

RESERVED ON 21ST JULY 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

COMMERCIAL APPEAL NO. 485 OF 2024

BETWEEN:

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

...APPELLANT

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

AND:

1. M/S. BSR INFRATECH INDIA LTD.,
No.851, D BLOCK, 15TH CROSS
SAHAKARNAGAR
BENGALURU - 560 092
REPRESENTED BY ITS DIRECTOR
SRI J. JAGPATHI CHOUDHARY
2. SRI JUSTICE K.N. KESHAVANARAYANA
SOLE ARBITRATOR
ARBITRATION AND CONCILIATION CENTRE
BENGALURU (DOMESTIC AND INTERNATIONAL)
KANJIA BHAVANA, RACE COURSE ROAD
BENGALURU - 560 001

...RESPONDENTS

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

Digitally
signed by K
P SWETHA
Location:
High Court
of Karnataka

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 18.09.2024, PASSED IN COM.A.P NO.52/2024 ON THE FILE OF HON'BLE LXXXIV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT BANGALORE & 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 18.09.2024 [**impugned judgment**] passed by the learned LXXXIV Additional City Civil and Sessions Judge, Commercial Court, Bengaluru (CCH-85) [**Commercial Court**] in Com.A.P.No.52/2024. 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.107/2021. The learned Commercial Court found no ground to interfere with the impugned award and accordingly passed the impugned judgment dismissing the petition.

2. Respondent No.1, M/s BSR Infratech India Ltd. [**BSR**], was the claimant before the Arbitral Tribunal and the appellant was the respondent. In terms of the impugned award, the Arbitral Tribunal partly allowed BSR's claims and directed the appellant to pay a total sum of ₹2,83,23,688/- (Rupees two crores eighty-three lakhs twenty-three thousand six hundred and eighty-eight only) together with future interest at 9% per annum from the date of the award till payment, comprising ₹1,80,78,950/- towards unproductive overhead charges, as against the claim of ₹2,32,55,404/- (Claim No.7(a)); and ₹1,02,44,738/- towards loss of expected profit, as against the claim of ₹2,32,55,404/- (Claim No.8); and ₹2,00,000/- towards costs (Claim No.12), as against the claim of ₹12,00,000/-.

3. The present appeal is one of a batch of five appeals, (COMAP Nos.484/2024 to 488/2024), 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.48/2024 to 52/2024) assailing separate Arbitral Awards rendered by the Arbitral Tribunal constituted of a Sole Arbitrator in respect of the contract of five packages awarded to M/s. BSR. The arbitral awards rendered are substantially in similar terms and the issues involved in the said five 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 in 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, for a total of 52 packages. BSR emerged the successful bidder in respect of five packages. The present dispute pertains to Package A-19 - Construction of Adarsha Vidyalayas at K.R. Nagar, Mysore, H.D. Kote, Nanjangud, Hunsur and T. Narasipura, and Girls' Hostel at K.R. Nagar Block, of Mysore District [**the subject package**] - comprising six Adarsha Vidyalayas and one Girls' Hostel spread over seven work sites. After BSR was declared as the lowest bidder (L1), the parties entered into negotiations, pursuant to which BSR agreed to a contract price of ₹30,74,26,000/- (₹3074.26 lakhs).

6. By Letter of Acceptance dated 18.03.2013 (Ex.C2), the appellant accepted BSR's offer for the said contract price in respect of the subject package, and called upon BSR to furnish the requisite security deposit.

7. The parties executed a Construction Agreement [**the Agreement**] dated 15.05.2013 (Ex.C3) for execution of the works under Package A-19. 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.C4) and the stipulated period of completion was twenty months therefrom, the tender completion date being 14.01.2015. 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 24.03.2017 for the additional work and cost, and the revised contract value was determined at ₹3460.09 lakhs as against the original contract price of ₹3074.26 lakhs.

9. There was delay in execution of the works and they were not completed within the stipulated period. BSR 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; and (v) scarcity of materials and labour on account of the scattered nature of the work sites. BSR invoked the price adjustment clause of the Conditions of Contract and raised its claim towards price adjustment; 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.

10. 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.

11. The said Government Order was impugned by three 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 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.

12. By Government Order dated 30.09.2020 (Ex.R2), the GoK adopted the recommendations of a Technical Advisory Committee and directed, among other things, that (i) extension of time and the resultant penalty be ascertained in respect of each work site individually, instead of the package as a whole; (ii) the administration be held responsible for delay caused on account of reasons beyond the control of the contractor; and (iii) price adjustment be allowed in respect of the 25 packages whose tender conditions contained the price adjustment clause. By an order dated 13.01.2021(Ex.R3), extension of time was granted to BSR without penalty.

13. By its letter dated 11.03.2019 (Ex.C40), BSR set out the causes of delay and its claims and sought favourable consideration thereof, and sought to invoke the dispute resolution mechanism under Clause 23 of the Conditions of Contract read with Clause 4

of the Special Conditions of Contract; and by legal notice dated 08.05.2019 (Ex.C41), it invoked the arbitration agreement, attributing breach of contract to the appellant.

14. The appellant responded by reply dated 11.06.2019 (Ex.C42), contending, inter alia, that the reference to arbitration was premature in view of the pendency of the intra-court writ appeals.

15. BSR filed an application under Section 11 of the A&C Act, being C.M.P.No.263/2019, 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.

ARBITRAL PROCEEDINGS

16. BSR filed its Statement of Claims before the Arbitral Tribunal claiming an amount of ₹80,03,19,726/- (Rupees eighty crores three lakhs nineteen thousand seven hundred and twenty-six only) under thirteen 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:

SUMMARY OF CLAIMS

Claims	Particulars	Claim Amount (Amt. in Rs.)
Claim No.1	Payment of Price Adjustment/Escalation Bill	4,53,24,186
Claim No.2 Claim No.3 Claim No.4	Payment of equitable enhanced rates executed beyond tender completion period. Payment of equitable enhanced rates executed beyond Tender Completion Period for extra items. Payment of equitable enhanced rates executed beyond Tender Completion Period for quantities of 125%	2,91,75,505
Claim No.5	Refund of Excess Royalty Charges	19,81,088
Claim No.6	Payment towards idle men, machinery and establishment during original tender period.	7,47,95,600
Claim No.7(a)	Payment of unproductive overhead charges.	2,32,55,404
Claim No.7(b)	Payment of additional overhead charges.	56,37,903
Claim No.8	Payment towards loss of expected profit on the balance work as on original tender completion date.	2,32,55,404
Claim No.9(a)	Loss of expected profit due to non-receipt of profit by tender completion period.	11,62,77,020
Claim No.9(b)	Loss of expected profit due to non-receipt of profit by actual completion period.	2,73,72,950
Claim No.10	Payment towards additional Bank Guarantee charges beyond original agreement period	5,98,370
Claim No.11	Payment towards interest on claim amount calculated upto 31.12.2020 at the rate of%	45,08,47,944
Claim No.12	Payment of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) towards Cost of Litigation.	12,00,000
	TOTAL	80,03,19,726

17. It was BSR'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. BSR 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 BSR from completing the contract within time and prolonging the execution of the works. BSR alleged that the appellant also withheld amounts due to it, which compelled BSR to seek reference of the disputes to arbitration.

18. 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 conditions of contract as forthcoming in the e-procurement portal, which were binding on the parties, specifically excluded price adjustment. 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 ₹80,03,19,726/-, were fictitious, unsubstantiated and beyond the scope of arbitration.

19. On the basis of the pleadings between the parties, the Arbitral Tribunal 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 10 of SOC?

6. Whether the Claimant is entitled for payment towards past interest on the amounts claimed up to 31-12-2020 at 24% PA as claimed under claim No.11 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?"

20. The Arbitral Tribunal, after examining the evidence and materials placed on record, held that the non-completion of the works within the stipulated period was for reasons solely attributable to the appellant, resulting in breach of contract by the appellant. In arriving at the said finding, the Arbitral Tribunal placed reliance on the Government Order dated 30.09.2020 (Ex.R2) and

the order dated 13.01.2021 (Ex.R3), whereunder extension of time was granted without penalty recording, in respect of each of the seven work sites, that the delay - ranging from 171 days to 467 days - was for reasons for which the contractor was not responsible, and no part of the delay was attributed to BSR. The Arbitral Tribunal held that the said documents amounted to an admission on the part of the appellant that BSR was not responsible for the delay. 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. Insofar as the claim towards price adjustment (Claim No.1) is concerned, the Arbitral Tribunal held that the price adjustment clause formed part of the contract; however, it rejected the said claim in its entirety on the ground that BSR had placed no evidence to substantiate the amount claimed thereunder.

21. The Arbitral Tribunal partly allowed Claim Nos. 7(a), 8 and 12. The Arbitral Tribunal also awarded future interest and costs but rejected the remaining claims, being Claim Nos.1 to 6, 7(b), 9(a), 9(b), 10 and 11, in their entirety.

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

"AWARD

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

(1) Claim Nos.7(a) is allowed in part in a sum of Rs.1,80,78,950/- only as against claim of Rs.2,32,55,404/-;

(2) Claim No.8 is allowed in part in a sum of Rs.1,02,44,738/- only as against the claim of Rs.2,32,55,404/-;

(3) Respondent is directed to pay to Claimant a total sum of Rs.2,83,23,688/- as per Sl.No.(1) and (2) above together with future interest at the rate of 9% per annum from the date of this Award till the date of payment;

(4) Claim No.12 is allowed in part in a sum of Rs.2,00,000/- 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;

(5) Claim Nos.1 to 6, 7(b), 9(a), 9(b), 10 and 11 are rejected in their entirety;

(6) Claimant shall pay requisite stamp duty on this award payable as per Karnataka Stamp Act.

With the pronouncement and publication of Award, this Arbitral Proceeding stand terminated as per Section 32(1) of the Act."

23. The impugned award was assailed by the appellant before the learned Commercial Court in Com.A.P.No.52/2024 under Section 34 of the A&C Act. The learned Commercial Court, by the

impugned judgment dated 18.09.2024, found no infirmity warranting interference with the impugned award and dismissed the petition, giving rise to the present appeal.

24. As noted above, the learned Arbitral Tribunal had partly allowed Claim No.7(a), which was towards unproductive overhead charges. The learned Arbitral Tribunal had noted that there were no averments made in the claim statement to support the said claim. Further, even in the affidavit tendered by BSR's witness (P.W.1) had not stated anything in this regard. Paragraph 121 of the impugned award reads as under:

"121. Respondent in its SO has contended that these claims are beyond the original tender period and the overhead charges are inbuilt for the finished items of works and that there is no provision in the agreement for payment of unproductive overhead charges beyond the original tender period, therefore, these claims are beyond the scope of arbitration as such Claimant is not entitled for these claims."

25. Although the statement of claims was bereft of any particulars or the methodology used for quantification of Claim No.7(a), the learned Arbitral Tribunal partly allowed the claim by applying the Hudson Formula and assuming that the overheads charges constituted 10% of the contract price. It is material to note that BSR had made no such claim. The learned Arbitral Tribunal

relied on the cross-examination of P.W.1 during which a suggestion was put to the witness that the overhead charges were included in the item rates. In absence of any averments justifying the said claim and any evidence led by BSR in this regard, the award for unproductive overhead imposed is unsustainable.

26. The learned Arbitral Tribunal also allowed the claim for loss of profits (Claim No.8), *inter alia*, referring to the decision in the case of the Supreme Court in **A.T.Brij Paul Singh and Others v. State of Gujarat**¹. On the said basis, the learned Arbitral Tribunal accepted that the expected profit was 10% of the contract price. However, in the present case, the contract was fully performed and it is evident that BSR had realized the profit as included in the contract price. Notwithstanding the same, the learned Arbitral Tribunal awarded 10% per annum of the expected profits included in the value of work executed after the execution date. BSR had made no claim on such basis. It had led no evidence as to the quantum of loss of profits. We find no basis for awarding 10% p.a of the assured profits as loss of profits for the prolongation of contract. In this view, the award against claim No.8 is unsustainable.

¹ (1984) 4 SCC 59

27. Claim No.12 is for costs. The award of costs, is premised on BSR succeeding in Claim Nos.7 and 8. Since the award against claim Nos.7 and 8 is set aside, the award against claim No.12 is also unsustainable.

28. The impugned award is in the similar terms as the arbitral award which was subject matter of challenge in COMAP No.54/2025. The said appeal was allowed by this court by an order dated 18.08.2026. The reasons set out in the said order fully cover the issues involved in the present appeal as well. For the sake of brevity, the same are not repeated in this order but may be read as a part of the present order as well.

29. In view of the above, the impugned award insofar as it awards claim Nos.7(a), 8 and 12 and interest thereon, is set aside.

30. The appeal is allowed in the aforesaid terms.

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

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