

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 478 OF 2025

BETWEEN:

THE EXECUTIVE ENGINEER
MANGALORE UNIVERSITY
MANGALAGANGOTRI
DAKSHINA KANNADA
DISTRICT - 574199

...APPELLANT

(BY MR. ARIHANT R SUNGAY, ADVOCATE FOR
SRI. T P RAJENDRA KUMAR SUNGAY, ADVOCATE)

AND:

1. M/S. BSR INFRACTECH INDIA LTD.
CORPORATE OFFICE AT NO.851,
D BLOCK, 15TH CROSS,
SAHAKARNAGAR
BENGALURU - 560092

2. JUSTICE ANAND BYRA REDDY
FORMER JUDGE,
HIGH COURT OF KARNATAKA
SOLE ARBITRATOR
ARBITRATION AND CONCILIATION
CENTER 3RD FLOOR,
EAST WING,
KHANIJA BHAVAN,
RACE COURSE ROAD,
BENGALURU - 560001.

...RESPONDENTS

(BY SRI. ZULFIKIR KUMAR SHAFI, ADVOCATE FOR R1)

Digitally
signed by
NIRMALA
DEVI

Location:
HIGH
COURT OF
KARNATAKA

THIS COMAP IS FILED UNDER SECTION 13(1A) OF COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 03.07.2025 PASSED BY THE LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU, (CCH-86) (COMMERCIAL COURT) DISMISSING COM.AP NO.179/2024 AND CONSEQUENTLY, SET ASIDE THE ARBITRAL AWARD DATED 04.09.2024 PASSED BY RESPONDENT NO.2 IN AC.NO.593/2023 AND DISMISS RESPONDENT NO.1 CLAIM PETITION.

THIS 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 MR. JUSTICE C.M. POONACHA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present appeal is filed under Section 13(1A) of Commercial Courts Act, 2015 (**CC Act**) r/w Section 37 of the Arbitration & Conciliation Act, 1996 (**A&C Act**), calling in question the judgment dated 03.07.2025 by the Court of LXXXV Addl. City Civil & Sessions Judge, Bengaluru (CCH-86), (**Commercial Court**)

and the Award dated 04.09.2024 passed in A.C. No.593/2023 by the Sole Arbitrator/Arbitral Tribunal.

2. The relevant facts are that the respondent No.1 was the successful tenderer in the tender notification dated 15.07.2016 issued by the appellant for construction of 'International Hostels, Class Room Complex and Auditorium Interior Works' for Mangalore University at Mangalore. It was agreed between the parties to execute the works at 19.50% above the schedule of rates (**SR**) of the Public Works Department (**PWD**) of the Government of Karnataka for the year 2015-16. The contract was executed on 17.10.2016 and the work order was issued by the appellant on 20.10.2016. The total contract value was ₹53,77,00,802/- excluding service tax which was to be reimbursed on submission of vouchers disclosing the payment to the concerned authorities. The contract was to be completed within 18 months including monsoon.

3. It was the claim of the respondent-claimant that the project site was not available and was not free from obstacles. Apart from the physical possession of the project site, the claimant also is stated to have faced certain other constraints like non-availability of sand in the Mangalore area, non release and delay in payment of running bills, etc. It is the contention of the claimant that the

appellant had entrusted additional works apart from the scope of work that was entrusted by the work order. That despite various constraints, the claimant had successfully completed work of the value of ₹4585 lakhs as against the contract value of ₹5377 lakhs (approximately 86%), which was the financial progress. The physical progress at the site was stated to be more than the financial progress.

4. It is the further case of the claimant that the appellant has executed a supplementary Agreement dated 13.03.2018 towards extra items and excess quantities for a total value of ₹9.45 crores. The claimant having contended that the appellant had not paid various amounts in terms of the running bills submitted by the claimant and since the claimant was unable to proceed further with the work at its own cost, stopped the execution of the work and got issued a legal notice on 01.09.2021. However, in the hope of an amicable settlement the claimant withdrew the said notice vide letter date 18.12.2021. That since the appellant failed to comply with its assurances, the claimant got issued a letter dated 29.07.2022 and thereafter invoked the arbitration clause.

5. In the arbitral proceedings, the claimant made a total of 15 claims in a total sum of ₹81,57,85,316/-. The appellant entered

appearance in the arbitration proceedings and filed its statement of objections, as also made a total of 7 counter claims of a total sum of ₹100 crores. The Arbitral Tribunal framed 24 points for consideration. By award dated 04.09.2024, the Arbitral Tribunal partly allowed the claim petition, rejected the counter claim and ordered as under:

Claim No.1 (Pending R.A. bills produced, for **Rs.8.12 Crore**, with interest thereon @ 18% from the date each of the said bills fell due, till the date of realization.)

Claim No.2 (Price Adjustment bills for about **Rs.1.44 Crore** with interest thereon @ 18% from the date the said bills fell due, till the date of realization.)

Claim No.7 (Towards Unproductive/Additional Overhead Charges, nominally assessed at **Rs.50 Lac**, with interest thereon at 24% per annum from the date of this Award till the date of realization)

Claim No.10 (Towards Statutory Payments and Reimbursement for about **Rs.2.99 Crore**, with interest at the rate of 18% from the date the statutory payments are shown to be made, till the date of realization)

Claim No.14: The respondent shall be liable to pay **GST**, to the Claimant, on the above amounts awarded, as **applicable**.

c. The Claimant shall be entitled to the costs of these proceedings, to be paid by the Respondent, in terms of Section 31 A of the Arbitration and Conciliation Act, 1996.

d. The stamp duty on this award, is payable as per the Karnataka Stamp Act, 1957.

6. Being aggrieved, the appellant filed a petition under Section 34 of the A&C Act before the Commercial Court. The claimant entered appearance before the Commercial Court and contested the proceedings. The Commercial Court by its judgment dated 03.07.2025 dismissed the petition filed by the appellant with costs. Being aggrieved, the appellant has preferred the present appeal.

7. The primary contention put forth by the appellant is that the conclusion of the Arbitral Tribunal, which was affirmed by the Commercial Court holding that the appellant was responsible for the delay, is erroneous. It is contended that in the Bill Of Quantities, which formed a part of the contract, it was clearly provided that the claimant was to clear the vegetation, grass, trees and hence, no delay can be attributed to the appellant. It is further contended that the Contract provided for site visit, site inspection and queries, which demonstrate that the claimant had prior knowledge of the site. The findings of the Arbitral Tribunal attributing the delay to the appellant for shortage of sand was also sought to be impeached.

8. In this context, the Arbitral Tribunal had noticed that the Contract provided for 5000 cubic metres of rock, whereas during the excavation, the claimant encountered 42000 cubic metres of rock, which was unforeseen.

9. Clause 21 of the Conditions of Contract, reads as under:

"21. **Possession of Site:** 21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data the Employer is deemed to have delayed that start of the relevant activities and this will be Compensation Event.

10. It is clear that the Contract having specifically provided that it was the appellant who was required to give possession of all parts of the site to the claimant, the Arbitral Tribunal was justified in holding that the appellant was responsible for the delay. Further, there is no material on record to indicate that the claimant was aware as to the extent of rock that was required to be removed from the site for commencement of the work. The Tribunal, noticing clause 21 of the Conditions of Contract as well as the acknowledgement for handing over and taking over the site (Ex.R1) held that the said document generally stated that the site has been handed over and did not establish that all parts of the site were

examined for obstacles and/or hindrance free site was handed over to the claimant.

11. It was also noticed that the appellant had sent a letter (Annexure-R3) to the Deputy Commissioner to provide for sand for construction. It was held that the shortage of sand was beyond the control of the claimant. It was also noticed that the delay in the completion of the project was solely on the part of the appellant for not having handed over an obstacle free worksite to the claimant to commence the work.

12. Further, the permissions/approvals for removing the trees were to be obtained by the appellant. Hence, it cannot be held that the finding of delay by the Arbitral Tribunal has been arrived at without any material on record. Under the circumstances, the finding of the Arbitral Tribunal, regarding delay attributable to the appellant which was affirmed by the Commercial Court does not suffer from any patent illegality and is not liable to be interfered with.

13. Another contention put forth by the appellant is that the Arbitral Tribunal has not considered the counter claim put forth by the appellant. In this regard, it is pertinent to note that the

consideration of the counter claim of the appellant would have arisen if it was held that the claimant was responsible for the delay in execution of the Contract. The Tribunal has held that "only if the respondent succeeds in defeating all the claims of the claimant by establishing that the claimant has committed breach of contract, the counter claim would arise for consideration". The appellant not having succeeded in establishing that the delay in completion of the Contract was solely attributable to the claimant, the rejection of the counter claim by the Arbitral Tribunal, which has been affirmed by the Commercial Court cannot be faulted.

14. It is also sought to be contended that the Commercial Court had not dealt with all the grounds urged by the appellant in the petition filed under Section 34 of the A&C Act. In this context, it is pertinent to note that the primary ground regarding delay and rejection of the counter claim have been adequately addressed by the Commercial Court.

15. It is also pertinent to note that the claimant had completed 86% of the work and admittedly 82.94% of the payments were made. Additional works were also entrusted by the appellant to the claimant, to which a supplementary agreement was also executed.

16. It is clear from the material on record that the delay in completion of the work was not attributable to the claimant and the Arbitral Tribunal was justified in allowing Claim Nos.1, 2, 7, 10 and 14. The Commercial Court has adequately appreciated the material on record and dismissed the petition filed by the appellant under Section 34 of the A&C Act.

17. In view of the aforementioned, it cannot be held that the Award suffers from patent illegality and is liable to be interfered with. Hence, the above appeal is dismissed as being devoid of merit.

18. Pending applications, if any, stand disposed of.

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

**Sd/-
(C.M. POONACHA)
JUDGE**

ND/-