2026 INSC 76

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4513 OF 2025

PRAKASH ATLANTA (JV) … Appellant

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA … Respondent

WITH

C.A. No. 5416 of 2025

C.A. No. 5302 of 2025

C.A. No. 5301 of 2025

C.A. No. 5304 of 2025

C.A. No. 5412 of 2025

J U D G M E N T

SANJAY KUMAR, J

1. These civil appeals, sourced in arbitral awards passed under the Arbitration and Conciliation Act, 1996[1], seek to raise questions about the interpretation and implementation of two enactments – 'The Building and Other Construction Workers (Regulation of Employment and Conditions

[1] For short, the 'Arbitration Act'

of Service) Act, 1996'[2], and 'The Building and Other Construction Workers' Welfare Cess Act, 1996'[3]. Prakash Atlanta (JV) filed the first of these appeals, viz., Civil Appeal No. 4513 of 2025, while National Highways Authority of India[4] is the appellant in the other five appeals, viz., Civil Appeal Nos. 5301, 5302, 5304, 5412 and 5416 of 2025. Insofar as the appeals filed by NHAI are concerned, a common issue arises therein. The issue is as to whether the BOCW Act and the Cess Act can be treated as 'subsequent legislation' for the purposes of the contracts entered into by NHAI with its contractors, the respondents in NHAI's five appeals. By way of their awards passed in favour of the said respondents, the arbitral tribunals held that these Acts did qualify as 'subsequent legislation'.

2. This being the milieu, it would be apposite to first note the statutory schemes of the BOCW Act and the Cess Act. Both these enactments had their origin in Ordinances promulgated on 03.11.1995. These Ordinances were followed by the later Ordinances dated 05.01.1996, 27.03.1996 and 20.06.1996. Finally, both the enactments took shape on 19.08.1996, with the sanction of the Parliament. The BOCW Act came into force on 01.03.1996, as per Section 1(3) thereof. The Cess Act, on the other hand, came into force even earlier on 03.11.1995, as per Section 1(3) thereof. The preamble to the BOCW Act states that it is an Act to regulate the

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2 For short, 'the BOCW Act'
3 For short, 'the Cess Act'
4 For short, 'NHAI'

employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto. The Cess Act is linked to the BOCW Act, as is evident from its preamble and Statement of Objects and Reasons, which state that it is an Act to provide for levy and collection of cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers' Welfare Boards constituted under the BOCW Act.

3. Section 1(4) of the BOCW Act states that the said enactment would apply to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work. Section 2(1)(a) thereof defines 'appropriate Government' to mean the Central Government in cases falling within Clauses (i) and (ii). Section 2(1)(a)(ii) pertains to public sector undertakings which may be specified by the Central Government, under notification, that employ building workers either directly or through a contractor. The '*Explanation'* thereto provides that a public sector undertaking (PSU) means any corporation established by or under any Central, State or Provincial Act or a Government company, which is owned, controlled or managed by the Central Government. Section 2(1)(a)(iii) states that, in relation to any other establishment which employs building workers, either directly or through a contractor, the

Government of the State in which that other establishment is situated would be the appropriate Government. Section 2(1)(c) defines 'Board' to mean a Building and Other Construction Workers' Welfare Board constituted under Section 18(1) thereof. Section 2(1)(d) defines 'Building or other construction work' to include construction, alteration, repairs, maintenance or demolition of, or in relation to, amongst others, roads also. Section 2(1)(i) defines 'employer' inclusively and it reads as follows:

> '(i) "employer", in relation to an establishment, means the owner thereof, and includes,—
> (i) in relation to a building or other construction work carried on by or under the authority of any department of the Government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department;
> (ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment;
> (iii) in relation to a building or other construction work carried on by or through a contractor, or by the employment of building workers supplied by a contractor, the contractor.'

4. Section 2(1)(k) defines 'Fund' to mean the Building and Other Construction Workers' Welfare Fund, constituted under Section 24(1) thereof. Chapter III of the BOCW Act pertains to 'Registration of Establishments'. Section 6 therein is titled 'Appointment of registering officers' and states that the appropriate Government may, by order notified in the Official Gazette, appoint gazetted officers of the Government to be registering officers for the purposes of the BOCW Act, duly defining the limits within which such registering officers shall exercise the powers

conferred upon them by or under the said enactment. Section 7 thereof pertains to registration of establishments and requires every employer to make an application to the registering officer for registration of the establishment to which the BOCW Act applies within a period of sixty days. The *proviso* thereto, however, empowers the registering officers to entertain belated applications upon being satisfied that there was sufficient cause for the delay. Section 10 deals with non-registration and states that no employer of an establishment to which the BOCW Act applies who has either failed to get the establishment registered, or whose registration has been revoked and has attained finality, shall employ building workers in the establishment after expiry of the stipulated period.

5. Chapter IV of the BOCW Act is titled 'Registration of Building Workers as Beneficiaries'. Section 11 therein provides that, subject to the provisions of the enactment, every building worker registered as a beneficiary thereunder shall be entitled to the benefits provided by the Board from its Fund under the enactment. Section 12 deals with registration of building workers as beneficiaries. Section 12(1) defines eligibility of building workers for registration as beneficiaries under the BOCW Act. The other sub-sections provide the procedure for registration to be carried out and stipulate that the Secretary of the Board shall maintain such registers as may be prescribed in relation to the building workers who have been registered as beneficiaries.

6. Section 15 of the BOCW Act requires every employer to maintain a register showing the details of employment of beneficiaries employed in the building or other construction work undertaken by him. Section 16 of the BOCW Act pertains to contributions by the building workers who are registered as beneficiaries and stipulates that they must contribute to the fund at the rate per month as prescribed by the State Government, by notification in the Official Gazette, and Section 17 of the BOCW Act provides that failure on the part of the beneficiary to pay his contribution for a continuous period of not less than one year would result in his ceasing to be a beneficiary.

7. Chapter V of the BOCW Act, comprising Sections 18 to 27, deals with the Buildings and Other Construction Workers' Welfare Boards. Section 18 therein deals with constitution of State Welfare Boards. Section 18(1) provides that every State Government shall appoint and constitute a Welfare Board to exercise the powers conferred on, and perform the functions assigned to, it under the BOCW Act, by notification. Section 18(2) provides that the Board shall be a body corporate having perpetual succession and a common seal. Section 18(3) states that the Board shall consist of a Chairperson nominated by the Central Government and such number of members, not exceeding 15, as may be appointed by the State Government. Section 22 of the BOCW Act details the functions of the Welfare Board.

8. Section 24 of the BOCW Act pertains to the 'Building and Other Construction Workers' Welfare Fund and its application'. This fund is to be constituted by the Welfare Board and all grants and loans made to the Board by the Central Government; all contributions made by the beneficiaries; all sums received from such other sources as may be decided by the Central Government should be credited to the said fund. Sections 40 and 62 of the BOCW Act empower the appropriate Government to make Rules, be it with regard to the measures to be taken for the safety and health of building workers in the course of their employment and the equipment and appliances to be provided to them for ensuring their safety, health and protection during such employment, or for carrying out the provisions of the BOCW Act. In exercise of power thereunder, the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998[5], were framed by the Government of India, *vide* G.S.R. 689 (E) dated 19.11.1998, published in the Gazette of India, Extraordinary, dated 19.11.1998.

9. The Cess Act, as is manifest from its preamble and Statement of Objects and Reasons, is complementary to the BOCW Act. Section 2(a) thereof defines 'Board' to mean the Welfare Board constituted under Section 18(1) of the BOCW Act by the State Government. Section 2(b)

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5 For short, 'the BOCW Rules'

defines ‘Fund’ to mean the Building and Other Construction Workers’ Welfare Fund, constituted by that Board. Section 3 thereof deals with levy and collection of cess. Section 3(1) states that there shall be levied and collected a cess for the purposes of the BOCW Act at such rate, not exceeding two per cent but not less than one per cent of the cost of construction incurred by an employer, as the Central Government may, by notification in the Official Gazette, from time to time specify. In exercise of power under Section 3(1) of the Cess Act, the Ministry of Labour, Government of India, issued Notification No. S.O. 2899 dated 26.09.1996, published in the Gazette of India, Extraordinary, dated 12.10.1996, in modification and supersession of Notification dated 17.05.1996, specifying the cess for the purpose of the BOCW Act @ 1 per cent of the cost of construction incurred by an employer. Section 3(2) states that the cess levied under Section 3(1) should be collected from every employer in such manner and at such time, including deduction at source, in relation to a building or other construction work of a Government or of a PSU, etc, as may be prescribed. Section 3(3) states that the cess collected under Section 3(2) shall be paid by the State Government collecting the cess to the Board, after deducting the cost of collection of such cess, not exceeding one per cent of the amount collected.

10. Section 14 of the Cess Act empowers the Central Government to make Rules for carrying out the provisions thereof by notifying the same

in the Official Gazette. Pursuant thereto, the Building and Other Construction Workers' Welfare Cess Rules, 1998[6], were framed by the Government of India, *vide* G.S.R. 149 (E) dated 26.03.1998, published in the Gazette of India, Extraordinary, dated 26.03.1998. Rule 2(f) defines 'Cess Collector' to mean an officer appointed by the State Government for collection of cess under the Act. Rule 2(g) defines 'Assessing Officer' to mean a gazetted officer of a State Government or an officer of a local authority, holding an equivalent post to a gazetted officer of the State Government, appointed by such State Government for assessment of cess under the BOCW Act. Rule 3 of the Cess Rules, titled 'Levy of cess', provides that, for the purpose of levy of cess under Section 3(1) of the BOCW Act, the cost of construction shall include all expenditure incurred by an employer in connection with the building or other construction work, subject to certain exclusions. Rule 4 of the Cess Rules is titled 'Time and manner of collection'. It reads as follows:

> **'4. Time and manner of collection.**— (1) The cess levied under sub-section (1) of section 3 of the Act shall be paid by an employer, within thirty days of completion of the construction project or within thirty days of the date on which assessment of cess payable is finalised, whichever is earlier, to the cess collector.
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> (2) Notwithstanding the provisions of sub-rule (1), where the duration of the project or construction work exceeds one year, cess shall be paid within thirty days of completion of one year from the date of commencement of work and every year thereafter at the notified rates on the cost of construction incurred during the relevant period.

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6 For short, 'the Cess Rules'

(3) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the levy of cess pertains to building and other construction work of a Government or of a Public Sector Undertaking, such Government or the Public Sector Undertaking shall deduct or cause to be deducted the cess payable at the notified rates from the bills paid for such works.

(4) Notwithstanding the provisions of sub-rule (1) and sub-rule (2), where the approval of a construction work by a local authority is required, every application for such approval shall be accompanied by a crossed demand draft in favour of the Board and payable at the station at which the Board is located for an amount of cess payable at the notified rates on the estimated cost of construction:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of commencement and further payments of cess due shall be made as per the provisions of sub-rule (2).

(5) An employer may pay in advance an amount of cess calculated on the basis of the estimated cost of construction along with the notice of commencement of work under section 46 of the Main Act by a crossed demand draft in favour of the Board and payable at the station at which the Board is located:

Provided that if the duration of the project is likely to exceed one year, the demand draft may be for the amount of cess payable on cost of construction estimated to be incurred during one year from the date of such commencement and further payment of cess due shall be made as per the provisions of sub-rule (2).

(6) Advance cess paid under sub-rules (3), (4) and (5), shall be adjusted in the final assessment made by the Assessing Officer.'

11. Rule 4(3) above manifests that, unlike a case falling under Rules 4(1) and (2), if the levy of cess pertains to the building and other construction work of a Government or of a PSU, that Government or PSU should deduct or cause to be deducted the cess payable at the notified rate from the bills paid for such works. Rule 4(6) states that the advance cess paid under Rule 4(3) shall be adjusted in the final assessment made by the Assessing Officer. Further, Rule 5 of the Cess Rules stipulates that

the proceeds of the cess collected under Rule 4 should be transferred by the Government, PSU, etc., to the Welfare Board within thirty days of its collection. Rule 6 is titled information to be furnished by an employer and provides that every employer, within thirty days of commencement of his work, shall furnish to the Assessing Officer, information in Form I and any change or modification in the information, so furnished, should be communicated to the Assessing Officer immediately and not later than thirty days from the date of affecting the modification or change.

12. Rule 7 pertains to 'Assessment'. Rule 7(1) provides that the Assessing Officer, on receipt of information in Form I from an employer is required to make an order of assessment within a period not exceeding six months from the date of receipt of information in Form I, indicating the amount of cess payable by the employer. A copy thereof is to be furnished to the employer; to the Welfare Board; and to the Cess Collector within five days of the date on which such order is made. Rule 7(2) provides that the order shall, *inter alia*, specify the amount of cess due, cess paid by the employer or deducted at source and the balance amount payable and the date, by which the cess should be paid to the Cess Collector.

13. We deemed it necessary to deal with and set out the contents of the BOCW Act, the Cess Act and the concomitant Rules to stress upon how exhaustive, comprehensive and detailed were the schemes of these two welfare legislations and the steps and measures to be taken thereunder.

14. It is, however, a matter of record that the BOCW Act and the Cess Act just remained on paper owing to the failure of the appropriate Governments in taking necessary steps and measures, as provided in those welfare legislations, to give full effect to them. A 3-Judge Bench of this Court took note of this sorry state of affairs in ***National Campaign Committee, C.L., Labour vs. Union of India and others***[7] and directed the State Governments and Union Territories (UTs) which had not framed Rules under Section 62 of the BOCW Act to adopt the Rules already framed by the Delhi Government in that regard. Further directions were issued on 18.01.2010 for implementation of the Acts by such States/UTs without further delay. One such direction was with regard to constitution of Welfare Boards, with adequate full-time staff, by each State/UT within three months. By order dated 10.09.2010, a 3-Judge Bench of this Court observed that time had come to enforce the earlier orders for implementation of the BOCW Act and directed the Central Government to call for the necessary information from the States/UTs concerned and to issue directions for setting up Welfare Boards within eight weeks, in terms of the earlier order dated 18.01.2010.

15. The Central Government was also asked to furnish a status report with regard to implementation of the BOCW Act and the guidelines given

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7 (2009) 3 SCC 269

in the earlier order dated 18.01.2010. Contempt proceedings were initiated for non-implementation of the directions of this Court in the orders dated 18.01.2010, 13.08.2010 and 10.09.2010. Notices were issued to the authorities of the Central Government, Lakshadweep, Meghalaya and Nagaland in that regard, *vide* order dated 15.03.2011. Thereafter, by order dated 28.11.2011, another 3-Judge Bench of this Court granted an opportunity to enable each defaulting State to explain as to why contempt action should not be taken.

16. By order dated 07.02.2012, taking note of substantial compliance by most of the States, this Court closed the contempt cases, but with further directions to ensure full compliance. Again, by order dated 16.10.2015, a 3-Judge Bench noted further inaction on the part of stakeholders in giving effect to these legislations, as only about 1.5 crores out of 4 crore construction workers had been registered with the authorities concerned. Further directions came to be issued for full and proper implementation of these Acts on 30.10.2017. This Court took note of the dismal situation in the context of misuse of the BOCW Act, as ₹29,000 crores had been collected but not even 10 per cent thereof was spent for the benefit of construction workers. The matter was accordingly adjourned to enable the Secretary in the Ministry of Labour, Government of India, to report. Having heard the Secretary on 10.11.2017, this Court directed involvement of civil society in the effective management of the BOCW Act and adjourned the

matter to enable the Secretary to hold a meeting with the Labour Secretaries of all the States/UTs within a time frame to ensure proper and complete implementation. The matter was heard again on 19.03.2018 and further directions were given by this Court. The matter was directed to be listed on 01.05.2018 to ascertain whether timelines were fixed by the authorities concerned for compliance with such directions. The last reported order of this Court in this regard is ***National Campaign Committee for Central Legislation on Construction Labour (NCC-CL) vs. Union of India and others***[8].

17. It is, thus, clear that neither the BOCW Act nor the Cess Act were actually implemented till this Court intervened and actively monitored the steps to be taken therefor from time to time. It is owing to this lassitude and lethargy on the part of the States, UTs and stakeholders that the present litigation arises. The failure on the part of several States in constituting Welfare Boards and in appointing authorities to give effect to these enactments lays foundation for the present conundrum. The contention of NHAI is that, notwithstanding the delayed constitution of Welfare Boards and lack of effective implementation, both the enactments should be construed to have come into effect on the dates notified, i.e., 01.03.1996 (BOCW Act) and 03.11.1995 (Cess Act) and they cannot,

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8 (2018) 5 SCC 607

therefore, be taken to be 'subsequent legislation' under its contractual clauses. NHAI would contend that, as the rate of the cess to be collected, i.e., @ one per cent of the cost of construction, was specified by the Central Government as long back as on 26.09.1996, the respondents in its five appeals cannot claim ignorance thereof and they ought to have factored in the same in their price bids while submitting tenders for its works. NHAI would argue that, as per Rule 4 of the Cess Rules, deduction at source was to be effected if the work pertained to a Government or a PSU and, therefore, the cess was deductible irrespective of the constitution of Welfare Boards. NHAI would further argue that, if the Cess Act is to be given effect by linking it to constitution of Welfare Boards, such interpretation would undermine and defeat the very scheme and intent underlying these welfare legislations, as that would mean that they came into operation on different dates in different States/UTs depending upon the constitution of Welfare Boards in such States/UTs.

18. NHAI would rely on the judgments of various High Courts holding that the Cess Act came into force on 03.11.1995 itself and not when the Welfare Boards were constituted. Reference is made to the decisions of the Delhi High Court in ***Delhi Metro Rail Corporation Limited vs. Simplex Infrastructures Limited***[9] and ***BBEL-MIPL Joint Venture vs.***

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9 2011 SCC OnLine Del 3603

National Highway Authority of India[10]; of the Andhra Pradesh High Court in ***Coromandel Prestcrete (P) Ltd. vs. State of Andhra Pradesh and others***[11]; of the Madras High Court in ***M.E.S. Builders' Association of India vs. Union of India and others***[12], and of the Sikkim High Court in ***Sikkim Urja Limited vs. Abir Infrastructure Pvt. Ltd. and others***[13].

19. At this stage, we may note that a Bench of this Court heard arguments in a batch of matters, including the special leave petitions of Gammon-Atlanta (JV) and PCL Suncon (JV), from which the present Civil Appeal Nos. 5416 and 5302 of 2025 arise. Notably, Civil Appeal No. 7141 of 2012, titled ***Gammon Rizzani (JV) vs. Delhi Metro Rail Corporation Limited***, arising out of the common judgment of the Delhi High Court reported in ***Delhi Metro Rail Corporation Limited vs. Simplex Infrastructures Limited*** (*supra*), was also part of the said batch. Judgment was reserved in those cases on 08.04.2015 but, on 03.08.2015, all the matters were reopened and adjourned to a later date. Again, on 12.10.2015, the Bench reserved judgment in the matters. However, the matters were again reopened on 16.11.2015 and posted for rehearing. The order dated 16.11.2015 recorded the two doubts that had compelled such rehearing. The order dated 16.11.2015 reads thus:

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10 2015 SCC OnLine Del 10222
11 2008 SCC OnLine AP 355
12 2010 SCC OnLine Mad 2919
13 2025 SCC OnLine Sikkim 50

> ‘(i) whether the judgment rendered in *Dewan Chand Builders and Contractors vs.Union of India and Others* (2012) 1 SCC 101, as held in paragraph 18, that The Cess Act and the Cess Rules have become operative in the whole of NCT of Delhi with effect from January, 2002, would confer the benefit on the contractors in view of Clause 70.8 of the Contract or it shall not in view of the language employed in Clause 34.2 of the said instrument in respect of the National Highways Authority cases;
> (ii) whether the conclusion arrived at in *Dewan Chand Builders and Contractors* case correctly states the law or it has to be differently understood for the purpose of applicability of the Act *qua* the workers and for the purpose of coming into force of the Act as regards deposit or realization.’

20. Thereafter, NKG Infrastructure, Hindustan Construction Co. Ltd. and DIC-NCC (JV) filed their cases in 2017, 2018 and 2019 respectively and they were clubbed with the pending cases of Gammon-Atlanta (JV) and PCL Suncon (JV). In fact, on 20.02.2020, when DIC-NCC (JV)’s case came up for consideration, this Court was informed that identical issues arose for consideration in the matters pertaining to Delhi Metro Rail Corporation Limited and other connected matters and it was directed that all the matters be clubbed for joint hearing. The special leave petition of Prakash Atlanta (JV) then came to be tagged with NHAI’s cases. Thereafter, by order dated 26.10.2020, it was observed that NHAI’s five cases raised common questions of law and they would be heard first. The appeals relating to Delhi Metro Rail Corporation Limited were detagged and directed to be listed as per procedure. Leave was granted in these cases on 25.03.2025. That is how the appeal filed by Prakash Atlanta (JV) and NHAI’s five appeals are now before us.

21. Reference was made in the aforestated order dated 16.11.2015 of the Bench to the earlier decision of this Court in ***Dewan Chand Builders and Contractors vs. Union of India and others***[14]. That decision arose out of the judgment dated 28.02.2007 of a Division Bench of the Delhi High Court, reported in ***Builders Association of India vs. Union of India and another***[15], which dealt with the validity of the BOCW Act and the Cess Act. While upholding the two Acts, the Division Bench had observed that they were not notified for application in Delhi till the year 2002. The Division Bench expressed concern at the tardy implementation of these welfare enactments, alluding to the fact that the Rules framed under Section 62 of the BOCW Act were brought into force in Delhi only on 10.01.2002. In ***Dewan Chand Builders*** (*supra*), this Court affirmed the judgment of the Division Bench of the Delhi High Court and observed: -

> **'18.** Although both the statutes were enacted in 1996, the Central Government in exercise of its powers under Section 62 of the BOCW Act notified the Delhi Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 2002 (for short "the Delhi Rules") vide Notification No. DLC/CLA/BCW/01/19 dated 10.1.2002. Accordingly, the Government of NCT of Delhi constituted the Delhi Building and Other Construction Workers' Welfare Board vide Notification No. DLC/CLA/BCW/02/596 dated 2-9-2002. Thus, the Cess Act and the Cess Rules are operative in the whole of NCT of Delhi w.e.f. January 2002.' (*emphasis is ours*)

This Court further observed that the levy of cess on the cost of construction incurred by the employers on the building or construction

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14 (2012) 1 SCC 101
15 (2007) 139 DLT 578 (DB)

works is to ensure sufficient funds for Welfare Boards to undertake social security schemes and welfare measures for building and construction workers. It was observed that the fund so collected is directed towards the specific ends spelt out in the BOCW Act and, therefore, applying the principle laid down in the decisions of this Court, it was clear that the said levy is a fee and not a tax. It was noted that the fund is set apart and appropriated specifically for the performance of a specified purpose; that it is not merged into the public revenues for benefit of the general public, and as such, a nexus between the cess and the purpose for which it is levied is established, satisfying the element of *quid pro quo* in the scheme.

22. In ***A. Prabhakara Reddy and Company vs. State of Madhya Pradesh and others***[16], the appellants therein had entered into contracts with the Government of Madhya Pradesh between December, 2002 and March, 2003. The Madhya Pradesh Building and Other Construction Workers' Welfare Board was constituted only on 09.04.2003, followed by a publication in the Official Gazette on 10.04.2003. The appellants unsuccessfully challenged imposition of the cess liability on them before the High Court. Their argument before this Court, thereafter, was that if demand of cess is made on construction works undertaken or even contemplated on issuance of work orders before constitution of the

16 (2016) 1 SCC 600

Welfare Boards, then such demand would amount to making the Cess Act operate retrospectively and that would be illegal. This Court noted that the scheme of the BOCW Act or the Cess Act did not warrant that unless all workers are duly registered or the Welfare Fund is created or welfare measures are made available, no cess can be levied, despite the constitution of the Welfare Board. In other words, *per* this Court, registration of workers and providing welfare services to workers was not a condition precedent for the levy of cess as rendering of such services can reasonably be undertaken only after cess is levied, collected and credited to the Welfare Fund. It was observed that the task of registering workers and providing them benefits may take some time and that would not affect the liability to pay the levy as per the Cess Act, as any other interpretation would defeat the rights of the workers, whose protection is the principal aim and primary concern and objective of the BOCW Act and the Cess Act. It was in these circumstances that this Court rejected the challenge by the appellants and dismissed their appeals.

23. This being the case law on the BOCW Act and the Cess Act, we are conscious of the fact that, in essence, we are examining the validity of arbitral awards in five of these six appeals which were passed against NHAI and in favour of the respective claimants before the arbitral tribunals, viz., the respondents in those appeals. The scope of interference by a Court, in exercise of jurisdiction under Section 34 or

Section 37 of the Arbitration Act, now stands settled by the Constitution Bench judgment in ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***[17]. The majority view therein held that modification of an arbitral award is permissible only on limited grounds, i.e., when the arbitral award is severable and the invalid portion can be severed from the valid portion thereof; when clerical, computational or typographical errors therein are amenable to correction or any other manifest errors are present which can be corrected, provided such modification does not involve a merits-based evaluation; by modifying the post-award interest in certain situations and circumstances; and where exercise of power by the Supreme Court under Article 142 of the Constitution is necessitated, albeit with great care and caution, and within the limits of such power.

24. In ***Associate Builders vs. Delhi Development Authority***[18], this Court noted that the expression 'public policy of India' in Section 34(2)(b)(ii) of the Arbitration Act was given a wider meaning in ***Oil & Natural Gas Corporation Ltd. vs. Saw Pipes Ltd.***[19]. It was held therein that the concept of public policy connotes some matter which concerns public good and public interest. It was observed that what is for public good or in public interest or what would be injurious or harmful to the public good or public interest has varied from time to time but an arbitral award

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17 (2025) 7 SCC 1
18 (2015) 3 SCC 49
19 (2003) 5 SCC 705

which, on the face of it, is patently in violation of statutory provisions, cannot be said to be in public interest. It was further observed that such an award is likely to adversely affect the administration of justice. This Court, therefore, held that, in addition to the narrower meaning given to the term 'public policy' by a 3-Judge Bench of this Court *in* ***Renusagar Power Co. Ltd. v. General Electric Co.***[20], an arbitral award can be set aside if it is patently illegal. The result was that an arbitral award could be set aside if it was contrary to the fundamental policy of Indian law; or the interest of India; or justice or morality; or if it is patently illegal. It was observed that illegality must go to the root of the matter but, if the illegality is of trivial nature, it cannot be held that the award is against public policy. It was further held that if the award is so unfair and unreasonable that it shocks the conscience of the Court, it would be opposed to public policy.

25. Thereafter, in ***Oil and Natural Gas Corporation Limited vs. Western Geco International Ltd.***[21], a 3-Judge Bench of this Court added three other distinct and fundamental juristic principles which must be understood as part and parcel of the fundamental policy of Indian law. The first is the principle that in every determination that affects the rights of a citizen or leads to civil consequences, whether by a Court or other authority, such Court or authority is bound to adopt what is, in legal

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20 1994 Supp (1) SCC 644
21 (2014) 9 SCC 263

parlance, called 'judicial approach'. The second principle is that a Court and so also a quasi-judicial authority, while determining rights and obligations of parties before it, must do so in accordance with the principles of natural justice. It was observed that, in addition to *audi alteram partem*, the Court/ authority deciding the matter must apply its mind to the attendant facts and circumstances as non-application of mind is a defect that is fatal to any adjudication. It was, therefore, held that the requirement that an adjudicating authority must apply its mind is so deeply embedded in our jurisprudence that it can be described as the fundamental policy of Indian law. The last principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same cannot be sustained. Decisions that fall short of the standards of reasonableness were, therefore, held liable to challenge in a Court of law and even in statutory processes wherever the same were available.

26. It was further held in ***Associate Builders*** (*supra*) that when a Court is applying the public policy test to an arbitral award, it does not act as a Court of appeal and, consequently, errors of fact cannot be corrected. A plausible view by the arbitrator on facts necessarily has to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his award. It was observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be invalid on this score.

Once it is found that the arbitrator's approach was not arbitrary or capricious, then he is the last words on facts.

27. As long back as in the year 2006, in ***McDermott International Inc. vs. Burn Standard Co. Ltd. and others***[22], this Court affirmed that construction of a contract is within the jurisdiction of the arbitrator and interpretation thereof is a matter for the arbitrator to determine, even if it gives rise to a question of law. This was affirmed in ***National Highways Authority of India vs. ITD Cementation India Limited***[23], wherein this Court held that construction of the terms of a contract is primarily for an arbitrator to decide and he is entitled to take the view that he holds to be the correct one, after considering the material and after interpreting the terms of the contract. It was observed that the Court, while considering a challenge to an arbitral award, does not sit in appeal over the findings and decision therein, unless the arbitrator construed the contract in such a way that no fair-minded or reasonable person would do. We may note that, in this case, the issue was whether additional costs owing to a change in the seigniorage fee had been taken into account in the indexing of inputs, while providing for price adjustment in the contract. NHAI had contended that the said levy was already factored into the indexing price formula and, therefore, no further payments were to be made to the contractor.

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22 (2006) 11 SCC 181
23 (2015) 14 SCC 21

28. In that context, this Court had observed that the terms and conditions of the bid stipulated that all duties, taxes and other levies payable by the contractor under the contract, as of the date 28 days prior to the deadline for submission of bids, were to be included in the rates and prices and in the bid submitted by the bidder. On facts, this Court found that the seigniorage fee on stone, sand, and earth was enhanced after the contract was executed by and between the parties and the arbitral tribunal had unanimously found that the contractor had incurred additional costs because of the change in the rates of the seigniorage fee pursuant to the change in legislation and that it would be entitled to be paid such costs. This Court, accordingly, held that construction of the terms of the contract by the arbitral tribunal was completely consistent with the principles laid down in earlier decisions of this Court and that, upon construing the material on record, the arbitral tribunal concluded that the matter would be covered by the 'subsequent legislation' clause. This Court, therefore, confirmed that the view taken by the arbitral tribunal after considering the material on record and the terms of the contract was certainly a possible view, to say the least, and that no reason was made out to interfere.

29. In ***UHL Power Company Limited vs. State of Himachal Pradesh***[24]*,* a 3-Judge Bench of this Court reiterated that if there are two

[24] (2022) 4 SCC 116

plausible interpretations of the terms and conditions of the contract, then no fault can be found if the arbitrator proceeds to accept one interpretation as against the other. Again, in ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India***[25], this Court held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not a plausible view to take.

30. In ***Dyna Technologies Private Limited vs. Crompton Greaves Limited***[26], a 3-Judge Bench of this Court held that an arbitral award should not be interfered with in a casual and cavalier manner, unless the perversity of the award goes to the root of the matter, without there being a possibility of an alternative interpretation that may sustain it. It was held that Section 34 is different in its approach and cannot be equated with normal appellate jurisdiction and that its mandate is to respect the finality of the award and the parties' autonomy to get the dispute adjudicated by an alternative forum as provided by law. This Court cautioned that if Courts were to interfere with awards in the usual course on factual aspects, then the commercial wisdom behind opting for alternative dispute resolution would stand frustrated.

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25 (2019) 15 SCC 131
26 (2019) 20 SCC 1

31. In ***MMTC Limited vs. Vedanta Limited***[27], this Court observed that the position is well settled that the Court exercising jurisdiction under Section 34 does not sit in appeal over an arbitral award and can interfere on the limited grounds provided under Section 34. Referring to the amendment of Section 34 with effect from 23.10.2015, this Court observed that the ambit of contravention of public policy has been modified to the extent that it now means fraud or corruption in the making of the arbitral award, violation of Sections 75 or 81 of the Arbitration Act, contravention of the fundamental policy of Indian law and conflict with the most basic notions of justice or morality. It was noted that the newly inserted Section 34(2A) provides that, in domestic arbitrations, violation of public policy would also include patent illegality appearing on the face of the arbitral award. It was also noted that interference under Section 37 cannot travel beyond the restrictions laid down in Section 34 of the Arbitration Act, i.e., Courts cannot undertake independent assessment of the merits of the award and must only ascertain that exercise of power by the Court under Section 34 has not exceeded the scope of the provision. It was observed that in case an arbitral award has been confirmed under Section 34 and, thereafter, in appeal under Section 37, this Court would be extremely cautious and slow in disturbing such concurrent findings.

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[27] (2019) 4 SCC 163

32. In ***Sumitomo Heavy Industries Limited vs. Oil and Natural Gas Corporation Limited***[28], this Court observed that, while considering a challenge to an arbitral award, neither the Court exercising jurisdiction under Section 34 of the Arbitration Act nor the Court sitting in appeal under Section 37 thereof would exercise appellate jurisdiction over the findings and decisions of the arbitrator. Once the award is held to be a plausible one, interference by the Court is not called for.

33. In ***OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited and another***[29], a 3-Judge Bench of this Court, upon a comprehensive recce of relevant case law, held that the legal position which emerges, after the amendment of the Arbitration Act in 2016, is that the phrase 'in conflict with the public policy of India' must be accorded a restricted meaning in terms of *Explanation 1* as the expression 'in contravention with the fundamental policy of Indian law' by use of the word 'fundamental' before the phrase 'policy of Indian law' made the expression narrower in its application than the phrase 'in contravention with the policy of Indian law'. This was held to mean that mere contravention of law is not enough to make an award vulnerable and to bring the contravention within the fold of the 'fundamental policy of Indian law', the award must contravene all or any of such fundamental

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28 (2010) 11 SCC 296
29 (2025) 2 SCC 417

principles that provide a basis for administration of justice and enforcement of law in this country. Further, by way of inexhaustive illustrations, the Bench observed that (*a*) violation of the principles of natural justice; (*b*) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and (*c*) violating laws of India linked to public good or public interest could be considered to be in contravention of the fundamental policy of Indian law. The Bench, however, cautioned that, while assessing whether there is a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in *Explanation 2* to Section 34(2)(*b*)(*ii*). It was further noted that, ordinarily, the terms of the contract should be understood in the way the parties wanted and intended them to be.

34. NHAI's applications under Section 34 of the Arbitration Act in relation to the arbitral awards of Gammon-Atlanta (JV), Hindustan Construction Co. Ltd. and PCL Suncon (JV) (Civil Appeal Nos. 5416, 5304 and 5302 of 2025) were before Act No. 3 of 2016, whereby the provisions of the Arbitration Act, including Section 34 thereof, stood amended with retrospective effect from 23.10.2015. NHAI's applications under Section 34 of the Arbitration Act against the arbitral awards pertaining to NKG Infrastructure Limited and DIC-NCC (JV) (Civil Appeal Nos. 5301 and 5412 of 2025) were filed after such amendment. Therefore, three of the five arbitral awards presently under scrutiny would have to be reviewed in

the light of the law laid down in ***Associate Builders*** (*supra*) while the other two would have to be examined in the light of the amended Section 34 of the Arbitration Act, including the ground of patent illegality falling under Section 34(2A) thereof. In that context, the changed outlines of Section 34 of the Arbitration Act are pointed out and NHAI would contend that perversity would form part of 'patent illegality', the ground that was introduced in Section 34(2A). NHAI contends that the arbitral awards must also be held to be in breach of Section 28(1)(a) of the Arbitration Act, which requires the arbitrator to decide the dispute in accordance with the substantive law in force in India. Be it before or after the amendment of the Arbitration Act, it is clear that neither the Courts exercising jurisdiction under Sections 34 and 37 of the Arbitration Act nor this Court, in exercise of jurisdiction under Article 136 of the Constitution, would undertake a merits-based evaluation or sit in appeal over a plausible and possible view on facts taken by the arbitral tribunal.

35. In this scenario, we may again re-examine the BOCW Act and the Cess Act. The argument of NHAI is that these Acts came into effect in the years 1996 and 1995 respectively and, therefore, they cannot be treated as 'subsequent legislation' for the purposes of its contractual clauses. However, we must note that the preamble to the Cess Act categorically states that the said enactment was made to provide for levy and collection of cess on the cost of construction incurred by employers with a view to

augment the resources of the Welfare Boards constituted under the BOCW Act. Therefore, the Cess Act being brought into effect from 03.11.1995 is totally incomprehensible as the BOCW Act was brought into effect only on 01.03.1996. This was clearly a case of putting the cart before the horse! Even thereafter, the Cess Act could not have been given effect in a vacuum before constitution of Welfare Boards under the BOCW Act, as augmenting of 'Welfare Board resources' cannot arise even before such Boards came into existence. This being one aspect, it is the established position that no effective steps were taken either by the Central Government or by the Governments of the States/UTs in this country to implement the provisions of the BOCW Act and the Cess Act until they were prodded to do so, time and again, by this Court, *vide* its orders in the case filed by the National Campaign Committee**.** It was only pursuant to the persistent efforts made by this Court that necessary machinery was put in place in different States/UTs on different dates.

36. Though the Central Government issued Notification dated 26.09.1996 stipulating the rate of cess @ one per cent, no steps were taken to monitor the actual implementation of the Acts so as to ensure that the prescribed one per cent cess was levied, collected and deposited. In fact, Welfare Boards were not even constituted under Section 18 of the BOCW Act for a long time. However, the BOCW Act and the Cess Act clearly envisage appropriate machinery being put in place for timely levy,

collection and deposit of cess. In the absence of such machinery, the question of levying and collecting cess cannot logically arise. More so as, in the absence of Welfare Boards which could accept such cess once it is collected, the same invariably had to be placed by the State in its consolidated fund and used for public purposes. Such appropriation would have impacted the very validity of such collection and would have made it debatable whether the distinction drawn by this Court between a 'tax' and a 'fee' in the context of this cess could still be maintained.

37. Though reference was made by NHAI to Rule 4(3) of the Cess Rules in the context of deduction at source of the cess leviable upon buildings and other construction works of a Government or a PSU from the bills paid for such works, we may note that as per Rule 5 of the Cess Rules, upon such collection, the Government or PSU is required to transfer the same to the Welfare Board within thirty days of its collection. Obviously, in the absence of a Welfare Board, even if the cess is deducted at source, be it by a Government or by a PSU while making bill payments, the same could not be deposited as per Rule 5. Notably, though NHAI placed reliance on Rule 4(3), it is an admitted fact that it did not resort to any such deduction at source and recoveries were sought to be made by NHAI only subsequently. It is, therefore, patently clear that, though the BOCW Act and the Cess Act, along with the Rules framed thereunder, remained on the statute book for eons, they were not given actual effect owing to the

complete absence of the required machinery for the levy, collection, deposit and utilisation of the cess to be collected thereunder for the benefit of building and other construction workers. The failure to effectively implement the BOCW Act and the Cess Act has to be laid squarely at the door of the authorities, i.e., the Central Government and the Governments of the States/UTs concerned.

38. This being the backdrop for the arbitral awards under scrutiny, we will now consider the contractual terms between the NHAI and the respondents in its appeals. In three of the five cases, i.e., in the contracts relating to Hindustan Construction Co. Ltd., PCL Suncon (JV) and NKG Infrastructure Limited, the BOCW Act and the Cess Act were specifically mentioned amongst the labour legislations that were to be complied with by them (Clause 34.2). However, in the contracts of Gammon-Atlanta (JV) and DIC-NCC (JV), no mention was made of the BOCW Act and the Cess Act. While so, Clause 14.3 and Clause 70.8 ('Subsequent Legislation') in the contract document provided that the time-frame of twenty-eight days before the last date for submission of the bid was crucial to ascertain what should be factored into the prices and rates in the bid offer. In the event a particular aspect was not to be factored into the bid price at that point of time as per the extant legal regime but it came into focus thereafter, due to a change in the scenario, it qualified as 'subsequent legislation' attracting the procedure under Clause 70.8.

39. We may note that NHAI has a prescribed template for its contracts. Volume I thereof pertains to the 'Bidding Document'. Clause 14.3 falls in Section I therein, titled 'Invitation for Bids'. Clause 14 deals with 'Bid Prices' and Clause 14.3 therein states as follows:

> 'All duties, taxes and other levies payable by the Contractor under the Contract or for any other cause as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total bid price submitted by the bidder and the evaluation and comparison of bids by the Employer shall be made accordingly.'

40. Clause 70.8, titled 'Subsequent Legislation', forms part of Section IV Part 2, titled 'Conditions of Particular Application' (COPA). It reads thus:

> 'If, after the date 28 days prior to the latest date for submission of tenders for the Contract there occur in the country in which the Works are being or are to be executed changes to any National or State Statute, Ordinance, Decree or other Law or any regulation or by-law of any local or other duly constituted authority, or the introduction of any such State Statute, Ordinance, Decree, Law, regulation or by-law which causes additional or reduced cost to the Contractor, other than under the preceding Sub-Clauses of this Clause, in the execution of the Contract, such additional or reduced cost shall, after due consultation with the Employer and the Contractor, be determined by the Engineer and shall be added to or deducted from the Contract Price and the Engineer shall notify the Contractor accordingly, with a copy to the Employer. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same shall already have taken into account in the indexing of any inputs to the Price Adjustment Formulae in accordance with the provisions of Sub-Clauses 70.1 to 70.7.'

41. In the context of the aforestated factual and legal position, we may now deal with the each of the appeals individually. In Civil Appeal No. 4513 of 2025, Prakash Atlanta (JV) is the appellant and NHAI is the respondent. Tenders were invited by NHAI for the construction of a segment of the Lucknow Bypass in the year 2001. Prakash Atlanta (JV) submitted its bid for the work on 21.03.2001 and emerged successful. It entered into a

contract with NHAI on 10.08.2001. It is an admitted fact that, in the contract dated 10.08.2001, specific mention was made of the BOCW Act and the Cess Act amongst the labour legislations that the appellant, being the contractor, would have to abide by. There was neither a clause akin to Clause 14.3 in its contract nor was there a 'subsequent legislation' clause, akin to Clause 70.8. NHAI terminated the contract with the appellant on 14.03.2008. However, disputes had arisen between the parties during the subsistence of the contract and the Dispute Resolution Expert, to whom the matter was referred, held in favour of Prakash Atlanta (JV).

42. Aggrieved thereby, NHAI initiated arbitration proceedings. Significantly, these proceedings were initiated in the year 2002 and went on till June, 2004, but NHAI never raised the issue of the levy and collection of cess under the BOCW Act and the Cess Act during the course of such proceedings. The arbitral tribunal rendered its award on 26.06.2004, dismissing NHAI's claims while accepting the counter-claim of Prakash Atlanta (JV) towards price adjustment for extra items. NHAI's application under Section 34 of the Arbitration Act against the arbitral award dated 26.06.2004 was dismissed, *vide* order dated 15.12.2011, by a learned Judge of the Delhi High Court in OMP No. 339 of 2004. The appeal filed by NHAI under Section 37 of the Arbitration Act against this order was dismissed by a Division Bench of the Delhi High Court, *vide* order dated 03.02.2012 in FAO(OS) No. 55 of 2012. Special Leave

Petition (Civil) No. 17736 of 2012 filed by NHAI was dismissed as withdrawn on 05.07.2012, taking note of the submission made that NHAI intended to apply for review of the said judgment. The NHAI did so in Review Petition No. 419 of 2012 but met with only limited success, irrelevant to the present adjudication. Long after the termination of the appellant's contract in March, 2008, the Government of Uttar Pradesh issued Circular dated 17.02.2010 stating that the provisions of the BOCW Act should be made applicable to all projects being executed on or after 04.02.2009 and that cess @ 1% of the project price should be deposited in the fund. Admittedly, this was the first instance of the levy of cess under the BOCW Act and the Cess Act in the State of Uttar Pradesh. As per the Circular, the cess was to be levied on all projects which were ongoing on 04.02.2009, irrespective of when they had commenced.

43. It was only during the course of the execution proceedings in Execution Petition No. 165 of 2012 initiated by Prakash Atlanta (JV) in connection with the arbitral award dated 26.06.2004 that NHAI attempted to adjust the amount allegedly payable by Prakash Atlanta (JV) towards the cess under the BOCW Act and the Cess Act for the period that it had worked. NHAI tendered a sum of ₹3,13,26,990/- to the appellant as against its claim for ₹7,70,43,623/- along with interest. However, by order dated 09.11.2012, the executing Court, viz., a learned Judge of the Delhi High Court, held that the deduction of 1% cess on a pro-rata basis against

the value of work completed by the appellant till 2008 was permissible, though it was prior to the cut-off date**,** viz., 04.02.2009. Aggrieved by this order, the appellant filed EFA (OS) No. 4 of 2012. However, the same was dismissed on 12.02.2013 by a Division Bench of the High Court, observing that the cess is to be calculated on the entire cost of the project; that it was made applicable to projects that were ongoing on 04.02.2009 and, as the subject project stood concluded only in 2012, i.e., after 04.02.2009, the appellant was liable to bear the cess liability for the extent of work executed by it prior to termination of its contract. Aggrieved by this judgment, Prakash Atlanta (JV) is before this Court by way of this appeal.

44. In Civil Appeal No. 5301 of 2025 filed by NHAI, the work awarded to NKG Infrastructure Ltd., the respondent therein, was the balance work of constructing a segment of the Lucknow Bypass and the contract was signed on 25.02.2009. Clause 34.2 referred to the BOCW Act and the Cess Act, along with other labour legislations, that the respondent/ contractor had to abide by. Clause 14.3 and Clause 70.8, viz., the 'subsequent legislation' clause were also applicable. NKG Infrastructure Ltd. had submitted its bid for the subject contract on 05.12.2008, more than 28 days prior to the Circular dated 17.02.2010 issued by the Government of Uttar Pradesh, notifying the levy of cess under the BOCW Act and the Cess Act from 04.02.2009. The question that arises is whether the 'subsequent legislation' clause would apply or whether the respondent

is to bear the levy of cess, in terms of the Circular dated 17.02.2010 and owing to the inclusion of the BOCW Act and the Cess Act (Clause 34.2). By award dated 24.11.2015, the arbitral tribunal held in favour of the respondent and directed NHAI to reimburse a sum of ₹1,14,05,033/- to the respondent, being the amount of cess wrongly deducted by it. The arbitral tribunal opined that there was a clear admission on the part of NHAI that the BOCW Act was made applicable in the State of Uttar Pradesh only from 04.02.2009. This admission was inferred from NHAI's letter dated 09.03.2010, wherein it clearly mentioned that the BOCW Act was applicable in the State of Uttar Pradesh with effect from 04.02.2009 on construction projects which continued on or after 04.02.2009 and 1% cess was payable on the total project cost. The arbitral tribunal opined that the 'subsequent legislation' clause would apply. Relying on the decision of the Delhi High Court in Gammon-Atlanta (JV), the arbitral tribunal held that NKG Infrastructure Ltd. was entitled to reimbursement. This award was confirmed by a learned Judge of the Delhi High Court, *vide* order dated 02.11.2016 in O.M.P. (COMM) No. 60 of 2016, NHAI's application under Section 34 of the Arbitration Act. The same stood confirmed by a Division Bench of the Delhi High Court, *vide* order dated 10.01.2017, whereby the appeal in FAO (OS) (COMM) No. 11 of 2017 filed by NHAI under Section 37 of the Arbitration Act stood dismissed, following the earlier Division Bench judgment in the case of Gammon-Atlanta (JV).

45. In Civil Appeal No. 5302 of 2025 filed by NHAI, the respondent is PCL Suncon (JV). It submitted its bid on 14.05.2001. NHAI and PCL Suncon (JV) entered into contract dated 20.09.2001, whereby it was to execute 4-laning and strengthening of National Highway No. 2 in the State of Jharkhand. Clause 34.2 included the BOCW Act and the Cess Act amongst the labour legislations that the respondent, PCL Suncon (JV), was required to abide by. Further, this contract also contained Clause 14.3 and Clause 70.8, viz., the 'subsequent legislation' clause. Admittedly, it was only on 01.08.2007 that the Government of Jharkhand issued S.O.19 dated 01.08.2007, notifying the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Jharkhand Rules, 2006, which were to be given effect in the State of Jharkhand from the date of their publication in the Gazette. The question that arose was whether the respondent was liable to bear the levy of cess or whether it would be covered by the 'subsequent legislation' clause. By award dated 24.02.2013, the arbitral tribunal held in favour of the respondent and directed NHAI to reimburse the amount deducted from the respondent's bills towards cess. The arbitral tribunal noted that the welfare measures to be undertaken by the State Government under the BOCW Act could not be made operative till Rules were framed for carrying out the functions under the said Act. Taking note of Rule 5 of the Cess Rules, which required the cess collected to be transferred to the Welfare Board within 30 days

of its collection, the arbitral tribunal noted that if any such cess had been levied and collected in the year 2001 when the contract was entered into, as there was no Welfare Board in existence, the cess would have been appropriated to the consolidated fund of the State which is used for public purposes. In that manner, the character of the cess collected would have changed from fee to tax, thereby rendering the Cess Act itself open to challenge. The arbitral tribunal noted that this was the reason why the State Government had decided to levy and collect cess only from 01.08.2007, when the Jharkhand Rules were notified in the Gazette. As the Jharkhand Rules were obviously a 'subsequent legislation' and were crucial for the levy and collection of cess under the BOCW Act and the Cess Act, the arbitral tribunal applied the 'subsequent legislation' clause and held PCL Suncon (JV) entitled to reimbursement of the cess deducted from its bills. This award stood confirmed under Section 34 of the Arbitration Act when a learned Judge of the Delhi High Court rejected NHAI's application thereunder, *vide* order dated 30.09.2013, corrected on 08.01.2014. Aggrieved thereby, NHAI preferred an appeal under Section 37 of the Arbitration Act in FAO (OS) No. 128 of 2014 but the same came to be dismissed by a Division Bench of the High Court on 11.03.2014, following the earlier decision in the case of Gammon Atlanta (JV).

46. As regards Civil Appeal 5304 of 2025 filed by NHAI, Hindustan Construction Co. Ltd. is the respondent therein. Hindustan Construction

Co. Ltd. submitted its bid on 15.07.2005 for award of the work relating to 4-laning of National Highway No. 28 from Km 92.00 to Km 135.00 of the Lucknow-Ayodhya Section. The contract between them was executed on 21.10.2005. Clause 34.2 therein included the BOCW Act and the Cess Act while Clause 14.3 and the 'subsequent legislation' clause (Clause 70.8) were also included. This matter also pertains to the State of Uttar Pradesh and, therefore, the Circular dated 17.02.2010 fixing the cut-off date, 04.02.2009, was the first instance whereby levy of cess under the BOCW Act and the Cess Act came to be imposed. The issue was whether the respondent was liable to bear such levy. By award dated 22.07.2014, the arbitral tribunal held in favour of the respondent and directed NHAI to reimburse ₹4,21,38,074/- towards the cess that had been deducted from its bills. The arbitral tribunal noted that the State of Uttar Pradesh had taken effective measures to implement the BOCW Act and the Cess Act only on 04.02.2009 and NHAI did not even attempt to recover cess from Hindustan Construction Co. Ltd. till March, 2010. The argument of NHAI that Clause 34.2 specifically mentioned the BOCW Act and the Cess Act and provided for recovery of cess was rejected. It was held that recovery of cess could not have been made when the necessary machinery therefor was not in place. It was observed that constitution of Welfare Boards was necessary for levy and collection of cess and without the same being in place, the question of such levy and collection did not arise.

The arbitral tribunal, accordingly, applied the 'subsequent legislation' clause as the State Government's notification was issued long after the bid related date in terms thereof and, in consequence, constituted 'subsequent legislation' thereunder. The sum of ₹10,76,959/- was directed to be reimbursed to Hindustan Construction Co. Ltd. along with interest thereon. We find that, in the case of Hindustan Construction Co. Ltd., the NHAI deducted a much larger sum towards cess but only deposited ₹3,30,000/- with the Welfare Board. The award stood confirmed when a learned Judge of the Delhi High Court rejected the application filed by NHAI under Section 34 of the Arbitration Act on 20.04.2017. NHAI's appeal under Section 37 of the Arbitration Act came to be dismissed on 23.03.2018 by a Division Bench of the Delhi High Court, following the earlier Division Bench decision in the case of Gammon-Atlanta (JV).

47. In Civil Appeal No. 5412 of 2025, NHAI is again the appellant while DIC-NCC (JV) is the respondent. The contract between the parties was in relation to rehabilitation and upgradation of Garamore-Gagodhar Road Section of National Highway-8 and National Highway-15 in the State of Gujarat. The Gujarat Government framed the Gujarat Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 2003, and the same were published in the Gujarat Government Gazette Extraordinary dated 18.08.2003. Thereafter, on 18.12.2004, the Gujarat Government notified that its Principal Secretary,

Labour and Employment Department, would hold the office of the Building and Other Construction Workers' Welfare Board for the purpose of the BOCW Act until a Board was duly constituted. Further, *vide* Resolution dated 30.01.2006, the Government of Gujarat instructed all Government Departments, PSUs, and local authorities to pay cess as per the BOCW Act and the Cess Act. They were advised to incorporate this cess in their estimates for all new works. Significantly, reference was made therein to the Notification dated 03.01.2005, whereby all Heads of Departments of the Government, all Executive Heads of PSUs, and all Executive Heads of local authorities were notified as Cess Collectors and Assessing Officers. Reference was also made to the Resolution passed by the Building and Other Construction Workers' Welfare Board to collect the cess with effect from 18.12.2004. It was directed that the cess payable by Government Offices, PSUs, local authorities to Cess Collectors was to be made in the challan prescribed under the major head, minor head and sub-head stipulated therein. Admittedly, DIC-NCC (JV) submitted its bid on 10.12.2023 and a letter of acceptance was issued to it on 22.11.2004. The ad-hoc Welfare Board, as noted earlier, was constituted thereafter on 18.12.2004 and the contract between the parties came to be executed on 23.12.2004. The contract required compliance with labour legislations and was worded inclusively. However, no mention was made of the BOCW Act and the Cess Act therein. Clause 14.3 and Clause 70.8, pertaining to

'subsequent legislation', were included. The arbitral award dated 18.07.2017 held in favour of the respondent on the issue of deductions made from its bills to the tune of ₹3,93,77,776/- by NHAI towards cess and directed release of the bank guarantee furnished by the respondent for that sum. The arbitral tribunal noted that the Government had framed Rules under Section 62 of the BOCW Act on 18.08.2003. It constituted an *ad hoc* Welfare Board on 18.12.2004 and passed a resolution on 30.01.2006 that Cess Collectors were to deposit with the Welfare Board the cess collected with effect from 18.12.2004. The arbitral tribunal, therefore, concluded that the BOCW Act and the Cess Act became operative in the State of Gujarat only upon such instructions being issued and, therefore, the same could not be made applicable to a contract which was based on DIC-NCC (JV)'s bid submitted on 10.12.2003. The arbitral tribunal noted that upon the insistence of NHAI, DIC-NCC (JV) had furnished a bank guarantee for ₹3,93,77,776/- towards the cess claimed by NHAI and, accordingly, directed release thereof. It was also noted that, had it been the intention of NHAI that DIC-NCC (JV) was liable to pay cess from December, 2004 itself, i.e., after the contract was entered into between the parties, it would have made deductions right from then but it had failed to do so and it was only on 13.03.2012 that NHAI stated that audit objections had been raised and asked DIC-NCC (JV) to deposit the cess component of over ₹3,50,00,000/-, failing which it threatened to

recover the same from its bank guarantees. The arbitral tribunal applied the 'subsequent legislation' clause and held in favour of DIC-NCC (JV). The same came to be confirmed by a learned Judge of the Delhi High Court under Section 34 of the Arbitration Act, *vide* order dated 12.10.2018. NHAI's appeal under Section 37 of the Arbitration Act in FAO (OS) (COMM) No. 20 of 2019 was dismissed by a Division Bench of the Delhi High Court on 14.03.2019.

48. Civil Appeal No. 5416 of 2025 pertains to Gammon-Atlanta (JV). Gammon-Atlanta (JV)'s bid for the award of work relating to National Highway-5 in the State of Orissa (now, Odisha), from Km 387.700 to Km 414.000 (Khurda to Bhubaneshwar), was submitted on 17.10.2000. The contract was entered into by and between them on 20.12.2000. The contract provided for compliance with labour legislations, as detailed in Annexures-A and A1. However, the Annexures were only inclusive in nature and not exhaustive. Neither the BOCW Act nor the Cess Act was mentioned among the labour legislations enumerated by way of illustration therein. Clause 14.3 and the 'subsequent legislation' clause in Clause 70.8 were included. It was on 02.08.2002 that the State of Orissa framed the Orissa Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 2002. However, it was only by Notification No. 1455/LE dated 11.02.2004 that the State Government appointed all Assistant Labour Officers, District Labour Officers working in

the field, the Labour Commissioner, the Joint Labour Commissioner and the Assistant Labour Commissioners posted in the Directorate of the Labour Commissioner, Orissa, as Cess Collectors. Provision was made by the State Government, under Resolution dated 15.12.2008 published in the Orissa Gazette Extraordinary dated 18.12.2008, for the Orissa Building and Other Construction Workers' Welfare Board to function from the Office of the Labour Commissioner, Orissa, Bhubaneshwar, with eight designated staff, as per the sanction of the Finance Department. The said Resolution also made it mandatory for the collection and remittance of the cess @ 1% from the date of issuance of the said Resolution. By award dated 20.02.2012, the arbitral tribunal held in favour of the respondent, Gammon-Atlanta (JV), on the issue of recovery of the cess payable under the BOCW Act and the Cess Act. The arbitral tribunal opined that NHAI could not have recovered the cess amount from Gammon-Atlanta (JV) in view of the 'subsequent legislation' clause. The award recorded, in para 14.29.8, that the amount recovered towards cess was ₹1,04,96,006/-, but only ₹3,30,225/- therefrom was paid by NHAI to the Welfare Board and NHAI adjusted the recovery in excess thereof against liquidated damages. This action on the part of NHAI was held to be unlawful and the arbitral tribunal directed reimbursement of the deducted amount along with interest. These findings of the arbitral tribunal stood confirmed under Section 34 of the Arbitration Act by a learned Judge of the Delhi High Court

on 17.07.2012. Further, NHAI's appeal against the said order came to be dismissed by a Division Bench of the Delhi High Court, *vide* order dated 14.08.2013, passed in FAO (OS) No. 366 of 2013. Reliance was placed by the Division Bench on the observations of this Court in ***Dewan Chand Builders*** (*supra*), which held to the effect that the BOCW Act and the Cess Act become operative only upon notification of the Rules framed under Section 62 of the BOCW Act. As, in this case, the bid was submitted by the appellant in the year 2000 and the notification in question was issued in the year 2008, the Division Bench opined that the reasoning of the arbitral tribunal could not be found fault with. This judgment was applied in the later decisions which are the subject matter of the other appeals.

49. These being the factual matrices of the appeals on hand, learned senior counsel/counsel, appearing for the respondents/contractors, would contend in unison that, when reasoned arbitral awards have been passed after considering all the facts and circumstances, including the terms and conditions of the contract, and the same have been confirmed by the Courts exercising jurisdiction under Sections 34 and 37 of the Arbitration Act, this Court ought not to interfere with the same.

50. Having given our earnest consideration to all aspects of the matter, we find that the ultimate obligation to bear the statutory levy of the subject cess would lie with the 'employer', under Section 3(2) of the Cess Act. 'Employer' in relation to an establishment is defined by Section 2(1)(i) of

the BOCW Act to mean the ‘owner’ thereof but includes the ‘contractor’, if the building or construction work is carried on by or through such contractor or by employment of workers provided by such contractor. This being one aspect of the matter, the crucial issue, insofar as ‘contractors’ are concerned, is whether they could have factored in the levy of such cess in their bid prices at the time they submitted their bids when such a levy was not even in existence then. This question would arise, irrespective of whether the contracts made a mention of the BOCW Act and the Cess Act. The answer is simple - the contractors could not have factored such cess component into their bid prices prior to a mechanism being put in place for its collection, as that would have led to unjust and unlawful enrichment on their part. In consequence, the question would arise as to when the liability to pay the subject cess commences. The observations in para 12 of ***A. Prabhakara Reddy*** (*supra*) are of guidance. This Court held therein that after the Cess Act and the Rules came into effect and the Welfare Board was constituted, with the notification specifying the rate of cess to be levied upon the cost of construction incurred by the employer already in place, the authorities were duty-bound to collect the cess by raising demands in respect of the ongoing construction works and it was not necessary to wait till such building and construction workers were registered under Section 12 of the BOCW Act or till welfare measures were provided to them. Therefore, the constitution

of Welfare Boards is the *sine qua non* for giving effect to the BOCW Act and the Cess Act and the cess in connection therewith could not have been levied or collected before the constitution of such Welfare Boards.

51. In this regard, we find that Gammon-Atlanta (JV) submitted its bid on 17.10.2000 and the Cess Act was notified in the State of Orissa only on 15.12.2008. PCL Suncon (JV) submitted its bid on 14.05.2001 and it was only pursuant to the Rules framed by the Government of Jharkhand, notified on 01.08.2007, that cess was levied under the provisions of the BOCW Act and the Cess Act. PCL Suncon (JV) submitted its bid on 14.05.2001 and its contract was signed on 20.09.2001. Notification of the Rules framed by the Jharkhand Government under Section 62 of the BOCW Act was on 01.08.2007, whereby the provisions of the BOCW Act and the Cess Act were given effect. As regards DIC-NIC (JV), the submission of its bid was on 10.12.2003 and collection of cess in the State of Gujarat started from 18.12.2004, i.e., long after the submission of its bid. NKG Infrastructure Limited submitted its bid on 05.12.2008, long prior to the notification dated 17.02.2010 brought out by the Government of Uttar Pradesh, giving effect to the provisions of the BOCW Act and the Cess Act from 04.02.2009. Hindustan Construction Co. Ltd.'s bid was submitted on 15.07.2005, which culminated in the contract agreement dated 21.10.2005, and it was only long thereafter, i.e., on 17.02.2010, that the Government of Uttar Pradesh gave effect to the provisions of the

BOCW Act and the Cess Act from 04.02.2009. Prakash Atlanta (JV) submitted its bid for the work on 21.03.2001 and its contract itself stood terminated on 14.03.2008, long before the Government of Uttar Pradesh's Notification dated 17.02.2010. Therefore, in none of these cases were Welfare Boards in existence when the bids were submitted by the contractors and the question of them factoring the levy of cess into their prices while submitting their bids did not arise.

52. The issue, in effect, boils down to whether the failure of the respondents to factor in their bid prices the cess payable under the BOCW Act and the Cess Act can be said to be in keeping with Clause 14.3, thereby attracting the 'subsequent legislation' procedure in Clause 70.8. In essence, it would come down to interpretation of these terms of the contract. The argument of NHAI that the 'subsequent legislation' clause only pertains to changes in existing laws or introduction of new laws overlooks the fact that there was a specific timeframe of twenty-eight days mentioned therein which was linked to the last date for submission of the bids and that is the basis on which the arbitral tribunals construed and interpreted that provision. Having considered the arbitral awards passed by the arbitral tribunals in the five appeals filed by NHAI, we find that the interpretation and construction of those terms and clauses by the arbitral tribunals cannot be said to be arbitrary, perverse or patently illegal. Given the situation obtaining in relation to the two Acts at the relevant time, the

arbitral awards cannot be said to have violated the public policy of India or be in breach of Section 28(1)(a) of the Arbitration Act. Once the view taken by the arbitral tribunal is found to be a plausible and possible one on facts and not an unreasonable one, it is not for the Courts, under Sections 34 or 37 of the Arbitration Act, or for this Court to sit in appeal or substitute its view for that of the arbitral tribunal.

53. NHAI would contend that the decision in ***Dewan Chand Builders*** (*supra*) is being misconstrued as that decision pertained to the validity of the BOCW Act and the Cess Act and the date of coming into force thereof was not in issue. It is contended that a stray sentence or observation made in a judgment cannot be taken to be its *ratio decidendi*. However, the observation made in para 18 of ***Dewan Chand Builders*** (*supra*) was not a stray observation as this aspect had also been considered by the Delhi High Court and this Court affirmed the same. Further, the later decision of this Court in ***A. Prabhakara Reddy*** (*supra*) put it beyond the pale of doubt that constitution of the Welfare Boards was essential to give actual effect to the BOCW Act and the Cess Act.

54. It is further contended on behalf of NHAI that, as there was no 'subsequent legislation' clause in Prakash Atlanta (JV)'s contract, the decision in the context of the other appeals cannot be extended to it. However, even in the absence of such contractual clauses, we must take note of the fact that NHAI never raised the issue of recovery of cess during

the course of the arbitral proceedings or even thereafter. Having filed a review petition before the High Court, pursuant to the liberty granted by this Court, NHAI did not raise this issue even then. It was only during the execution proceedings that it came up with the idea of deducting the cess allegedly due from Prakash Atlanta (JV) from the amounts payable to it under the arbitral award. Further, this attempt was made by the NHAI only in September, 2012, long after the Notification dated 17.02.2010 was issued by the Uttar Pradesh Government. Thus, it was clearly an afterthought on the part of NHAI. This clutching at straws so as to reduce its own liability by NHAI must necessarily be recognized for what it is worth. Further, the same rationale with regard to factoring the cess component in its bid in the year 2001, without a corresponding reality, would arise in the case of Prakash Atlanta (JV) also as it does in the other appeals. Had the Government of Uttar Pradesh not brought out the Notification dated 17.02.2010 on the lines that it did or if it had made the payment of cess prospective from that date, instead of applying it to all ongoing contracts as on 04.02.2009, Prakash Atlanta (JV) would have been unjustly enriched had it factored in such levy of cess into its price. Its failure to factor in such levy, therefore, cannot be found fault with at this late stage and it cannot be visited with such liability with retrospective effect, long after the termination of its contract. This appeal must also be

decided on the same lines as the appeals filed by NHAI, notwithstanding its factual narrative being entirely different.

55. As regards the additional issue raised in Civil Appeal No. 5304 of 2025, pertaining to Hindustan Construction Co. Ltd., we may note that Claim 4 before the arbitral tribunal pertained to 'withholding of part of the payment due towards price adjustment on foreign currency portion from interim payment certificates.' The arbitral tribunal noted in the award that this issue turned upon analysis of the contract to ascertain whether it provided for additional adjustment of 85% of the foreign currency component over and above 85% provided in the formula. Having perused the relevant terms of the contract - Clause No. 72.2 in Section 4, Part 1 of Volume I, titled 'Conditions of contract', along with Clauses 70.3 and 70.4 of the COPA in Section 5 Part 2 of Volume I, the arbitral tribunal noted that the contract provided for payment in two currencies, i.e., Indian Rupees (90%) and Euros (10%). Further, the arbitral tribunal found that the contract provided for price adjustment for both currencies as per the formulae set out in Clause 70.3 of the COPA. Construing these terms, the arbitral tribunal noted that the portion of the work done, that is, 'R' and the portion of 'R' which was payable in foreign currency was set out in the contract. It was noted that the word used was payable 'R' and not adjustable foreign currency ('Rf'). The Tribunal, accordingly, observed that 'Rf' used in the formula is the portion of 'R' payable in foreign currency

and not the adjustable one. It was also noted that the contract required the bidder to provide the break-up of total foreign currency component and the contract indicated 15% as non-adjustable which, in other words, meant that 85% was adjustable. Therefore, the arbitral tribunal opined that when the Note (15% non-adjustable) is read with the formula under Clause 70.3 (viii) of the COPA, it is clear that 85% of the Euro component is adjustable and, therefore, there cannot be further 85% adjustment as the same would result in 72.2% adjustment which is not in keeping with the terms of the contract. The arbitral tribunal also took note of the submission on behalf of NHAI that there was a mistake in the formula given in Clause 70.3 of the COPA and opined that there was no room for it to correct the so-called mistake in the contract, if any. The arbitral tribunal, accordingly, affirmed that a harmonious reading of the relevant provisions suggested that 85% of the Euro component alone could be adjusted and not over and above that.

56. We may note that NHAI filed written submissions on this claim, viz. Claim 4, though no arguments were advanced by it during the course of the hearing. Therein, it sought to place its own take on how Clause 70.3 and the formulae prescribed therein are to be construed and acted upon. However, as the arbitral tribunal dealt with this contractual term and also noted the submission made on behalf of NHAI that there was a mistake in the formula itself, we can find no fault with the arbitral tribunal in holding

that it could not undertake correction of such mistake and in giving effect to the contract and the formulae prescribed therein as per its construction, which we find to be reasonable. The award insofar as it pertains to this claim, therefore, falls beyond the scope of interference by this Court.

57. As these appeals focus only upon the issue of cess payable under the BOCW Act and the Cess Act and arguments were also advanced only on that issue, the note submitted by NHAI touching upon other claims in relation to Gammon-Atlanta (JV)'s award, i.e., with regard to the refund of liquidated damages together with interest; recovery of alleged penalty for not providing vehicles to the Engineer; claim for refund of interest on discretionary advance; claim regarding recovery of earthwork pertaining to clearing and grubbing; and claim for interest *pendente lite* and future interest are not considered. In any event, these claims also turned upon the contractual terms and interpretation thereof and a merits-based evaluation of such findings of the arbitral tribunal is beyond the ken of this Court, just as it was beyond the ken of the Courts exercising jurisdiction under Section 34 and 37 of the Arbitration Act. Further, we may note that limited notice was issued in these matters only on the issue of cess payable under the BOCW Act and the Cess Act. It is, therefore, not open to NHAI to enlarge the scope of these matters at this late stage.

58. IA No. 84855 of 2015 was filed for intervention in Civil Appeal No. 5416 of 2025. M/s. Centrodorstroy, the intervener, entered into contracts

with NHAI in relation to works to be carried out in Uttar Pradesh in 2001. It claims to have completed the works under contract packages IIC and IIIC on 27.05.2010 and 25.03.2009 respectively. In view of the Government notifying the UP Rules of 2009 with effect from 04.02.2009, NHAI deducted amounts from its bills towards the cess payable under the BOCW Act and the Cess Act. Arbitration proceedings having been initiated, awards were passed on 03.11.2016 and 18.05.2018 in its favour. The amount payable under the awards was released to the intervener under affidavit of undertaking dated 06.03.2016. Though the awards were never challenged, they were made subject to the outcome of the pending appeals before this Court. It is on this ground that M/s. Centrodorstroy sought to intervene before this Court so as to make itself heard. In the light of our decision in these appeals, we do not deem it necessary to consider the additional grounds sought to be urged by it. The intervention application is, accordingly, rejected along with the additional grounds.

59. We may now sum up our conclusions as under:

(i) The observation made by this Court in ***Dewan Chand Builders*** (*supra*) to the effect that the Cess Act along with the Rules framed thereunder became operative in the whole of the NCT of Delhi from January, 2002 was an affirmation of the finding in that regard by the Division Bench of the Delhi High Court.

(ii) The BOCW Act and the Cess Act were brought into force on the dates notified therein but could not have been given effect to till Welfare Boards were constituted under Section 18 of the BOCW Act. Notwithstanding the dates from which these two enactments were brought into force, the BOCW Act and the Cess Act remained dormant, in fact, owing to the failure of the appropriate Governments in taking necessary measures to bring the provisions thereof into actual effect.

(iii) The Cess Act is complementary to the BOCW Act and was enacted for augmenting the resources of the Welfare Boards, constituted under Section 18 of the BOCW Act. Therefore, in the absence of such Welfare Boards, levy and collection of cess under the Cess Act did not arise, given the scheme and structure of the two Acts and the Rules.

(iv) As pointed out in ***A. Prabhakara Reddy*** (*supra*), constitution of Welfare Boards was essential and was a condition precedent for levy and collection of the cess in relation to the BOCW Act and the Cess Act. The registration of workers or providing of welfare measures to them, however, are not pre-conditions for the levy and collection of such cess.

(v) Mere mention of the BOCW Act and the Cess Act in Clause 34.2 of its contracts by NHAI had no significance or import in the absence of the requisite machinery being put in place by the authorities concerned for levy, collection and deposit of the cess with the Welfare Boards.

(vi) If an arbitral tribunal's view is found to be a possible and plausible one, it cannot be substituted merely because an alternate view is possible. Construction and interpretation of a contract and its terms is a matter for the arbitral tribunal to determine. Unless the same is found to be one that no fair-minded or reasonable person would arrive at, it cannot be interfered with. If there are two plausible interpretations of the terms of a contract, then no fault can be found if the arbitrator accepts one such interpretation as against the other. To be in conflict with the public policy of India, the award must contravene the fundamental policy of Indian law, which makes it narrower in its application.

(vii) We find that the arbitral awards in NHAI's five appeals turned upon interpretation and construction of identical terms in the contract and as the view taken by the arbitral tribunals was not only a plausible and possible one but also a justified one, on facts, we find no reason to interfere therewith. The awards are not perverse, patently illegal or opposed to the public policy of India. Further, we do not find the awards to be in breach of Section 28(1)(a) of the Arbitration Act.

60. On the above analysis, we find no merit in the appeals filed by NHAI against the orders of the High Court affirming the arbitral awards pertaining to Gammon-Atlanta (JV), PCL Suncon (JV), NKG Infrastructure Limited, Hindustan Construction Co. Ltd. and DIC-NCC (JV). The appeals, viz., C.A. Nos. 5301, 5302, 5304, 5412 and 5416 of 2025 are accordingly

dismissed. Insofar as Civil Appeal No. 4513 filed by Prakash Atlanta (JV) is concerned, we find that neither the executing Court nor the appellate Court was justified in holding it liable to pay cess under the BOCW Act and the Cess Act in relation to a contract entered into by it in the year 2001 which stood terminated in the year 2008, long thereafter, in the year 2012, on the basis of the Government of Uttar Pradesh's notification of the Rules with effect from 04.02.2009. C.A. No. 4513 of 2025 is, accordingly, allowed setting aside the said orders. NHAI shall, in consequence, release the amount that has been adjusted from out of the amounts payable by it in relation to Prakash Atlanta (JV)'s arbitral award dated 26.06.2004 along with interest payable thereon as per the said award.

IA Nos. 77056 of 2013 and 2 of 2013 are allowed, permitting additional facts, documents and annexures to be placed on record.

Other pending applications shall stand disposed of.

……..J
[SANJAY KUMAR]

……..J
[ALOK ARADHE]

New Delhi;
January 20, 2026.