But when the whole of the works does not get completed within the stipulated time limit and the time gets prolonged, the same quantum of the work get executed in that longer period of time, requiring additional cost of overheads. However, the quantum of whole of the work remaining same, the recovery of the overhead cost from the execution of whole of the work would remain same as per that received on completion of work within the time limit. This additional time related cost

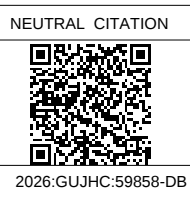


has been claimed by the claimant.

31. Now, coming to the quantification, Learned AT has considered the value of Work Order to the tune of Rs.34,90,29,720/- which includes the profit of 10% and 8% towards the overheads which is as per the trade practice. Here, it is not the case of the applicant-GHB that no such trade practice is being prevailed, on the contrary, the Learned AT cannot lost sight towards the usage and trade practice as per section 28(3) of the A&C Act. By calculating the same, the Learned AT arrived at a conclusion that there would be 750 days of over stay. Hence, there would be Rs.3,26,43,750/-, but the claimant claimed much lesser amount of Rs.85,49, 007/-, hence the same was awarded. Now, in doing so, there is no any contravention or perversity or any patent illegality for awarding the same. On the contrary, whatever least was asked for, even there would be remarkable difference in actual amount, but whatever was prayed, it came to be awarded.

32. Now for prayer (h), by which, the cost of arbitration was charged from the applicant-GHB only. Now, it is regime and domain of the Learned AT, ultimately, which is based on the specific circumstances of the present case. Now, the Award itself contains specific observations and findings of the Learned AT that there was a delay solely attributed on the shoulder of the applicant-GHB and even after completion of work on 24.8.2017, whatever the request for extension came to be adjudicated on 6.6.2020 and during such long time, the amount of the final bill was withheld by the applicant-GHB. By keeping all the surrounding aspects, the Learned AT felt that the cost of arbitration to be borne by the applicant- GHB. Even this Court has very much limitation and even not expected to re-appreciate or re-evaluate the finding. Hence, on the basis of the facts, the said decision does not require any interference on the part of this Court.

33. Lastly, the interest prayer (g) is concerned, the claimant claimed 18% interest pre-reference as well as



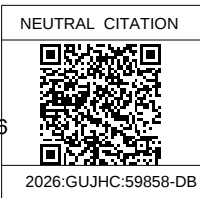
*post-reference interest from 8.8.2018 to 11.8.2023. Now, the applicant- GST has not shown any existence of negative clause in the agreement. Ultimately, the aspect of interest emanates from the contract itself and it is the discretion of the Learned AT. In the present case, looking to the circumstances, by keeping the ratio laid down in the case of **Rajasthan Vs. FFRRO Construction Private Limited**, the Ld. AT also cited paras-34 and 35 in the Award, wherein it is held that claim for damages, interest can be granted prior to the date of ascertainment or quantification, if written demand is made. Hence, in the present case, from the written demand, the Learned AT has awarded interest 10% which is just and reasonable and not requires to be interfered with by this Court from any angles. Hence, whatever the pre-reference interest of Rs.1,84,74,645/- awarded does not seem to be illegal or suffered with any patent illegality.*

34. So far as whatever judgments as relied upon by the Learned Advocate for the applicant are concerned, they are totally on different footings and as such the Award is passed in accordance with law, they are not applicable to the facts of the present case.

35. So far as the judgments as relied upon by the opponent, wherein the ratio laid down that when delay is attributed to the employer, then compensation is required to be awarded which is done by the Learned AT. In the present case, on the basis of the evidence and with four corners of agreement by considering the trade practice and usage.

36. It is pertinent to note here that as discussed in paragraph No.3 of this judgment, that one Execution Petition No.30 of 2024 filed under section 36 of the A&C Act is also tagged with the present application, which is now required to be detached, for onwards proceedings.

37. In sum and substance, whatever points raised by the applicant's side are not such, so that the conscience of this Court is shocked qua the Ld. AT's Award. On the contrary,



it came to be passed precisely in accordance with law. I do not find any contradiction in the observations and findings given by the Ld. AT. The impugned Award does not suffer from vice of irrationality and perversity. None of the grounds raised by the applicant attract section 34 of the A&C Act. Therefore, there is no patent illegality or error apparent on the face of the impugned Award. Hence, in absence of any arbitrariness, perversity or against the public policy, this Court is not in agreement with the arguments advanced by the Ld. Advocate for the applicant. Therefore, the impugned Award is not required to be interfered with by this Court in view of Section 34 of the A&C Act and hence, in view of the aforesaid discussions, the present application is liable to be dismissed.

7. We may note that there is an admission of the concerned Engineer in-charge of the appellant – Board with regard to the dues of contractor and hence, the award towards the amount of Rs. 62,54,467/- which was deducted towards RA bill, was not interfered with. As regards the claim of extra work awarded to the tune of Rs.3,35,09,202/-, it was noted by the Court under Section 34 that the claimant contractor was asked for extra work which was not only limited but included structural change due to curtailment of work and idling of manpower and machinery charges due to delay in completion of work. In the beginning, G+3 designs were given to the claimant but the same was not approved due to the site being situated in



Seismic Zone, and therefore, the project was curtailed to G+2 only. Due to change of the design and delay, which were solely attributed to the appellant – Board herein, the contractor had faced hardships. The dispute was raised with regard to the award for extra work on the premise that the claim was beyond the scope of the contract.

8. It was noted that there is absolutely no dispute about the work done by the contractor on the instructions of the Engineer in-charge. As regards the delay, it was noted that the arbitral tribunal has returned a finding of fact that the plea of the appellant that possession of the site was handed over on 15.04.2014 was unbelievable due to absence of any evidence. Due to halt of the project and there being uncertainty qua G+2 or G+3 in the mind of the claimant proved by the surrounding evidence, the claimant sought for extension of time which was duly granted. The appellant had even issued a completion certificate on 24.01.2018 and on 06.06.2020 deductions made while holding that the delay of 703 days was not justified.

9. The findings returned by the Arbitral Tribunal as noted in the judgment impugned of the Court under Section



34 could not be assailed before us, on any of the permissible grounds of patent illegality or perversity from the standard of a reasonable man. Within the limited scope of Section 37, we can not examine the findings of the learned Arbitral Tribunal on the issue of delay and merits of the claim, independently.

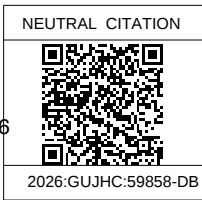
10. As regards the challenge to the quantification qua idle of machinery charges due to delay to the tune of Rs. 2,49,60,195/- awarded by the Arbitral Tribunal, the findings in paragraph no. '72' of the award as noted in paragraph nos. '28' and '29' of the judgment impugned are sufficient to reject the arguments of the learned counsel for the appellant herein about the correctness of the said findings, which are essentially on the merits of the arbitral award.

11. In the totality of the facts and circumstances of the present case, having gone through the reasoning given by the Court under section 34 of the Act 1996 and the arbitral award dated 11.08.2023 passed by the three member Arbitral Tribunal, we do not find any good ground to entertain this appeal under Section 37 of the Arbitration and Conciliation Act, 1996, so as to attach any illegality to



the concurrent findings returned by the Arbitral Tribunal and the Court under Section 34 of the Act, 1996. None of the grounds agitated during the course of arguments by the learned counsel for the appellant herein would demonstrate even a semblance of perversity in the arbitral award, much less patent illegality. We also think that the word “First Appeal” as a cause title in the appeals filed under Section 37 in this Court is a misnomer as the learned advocate tend to argue on the merits of the arbitral award as if we are of the first Court of appeal. We are informed that the amendments in the High Court Rules is yet to be notified. The Registrar General is directed to do the needful at the earliest.

12. We also find it improper on the part of the appellant, a statutory authority in challenging the award both by drawing proceedings under section 34 and 37 of the Act 1996. It must be kept in mind that a contract awarded by a statutory authority will not, *ipso facto* become a statutory contract. The same still remains in the realm of a private agreement between a statutory authority and the contractor. The casual filing of applications under Sections



34 and 37 of the Act, 1996 burdening the Courts with unnecessary and frivolous litigation, needs to be curbed forthwith. The only deterrent which comes in our mind is imposition of costs by Courts under Section 34 as well as in 37 proceedings, at par with the arbitration costs which is imposed upon the losing party in accordance with the provisions of 31A of Act, 1996.

13. A perusal of section 31A of the Act, 1996 indicates that the both the Courts or Arbitral Tribunal have been conferred with discretion to determine the costs payable by one party to another in relation to any arbitration proceedings or a proceeding under any of the provisions of the Act pertaining to the arbitration, which would obviously include the proceedings under Sections 34 and 37 of the Act, 1996. Three clauses (a) to (c) of Section 31A (1) provides that the Court shall have discretion to determine [\(a\)](#)whether costs are payable by one party to another; [\(b\)](#)the amount of such costs; and [\(c\)](#)when such costs are to be paid. The Explanation to Section 31A (1) further provides as to what would be the reasonable costs, falling within the meaning of “costs” as incurring in clauses (a) to (c) of



Section 31A (1) therein.

14. The reasonable cost relating to arbitration proceedings or a proceedings under any of the provisions of the Act pertaining to the arbitration, as provided in the Explanation would be (i) fees and expenses of the arbitrators, Courts and witnesses; (ii) legal fees and expenses; any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

15. Sub-section (2) of Section 31A further provides that the if the Court or arbitral tribunal decides to make an order as to payment of costs, the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or the Court or arbitral tribunal may make a different order for reasons to be recorded in writing. The costs of successful party has to be paid by unsuccessful party as a general rule.

16. Sub-section (3) of Section 31A further provides the circumstances which shall have to be taken into account by the Court in determining the costs which are:-

(a) the conduct of all the parties;



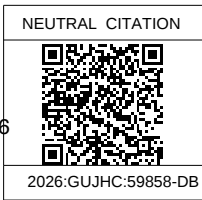
(b) whether a party has succeeded partly in the case;

(c) whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and

(d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

Clauses (c) and (d) of Section 31A (3) are not relevant for our purposes in the present case.

17. Taking into account the provisions of Section 31A of the Act, 1996 in extenso and on consideration of the conduct of the appellant herein in raising the challenge to an arbitral award in a casual manner, when no ground for interference in the award on the ground of patent illegality is made out and thereby dragged the respondent in litigations both the Courts under Sections 34 and 37 of the Act, 1996, we are of the view that the present appeal filed under Section 37 of the Act, 1996, bereft of any of the ground of challenge to the arbitral award within the scope of Section 34/37 of the Act, 1996, is liable to be dismissed



with costs of Rs. 3,00,000/-, out of which Rs. 2,00,000/- shall to be paid to the respondent/claimant towards the advocate's fees and legal expenses incurred by it in litigating before the Court under Section 34 as well as before this Court under Section 37 of the Act, 1996. The remaining Rs. 1,00,000/- shall be deposited in this Court towards the costs of litigation in a frivolous matter and burdening the docket of this Court with unnecessary litigation resulting in wastage of its precious judicial time.

18. The cost of Rs. 1,00,000/- as such shall have to be deposited before the Registrar General of this High Court within a period of three weeks from today. The amount of Rs. 2,00,000/- of costs shall be paid to the respondent - contractor within a period of four weeks from today, failing which, the entire cost amount shall be recoverable as an arrears of land revenue.

19. Subject to the above, the present appeal stands dismissed.

(SUNITA AGARWAL, CJ)

(D.N.RAY,J)

VARSHA DESAI