

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

COMMERCIAL APPEAL NO.363 OF 2024

BETWEEN:

BANGALORE WATER SUPPLY AND SEWERAGE BOARD
5TH FLOOR
CAUVERY BHAVAN
K G ROAD
BENGALURU-560 009
REPRESENTED BY THE CHIEF ENGINEER
(WASTE WATER MANAGEMENT)-EAST

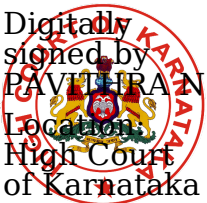
...APPELLANT

(BY SRI. B. S. SHRINIVAS, ADVOCATE)

AND:

1. M/S JAYSONS INFRASTRUCTURE INDIA PVT. LTD.
(FORMERLY KNOWN AS M/S JAYARAM
ENGINEERING)
A PROPRIETARY CONCERN
HAVING ITS REGISTERED OFFICE AT
N.12, SUMERU
MN KRISHNA RAO ROAD
BASAVANAGUDI
BENGALURU-560 004
REPRESENTED BY ITS MANAGING DIRECTOR
SRI M. JAYARAM

Digitally
signed by
PAVITHRA
Location
High Court
of Karnataka



2. MR VIVEK SOOD
SENIOR ADVOCATE
218 M C SETALVAD CHAMBERS
SUPREME COURT OF INDIA
NEW DELHI-110 001
(ADDED AS RESPONDENT FOR THE PURPOSE OF
SECURING RECORDS)

...RESPONDENTS

(BY SRI. PRAKASH B. N., ADVOCATE FOR R1;
V/C/O DATED 14.07.2025, NOTICE TO R2 IS DISPENSED WITH)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION
13(1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO
SET ASIDE THE IMPUGNED JUDGMENT DATED 25.04.2024
PASSED BY THE LXXXIX ADDL. CITY CIVIL AND SESSIONS
JUDGE, BENGALURU (CCH-90) IN COM AP 01/2023 VIDE
ANNEXURE-A & ETC.,

THIS COMMERCIAL APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT ON 15.06.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN**
J., PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This appeal is filed seeking to set aside the judgment and order dated 25.04.2024 passed by the LXXXIX Additional City Civil and Sessions Judge (CCH-90), Bengaluru ('Commercial Court' for short) in Com.A.P.No.01/2023, whereby the Commercial Court dismissed the petition filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 ('Arbitration Act' for short), and confirmed the Arbitral Award dated 12.09.2022.

2. We have heard Shri. B.S Shrinivas, learned counsel appearing for the appellant and Shri. Prakash B.N, learned counsel appearing for respondent No.1.

3. The appellant - Bengaluru Water Supply and Sewage Board ('BWSSB' for short) issued a Tender Notification dated 11.01.2010 for the work of laying a pipeline. M/s Jaysons Infrastructure India Pvt. Ltd. formerly M/s Jayram Engineering - respondent herein was the sole

bidder for the tender and quoted Rs.16,74,93,723/- for the work. Pursuant to the letter of acceptance dated 24.06.2010, the parties executed an agreement on 02.08.2010, under which the work was to commence on 04.08.2010 and be completed within 120 days. The respondent commenced the work but contended that the progress was hampered by delays caused for securing permissions from the Bruhat Bengaluru Mahanagara Palike ('BBMP' for short) and Deputy Commissioner of Police (DCP)-Traffic. The respondent contended that the BBMP also did not grant permission for the originally required alignment to lay 1200 mm of dia sewer partly inside the storm water drain and road. Consequently, a survey was conducted which resulted in a change in the alignment. The respondent alleges that this revised alignment resulted in increased BOQ items (work slip items) and EIRL Items (new items), of which several work-slip and EIRL items remained unpaid.

4. The respondent claimed payment under clause 40 - Price Adjustment Clause of the Contract and price

adjustment bill No.1 was audited and admitted but not paid. Despite part-payments under the RA Bills, the respondent claimed these amounts remained outstanding and accordingly invoked arbitration on 29.06.2018 under Clause 24 of the Special Conditions of Contract, claiming Rs.4,26,82,858/- with interest and future interest at 18% per annum. The appellant thereafter appointed the Sole Arbitrator on 30.08.2018. The learned Arbitrator passed an award in favour of the claimant, whereby the principal amount together with interest accrued thereon till the date of the award, totalling Rs.10,92,29,998/-, was awarded to the respondent, along with additional costs of Rs.13,03,688/-. It was further ordered that in the event the said amounts were not paid by the appellant within three months of the award, post-award interest at the rate of 18% per annum till the date of realization, in terms of Section 31 of the Arbitration Act would be payable.

5. The appellant challenged the said Award before the Commercial Court in Com.A.P.No.99/2019 under Section 34 of the Arbitration Act, praying to set aside the Award.

The Commercial Court by the impugned judgment dated 25.04.2024, dismissed the petition and confirmed the Award of the Sole Arbitrator dated 12.09.2022. The present appeal is filed by the appellant under Section 37 of the Arbitration Act assailing the validity of the said judgment.

6. The Commercial Court by its judgment dated 25.04.2024 framed two points for consideration, namely, whether the respondent has made out any grounds set out under Section 34 of the Arbitration Act and what Order should follow. Point No.1 was held in the negative and accordingly Order was passed.

7. The Commercial Court held that the Tribunal had jurisdiction to adjudicate the matter. The BWSSB had filed an application under Section 13(2) of the Arbitration Act objecting to the appointment of the sole arbitrator by the Indian Council of Arbitration ('ICA' for short), but that application was dismissed by the Tribunal by Order dated 30.04.2021, holding that the ICA is an independent organization which had independently appointed the Tribunal. The BWSSB did not assail the Order either before

the Commercial Court or before this Court and participated in the arbitration proceedings. Therefore, the BWSSB could not challenge the appointment of the Arbitrator. On the question of limitation, the Commercial Court held that while the appellant claimed that the cause of action arose upon the completion of work on 30.09.2011, the Arbitral Tribunal rightly held that the cause of action arose on 24.07.2015, that is, when the appellant refused to make the payment to the respondent.

8. On the merits of the case, the Commercial Court examined the issues framed by the Arbitral Tribunal and was in full consonance with the decision of the Arbitrator. The Commercial Court held that the Arbitral Tribunal had rightly held that there was delay attributable to the BWSSB. It was found that in terms of the contract, BWSSB was responsible for obtaining the road-cutting permissions from the DCP (Traffic) and BBMP and there was no material on record to show that the BWSSB was not responsible for the delay. Further, the Commercial Court held that the change in alignment did result in an increase in the work of the

respondent and it resulted in several increased work slip items (BOQ items) and some new items (EIRL items). The Commercial Court held that this finding called for no interference.

9. The Commercial Court held that the claimant was entitled to price adjustment under the contract. The first price adjustment bill had been audited and admitted, and the Executive Engineer, BWSSB, by letter dated 20.04.2015 had recorded that the delay was not attributable to the respondent, and had recommended that the price adjustment bill be considered for payment, however, the BWSSB did not make the payment. In these circumstances, the Commercial Court affirmed the Arbitral Tribunal's decision regarding the balance amount of Rs.1,24,96,452/- deserved to be paid. The Commercial Court held that the Arbitral Tribunal had rightly awarded the principal sum of Rs.10,92,29,998/- which also did not require any interference. Further, the Arbitral Tribunal had awarded costs of Rs.13,03,688/-, which was also confirmed by the Commercial Court.

10. The learned counsel appearing for the appellant - BWSSB reiterated the contentions as were raised before the Commercial Court. It is contended that the Commercial Court has incorrectly confirmed the Arbitral Award. This is because the learned Arbitrator incorrectly held that the cause of action arose on 24.07.2015, when the appellant refused payment of the price adjustment bill. It is contended that the limitation begins from the date when the right to sue accrues which in this case was when the work was completed. Further, the learned Arbitrator failed to appreciate that all the RA bills were settled by 28.11.2014 and even taking this as the starting, the point of cause of action, the notice invoking arbitration being issued on 29.06.2018 is beyond the limitation period. Further, the notice issued under Section 21 of the Arbitration Act was defective as it was issued by Jayaram Engineering and not by the respondent - Company, which are two separate legal entities.

11. It is further contended that the Commercial Court did not consider that the learned Arbitrator erroneously

concluded that the delay was attributable to the appellant on account of the permissions required to be obtained, despite there being no evidence to this effect. The learned Arbitrator also failed to appreciate that an extension of time had been granted up to 30.09.2011 as part of a settlement of all claims between the parties. Further, the finding that there was increase in BOQ items resulting from the change in alignment is unsustainable as it could have been anticipated by the respondent. It is also submitted that the appellant's Technical Committee and Variation Sub-Committee had determined the amounts payable at Rs.2,54,98,523/- towards work slip and Rs.1,20,64,394/- towards EIRL, which was not properly considered by the learned Arbitrator.

12. It is further contended that the learned Arbitrator failed to appreciate the appellant's rejection of the price adjustment bill by communication dated 24.07.2015, which was founded on valid grounds, including the delay in submission of the claim. It is contended that the award of Rs.1,24,96,452/- is unsupported by evidence and is contrary to the terms and conditions of the contract.

13. It is further contended that the final award of Rs.10,92,29,998/- and Rs.13,03,688/- and post-award interest at the rate of 18% per annum is excessive and disproportionate. Further, the award of costs fails to take into account the appellant's partial success in contesting several of the respondent's claims and is therefore liable to be interfered with.

14. The learned counsel appearing for the respondent contended that the notice under Section 21 of the Arbitration Act was validly issued, as there was merely a change in the respondent's name and M/s. Jayram Engineering and M/s. Jaysons Infrastructure Pvt. Ltd. are not separate entities. It is further contended that the learned Arbitrator had been appointed in accordance with law, and that no objection in this regard was raised by the appellant. On the merits, it is contended that the delay was caused by the time taken in obtaining the necessary permissions and that the costs had increased on account of the revised alignment. Given that the bills were unpaid, the

award rendered by the learned Arbitrator and the judgment of the Commercial Court confirming the same are justified.

15. We have considered the contentions advanced. The question with regard to change in the name of the entity has been specifically considered by the Arbitral Tribunal in the Award. The respondent herein had specifically stated that the contract was awarded to M/s. Jayaram Engineering and that there was a change in the name of the entity as M/s. Jaysons Infrastructure India Private Limited. The appellant had admitted that change of name of the entity was intimated by the respondent and was done in accordance with the rules and registration of the contractor in BWSSB, but contended that the name in the agreement was not changed and therefore the respondent-Company had not executed any work for the appellant. The learned Arbitrator found that the entity which entered into the contract was a proprietary concern and the change of name was intimated to the appellant, the same was clearly admitted. Accordingly, a new registration certificate was granted to the respondent on 04.12.2010 in the name of

M/s. Jaysons Infrastructure India Private Limited and that the main object of the respondent - Company was to take over the business of infrastructure, facilities and construction, which was being carried out by M/s. Jayaram Engineering. The Arbitral Tribunal further found that the appellant had never objected to the respondent - Company carrying out the contract in terms of the agreement. This aspect was raised in Section 34 petition as well, and the finding of the Arbitral Tribunal was upheld. We are of the opinion that the finding on fact as evidenced by documents that the change was essentially only a change in name which was permitted by the appellant cannot be a ground for setting aside an award under Section 34 or Section 37 of the Arbitration Act.

16. Further, the Arbitral Tribunal did not accept the contention of the appellant that the cause of action had arisen on completion of works. It was found that the completion of works did not bring an end to the contractual relationship and that the request of the respondent for extension of time and regarding price adjustments and

increase in BOQ items were pending post completion of works. Further, it was found that the cause of action cannot be said to have arisen on 19.11.2014, when the last and pre-final bill was received by the respondent, since there were amounts claimed as due by the Contractor, which were not paid.

17. Relying on clause 47 of Section 6-Contract Data, it was found that the employer had agreed to issue the Defect Liability Certificate and certify any final payment within 90 days of receiving the Contractor's account. The appellant had issued a letter on 24.07.2015 refusing to make the payment, which was the date when the cause of action arose. This aspect too has been considered in the Section 34 petition and it was found that the notice issued by the respondent invoking the arbitration clause on 29.06.2018 was within three years of arising of the dispute on 24.07.2015.

18. It is the third and final contention of the appellant that the Contract did not contain any provision for payment

of interest and that the direction for payment of interest at 18% per annum was unwarranted. We notice that the Arbitral Tribunal had considered the contentions and had held as follows:-

"4. Thus, keeping in mind the above judgments, it is held that the pre-award claim of interest of 18% is hereby rejected being excessive in nature. However, since the contract does not debar the payment of the interest on the money which has been illegally withheld by the Employer/Respondent, after it became due and keeping in view the fact that the Respondent has arbitrarily withheld the payments of the Claimant without any justification whatsoever, thus, a simple interest at the rate of 14% per annum from 21.11.2011 till the date of the Award on the aforesaid principal amount is hereby allowed. The reason for awarding 14% simple interest is the total lack of justification for withholding the amounts payable to the Claimant. Except for bald denials, no case has been made out by the Respondent for withholding the amount payable to the Claimant. For a businessman, capital and cash flow is the raw material for running a sustainable business. By withholding the amounts payable to the Claimant, the Respondent has caused immense injury and loss to the Claimant's business. The said amount of Simple interest @14% per annum from 21.11.2011 till the date of the Award. i.e. 12.09.2022 (129 months) works out to Rs. 5,75,40,734/-.

5. *The claim of 18% interest on 8th RA Bill from 21.11.2011 till 21.11.2014 is also rejected being excessive in nature. A simple interest of 14% per annum from 21.11.2011 to 21.11.2014 is awarded for the said amount, which works out to Rs.1,34,56,218/- (Rs. 3,20,38,615 x 14% x 3 years)"*

19. It is therefore clear that the award has been passed after considering the contentions advanced and the evidence on record as well as the provisions of the agreement which contained the arbitration clause. The grounds raised in this appeal are those which have been urged before the Arbitrator as well as the Commercial Court. We find that the grounds raised do not fall within the ambit of any of the grounds enumerated in Section 34(2) of the Arbitration Act. The said grounds also do not amount to patent illegality appearing on the face of the record as provided under Section 34(2-A) of the Arbitration Act.

20. The scope of interference of this Court in an appeal under Section 37 of the Arbitration Act has been categorically laid down by the Apex Court **MMTC Ltd. v.**

Vedanta Ltd. reported in **(2019) 4 SCC 163**. The Apex Court held as follows:-

"11. As far as Section 34 is concerned, the position is well-settled by now that the Court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) i.e. if the award is against the public policy of India. As per the legal position clarified through decisions of this Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the fundamental policy of Indian law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Additionally, the concept of the "fundamental policy of Indian law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness. Furthermore, "patent illegality" itself has been held to mean contravention of the substantive law of India, contravention of the 1996 Act, and contravention of the terms of the contract.

12. It is only if one of these conditions is met that the Court may interfere with an arbitral award in terms of Section 34(2)(b)(ii), but such interference does not entail a review of the merits of the dispute, and is limited to situations where the findings of the arbitrator are arbitrary, capricious or perverse, or when the conscience of the Court is shocked, or

when the illegality is not trivial but goes to the root of the matter. An arbitral award may not be interfered with if the view taken by the arbitrator is a possible view based on facts.

14. *As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."*

21. These principles were reaffirmed in ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project*** reported in **(2023) 9 SCC 85**, wherein the Apex Court held that the jurisdiction of the court under Section 37 of the Arbitration Act is akin to its jurisdiction under Section 34 of the Arbitration Act, and that the scope of interference in an appeal under Section 37 of the Arbitration Act, while examining an order setting aside or refusing to set aside an

award, is restricted to and subject to the same grounds as a challenge under Section 34 the Arbitration Act. It was also held that the jurisdiction under Sections 34 and 37 the Arbitration Act is not in the nature of normal appellate jurisdiction.

22. The narrow jurisdiction under Section 37 of the Arbitration Act was also laid down in ***UHL Power Company Ltd. v. State of Himachal Pradesh*** reported in **(2022) 4 SCC 116**. This line of reasoning was further affirmed in ***Larsen Air Conditioning & Refrigeration Co. v. Union of India*** reported in **(2023) 15 SCC 472**, wherein the Apex Court held that the jurisdiction of the court under Section 34 of the Arbitration Act is limited and extremely circumscribed, permitting interference only on the ground of patent illegality which goes to the root of the matter and is not of a trivial nature.

23. The Apex Court in ***Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited*** reported in **(2022) 1 SCC 131**, held that a Court exercising jurisdiction under Section 34 of the Arbitration Act cannot

re-appreciate evidence or reassess the factual findings of the arbitral Tribunal. Mere erroneous application of law or erroneous appreciation of evidence is insufficient. A finding of fact by the Arbitral Tribunal, even if another view is possible, cannot be interfered with so long as the view taken by the Tribunal is a plausible one.

24. The Apex Court in ***Punjab State Civil Suppliers Corporation Limited and Another v. M/s Sanman Rice Mills and Others*** reported in **2024 INSC 742**, held that an Arbitral Award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law, that too upon reappraisal of the evidence adduced before the arbitral trial. Even an award which may not be reasonable or is non-speaking to some extent cannot ordinarily be interfered with by the Courts. It is also well settled that even if two views are possible, there is no scope for the Court to reappraise the evidence and to take the different view other than what has been taken by the arbitrator.

25. Further, in ***Somdatt Builders-NCC-NEC(JV) v. National Highways Authority of India and Ors.*** reported

in **2025 INSC 113**, the Apex Court after considering the case law on the point, held as under:-

"42. As already discussed above, the Arbitral Tribunal had interpreted Clause 51 in a reasonable manner based on the evidence on record. This interpretation was affirmed by the learned Single Judge exercising jurisdiction under Section 34 of the 1996 Act. Therefore, Division Bench of the High Court was not at all justified in setting aside the arbitral award exercising extremely limited jurisdiction under Section 37 of the 1996 Act by merely using expressions like 'opposed to the public policy of India', 'patent illegality' and 'shocking the conscience of the court'. As reiterated by this Court in Reliance Infrastructure Ltd. (supra), it is necessary to remind the courts that a great deal of restraint is required to be shown while examining the validity of an arbitral award when such an award has been upheld, wholly or substantially, under Section 34 of the 1996 Act. Frequent interference with arbitral awards would defeat the very purpose of the 1996 Act."

26. In the instant case as well, the grounds raised are not that as specifically referable to Section 34(2) or Section 34(2-A) of the Arbitration and Conciliation Act, 1996. In the result, we find that no interference is warranted in the matter since no grounds have been made for interference referable to Section 37 of the Arbitration Act. The appeal therefore fails and the same is accordingly **dismissed**.

All pending interlocutory applications shall stand
disposed of.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

cp*