



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

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*Judgment Reserved on: 9<sup>th</sup> March, 2026*

*Judgment pronounced on: 26<sup>th</sup> May, 2026*

+ **O.M.P. (COMM) 452/2019 & I.A. 14761/2019**

MADHYA BHARAT POWER  
CORPORATION LIMITED

.....Petitioner

Through: Mr. Ratan K. Singh, Senior Advocate  
with Mr. Prateek Khandelwal and Mr.  
Anand Murthi Rao, Advocates. Mr. M.  
Rajshekhar, DGM (Legal).

Versus

VOITH HYDRO PRIVATE LIMITED

.....Respondent

Through: Mr. Raj Shekhar Rao, Senior  
Advocate with Mr. Omar Ahmad, Mr.  
Vikram Shah, Ms. Simarjeet and Mr.  
Ritik Kumar Rath, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J.**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') seeking setting aside of the Award dated 31<sup>st</sup> July, 2019 passed by the Arbitral Tribunal ('Award').
2. The petitioner (respondent in the arbitration proceedings) shall hereinafter be referred to as 'Madhya Bharat' or 'the Employer' and the respondent (claimant in the arbitration proceedings) shall hereinafter be referred to as 'Voith Hydro' or 'the Contractor'.



### **FACTUAL BACKGROUND**

3. Brief facts relevant for the adjudication of present dispute are as follows.
4. Madhya Bharat entered into a Memorandum of Understanding with the Government of Sikkim by which Rongnichu Hydro Project ('RHEP') in Sikkim was allotted to Madhya Bharat.
5. Madhya Bharat had split RHEP into five different packages, one of which was for Electro Mechanical Works ('E&M'). Tender was floated by Madhya Bharat for E&M in respect of which Voith Hydro submitted its bid. A Letter of Intent was issued to Voith Hydro on 21<sup>st</sup> June, 2011. Thereafter, Voith Hydro was awarded the Contract for Electro Mechanical works for the 96 MGW Rongnichu Hydro Project in the State of Sikkim.
6. On 28<sup>th</sup> September, 2011, Madhya Bharat and Voith Hydro entered into two Contracts:
  - (a) Supply Contract for sale of electro-mechanical equipment for the project; and
  - (b) Services Contract for port clearance, transportation, unloading, storage and erection among other things.
7. The timeline agreed by the parties for the completion of the Contract was a period thirty (30) months from the effective date of Contract. However, within a week of signing of the Contracts, the parties amended the Contract and revised the time of completion from thirty (30) months to forty-two (42) months from the effective date of the Contract.
8. On 27<sup>th</sup> November, 2013, Voith Hydro issued a notice of suspension to Madhya Bharat. Subsequently on 11<sup>th</sup> December, 2013, Voith Hydro



suspended the Contract in terms of Clause 41.2(b) of the General Conditions of Contract ('GCC'). Madhya Bharat also formally suspended the Contract on 13<sup>th</sup> June, 2014.

9. On 5<sup>th</sup> May, 2016, Voith Hydro issued a notice for settlement of dispute under Clause 6 of the GCC, which did not materialise. Thereafter, Voith Hydro nominated an Adjudicator for resolution of disputes, in terms of Clause 6.1 of the GCC, however, the Adjudicator later on conveyed his unwillingness to adjudicate the dispute.

10. Accordingly, Voith Hydro issued a notice dated 9<sup>th</sup> March, 2017 invoking the arbitration clause. Both the parties appointed their respective Nominee Arbitrators who mutually appointed the Presiding Arbitrator.

#### **OVERVIEW OF THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL**

11. Voith Hydro made the following claims in the Statement of Claim filed before the Arbitral Tribunal on 19<sup>th</sup> July, 2017:

- (a) Claim I: Compensation for engineering works completed
- (b) Claim II: Compensation for materials manufactured
- (c) Claim III: Compensation for on-site expenses
- (d) Claim IV: Compensation for off-site expenses and loss of profits
- (e) Claim V: Miscellaneous expenses
- (f) Pre-award interest at 15% per annum; post award interest at 18% per annum
- (g) Costs

12. Statement of Defence along with Counter Claim was filed on behalf of Madhya Bharat on 25<sup>th</sup> September, 2017. Counter Claims raised on behalf of Madhya Bharat were as under:



- (a) Return of advance amount of ₹8,18,31,444/- for Supply Contract and ₹1,29,53,966 for Service Contract.
- (b) Damages on account of losses suffered (not quantified).
- (c) Interest at 8% per annum from 11<sup>th</sup> December, 2013.
- (d) Costs

13. Voith Hydro provided testimonies of four fact witnesses and one Expert witness, Mr. Nigel Grout. For Madhya Bharat, there were three fact witnesses and one Expert witness, Mr. John Prudhoe.

14. The Arbitral Tribunal observed that the determination of quantum involved minute and technical scrutiny of engineering and manufacturing aspects requiring specialised expertise, and therefore relied substantially on the findings of the Experts in this regard. Both the appointed Experts filed two individual reports each. After cross examination, both the Experts prepared a Joint Expert Report on 25<sup>th</sup> September, 2018. In their Joint Expert Report, the two Experts identified areas of agreement and disagreement, along with their respective reasoning.

15. Relevant portions of the Award are set out below for ease of reference:

*“147. In general, the Experts have agreed as to the approach to valuation before and after suspension / termination. They agreed that for the period prior to suspension / termination on 11.12.2013 (the Execution Phase), the quantum should be a valuation of work done based on the prices in the Contracts plus any applicable Price Adjustment. From 12.12.2013 (the Suspension Phase), the quantum should use actual additional costs incurred. As quantum Experts, they have disclosed their own conclusions as to the quantum of various claims made by the Claimant and they have also attempted to give reasons in support of their respective stand on certain claims and / or related issues on which they have differed from each other.*

*148. We find no good reasons not to accept their Joint Report on the claims / issues on which they are in agreement. Their agreed views are fit to be*



*accepted, although some reservation has been expressed even against such agreed views, on behalf of the Respondent. The areas where both the Experts have differed from each other will have to be carefully examined before deciding which view is more acceptable on the touchstone of reasons”*

16. Ultimately, a unanimous Award was passed by the Arbitral Tribunal awarding the following amounts in respect of each of the claims:

| HEADS OF CLAIM                                                                      | INR                   | USD              | EUR              |
|-------------------------------------------------------------------------------------|-----------------------|------------------|------------------|
| Compensation for Engineering Completed                                              | 2,57,13,267           | 1,08,840         | 42,249           |
| Compensation for Material Manufactured                                              | 6,32,09,933           |                  |                  |
| Compensation for On-site Expenses                                                   | 91,71,305             |                  |                  |
| Compensation for Off-site expenses (Project manager)                                | 51,32,518             |                  |                  |
| Compensation for Off-site overheads and Loss of Profit on unexecuted Contract works | 8,19,42,196           | 3,81,421         | 1,48,057         |
| Compensation for Miscellaneous Expenses                                             | NIL                   | NIL              | NIL              |
| LESS: Amount already paid                                                           | 9,47,85,410           | 4,08,852         | 1,58,706         |
| <b>TOTAL</b>                                                                        | <b>9,03,83,809.00</b> | <b>81,409.00</b> | <b>31,600.00</b> |

17. Counter claims made by Madhya Bharat were rejected by the Arbitral Tribunal.



18. The operative directions in paragraph 277 of the Award are set out below:

***“277. The final Award is as follows:***

*I. The Claimant’s claim is allowed to the extent of INR 9,03,83,809.00, USD 81,409.00 and EURO 31,600.00 (after adjusting the payment already made). The foreign currency amount will have to be paid in INR at the foreign exchange rate prevalent on the date of the Award.*

*II. The Claimant is entitled to pendente-lite interest @ 8% per annum from 09.03.2017. On the foreign currency award, the interest rate would be 3% per annum from the same date.*

*III. The Claimant is entitled to costs being 50% fees and expenses of the Tribunal that had been borne by the Claimant towards its share. Towards the legal expenses of the Solicitors, Counsel and Expert etc., the parties shall bear their own costs.*

*IV. The amount to be paid to the Claimant under this award along with interest as aforesaid should be paid to the Claimant within a period of three months failing which the awarded amount will carry interest @ 12% per annum from the date of the Award until the date of payment.*

*V. The Respondent is directed to return the papers of the bank guarantees to the Claimant forthwith.*

*VI. The Counterclaim by the Respondent is rejected.”*

19. Aggrieved by the Award passed by the Arbitral Tribunal, the present petition has been filed by Madhya Bharat seeking setting aside of the impugned Award.

20. In the order passed by this Court on 22<sup>nd</sup> October, 2019, it was noted that a sum of ₹9 crores is lying with Voith Hydro. Accordingly, subject to Madhya Bharat depositing an amount of ₹1.5 crores, the enforcement of the impugned Award was stayed.



**SUBMISSIONS ON BEHALF OF MADHYA BHARAT**

21. Mr. Ratan K. Singh, senior counsel appearing on behalf of Madhya Bharat has made the following submissions in support of the present petition.

**22. CLAIM I - COMPENSATION IN RESPECT OF ENGINEERING PRICE FOR THE WORKS COMPLETED**

- i. The Arbitral Tribunal awarded excessive value for the engineering component for the Supply Contract. Voith Hydro claimed 6% of the Contract value towards engineering component. It was the case of Madhya Bharat that the actual cost could not exceed 1%, and its Expert opined that it should not exceed 4%. The Arbitral Tribunal nevertheless accepted 6% based on the report of the Expert of Voith Hydro.
- ii. The research paper relied upon by the Voith Hydro's Expert states that Engineering, Procurement and Construction management together constitute 7%. As 4% has already been awarded towards procurement, the balance 3% would cover engineering and construction management. The award of 6% towards engineering is contrary to the evidence and the material relied upon.
- iii. The engineering cost forms part of the materials manufactured costs awarded under Claim II, based on purchase orders placed by Voith Hydro on its sub-suppliers. The Award results in overlap and double recovery.

**23. CLAIM II – COMPENSATION FOR MATERIALS MANUFACTURED**

- i. Voith Hydro initially claimed that the turbine housing was ready and available but later admitted that it had been diverted. Despite this,



the Arbitral Tribunal awarded ₹89,19,752/- towards its manufacturing cost and also granted storage charges, relying on category-wise values in the Joint Expert Report. Having declined relief for other diverted items, the award of manufacturing and storage costs for a diverted turbine housing is contradictory and unsustainable.

- ii. The Arbitral Tribunal awarded ₹1,67,37,958/- towards five items (Inspection Platform, Generator Coolers, Dovetail Bars, Generator Shafts and Stator Frames), which were admitted to be available with Voith Hydro. However, no direction was issued for their delivery to Madhya Bharat. The award of manufacturing cost without directing delivery is unsustainable.
- iii. A sum of ₹2,21,35,101/- was awarded, including ₹69,41,313/- (cable system) and ₹20,48,071/- (distributor pipes), though these were only partially complete (85% and 15%). No delivery was directed. Further, the letter dated 22<sup>nd</sup> February, 2019 sent by Voith Hydro did not confirm their availability. The award of cost without proof of completion or direction for delivery is untenable.

**24. CLAIM III – COMPENSATION FOR ON-SITE EXPENSES**

The amounts awarded by the Arbitral Tribunal under this claim were based on ERP extracts which are unreliable in nature, in absence of evidence of the person who printed the ERP extract.

**25. CLAIM IV – COMPENSATION FOR OFF-SITE EXPENSES AND LOSS OF PROFITS**

- i. Loss of profit was awarded without any proof. The Arbitral Tribunal accepted non-disclosure on grounds of confidentiality, though a



claimant must substantiate actual loss. Even the Society of Construction Law Delay and Disruption Protocol, 2017 recognises that confidentiality may have to be sacrificed to prove such claims. Loss of profit on unexecuted work cannot be granted in absence of proof.

- ii. Voith Hydro had earlier set up a case of suspension of the Contract. It was only in rejoinder, that Voith Hydro changed its case to that of termination. Therefore, the Arbitral tribunal could not have awarded loss of profits on the premise that the Contract stood terminated.

## **26. INTEREST**

- i. The Arbitral Tribunal has awarded post-award interest at a higher rate of 12% per annum without furnishing any reasons for the same.

## **27. COSTS**

- i. The Arbitral Tribunal awarded the entire costs of arbitration to Voith Hydro solely on the basis that it partly succeeded and that Madhya Bharat's counterclaims were rejected. Costs must be awarded on a reasoned consideration of conduct and circumstances; partial success alone does not justify grant of entire costs.

## **SUBMISSIONS ON BEHALF OF VOITH HYDRO**

28. Mr. Rajshekhar Rao, senior counsel appearing on behalf of Voith Hydro, counters the aforesaid submissions by submitting as under:

## **29. CLAIM I - COMPENSATION IN RESPECT OF ENGINEERING PRICE FOR THE WORKS COMPLETED**

- i. Contention of Madhya Bharat that the Arbitral Tribunal awarded price of engineering component at 6% by solely relying on the claim



by Voith Hydro and its expert report is misconceived. Report submitted by Experts of both the parties stated that the percentage of engineering costs ranged from 4% to 6%. The Arbitral Tribunal assessed the evidence including the Experts' reports, as well as cross examination of the said Experts to arrive at the figure of 6%.

- ii. Insofar as the objection of Madhya Bharat with regard to the duplication in awarding engineering costs is concerned, the claim for engineering costs cannot be clubbed with the costs of materials manufactured. The cost for manufacturing and engineering was different under the Contract and therefore there exists no duplication of costs.

### **30. CLAIM II – COMPENSATION FOR MATERIALS MANUFACTURED**

- i. The record demonstrated continuous execution activity including technical meetings, progress reports, purchase orders, inspection calls and manufacturing updates which was without objection from Madhya Bharat. Critical components were ready for inspection, yet Madhya Bharat neither sought inspection nor delivery, despite being informed of storage constraints and financial implications.
- ii. The plea for delivery of the materials arose belatedly after it emerged in cross-examination that part of the Contract had been awarded to a third party. Both Experts had already discounted storage and recommissioning costs, and directing delivery after nearly a decade would generate fresh disputes.



**31. CLAIM III – COMPENSATION FOR ON-SITE EXPENSES**

- i. The contention that the Award is contrary to the evidence on record, as the identity of the person who generated the ERP extracts was not established, essentially seeks a reappraisal of evidence, which is impermissible in proceedings under Section 34 of the Act. In any case, the ERP extracts had been verified by the project team of Voith Hydro, and the same stood confirmed during the cross-examination of the witness of Voith Hydro, Mr. Sundararaman.

**32. CLAIM IV – COMPENSATION FOR OFF-SITE EXPENSES AND LOSS OF PROFITS**

- i. The Arbitral Tribunal awarded loss of profit after a detailed, fact-specific analysis based on Expert evidence. Two quantum Experts were appointed, reports and a joint report were exchanged and oral evidence was led. The quantification was thus grounded in evidence and not made on a notional or automatic basis.
- ii. Reliance placed on *McDermott International Inc. v. Burn Standard Co. Ltd.*<sup>1</sup> (*McDermott International*) and *NTPC Limited v. Voith Hydro JV*, OMP (COMM) 16/2017 decided on 2<sup>nd</sup> July, 2019 (*NTPC Limited*), to submit that quantification of damages and choice of methodology fall within the domain of the Arbitral Tribunal and do not warrant interference.

**33. INTEREST**

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<sup>1</sup> (2006) 11 SCC 181.



- i. The Arbitral Tribunal has awarded interest in accordance with prevailing commercial rates. A Court exercising jurisdiction under Section 34 of the Act would ordinarily not interfere with the rate of interest awarded unless the same is contrary to the terms of the Contract, or shocks the conscience of the Court.

#### 34. COSTS

- i. The Arbitral Tribunal is vested with discretion under Section 31A of the Act to determine the allocation of costs. In view of the settled legal position, the award of costs cannot be assailed in the present proceedings.

#### **ANALYSIS AND FINDINGS**

35. I have heard counsel for the parties and perused the material on record.

36. The Supreme Court has defined the scope of interference by courts in a petition challenging an Award passed by the Arbitral Tribunal under Section 34 of the Act in a plethora of judgments.

37. In ***Associate Builders v. Delhi Development Authority***<sup>2</sup> (***Associate Builders***'), the Supreme Court made the following observations:

*“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where: (i) a finding is based on no evidence; or (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.”*

[emphasis supplied]

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<sup>2</sup> (2015) 3 SCC 49.



38. The findings in *Associate Builders* (supra) were reaffirmed by the Supreme Court in *Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)*<sup>3</sup> (*'Ssangyong'*). Relevant observations of the Supreme Court in *Ssangyong* (supra) are set out below:

37. *Insofar as domestic awards made in India are concerned, an additional ground is now available under sub-section (2-A), added by the Amendment Act, 2015, to Section 34. Here, there must be patent illegality appearing on the face of the award, which refers to such illegality as goes to the root of the matter but which does not amount to mere erroneous application of the law. In short, what is not subsumed within "the fundamental policy of Indian law", namely, the contravention of a statute not linked to public policy or public interest, cannot be brought in by the backdoor when it comes to setting aside an award on the ground of patent illegality.*

38. *Secondly, it is also made clear that reappreciation of evidence, which is what an appellate court is permitted to do, cannot be permitted under the ground of patent illegality appearing on the face of the award.*

[emphasis supplied]

39. The Supreme Court has reiterated the same principles recently in *OPG Power Generation Private Limited v. Enxio Power Cooling Solutions India Private Limited*<sup>4</sup>.

*"Scope of interference with an arbitral award*

74. *The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorized as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation*

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<sup>3</sup> (2019) 15 SCC 131.

<sup>4</sup> (2025) 2 SCC 417.



*of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.”*

[emphasis supplied]

40. On the aspect of determination of damages, the Supreme Court in **McDermott International** (supra), has held that the method to compute damages and quantum thereof squarely falls within the domain of the Arbitral Tribunal. Paragraphs 109 and 110 from the said judgment are set out below:

*“109. Sections 55 and 73 of the Indian Contract Act do not lay down the mode and manner as to how and in what manner the computation of damages or compensation has to be made. There is nothing in Indian law to show that any of the formulae adopted in other countries is prohibited in law or the same would be inconsistent with the law prevailing in India.*

*110. As computation depends on circumstances and methods to compute damages, how the quantum thereof should be determined is a matter which would fall for the decision of the arbitrator. We, however, see no reason to interfere with that part of the award in view of the fact that the aforementioned formula evolved over the years, is accepted internationally and, therefore, cannot be said to be wholly contrary to the provisions of the Indian law.”*

[emphasis supplied]

41. Similarly, the Coordinate Bench of this Court in **NTPC Limited** (supra), has held that where the Tribunal has evaluated evidence and materials produced before it determining the quantum of compensation on the basis of expert evidence, the Court in exercise of jurisdiction under Section 34 of the Act cannot re-appreciate evidence. Paragraph 73 is set out below:

*“73. This Court finds no infirmity with the aforesaid view, which would warrant any interference in these proceedings. Apart from the above, it is also seen that the Tribunal had evaluated the evidence and materials produced before it for determining the quantum of compensation. It had also relied on the expert evidence led by the Claimants in this regard. The scope of the present proceedings does not entail reappreciation of evidence. Suffice it to state that the impugned award is based on sufficient material and evidence and, therefore, the same cannot be interfered with in these proceedings.”*

[emphasis supplied]

42. The appeal against the aforesaid judgment has been dismissed by the



Division Bench and subsequently, the Special Leave Petition has also been dismissed by the Supreme Court.

43. With this background, I shall now proceed to apply the aforesaid principles in the facts and circumstances of the present case to deal with the objections raised in each of the claims.

#### **CLAIM I - COMPENSATION FOR ENGINEERING WORKS COMPLETED**

44. Under this Claim, Voith Hydro sought compensation for (i) executed engineering, (ii) cost of unused engineering workforce during suspension of the project, along with price adjustment.

45. The amounts claimed by Voith Hydro and amounts awarded by the Arbitral Tribunal under Claim I are tabulated below:

|                        | <b>INR</b>  | <b>USD</b> | <b>EUR</b> |
|------------------------|-------------|------------|------------|
| <b>Amounts Claimed</b> | 3,11,82,339 | 1,08,921   | 42281      |
| <b>Amounts Awarded</b> | 2,57,13,267 | 1,08,840   | 42249      |

46. It was an admitted position that the Contract in the present case did not provide any cost break-up for the engineering component. Voith Hydro sought remuneration for the engineering works executed till November, 2013 by claiming the engineering component to be 6% of the total Supply Contract value, based on the opinion of its Expert, Mr. Nigel Grout.

47. Per Contra, the Expert of Madhya Bharat, Mr. John Prudhoe, opined that engineering component should not be more than 4% of the total value of the Contract.

48. The Arbitral Tribunal accepted the value of 6% given on behalf of Voith Hydro and on that basis, awarded amounts in favour of Voith Hydro.



49. On behalf of Madhya Bharat, it is contended that the Arbitral Tribunal has wrongly accepted the engineering component at 6% of the Contract value.

50. In paragraph 1.30 of the Report given by the Expert of Voith Hydro, Mr. Nigel Grout, on 25<sup>th</sup> February, 2018, he has opined that after deduction of procurement and management charges of 3-4%, the engineering element would be to the tune of 6% of the total value of the Contract. Mr. Nigel Grout has placed reliance on three research papers to come to conclusion that 6% would be reasonable consideration of the engineering component. Mr. Nigel Grout was cross-examined by counsel for Madhya Bharat and in the cross-examination, he has maintained his stand that the engineering component should be at 6% of the total Contract value.

51. Mr. Ratan Singh, Senior Counsel appearing for Madhya Bharat has drawn attention of the Court to questions 92 to 94 of the cross examination of Mr. Nigel Grout and the responses thereto. For the sake of convenience, the said questions from the cross-examination are set out below:

***“Q.92. What is the percentage of your total assessment for engineering, procurement and construction management?”***

***Ans.*** I have made an assessment of 6% for the engineering. I will have to check about procurement and construction management.

***Q.93 Is it correct that in the Joint Report you have assessed 15% for procurement alone (Sl. No. 13 of Joint Report)?***

***Ans.*** 15% you are referring to is taken from the price variation formula in the Contract and is not an assessment by me. That 15% has been merely used for the calculation of materials manufactured.

***Q.94 Therefore this is still an assessment by you for procurement, isn't it?***

***Ans.*** No. 15% that you have referred to is purely a percentage shown in cost adjustment formula. The assessment I have made with relation to the engineering percentage has already been deducted for procurement and construction management. Even after these deductions, the engineering percentage from the studies shows engineering percentage in the region of 6%. The procurement and



*management percentage deductions amount to 3% to 4% in the studies that have been referred to.”*

52. A perusal of the aforesaid cross-examination makes it abundantly clear that in the opinion of Mr. Nigel Grout, the Expert of Voith Hydro, the assessment of 6% is in respect of the engineering costs, excluding procurement and construction management.

53. In this regard, the finding of the Arbitral Tribunal given in paragraphs 182 and 183 are set out below:

*182. The reason for disagreement by the Respondent's expert is “in the absence of disclosed documents to show what the actual engineering component is in the Supply Contract Price, JP believes the percentage is less than 6% particularly of the engineering on the Rongnichu project is similar to other projects of the Claimant which would reduce the engineering man hours”. When both parties that the contract did not contain a separate break up for engineering, then it is a matter of estimation. There is no admission by the Claimant that its tender breakup would have contained the engineering component separately. When it is not separately identified in the contract, then it is also reasonable to assume that it would not have been part of the tender break up. The Claimant's argument that engineering is recoverable as part of the price and not separately provided is also not questioned by the Respondent. While the Respondent accepts 4% but does not agree to 6% also on the ground that the present project is similar to the other projects of the Claimant and thus due to overlap of engineering work, the percentage is lesser. This argument is attractive, but cannot be accepted. **There is no admission by the Claimant that the other projects are similar to the present project and there is also evidence lead to that effect. All Hydro Power projects are unique and are governed by specificities like water levels (head), water flow conditions including seasonal variations etc., water conditions e.g. silt/impurities contents etc., topographical, geological, hydrological conditions as well as operational regime of the power plant e.g. base load or peak load operations, specific site conditions e.g. cavern type or surface type etc. Thus, equipment requires tailor made engineering to the specific requirements.***

*183. Even if there is some overlap of Engineering work between its project and other works, the fact also is that the hydropower projects are very topographic specific. The overall engineering of a hydropower project would have to be done keeping in mind the specific topography, the need and the size of the project. It cannot be assumed that the overlap would be to the extent that it*



*would reduce the engineering percentage from 6 to 4%. Therefore, the Tribunal accepts the Engineering percentage at 6%. On this basis and on the admitted percentage completed of 47.04%, the Tribunal holds the engineering value of work completed to be INR 18,476,885/-, USD 92,316 & EUR 35,834 towards claim for completed engineering in the following manner:*

|      | <b>Supply Contract Value (A)</b> | <b>Engg Component (in %) (B)</b> | <b>Contract Engg Value in (%) (C = A*B)</b> | <b>Engg Work Completion (in %) (D)</b> | <b>Value of Completed Engg work (E = D*C)</b> |
|------|----------------------------------|----------------------------------|---------------------------------------------|----------------------------------------|-----------------------------------------------|
| INR  | 65,46,51,553.00                  | 0.06                             | 3,92,79,093.18                              | 0.47                                   | 1,84,76,885.43                                |
| USD  | 32,70,819.00                     | 0.06                             | 1,96,249.14                                 | 0.47                                   | 92,237.10                                     |
| EURO | 12,69,646.00                     | 0.06                             | 76,178.76                                   | 0.47                                   | 35,804.02                                     |

[emphasis supplied]

54. The Arbitral Tribunal has given a categorical finding that different hydro power projects are unique and topography specific, therefore, it cannot be said that there would be an overlap of the engineering works. The Arbitral Tribunal has also noted that both the Experts in their Joint Expert Report have accepted that 47.04% of the engineering works had been completed at the time of suspension of the Contract by Voith Hydro.

55. The Arbitral Tribunal has, after carefully analysing the evidence of the parties and reports given by both the Experts, concluded that engineering component would be 6%. The Arbitral Tribunal has given cogent reasons for agreeing with the report of Voith Hydro's Expert and disagreeing with Madhya Bharat's Expert in the paragraphs set out above.

56. It is a settled position of law that the Arbitral Tribunal is the master of evidence. This Court in exercise of jurisdiction under Section 34 of the Act cannot reassess or reappreciate the evidence led before the Arbitral Tribunal.

57. The next objection raised by Madhya Bharat is that the awarded amount towards engineering component is already covered under Claim II, in respect of the costs of material manufactured, which is inclusive of the costs of



engineering.

58. There is nothing to show from the record that claim for engineering costs has been clubbed with the claim of costs of materials manufactured. Therefore, it cannot be said that engineering costs, which are the subject matter of Claim I, have also been awarded as a part of the costs of materials manufactured under Claim II.

59. In view of the discussion above, I do not find any infirmity in the findings of the Arbitral Tribunal in respect of Claim I.

#### **CLAIM II – MATERIALS MANUFACTURED**

60. Under this claim, Voith Hydro sought compensation for (i) material manufactured or partly manufactured, (ii) cost incurred in storage, handling, preserving and scrapping of such material, along with price adjustment.

61. The amounts claimed by Voith Hydro and amounts awarded by the Arbitral Tribunal under Claim II are tabulated below:

|                        | <b>INR</b>   |
|------------------------|--------------|
| <b>Amounts Claimed</b> | 22,99,98,495 |
| <b>Amounts Awarded</b> | 6,32,09,933  |

62. As per Voith Hydro, the manufacturing of the materials commenced soon after the effective date of Contract and majority of the material was fully or partly manufactured in November, 2013, *i.e.* the date when notice of suspension was given. Further, the material was customised for the work package under the Contract and could not be used for another project.

63. Voith Hydro had divided this claim into seven categories depending upon the stage of manufacturing, as stated below:



- i. Material Status Category-I: Material completely made ready by the Voith Hydro's sub-supplier and available.
- ii. Material Status Category-II: Material completely made ready by the Voith Hydro's sub-supplier and scrapped.
- iii. Material Status Category-III: Material completely made ready by the Voith Hydro's sub-supplier and diverted.
- iv. Material Status Category-IV: Material partially made by the Voith Hydro's sub-supplier and available.
- v. Material Status Category-V: Material partially made by the Voith Hydro's sub-supplier and scrapped.
- vi. Material Status Category-VI: Material partially made by the Voith Hydro's sub-supplier and diverted.
- vii. Material Status Category-VII: Order placed, engineering done. Under planning and manufacturing at sub-suppliers.

64. The Arbitral Tribunal undertook a detailed category-wise examination of seven sub-categories of materials, including fully manufactured, scrapped and diverted items, and evaluated methodologies submitted by both the Experts. To adjust the said claim, the Arbitral Tribunal substantially accepted the Purchase Order method ('PO Method') based valuation as recommended by the Expert of Madhya Bharat and rejected speculative valuation under the Billing Break-Up method ('BBU method') as proposed by the Expert of Voith Hydro. For the fixed portion for procurement, the Arbitral Tribunal adopted the rate of 4% as agreed by the Experts of the parties.

65. In paragraph 238 of the Award, the Arbitral Tribunal has summarised the claim of Voith Hydro, assessment made by the respective Experts and the



amounts ultimately awarded by the Arbitral Tribunal under each of the sub-categories, as set out below:

238. To summarize, the claim of the Claimant, as compared to what has been assessed by both the experts, being allowed by the Tribunal is as follows :

| HEADS                                                                    | CLAIMANT<br>EXPERT       | RESPONDENT<br>EXPERT    | ALLOWED BY THE<br>TRIBUNAL |
|--------------------------------------------------------------------------|--------------------------|-------------------------|----------------------------|
| Cat I (Sl 17 of JR)                                                      | ₹ 2,48,12,100.00         | ₹ 1,25,11,993.00        | ₹ 1,25,11,993.00           |
| Cat II (Sl 18 of JR)                                                     | ₹ 1,24,08,682.00         | ₹ 1,57,19,264.00        | ₹ 1,57,19,264.00           |
| Cat III (Sl 19 of JR)                                                    | ₹ 79,91,738.00           | ₹ 22,93,398.00          | ₹ 22,93,398.00             |
| Cat IV (Sl 20 of JR)                                                     | ₹ 3,06,88,663.00         | ₹ 2,21,35,101.00        | ₹ 2,21,35,101.00           |
| Cat V (Sl 21 of JR)                                                      | ₹ -                      | ₹ -                     | ₹ -                        |
| Cat VI (Sl 22 of JR)                                                     | ₹ 61,77,925.00           | ₹ 8,68,177.00           | ₹ 8,68,177.00              |
| Cat VII (Sl 23 of JR)                                                    | ₹ 1,89,42,525.00         | ₹ 56,82,307.00          | ₹ 56,82,307.00             |
| Cat-Totals                                                               | ₹ 10,10,21,633.00        | ₹ 5,92,10,240.00        | ₹ 5,92,10,240.00           |
| PV (Sl 24 of JR)                                                         | ₹ 1,81,83,895.00         | ₹ 1,35,899.00           | ₹ 2,04,982.00              |
| Cost of storage, diverting, preservation and refurbishment (Sl 25 of JR) | ₹ 37,94,711.00           | ₹ -                     | ₹ 37,94,711.00             |
| <b>MATERIALS TOTAL</b>                                                   | <b>₹ 12,30,00,239.00</b> | <b>₹ 5,93,46,139.00</b> | <b>₹ 6,32,09,933.00</b>    |

Thus, the Tribunal holds that the Claimant is entitled to Rs. 6,32,09,933/- in respect of the claim for materials manufactured.

66. From the table above, it is manifest that the amounts awarded by the Arbitral Tribunal are substantially closer to the assessment made by the Expert of Madhya Bharat.

67. The challenge in the present petition by Madhya Bharat is confined to Material Status ('MS') Categories I, II and IV.

68. In respect of MS Category I, it is submitted that Arbitral Tribunal has awarded a sum of ₹89,90,752/- in respect of the cost of manufacturing of turbine housing along with storage cost, even though the same has been diverted by Voith Hydro. Insofar as MS Category II is concerned, it is submitted by Madhya Bharat that five items worth ₹1,67,37,958/- that were available with Voith Hydro have not been directed to be delivered to Madhya



Bharat. Insofar as MS Category IV is concerned, which includes cable system and distribution pipes, the Tribunal has awarded ₹2,21,35,101. However, the said items were not directed to be delivered to Madhya Bharat.

69. The aforesaid objections of Madhya Bharat have been duly dealt by the Arbitral Tribunal in paragraph 239 to 241 of the award which are set out below:-

*“239. In the course of arguments (certainly not raised in pleadings), the Respondent prayed that if the Tribunal would be compensating the Claimant for the materials manufactured then those materials should also be directed to given to the Respondent. In response to this oral argument, the Claimant has submitted that both the experts have discounted the storage, preservation and refurbishment costs of the above items and should the Tribunal direct the Claimant to provide the said materials to the Respondent, then the Respondent should also be directed to bear the cost for storage, preservation and refurbishment as well.*

*240. The Tribunal notices that this is a new and unpleaded case of the Respondent. The contract is already over and the Respondent did not make any claim on the Respondent for these goods. A relief not prayed for cannot be granted. Since there is no pleading, there is also no evidence and it would not be just to allow such kind of prayer to be made in oral submissions.*

*241. Even theoretically, liability is on the Claimant to limit its loss and it cannot be expected to preserve those completed items and incur expenditure in storage, security etc. If the claim of the Respondent is to be allowed, there may be other attendant costs like transportation, security. Storage which would result in further claims and counter claims. For these reasons also, it would not be possible to consider this prayer of the Respondent raised during oral submissions and is rejected.”*

70. The Arbitral Tribunal has observed that the submission with regard to delivery of the manufactured materials was made by Madhya Bharat only at the stage of final arguments. No pleading in this regard was made, nor was any evidence lead. The Arbitral Tribunal has correctly held that Voith Hydro could not be expected to preserve the completed engineering items and incur additional costs towards storage, security, etc.



71. The Arbitral Tribunal also notes that the amounts that were awarded in favour of Voith Hydro were after discounting the storage, preservation and refurbishment costs and if the aforesaid contention of Madhya Bharat was to be accepted, Madhya Bharat would have been liable to pay not only the storage charges but also other attendant costs like transportation and security.

72. Accordingly, I do not find any error in the findings of the Arbitral Tribunal in respect of Claim II.

### **CLAIM III – COMPENSATION FOR ON-SITE EXPENSES**

73. Under this claim, Voith Hydro sought compensation towards on-site expenses, including site man-hours and site running expenses, for both the pre-suspension and post-suspension period.

74. The amounts claimed by Voith Hydro and amounts awarded by the Arbitral Tribunal under Claim III are tabulated below:

|                        | <b>INR</b>  |
|------------------------|-------------|
| <b>Amounts Claimed</b> | 1,30,57,815 |
| <b>Amounts Awarded</b> | 91,71,305   |

75. The Arbitral Tribunal after analysing the evidence came to the conclusion that even during the suspension period Voith Hydro was required to maintain safety infrastructure, project management teams and other establishment staff thereby incurring actual standby expenses. The Arbitral Tribunal calculated the cost, based on the report of the experts of the parties.

76. Madhya Bharat submits that the Arbitral Tribunal has wrongly allowed the aforesaid claim based on ERP extracts when Voith Hydro's own witness stated that he did not know the identity of the person who took the printout of



ERP extracts. Accordingly, the Arbitral Tribunal has awarded on-site expenses without any proof.

77. The objection raised on behalf of the Madhya Bharat has been specifically dealt with by the Arbitral Tribunal in paragraph 194 of the Award which is set out below:

*“194. According to the Respondent, the Claimant can be awarded only actual cost for the hours worked and the hours claimed are also not legally proved in absence of the evidence of the person who printed the ERP Extract. However, in view of evidence of Mr. K.A. Sudararaman (CW-3), there appears to be no merit in the submission that the ERP Extract is not reliable because it is not the direct output of the software maintaining, the ERP. CW-3 clearly stated that he does not know who took the printout of the ERP Extract. In view of evidence of CW - 3 and the circumstances, the ERP records appear to be reliable, being the output of the software used for maintaining the ERP.”*

78. In the opinion of this Court, the Tribunal has correctly placed reliance on ERP records produced by Voith Hydro to determine the claim for site man-hours and site running expenses pre-suspension and post-suspension of the Contract. Merely because Voith Hydro's witness did not know the name of the person who took the printout of ERP extract cannot be the basis to disregard the evidence.

79. In the opinion of this Court, the aforesaid objection of Madhya Bharat would require this Court to re-appreciate the evidence lead before the Arbitral Tribunal which is impermissible.

80. In view of the discussion above, no fault can be found with the findings of the Arbitral Tribunal in respect of Claim III.

#### **CLAIM IV - COMPENSATION FOR OFF-SITE EXPENSES AND LOSS OF PROFIT**

81. Under this claim, Voith Hydro sought compensation towards off-site expenses and loss of profit which includes (i) project manager ('PM') man-



hours pre-suspension (ii) project manager ('PM') man-hours pre-suspension (iii) license fee (iv) offsite overheads and (v) computation of loss of profits. The amounts claimed by Voith Hydro under each of the sub categories under this claim were as follows:

| Head                                                                                                                  | INR                | USD            | EUR            |
|-----------------------------------------------------------------------------------------------------------------------|--------------------|----------------|----------------|
| PM Man-hours (pre-suspension)                                                                                         | 5,385,600          | -              | -              |
| PM Man-hours (post-suspension)                                                                                        | 949,575            | -              | -              |
| Compensation for off-site overheads, license fees and loss of profit for the unexecuted value/portion of the Contract | 175,696,826        | 932,760        | 362,073        |
| <b>Total</b>                                                                                                          | <b>182,032,001</b> | <b>932,760</b> | <b>362,073</b> |

82. The amounts claimed by Voith Hydro and amounts awarded by the Arbitral Tribunal under Claim IV are tabulated below:

|                        | INR          | USD      | EUR      |
|------------------------|--------------|----------|----------|
| <b>Amounts Claimed</b> | 18,20,32,001 | 9,32,760 | 3,62,073 |
| <b>Amounts Awarded</b> | 8,19,42,196  | 3,81,421 | 1,48,057 |

83. Madhya Bharat challenges the finding of the Arbitral Tribunal on the ground that loss of profit has been awarded without any proof submitted by Voith Hydro.

84. On the aspect that Voith Hydro has failed to establish that it suffered losses, the Arbitral Tribunal has returned the finding in paragraph 143, which is set out below:

*"143. In the present case the facts are different, both on pleadings and evidence. The Claimant has supported its case and the Respondent has not been able to*



*establish that the Claimant has not suffered any loss. Contracts and business arrangements can be of various types and in all situations, it is not possible to assess the loss or damage with exact certainty. In such a situation, it is quite usual to take help of Experts for quantifying the damages / loss as has been done in the present case.”*

85. Another objection taken on behalf of Madhya Bharat is that Voith Hydro had earlier set up a case of suspension of Contract. It was only in rejoinder, that Voith Hydro changed its case to that of termination. Therefore, the Arbitral tribunal could not have awarded loss of profits on the premise that the Contract stood terminated.

86. In this regard, the Arbitral Tribunal observed that it emerged only during the cross-examination of Madhya Bharat's witness that the Contract had been awarded to a third party on 17<sup>th</sup> February, 2017 and 28<sup>th</sup> February, 2017, a fact which was neither disclosed in the pleadings nor in the examination-in-chief. Noting that the Contract had remained suspended for over five years without either party seeking specific performance, the Arbitral Tribunal has correctly concluded that the Contract was no longer subsisting. The findings of the Arbitral Tribunal in this regard, as recorded in paragraphs 105 and 106 of the Award, are set out below:

*105. In the course of trial, it emerged in the cross-examination of the Respondent's witness Mr. Chhanghani (cross examination on 06.08.2018) that the Respondent has awarded the work forming part of the Claimant's contract to a third party on 17.02.2017 and 28.02.2017 (which are prior to the date of filing of the Statement of Defence, though not disclosed). This aspect was not revealed either in the pleadings or in the examination in chief of the Respondent's witnesses and the new contracts were also not brought on record.*

*106. The Tribunal finds that the contract has remained suspended for more than 5 years at the time of filing of the present claim, and the Respondent having already appointed a new contractor, it is obvious that the Respondent does not intend to continue with the present contract with the Claimant. The appointment of the third party contractor was done by the Respondent without notice to the*



*Claimant or formally terminating the contract. Neither party has sought specific performance of the contract. Under such circumstances, it would be reasonable for this Tribunal to proceed on the basis that the contract is no more surviving any more for all practical purposes and there is no further performance either demanded, or expected by either party. Whatever the claims of the Claimant or the Respondent are would have to be determined on the basis of which party is in breach of the contractual obligations and the principles of Section 73 of the Indian Contract Act, 1872. This aspect is being also dealt with while dealing with the quantum claims of the Claimant.”*

87. Yet another objection raised by Madhya Bharat in respect of loss of profits is that Voith Hydro withheld tender break-ups and cost account statements by invoking confidentiality, and therefore, the quantum of damages assessed by the experts was speculative in nature.

88. The Arbitral Tribunal has rejected the objection and observed that the absence of tender break-ups could not by itself defeat the claim for damages, particularly in view of the assessment undertaken by quantum experts. The Arbitral Tribunal observed that such tender documents were internal pre-contract workings without any standard methodology, and therefore, reliance on expert analysis based on available material was justified. Relevant paragraphs 159 and 160 of the Award are set out below:

*159. ... The Claimant has not submitted the tender breakups or its price breakups for claiming its losses. Even if we assume that the Claimant would have submitted it, then it is not that the Respondent would have accepted such tender breakup and loss computation thereof. While the Claimant is not relying upon its tender breakup to justify a particular loss claim, the Respondent is seeking to rely upon its absence to question the Claimant's claim. It is open to the Respondent to question those bases of the Claimant. Such tender break up, if it existed, would be a pre-contract internal working of the Claimant. There is no standard format or methodology of this break up and it may be based on very broad calculations. Mr. Prudhoe, who has an experience of acting as an expert in many arbitrations, could cite only one example where a tender was produced and that too it was a case, the parties did not have any other engagement ongoing.*



*160. More so, in the present case, both parties have, presented their experts to deal with the aspect of quantum who have given their views on the different claims. Since the Claimant is not relying upon the tender break up for its claims, the Tribunal would be adjudging the Claimant's claim on its own merits and by examining the correctness of the basis on which those claims have been made by the Claimant and greater scrutiny with due caution.*

89. For determination of the claim on loss of profits, the Arbitral Tribunal noted that in the Statement of Claim Voith Hydro has claimed 15% of profits which has been accepted by the Expert of Voith Hydro. On the other hand, the Expert of Madhya Bharat in his report fixed it at 5% profit. The Arbitral Tribunal rejected the claim of 15% of profit as claimed by Voith Hydro and awarded compensation for loss of profits at rate of 6%. Relevant extracts from the findings of the Arbitral Tribunal are set out below:

*"171. ... The Tribunal also feels that in project involving competitive bidding, a profit margin as high as 15% claimed by the Claimant is not possible, particularly since the Tribunal takes into account the non-filing of tender breakup by the Claimant to support its claim for profit percentage of 15% and holds the same against it. Moreover, the Hon'ble Supreme Court in case of Barat Coking Coal (Supra) has rejected the claim for loss of profit @ 15% as unreasonable. Insofar as the objection that the loss of profit claim cannot be granted in case of a suspension is also rejected in view of the Tribunal's decision on the aspect relating to suspension and termination.*

*172. In this backdrop, the Tribunal rejects the Claim of 15% of Profit setup by the Claimant and awards profit @6% considering it to be reasonable. Since the claim under this head is to be calculated on unexecuted value of the Contract, and therefore the unexecuted value of Contract is to be determined, which would be determined in the section below"*

90. As is manifest from the aforesaid extracts of the Award, the Arbitral Tribunal has given cogent reason for awarding loss of profits at 6% of the unexecuted part of the Contract value.

91. With respect to amounts awarded towards off-site overheads, the



Arbitral Tribunal analysed the report of the Expert of Voith Hydro, as well as the Expert of Madhya Bharat. Madhya Bharat's Expert has assessed 3% towards off-site overheads, whereas the Expert of Voith Hydro has assessed the same at 10%. The Arbitral Tribunal has held 6% for *off-site overheads* on the unexecuted portion of the Contract. Paragraph 263 from the Award is set out below:

*"263. Offsite-overheads*

*Mr. Grout in his report has supported the claim of 10% for off-site overheads. However, Mr. Prudhoe in his report considered 10% as too high and assessed the same as 3%. Moreover, the Tribunal feels that 3% overheads assessed by Mr. Prudhoe is too conservative. In this backdrop, and in absence of any document to support 10% claim of the Claimant, the Tribunal wishes to adopt middle path and holds 6% to be a reasonable overhead. The Claimant is entitled to off-site overheads @6% on the unexecuted portion."*

92. In view of the discussion above, I do not find any perversity or patent illegality in the findings of the Arbitral Tribunal in respect of Claim IV.

**INTEREST**

93. Even though Voith Hydro had claimed pre-award interest at the rate of 12% and post-award interest at the rate of 18%, the Arbitral Tribunal has allowed 8% pre-award interest and 12% post-award interest. It is submitted on behalf of Madhya Bharat that 12% post-award interest awarded by the Arbitral Tribunal is at a higher rate without any discussion or finding.

94. It is correctly pointed out on behalf of Voith Hydro that this objection has not been raised by Madhya Bharat in the petition.

95. In the opinion of this Court, the post-award interest at the rate of 12% per annum is not excessive and hence, does not require interference under Section 34 of the Act.



## **COSTS**

96. Insofar as the aspect of costs is concerned, the Arbitral Tribunal has the sole discretion to allocate the cost of arbitration process in terms of Section 31A of the Act.

97. In the present case, while the Arbitral Tribunal has directed that the entire fees and expenses of the Arbitral Tribunal was payable by the Madhya Bharat. However, insofar as the legal expenses pertaining to lawyers' fees and fees of the experts, the Arbitral Tribunal has directed that each party would bear its own expenses.

98. In the opinion of this Court, the aforesaid finding is just and reasonable and no ground for interference has been made out on behalf of Madhya Bharat.

## **CONCLUSION**

99. In light of the discussion above, I am of the view that Madhya Bharat has failed to make out any ground for interference with the impugned Award under Section 34 of the Act.

100. Accordingly, the petition is dismissed.

**AMIT BANSAL  
(JUDGE)**

**MAY 26, 2026**

*Vivek/-*