



CNR: KAHC010048492025

NC: 2026:KHC:52534-DB  
COMAP No. 38 of 2025

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 22<sup>ND</sup> DAY OF SEPTEMBER, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE D K SINGH**

**AND**

**THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN**

**COMMERCIAL APPEAL NO. 38 OF 2025**

**BETWEEN:**

M/S. UNIVERSAL ASPHALT PVT. LTD.,  
A PRIVATE LIMITED COMPANY INCORPORATED  
UNDER THE COMPANIES ACT,  
BRANCHES AT BAITHKIL,  
KARWAR AND KARIKAL  
IN PONDICHERRY STATE,  
H.O. 208, 2<sup>ND</sup> FLOOR, SWASTIK CENTRAL,  
NEELIGEN ROAD, HUBBALLI - 580 029,  
TALUKA, HUBBALLI, DISTRICT DHARWAD

REPRESENTED BY ITS DIRECTOR  
SHRI. A. AHAMED AFZAL ABBAS  
S/O. A. ABDUL KAREEM,  
AGE 27 YEARS,  
OCC. DIRECTOR,  
R/O 01, SHANTI NAGAR,  
S/O. A. ABDUL KAREEM,  
KESHWAPUR, HUBBALLI,  
DHARWAD, KARNATAKA - 580 023

...APPELLANT

(BY SRI. MOINUDDIN N.,ADVOCATE)

**AND:**

1. M/S MYSORE MERCANTILE CO LTD.,  
A PUBLIC LIMITED COMPANY INCORPORATED UNDER  
THE COMPANIES ACT,  
HAVING ITS BRANCH OFFICE AT  
SEA BIRD ROAD, BAITHKOL,

Digitally  
signed by  
MALA K N  
Location:  
HIGH COURT  
OF  
KARNATAKA



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TANK INSTALLATION AT KARWAR PORT,  
KARWAR - 581 302,  
UTTARA KANNADA DISTRICT,

AND HAVING ITS REGISTERED OFFICE AT  
201 AND 292, 2<sup>ND</sup> FLOOR,  
SHRESTABUMI, NO.187,  
K. R. ROAD, BASANGUDI,  
BENGALURU - 560 004,  
TALUKA AND DISTRICT ,  
BENGALURU URBAN

2. SHRI. KUKKAJE RAMAKRISHNA BHAT,  
DISTRICT JUDGE (RETD.)  
AND SOLE ARBITRATOR,  
AGE MAJOR, OCC. ARBITRATOR,  
C/O. ARBITRATION AND CONCILIATION CENTRE,  
BENGALURU (DOMESTIC AND INTERNATIONAL),  
'KHANIJABHAVANA', NO.49, 3<sup>RD</sup> FLOOR,  
EAST WING, RACE COURSE ROAD,  
BENGALURU - 560 001 DIST.  
BENGALURU

...RESPONDENTS

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION  
13(1-A) OF COMMERCIAL COURT ACT, PRAYING TO SET ASIDE  
THE IMPUGNED JUDGMENT DATED 23.11.2024 PASSED BY  
LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT  
BENGALURU (CCH-86) (COMMERCIAL COURT) IN COM.AP  
NO.76/2024 AT ANNEXURE A IN TIME.

THIS APPEAL, COMING ON FOR ORDER, THIS DAY,  
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH  
AND  
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN



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### **ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE D K SINGH)

Heard Sri. Moinuddin N., learned counsel for the appellant.

2. The present appeal has been filed under Section 37(1) of the Arbitration and Conciliation Act, 1996 impugning the order dated 23.11.2024 passed under Section 34 of the Arbitration and Conciliation Act, 1996 by the LXXXV additional City Civil and Sessions Judge, Bengaluru in Com.A.P.No.76/2024.

3. The appellant invoked the arbitration proceedings against M/s. Mysore Mercantile Co., Ltd., respondent and filed a claim of Rs.7,20,00,000/- for damage on account of termination of contract by the respondent and Rs.72,00,000/- for loss of good-will and interest at the rate of 2% per month.

4. The learned arbitrator has framed the following issues for determination:



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**ISSUES**

1. *Whether the claimant proves that they complied with terms and conditions of the respondent in the agreement in payment of security deposit of Rs. 1,00,00,000/-?*
2. *Whether the claimant proves that while signing the agreement the Respondent Company was yet to complete the construction of their storage tanks and had not laid down special pipes to connect the Karwar port pumping point oil jetty to the tanks and this fact was suppressed by the respondent?*
3. *Whether the respondent proves that tanks were ready in all respects for taking over from 1st October 2019?*
4. *Whether the claimant proves that they had to postpone dispatch of bitumen from foreign supplier for the reasons stated in para 14 and 15 of the claim statement?*
5. *Whether the claimant proves that they paid the amounts claimed under Invoices No. 002/KAR/2019-20 DATED 30-09 2019 and No 006/ KAR/2019-20 DATED 21-10-2019 as the respondent informed that the amounts claimed under these invoices would be subsequently appropriated at the end of the year on actual usage of the tank by the claimant as alleged in paragraphs 19 to 21 of the claim statement?*
6. *Whether the claimant proves that they had a closing stock of 38.273 MT of bitumen worth Rs. 10,52,575/-in storage tank no. 7 as on 28-12-2019 and on 07-04-2020 the respondent utilised the same without notice to the claimant and stored bitumen imported by other importers in tank no.7 as alleged in para 22(A) of the claim statement and thereby they suffered a loss of Rs. 10,52,575/-?*
7. *Whether the claimant proves that the charges preferred by the respondent stood duly paid by the claimant even for the months of November, 2019 and December, 2019 as per terms of the agreement as alleged in para 22(B) of the claim statement?*



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8. *Whether the claimant proves that they had paid three advances, one payment is collected in excess by the respondent and since the same were not adjusted, the same were liable to be refunded to them by the respondent?*
9. *Whether the claimant proves that they received cargo arrived from M.T.Gulf Hawk on 16-04-2020 and when it was intimated to the respondent they failed to perform their reciprocal promise to store cargo of 3073.589 MT by providing storage facility in the storage tank and thereby committed breach of contract as alleged in para 23, 24 and 25 of the claim statement?*
10. *Whether the claimant proves that they suffered loss due to the breach of agreement by the respondent in not providing the tank to unload bitumen from M.T.Gulf Hawk as alleged in paras 26 to 37 of the claim statement?*
11. *Whether the respondent proves that the agreement was terminated because of the violation of the agreement, default of monthly payments and therefore the termination of the agreement by the letter dated 21-04-2020 with the claimant is legal and proper?*
12. *Whether the claimant proves that they are entitled to refund of security deposit of Rs.1,00,00,000/- along with interest at 2% per month from the Respondent?*
13. *Whether the claimant proves that the respondent is liable to pay damages and interest where on to them at 2% per month as prayed in items (B) to (G) of the prayer in the claim statement?*
14. *Whether the claimant proves that the counter claim made by the respondent is not admissible and this Tribunal has no jurisdiction to adjudicate the same.?*
15. *Whether the respondent proves that the monthly hire charges for the months of October 2019 to December 2019 belatedly and thereby*



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*committed breach of the terms of the agreement?*

16. *Whether the respondent proves that the claimant failed to pay the monthly hire charges and other charges for the months of January 2020 to April 2020 and thereby committed breach of the terms of the agreement?*
17. *Whether the Respondent proves that the claimant is liable to pay to the respondent the hire and other charges as listed in para 11 of the counter-claim and interest there on?*
18. *Whether the Respondent proves that the claimant is liable to pay to the respondent Rs.1.00,00,000/- towards damages for committing breach of the terms and conditions of the agreement dated 01-10-2019?*
19. *What award or order the parties are entitled to?*

**ADDITIONAL ISSUES**

1. *Whether the claimant proves that the agreement of license dated 29-03-2019 and amended agreement dated 06- 08-2019 are agreements of license without handing over possession of the subject and without consideration and if so whether it is invalid agreement under the provisions of contract law and whether it is enforceable?*
2. *Whether the claimant proves that the agreement of license dated 29.03.2019 and amended agreement dated 06.08.2019 are contingent contracts on the happening of a future storage tank to the Claimant so as to enable the respondent to raise invoice for claiming rent?"*

5. After considering the evidence brought on record as well as the oral testimony of the witnesses of the appellant and respondent, Passed the award as under:



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**"ORDER**

*The claim of the Claimant for refund of the security deposit of Rs.1,00,00,000/- is allowed in part with interest at 24% p.a. on the amount remaining payable to them and all other claims of the Claimant for damages/compensation are rejected. The counter claim of the Respondent for recovery of dues with interest and damages in parts are allowed and totally to the extent of Rs.66,05,902/-, subject to adjustment out of the security deposit payable to the Claimant as on 21-04-2020. Therefore, it is ordered that:*

- 1. The Claimant is entitled to receive from the Respondent the security deposit of Rs. 1,00,00,000/- (Rupees One Crore only) as on 21-04-2020,*
- 2. The Respondent is entitled to receive from the Claimant a total sum of Rs.66,05,902/- (Rupees sixty six lakhs five thousand nine hundred and two only) towards arrears hire charges and other charges including interest at 24% p.m. up to 21-04-2020,*
- 3. The Respondent is entitled to receive from the claimant a total sum of Rs.20,00,000/- (Rupees twenty lakhs only) towards damages,*
- 4. The total sum of Rs.86,05,902/- (Rupees eighty six lakhs five thousand nine hundred and two only) payable by the Respondent to the Claimant shall be adjusted from Rs.1,00,00,000/- (Rupees one crore only) payable by the Respondent to the Claimant towards refund of security deposit. The Respondent shall pay to the Claimant the balance remaining after adjustment as stated above, Rs. 13,94,098/- (Rupees thirteen lakhs ninety four thousand ninety eight only) as on 21-04-2020 and interest there on at 24% p.a. till the date of the claim petition and further interest at 18% p.a. from the date of claim petition on Rs. 13,94,098/- (Rupees thirteen lakhs ninety four thousand ninety eight only) till realization of the entire amount.*
- 5. Parties are directed in the circumstances of the case to bear their own cost of this Arbitral Proceedings.*
- 6. The stamp duty is payable as per Karnataka Stamp Act, 1957."*



6. The appellant being dissatisfied with the award filed the application under Section 34 of the Act, 1996 before the Commercial Court. The Commercial Court after having considered the submissions and award has found that none of the grounds as mentioned under Section 34 of the Act, 1996 is present in the challenge to the, limited challenge to the arbitration award for non grant of the compensation of damages claimed by the appellant. The award is based on evidence.

7. We have perused the award as well as the order passed by the Commercial Court and considered the submission of Sri. Moinuddin, learned counsel for the appellant.

8. We are of the considered view that none of the grounds as mentioned under Section 34 of the Act, 1996 to challenge an Arbitral Award is present in the present appeal. The scope of appeal under Section 37 of the Act, 1996 is same as of Section 34 of the Act, 1996, and if none of the grounds as mentioned under Section 34 of the Act, 1996 is preset we cannot re-appreciate the evidence to come to a different conclusion and finding as recorded by the Arbitral Tribunal and



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affirmed by the Court in an application under Section 34 of the Act, 1996. We find no ground to interfere with the arbitral award. We, therefore, dismiss this appeal.

If the amount as awarded by the arbitrator has not been paid to the appellant, he can take recourse to execute the award in appropriate proceedings.

**Sd/-  
(D K SINGH)  
JUDGE**

**Sd/-  
(H.SHANTHI BHUSHAN)  
JUDGE**

BVK  
List No.: 1 SI No.: 10