

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3593/2017

NATIONAL HIGHWAYS AUTHORITY OF INDIA

APPELLANT(S)

VERSUS

M/S. HINDUSTAN CONSTRUCTION COMPANY

RESPONDENT(S)

WITH

CIVIL APPEAL NO.3594/2017

O R D E R

1. These appeals arise out of the common judgment of the High Court of Delhi dated 24.02.2016, which disposed of appeals arising from the judgment rendered by learned Single Judge in the context of a challenge to an Arbitral Tribunal award under Section 34 of the Arbitration and Conciliation Act, 1996.

2. Mr. Pradeep K. Bakshi, appearing on behalf of the National Highways Authority of India (NHAI) argued that the impugned judgment is unsustainable on the ground that the parties anticipated all manner of contingencies and specifically provided for cost escalation. It was submitted that given the nature and phraseology used in the agreement between the parties, there was no

scope for the Tribunal to award any compensation towards loss of profit. Clause 70.2 and Clause 70.3 were specifically highlighted. It was, therefore, urged that having regard to imperative of Section 28(c), the Tribunal's findings, were beyond the terms of the contract.

3. Learned counsel by relying upon the minority opinion of one of the tribunal members, also urged that the direction to pay interest at monthly rests, is unsustainable in law and highly disproportionate having regard to the circumstances of this case.

4. Having considered the record and after considering the submissions of the parties, this Court is satisfied that the impugned judgment does not call for interference. Claim No.8 (Dispute No.8A) which pertains to loss of profit was in respect of what can be termed as "opportunity costs" and recompense for the extra period of work done which could have been otherwise profitably utilised by the respondent-contractor.

5. In such circumstances, the award towards the claim of loss of profit, for such period cannot be characterised falling beyond the terms of the contract.

6. This Court is, however, at the same time, of the opinion that the direction to pay interest at monthly rests, based upon Clause 60.8, in the present case is untenable.

7. Consequently, the direction to the extent it requires the NHAI to pay interest at monthly rests, is hereby set aside; however, the rate of interest @ 12 per cent is sustained, in respect of claim No.8.

8. These appeals are partly allowed to the above extent.
9. Pending application(s), if any, shall stand disposed of.

.....J.  
(S. RAVINDRA BHAT)

.....J.  
(ARAVIND KUMAR)

NEW DELHI;  
SEPTEMBER 21, 2023

ITEM NO.103

COURT NO.8

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3593/2017

NATIONAL HIGHWAYS AUTHORITY OF INDIA

Appellant(s)

VERSUS

M/S. HINDUSTAN CONSTRUCTION COMPANY

Respondent(s)

[RETAIN ITS POSITION]

(IA No. 28650/2023 - APPLICATION FOR PERMISSION

IA No. 24540/2018 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)

WITH

C.A. No. 3594/2017 (XIV-A)

Date : 21-09-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S. RAVINDRA BHAT  
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Appellant(s) Mr. Pradeep Kumar Bakshi, AOR  
Mr. Kushagra Pandit, Adv.

For Respondent(s) Dr. A.m. Singhvi, Sr. Adv.  
Mr. V. Giri, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Rishi Agrawala, Adv.  
Ms. Malavika Lal, Adv.  
Ms. Shruti Arora, Adv.  
Ms. Deepshikha Mishra, Adv.  
Mr. Anirudh Bhatia, Adv.  
Mr. Nidhi Ram Sharma, Adv.  
Mr. Jimut Mohapatra, Adv.  
Mr. E. C. Agrawala, AOR

UPON hearing the counsel the Court made the following  
O R D E R

These appeals are partly allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SAPNA BISHT)  
COURT MASTER (SH)

(Signed order is placed on the file)

(BEENA JOLLY)  
COURT MASTER (NSH)