

RESERVED ON 21ST JULY 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO. 59 OF 2025

BETWEEN:

1. STATE PROJECT DIRECTOR
RASHTRIYA MADHYAMIKA
SHIKSHA ABHIYAN
NEW PUBLIC ANNEX BUILDING
N.T. ROAD, K.R. ROAD
BANGALURU - 560 001

...APPELLANT

(BY SRI KIRAN VASANTH RON, ADDITIONAL ADVOCATE GENERAL
A/W SRI K.S. HARISH, GOVERNMENT ADVOCATE)

AND:

1. M/S KMV PROJECTS
REGIONAL OFFICE SITUATED
AT NO. 302, 3RD FLOOR
EAST PARK ROAD, KUMAR PARK (E)
BENGALURU - 560 020

REP. BY ITS VICE PRESIDENT AND
AUTHORISED SIGNATORY
SRI D. TARANATH DASARI
2. SRI JUSTICE K.N. KESHAVANARAYANA
SOLE ARBITRATOR
ARBITRATION AND CONCILIATION CENTRE
BENGALURU (DOMESTIC AND INTERNATIONAL)

KANIJA BHAVANA
RACE COURSE ROAD
BENGALURU - 560 001

...RESPONDENTS

(BY SRI ZULFIKIR SHAFI, ADVOCATE FOR C/R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 37(1)(c) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE JUDGMENT DATED 30.11.2024, PASSED IN COM.A.P.NO.46/2024 ON THE FILE OF THE HON'BLE LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BANGALORE AND CONSEQUENTLY AND ETC.

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE)

1. The appellant, the State Project Director, Rashtriya Madhyamika Shikshana Abhiyana, has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning a judgment dated 30.11.2024 [**impugned order**] passed by the learned LXXXVI Additional City Civil and Sessions Judge, Commercial Court, Bengaluru (CCH-87) [**Commercial Court**] in Com.A.P.No.46/2024. The appellant had

filed the said petition under Section 34 of the A&C Act seeking setting aside of an arbitral award dated 10.11.2023 [**impugned award**] rendered by the learned Sole Arbitrator [**Arbitral Tribunal**], in A.C.No.101/2021. The learned Commercial Court found no ground to interfere with the impugned award and accordingly passed the impugned order dismissing the petition.

2. Respondent No.1, M/s KMV Projects [**KMV**], was the claimant before the Arbitral Tribunal and the appellant was the respondent. In terms of the impugned award, the Arbitral Tribunal partly allowed KMV's claims and directed the appellant to pay a total sum of ₹9,45,38,780/- as together with future interest at 9% per annum on ₹6,90,54,015/- from the date of the award till payment, comprising ₹4,65,47,517/- towards price adjustment (Claim No.1) together with past and current interest of ₹2,54,84,765/- calculated at 9% per annum from 10.10.2017 up to 10.11.2023; ₹1,40,66,562/- towards unproductive overhead charges (Claim No.6(a)); and ₹84,39,936/- towards loss of expected profit, being Claim No.7, as against the claim of ₹1,40,66,562/-; and ₹3,00,000/- towards costs (Claim No.11), as against the claim of ₹12,00,000/-.

3. The present appeal is one of a batch of nine appeals, (COMAP Nos.53/2025 to 61/2025), filed by the appellant against

orders passed by the learned Commercial Court dismissing the appellant's petitions under Section 34 of the A&C Act, (Com.A.P.Nos.39/2024 to 47/2024) assailing separate Arbitral Awards rendered by the Arbitral Tribunal constituted of a Sole Arbitrator in respect of the contract of nine packages awarded to M/s. KMV. The arbitral awards rendered are substantially in similar terms and the issues involved in the said nine appeals are also materially similar.

PREFATORY FACTS

4. Rashtriya Madhyamika Shikshana Abhiyana [**RMSA**] is a centrally sponsored scheme launched in the year 2009-10 by the Ministry of Human Resource Development, Government of India, for enhancing access to, and the quality of, secondary education. The Government of Karnataka [**GoK**] implemented the scheme through the appellant and took up 2,024 civil works under 77 packages between 2009 and 2015. The said civil works involved construction of new school buildings, Adarsha Vidyalayas [**model schools**] and girls' hostels, and strengthening and upgradation of existing schools at an aggregate cost of ₹1,645.70 crores. The scheme has since been integrated with Samagra Shikshana Karnataka (2018-19).

5. On 24.09.2012, tenders were invited on a package basis through the e-procurement portal in respect of works spread over thirty districts of the State. KMV emerged the successful bidder in respect of nine packages awarded to it under the scheme. The present dispute pertains to Package B-27 -- Construction of New School Buildings for Upgradation and Additional Rooms for Strengthening of Existing Government High Schools at various places in Raichur District [**the subject package**] -- comprising 76 works. After KMV was declared as the lowest bidder (L1), the parties entered into negotiations, held on 20.12.2012, 21.01.2013 and 13.02.2013, pursuant to which KMV reduced its quoted rates.

6. By Letter of Acceptance dated 18.03.2013 bearing No.RMSA/CW/UP-ST/RAICHUR/2012-13/35 (Ex.C3), the appellant accepted KMV's revised offer for a contract price of Rs.4,077.11 lakhs in respect of the subject package, and called upon KMV to furnish the requisite security deposit.

7. The parties executed a Construction Agreement [**the Agreement**] dated 15.05.2013 (Ex.C4). Clause 4 of the Agreement stipulates that the Letter of Acceptance, the Contract Data, the Conditions of Contract, and the Special Conditions of Contract, among other documents, formed an integral part of the Agreement.

8. The notice to proceed with the work was issued on 17.05.2013 (Ex.C5) and the stipulated period of completion was sixteen months therefrom. During execution, additional quantities and EIRL items were required to be executed. Upon approval of the competent authority, the parties entered into a Supplementary Agreement dated 17.03.2017, which forms part of Ex.C4, for ₹904.93 lakhs.

9. Clause 4(i) of the Supplementary Agreement stipulates that all conditions of the original agreement (the Agreement) are applicable "except for the price adjustment clause, for which a decision will be taken after the completion of enquiry ordered by the Government".

10. There was delay in execution of the works and they were not completed within the stipulated period. KMV attributed the delay, *inter alia*, to (i) delay in handing over sites; (ii) delay in supply of drawings; (iii) delay in approval of work slips and EIRL items; (iv) delay in release of payments; (v) non-availability of water and power; and (vi) scarcity of sand and materials on account of the scattered nature of the work sites. KMV invoked the price adjustment clause of the Conditions of Contract and raised its claim towards price adjustment, but none of the said bills were paid. The

appellant, on the other hand, contended that no price adjustment clause was applicable to the Agreement in respect of the subject works.

11. In the meantime, under Government Order No. ED 49 MCD 2016 dated 16.11.2016, the GoK, while granting administrative approval to a revised project cost, directed (i) an audit by the Karnataka Institute of Public Auditors [**KIPA**] into the causes of and responsibility for the delay; and (ii) an enquiry into the issue of price adjustment by a committee headed by an officer of the rank of Additional Chief Secretary. The committee reported that the price adjustment clause incorporated in the tender documents for the RMSA civil works of 2009-10 and 2010-11 was not duly approved and was not binding on the GoK.

12. The said Government Order was impugned by three other contractors, namely, M/s Jampana Constructions Pvt. Ltd., M/s NCC Ltd., and M/s KBR Infratech Pvt. Ltd., in W.P. Nos.38613/2018, 35594/2018 and 34990/2018 respectively. By orders dated 25.02.2019, a learned Single Judge of this Court quashed the Government Order dated 16.11.2016 and restrained the State from acting upon KIPA's reports and suggestions, observing that whether the price adjustment clause was

incorporated with approval or inserted unauthorisedly is a disputed question of fact, and relegated the petitioners to arbitration. The intra-court appeals were disposed of by a Division Bench of this Court on 20.10.2020, observing that the parties would be governed by the terms of the contract entered into by them in respect of the various packages awarded by the State.

13. By its letter dated 12.03.2019 (Ex.C71), KMV set out the causes of delay and its claims and sought favourable consideration thereof; and by legal notice dated 08.05.2019 (Ex.C72), it invoked the arbitration agreement.

14. The appellant responded by letter dated 11.06.2019, contending, *inter alia*, that the reference to arbitration was premature in view of the pendency of the intra-court writ appeals.

15. KMV filed an application under Section 11 of the A&C Act, being C.M.P.No.257/2019, seeking appointment of an Arbitrator. This Court allowed the same by an order dated 05.11.2020 and appointed a Sole Arbitrator to adjudicate the disputes between the parties.

16. In the meanwhile, by Government Order No.EP 89 YYK 2020 dated 30.09.2020 (Ex.R1), the GoK, adopted the recommendations

of the Technical Advisory Committee in supersession of the KIPA report, ordered that (i) for computing extension of time and penalty, each work site in a package be treated as a separate unit; (ii) the administration be held responsible for delays occasioned by causes beyond the contractor's control; and (iii) price adjustment be allowed in respect of the 25 packages whose tender conditions contained the price adjustment clause. Admittedly, the sums due to KMV were released only thereafter and were received in full before 29.03.2021. By an order dated 13.01.2021, extension of time was granted to KMV without levy of penalty.

ARBITRAL PROCEEDINGS

17. KMV filed its Statement of Claims before the Arbitral Tribunal claiming an amount of ₹1,61,64,20,418/- (Rupees one hundred sixty-one crores sixty-four lakhs twenty thousand four hundred and eighteen only) under eleven heads, together with interest at 24% per annum from the date of the claim petition till payment, and costs. The summary of claims as set out in the statement of claims is reproduced below:

Claims	Particulars	Claim Amount (Amt. in Rs.)
Claim No.1	Payment of Price Adjustment/Escalation Bill	4,65,47,517
Claim No.2	Payment of equitable enhanced rates	3,92,54,570

	executed beyond Tender Completion Period	
Claim No.3	Payment of equitable enhanced rates executed beyond Tender Completion Period for extra Items.	
Claim No.4	Payment of equitable enhanced rates executed beyond Tender Completion Period for quantities more than 125%	
Claim No.5	Payment towards idle labour charges	29,63,57,454
Claim No.6(a)	Payment of unproductive overhead charges.	1,40,66,562
Claim No.6(b)	Payment of additional overhead charges.	2,26,88,893
Claim No.7	Payment towards loss of expected profit on the balance work as on original tender completion date.	1,40,66,562
Claim No.8(a)	Loss of expected profit due to non-receipt of profit by tender completion period.	7,92,19,941
Claim No.8(b)	Loss of expected profit due to non-receipt of profit by actual completion period.	9,65,85,593
Claim No.8(c)	Liquidated damages	14,00,000
Claim No.9	Payment towards interest on claim amount calculated upto 31.12.2020 at the rate of 24%.	79,19,30,057
Claim No.10	Payment towards additional Bank Guarantee charges beyond original agreement period	13,24,395
Claim No.11	Payment of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) towards Cost of Litigation.	12,00,000
Total		1,61,64,20,418

18. It was KMV's case that after it was declared the successful bidder, it had reduced its rates by factoring in the price escalation clause and the economies of scale. KMV claimed that the appellant did not hand over the sites within the stipulated period despite various requests, and delayed approval of drawings, work slips and EIRL items, thereby preventing KMV from completing the contract within time and prolonging the execution of the works. KMV alleged that the appellant also withheld amounts due to it, which compelled KMV to seek reference of the disputes to arbitration.

19. The appellant contended that no price adjustment clause was applicable to the Agreement in respect of the subject works, and that, in any event, the notice inviting tender required the price variation clause to be treated as deleted, such that the appellant was not bound by it. The appellant further contended that the delay, if any, had been suitably compensated by extension of time granted without imposition of penalty, and that the claims, aggregating ₹1,61,64,20,418/-, were fictitious, unsubstantiated and beyond the scope of arbitration.

20. On the basis of the pleadings between the parties, the Arbitral Tribunal, on 04.02.2022, framed the following issues:

"1. Whether Claimant proves that non completion of the works under the contract within the stipulated period was for the reasons solely attributable to Respondent, resulting in breach of contract by Respondent, as such, the delay in completion of the works was solely attributable to Respondent?

2. Whether for the reasons set out in SOC which were beyond the control of Claimant, he was prevented from completing the entire scope of work within the scheduled contract period?

3. Whether Respondent proves that the delay in completion of the works under the contract within the original period stipulated under the contract was solely attributable to Claimant?

4. Whether Respondent proves that as the requirements of Clause 38.4 of Conditions of Contract have not been complied with by

Claimant, none of the claims put-forth in SOC is tenable?

5. Whether the Claimant is entitled for payment of amounts claimed under various heads as put-forth under claim Nos.1 to 8 of SOC?

6. Whether the Claimant is entitled for payment towards past interest on the amounts claimed up to 31-12-2021 at 24% PA as claimed under claim No.9 of SOC?

7. Whether Claimant is entitled for current and future interest at 24% PA on the amount claimed?

8. Whether Claimant is entitled for cost of this arbitral proceeding?

9. To what order and award the parties are entitled to?"

21. The Arbitral Tribunal, after examining the evidence and materials placed on record, found that the non-completion of the contract within the stipulated period was, in substantial part, for reasons attributable to the appellant, while also finding that KMV was partly responsible in certain respects. The Arbitral Tribunal further rejected the appellant's contention that non-compliance with Clause 38.4 of the Conditions of Contract rendered the claims not tenable.

22. The Arbitral Tribunal partly allowed Claim Nos.1, 6(a), 7 and 11. The Arbitral Tribunal also awarded future interest and costs but rejected the remaining claims, being Claim Nos.2 to 5, 6(b), 8(a), 8(b), 9 and 10, in their entirety.

23. The dispositive part of the impugned award is set out below:

"The claims of Claimant as put forth in Statement of Claim are allowed in part as under:

(1) Claim No.1 is allowed in a sum of Rs.4,65,47,517/- together with Rs.2,54,84,765/- towards past and current interest calculated at 9% per annum from 10.10.2017 up to 10.11.2023;

(2) Claim No.6(a) is allowed in a sum of Rs.1,40,66,562/-;

(3) Claim No.7 is allowed in part in a sum of Rs.84,39,936/- only, as against the claim of Rs.1,40,66,562/-;

(4) Respondent is directed to pay to Claimant a total sum of Rs.9,45,38,780/- as per Sl.No.(1) to (3) above together with future interest at the rate of 9% per annum from the date of this Award till the date of payment on Rs.6,90,54,015/-;

(5) Claim No.11 is allowed in part in a sum of Rs.3,00,000/- only as against claim of Rs.12,00,000/-. Respondent is directed to pay to Claimant this amount within a period of 3 months from the date of this award failing which the said amount shall carry interest at the rate of 9% per annum from the date of award till the date of payment;

(6) Claim Nos.2 to 5, 6(b), 8(a), 8(b), 9 and 10 are rejected in their entirety;

(7) Claimant shall pay requisite stamp duty on this award payable as per the Karnataka Stamp Act. With the pronouncement and publication of the Award, this Arbitral Proceeding stands terminated as per Section 32(1) of the Act."

24. As noted at the outset, the present appeal is part of a batch of nine appeals (COMAP Nos.53/2025 to 61/2025) which have been filed against the orders passed by the learned Commercial

Court in respective petitions (COM.AP.Nos.39/2024 to 47/2024) filed under Section 34 of the A&C Act for setting aside the arbitral awards. These awards are rendered in respect of similar contracts awarded to KMV for execution of works under nine separate packages. All contracts were similarly worded and KMV had raised similar claims. The amounts claimed under various heads of claims are different, but the basis on which the claims were raised is identical. The arbitral awards rendered in respect of the claims are also similarly worded. The arbitral award, including the impugned award, are substantially similar in material aspects. Some of the material findings on which the award was premised are also similarly worded.

25. This court has examined the appellant's challenge to a similar arbitral award in COMAP No.54/2025, which is considered as the lead matter. The same is disposed of by a separate order. This court held in view of the Arbitral Tribunals' findings, that there are no averments and evidence which would support the amount awarded against the claims for i) payment of price adjustment/escalation bill (claim No.1); ii) payment of unproductive overhead charges (claim No.6(a)); and iii) towards loss of expected profits on the balance work (claim No.7), the arbitral award would

be unsustainable. Accordingly, the award to the extent that it had rendered awards against the said claims has been set aside. Consequently, the interest awarded in respect to the said sum and costs (claim No.11) are also set aside.

26. For the reasons as set out in the order passed in COMAP No.54/2025, the impugned award to the extent of the amounts as awarded against claim Nos.1, 6(a) and 7 is set aside. Consequently, the impugned award to the extent of interest awarded on the said amount as well as costs is also set aside.

27. The present appeal is allowed in the aforesaid terms.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(K.S. HEMALEKHA)
JUDGE**

KPS