

Reliance on CA Certificates in Arbitration Not Per Se Erroneous, Rules Delhi High Court

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Introduction

Is it erroneous for an arbitral tribunal to rely on a Chartered Accountant ("**CA**") certificate as proof of actual costs incurred? This question recently came before the Delhi High Court in ***National Highways Authority of India v. Hindustan Construction Co. Ltd¹***, while deciding a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**").

The High Court upheld the arbitral award insofar as it granted compensation for expenses incurred during the extended period of the contract, finding the reasoning of the Tribunal to be plausible and free from perversity or patent illegality. The High Court reaffirmed the evidentiary value of audited financial statements, observing that certificates issued by statutory auditors reflect true and reliable records of actual expenses and may be relied upon to determine overhead and prolongation costs.

Factual Background

National Highways Authority of India ("**NHAI**"/"**Petitioner**") filed a petition under Section 34 of the Act seeking to set aside an Arbitral Award dated 14.10.2016 passed in an arbitration between Hindustan Construction Company Ltd. ("**HCC**"/"**Respondent**") and NHAI. The dispute arose out of a contract dated 05.10.2005 between NHAI and HCC for a project related to four-laning of NH-28 (Lucknow-Ayodhya Section) for a total contract price of ₹212.33 crores. Although the scheduled completion date was 12.10.2008, the works were completed on 12.09.2011. A Taking Over Certificate was issued on 29.09.2011.

NHAI contested the award of ₹53.79 crores plus 12% compound interest awarded on account of the additional work included within the scope of the Contract. It challenged the Award insofar as it granted relief in respect of overhead expenses, costs on account of retention of plant and machinery during the extended period, and unrecovered portions of price adjustments towards steel, cement, POL (Petroleum, Oil and Lubricants) and labour. These claims, collectively forming the prolongation and additional costs, were allowed by the Tribunal for the extended period of the contract *i.e.* from 13.10.2008 to 12.09.2011.

Submissions

1 National Highways Authority of India v. Hindustan Construction Co. Ltd, O.M.P. (COMM) 99/2017.

NHAI's submissions

- The Arbitral Tribunal went beyond the terms of the General Conditions of Contract ("**GCC**") and Conditions of Particular Application ("**COPA**"), thereby rewriting the contract.
- Having sought and accepted Extensions Of Time ("**EOT**"), HCC could not claim damages for prolongation. The Tribunal failed to appreciate the law laid down by the Supreme Court in *Associated Builders v. DDA*², wherein it was held that if delays are attributable to the contractor and the contractor seeks and obtains an EOT on that account, no claim for compensation can be maintained in addition to the EOT so granted.
- The Tribunal relied on CA certificates and monthly progress reports submitted by HCC without undertaking any analysis as to whether such expenses were actually incurred during the extended period of time, or whether they were substantiated by invoices and receipts.
- The Tribunal ignored Engineer's records showing delays and defaults on the part of HCC and relied solely on unverified CA certificates that were not subjected to cross-examination.
- The award of 12% compound interest was excessive and contrary to Section 31(7) of the Act since the claims were in the nature of damages.

HCC's submissions

- Under Section 34 of the Arbitration Act, the Court cannot re-appreciate evidence or review the merits.
- The Engineer himself granted EOT for reasons beyond the control of the respondent and did not impose liquidated damages ("**LD**"). The Tribunal rightly provided compensation for additional costs due to delays not attributable to the contractor.
- The CA-certified statements were contemporaneous and not challenged. The Tribunal was entitled to rely on them.
- The Tribunal gave reasons for relying on the Monthly Progress Reports ("**MPRs**") filed by the respondent, rather than those prepared by the Engineer.

² Associated Builders v. DDA, (2015) 3 SCC 49.

- The 12% compounded interest was consistent with the contract and intended to compensate for the delay.

Issues and Judgment of the High Court

Whether awarding amounts over and above price escalation cost amounted to rewriting of the Contract?

At the outset, the High Court observed that: "*the scope of interference under Section 34 of the Act is very limited and narrow. The Court does not sit in appeal over the Award, nor does it review or re-appreciate the evidence as if it were an appellate forum. It is the prerogative of the Tribunal to interpret the terms of the contract, and if the Tribunal has adopted a plausible view, the Court is not required to interfere, even if another interpretation is possible.*"

The High Court noted that the Engineer and the petitioner themselves had granted an EOT of 35.01 months under Sub-clause 44.1 of the GCC. Since EOT under this clause could only be granted for delays "other than through a default or breach of Contract by the Contractor", the Tribunal concluded that the delays were not attributable to the respondent. The Tribunal had also noted that no liquidated damages were imposed, and that price adjustment was paid during the extended period, which further substantiated that the delays were not due to the respondent's default.

The High Court observed that the Tribunal had properly relied on contemporaneous documents, which lend credibility to the fact that the EOTs were granted on account of events not attributable to the respondent. In view of this evidence, the High Court held that the Tribunal's finding that delays up to 12.09.2011 were due to the petitioner's own failures was a plausible and reasoned conclusion. The High Court reiterated that it could not reappreciate factual findings under Section 34 of the Act, unless the award suffered from perversity or patent illegality, which was not the case here.

Whether the Tribunal erred in awarding sum over and above the Price Escalation cost?

The High Court noted that Clause 70.3 provided a formula-driven mechanism to neutralise escalation in labour, materials, fuels, and lubricants, whereas Clauses 6.4, 12.2, and 42.2 were distinct provisions providing for reimbursement of costs incurred due to delays attributable to the Employer. The Tribunal had rightly distinguished between these two categories and found that the respondent had "given due credit for the amounts already received under Clause 70.3, and claimed only uncompensated costs arising during the extended period". The High Court therefore held that the tribunal's award which granted compensation for additional costs over and above the escalation formula, did not warrant interference under Section 34 of the Act.

Whether reliance placed on CA certificates was erroneous and devoid of rationale?

The High Court held that the Tribunal had duly recorded that the books of accounts were contemporaneous business records audited by a statutory auditor, and hence admissible under Sections 34 and 65 of the Indian Evidence Act, 1872. It observed that the Tribunal, being the master of the quality and quantity of evidence, had taken a plausible view in accepting such audited statements as reliable proof of actual expenditure. The High Court re-affirmed that *audited statements duly certified by statutory auditors reflect the actual expenses incurred* and may be relied upon for determining overhead costs. It noted that the Tribunal here had not relied solely on the CA certificates but had also considered other corroborative material. Accordingly, the High Court found no ground for interference with the Tribunal's findings on this issue.

Whether disregard of MPRs submitted by the engineer of the petitioner to the Tribunal was disregard of vital evidence and amounted to patent illegality?

Regarding the claim on additional costs for the extended stay of plant and equipment, the High Court did not agree with the reasoning by the Tribunal to disregard the Engineer's Monthly Progress Reports ("**MPRs**"). It noted that the Tribunal's approach in relying solely on the contractor's self-serving reports was perverse and contrary to the material on record. It noted that the issue was directly covered by ***National Highways Authority of India v. HCC***³.

Since the MPRs were part of the contemporaneous record and had never been objected to by the contractor at the relevant time, they constituted the most reliable evidence of machinery deployed at site. Therefore, any computation of additional costs or prolongation claims had to be based strictly on these MPRs, and any deviation therefrom rendered the finding unsustainable in law and liable for interference under Section 34 of the Act.

The High Court held that by disregarding the Engineer's MPRs, the Tribunal ignored vital evidence and substituted it with speculative estimations, constituting patent illegality. The High Court, therefore set aside this part of the award, noting that the claim under this head was severable.

Whether interest awarded by the Tribunal was exorbitant and could not be sustained?

As to the issue of interest, the High Court upheld the Tribunal's award of 12% interest compounded monthly from the date of submission of the claim to the Engineer till the date of the award. It noted that the Tribunal had awarded

³ National Highways Authority of India v. HCC, 2016 SCC OnLine Del 6112

interest strictly in accordance with Clause 60.8 of the Conditions of Contract, which provided for such compounding on unpaid sums. The High Court deemed the Tribunal's interpretation of "sums payable" to include the amounts found due upon adjudication reasonable. The High Court referred to ***National Highways Authority of India v. ITD Cementation India Ltd.***⁴, ***NHAI v. BSC-RBM-Pati JV***⁵, and ***Larsen Air Conditioning & Refrigeration Co. v. Union of India***⁶, wherein it has been held that contractual stipulations for compound interest are not against public policy. The High Court also relied upon ***Gayatri Balasamy v. ISG Novasoft Technologies Ltd.***⁷, and clarified that while courts may modify post-award interest, they cannot ordinarily interfere with pre-award or pendente lite interest unless it violates Section 31(7)(a) of the Act.

Decision of the High Court

The High Court partly allowed the petition. It set aside only that portion of the award which granted additional costs of ₹30,20,98,041. It upheld the award on all other claims and the award of interest.

Comment

The Delhi High Court's reasoning adds to the jurisprudence on the evidentiary value of CA certificates in arbitral proceedings. The judgment of the High court is in line with its recent decision In ***Delhi Transco Ltd. v. KEC International Ltd.***⁸, which held that when an arbitral award is founded solely on the findings contained in a CA certificate, without the Chartered Accountant having been examined as a witness and without any corroborative evidence on record, such an award is liable to be set aside on the ground of patent illegality. As a corollary, in the ***NHAI v. HCC (supra)*** case, the claims based on CA Certificates relied upon along with other material evidence were upheld. The position that emerges thus is that CA Certificates constitute valid evidence in arbitration proceedings. However, they must be considered along with and corroborated with other relevant material evidence.

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4 National Highways Authority of India v. ITD Cementation India Limited O.M.P. No. 27 of 2010.

5 National Highways Authority of India v. BSC-RBM-Pati Joint Venture, 2014 SCC OnLine Del 1682.

6 Larsen Air Conditioning & Refrigeration Co. v. Union of India, (2023) 15 SCC 472.

7 Gayatri Balasamy v. ISG Novasoft Technologies Ltd., (2025) 7 SCC 1.

8 Delhi Transco Ltd. v. KEC International Ltd., FAO(OS)(COMM) 162/2023 dt. 21.05.2025.

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