



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST 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. 632 OF 2025

BETWEEN:

PROMAC ENGINEERING INDUSTRIES LIMITED
INCORPORATED UNDER THE
COMPANIES ACT, 1956
OFF KANAKAPURA ROAD ALAHALLI,
ANJANAPURA POST
BENGALURU - 560 062
REPRESENTED BY ITS DIRECTOR
S. JAYARAM REDDY

...APPELLANT

(BY SRI. AJESH KUMAR S, ADVOCATE)

AND:

1. ZAMIL STEEL BUILDINGS INDIA PVT LTD
OFFICE NO.1, FIRST FLOOR,
PLOT NO.2, S. NO.8,
ALMONTE SOFTWARE PARK,
KHARADI-411 014, PUNE
MAHARASHTRA
REP. BY ITS AUTHORISED
REPRESENTATIVE,
SHRI ANOOPAM RAJANNA
ALSO AT

Digitally
signed by
NIRMALA
DEVI

Location:
HIGH
COURT OF
KARNATAKA



ZAMIL STEEL BUILDINGS INDIA PVT LTD.,
NO.6, 2ND FLOOR,
ASHA TOWERS, NO.35/13,
LANGFORD ROAD CROSS,
BENGALURU -560 025

2. JUSTICE K.N. KESHAVANARAYANA,
FORMER JUDGE,
HIGH COURT OF KARNATAKA,
C/O ARBITRATION AND
CONCILIATION CENTRE
BENGALURU (DOMESTIC AND
INTERNATIONAL) 3RD FLOOR,
EAST WING, KHANIJA BHAVAN,
NO.49, RACE COURSE ROAD
BENGALURU -560 001

...RESPONDENTS

THIS COMAP IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURT ACT, 2015 R/W SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 196 PRAYING TO CALLING FOR THE RECORDS IN COM.AP NO.79/2024 PASSED BY THE COURT OF LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU (CCH-87) AND SET ASIDE JUDGMENT DATED 06.08.2025 PASSED BY THE LEARNED LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU, AS PER ANNEXURE A AND CONSEQUENTLY ALLOWING THE APPLICATION UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996, AS PER ANNEXURE B.

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

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA



ORAL JUDGMENT

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

1. For the reasons stated in the application – I.A No.1/2025, the same is allowed and the delay in filing the appeal is condoned.
2. The present appeal is filed under Section 13(1-A) of the Commercial Court Act, 2015 [**CC Act**] read with Section 37 of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning an order dated 06.08.2025 passed in Com.A.P.No.79/2024 by the LXXXVI Additional City Civil and Sessions Judge, Bengaluru [**Commercial Court**], whereunder the application filed by the appellant under Section 34 of the A&C Act to set aside the arbitral award dated 15.12.2023 passed in AC No.217/2021 by the Sole Arbitrator [**Arbitral Tribunal**] was rejected.
3. The relevant facts in a nutshell are that the appellant is a company which was approached by the respondent/claimant for design, engineering, manufacturing and supply of PEB for 1x125 MW Thermal Power Plant for its Sendou project at Senegal [**said project**]. Accordingly, the appellant issued a letter of intent on 26.11.2014 [**LOI**], pursuant to which purchase order dated



11.02.2016 [PO] was placed by the appellant with the respondent/claimant for a total sum of ₹18.30 crores. The said PO required the respondent/claimant to supply steel structures for the said project. The scope of supply of steel and the value of the PO was revised to ₹21,21,65,476/- (Rupees twenty one crores twenty one lakh sixty five thousand and four hundred seventy six only) from its original price of ₹18.30 crores. Various disputes arose between the parties regarding the LOI and PO, as a result of which arbitration proceedings were initiated by the respondent/claimant.

4. The respondent/claimant made a total claim of ₹66,27,380/- towards unpaid dues relating to the project in question, together with interest at 18%; interest at 10% on the outstanding amount of claim towards damages sustained by the respondent/claimant, as also ₹3,00,000/- towards cost.

5. The appellant entered an appearance before the Arbitral Tribunal and filed its statement of objections, denying the claims put forth by the respondent/claimant. The appellant also made counterclaims summarised as under:



a) for a sum of ₹7,41,609/- made as excess payment towards the invoices raised by the respondent/claimant.

b) demurrage and other charges incurred by the appellant at the Port which are liable to be reimbursed by the respondent/claimant in a sum of ₹39,48,354/-.

c) costs incurred by the appellant by engaging other agency for erection of the PEB which is payable by the respondent/claimant in a sum of ₹Rs.49,96,100/-.

d) liquidated damages payable by the respondent/claimant in a sum of ₹1,03,48,303/-.

6. The counter claim made by the appellant was in a total sum of ₹1,85,54,218/-, which amount was claimed together with interest at 18% per annum

7. The Arbitral Tribunal, by its award dated 15.12.2023, partly allowed the claim and counterclaim and ordered as under:-

(1) Claim No.1 covered by Issue No.1 and 2 is allowed in part in a sum of Rs.51,77,404/- (Rupees Fifty One Lakhs Seventy Seven Thousand Four Hundred and Four Only) as against the claim of Rs.66,27,380/- (Rupees Sixty Six Lakhs



Twenty Seven Thousand Three Hundred and Eighty Only) and Respondent to pay the said amount to Claimant.

(2) Claim No.2 covered by Issue No.3 is allowed in part directing payment of pendente lite interest at 9% per annum on the principal amount of Rs.51,77,404/-(Rupees Fifty One Lakhs Seventy Seven Thousand Four Hundred and Four Only) from 5.2.2019 up to the date of this Award which is quantified as Rs.22,65,113/- (Rupees Twenty Two Lakhs Sixty Five Thousand One Hundred and Thirteen Only) and Respondent to pay the said amount to Claimant along with future interest at 9% PA on Rs.51,77,404/- (Rupees Fifty One Lakhs Seventy Seven Thousand Four Hundred and Four Only) from the date of this Award up to the date of actual payment.

(3) Claim No.3 covered by Issue No.4 and the additional claim covered by Issue No.5 are rejected in their entirety.

(4) Respondent to pay to Claimant Rs.3,00,000/-(Rupees Three Lakhs Only) being the cost of this Arbitral Proceeding. This amount shall be paid within a period of 3 months from the date of this Award, failing which it shall carry interest from the date of Award at 6% PA up to the date of payment.

(5) Counterclaim Nos. 1 to 4 covered by Issue Nos.7, 9, 11, and 13 put forth by Respondent are rejected in their entirety. Respondent to bear its own cost on the



Counterclaims and pay to Claimant its cost of this Arbitral proceeding as quantified at (4) above.

(6) With the pronouncement and publication of the Award, this arbitral proceeding stands terminated as per Section 32(1) of the Act.

(7) This award is signed and issued in 3 originals, one for the record of Arbitration & Conciliation Centre and rests to each of the parties.

8. Being aggrieved, the appellant filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the Commercial Court. The Commercial Court by its order dated 06.08.2025 dismissed the said petition. Being aggrieved, the present appeal is filed.

9. The primary contention put forth by the learned counsel for the appellant is that the Arbitral Tribunal has erred in holding that the appellant did not prove the meeting dated 18.01.2017, a copy of the minutes of which was produced as Ex.R1 before the Arbitral Tribunal.

10. In this context, it is pertinent to note issue No.1 framed by the Arbitral Tribunal, which is as under:-



Whether, Claimant proves that there was underpayment on the part of Respondent against the value of each of the invoices issued by him in respect of the work in question, on account of which in all an amount of Rs.66,27,380/- remained unpaid at the completion of the work?

11. While considering the said issue No.1, it was noticed by the Tribunal that although the revised PO was for an amount of ₹21,21,65,476/- (as per Ex.P9), the respondent/claimant had issued invoices for a total sum of ₹20,69,60,604/- and it had admittedly received a sum of ₹20,17,83,200/- leaving a balance of ₹51,77,404/-. Further, the respondent/claimant claimed a sum of ₹10,67,200/- in respect of testing and trial assembly charges and a sum of ₹2,88,000/- towards assembly charges which amounted to a total sum ₹66,27,380/-.

12. The appellant contended that the respondent/claimant had raised various invoices amounting to ₹21,37,35,273/-, in respect of which in all the appellant claimed to have paid the respondent/claimant a total sum of ₹20,17,83,200/- leaving a balance of ₹1,19,52,073/-. From the said amount, the appellant sought to retain a sum of ₹47,44,371/- on the premise that in the



meeting held on 18.01.2017, it was agreed that the said amount be retained by the appellant as a guarantee against demurrage charges to be paid.

13. While considering the said case of the parties, the Tribunal held as under:

44. Thus, from the above, it is clear that Respondent has admitted the fact of Claimant having issued invoices of various dates totally amounting to Rs.21,37,35,273/- and as against this, even as per the Respondent's statement the total amount paid including the advance of Rs.30 lakhs and two more payments of Rs.64,05,000/- and Rs.61,50,000/- as advance, is Rs.20,17,83,200/-, thereby leaving balance of Rs.1,19,52,073/-. From the above statement, it is further clear that a sum of Rs.47,44,371/- was retained by Respondent on the premise that in the meeting said to have been held on 18.1.2017, it was agreed that the said amount be retained by Respondent as guarantee against demurrage charges to be paid.

45. According to Respondent, on account of reduction in the total tonnage, the revised contract value was reduced to Rs.20,69,60,604/- and Claimant said to have withdrawn and cancelled some of its invoices amounting to Rs.67,74,669/- and thus the actual amount payable by Respondent to Claimant was Rs.20,69,60,604/- against which Respondent said to have paid a sum of Rs.20,17,83,200/- leaving a balance of Rs.51,77,404/-.



According to Respondent, this amount has been adjusted towards the demurrage charges and the amount debited to the account of claimant being the adjustment of excess amount said to have been paid to old erection contractor. Thus, according to Respondent, an excess payment of Rs.7,41,609/- has been made by Respondent to Claimant. Thus, there has been an admission on the part of Respondent that a sum of Rs.51,77,404/- was due and payable to Claimant towards the total amount covered by invoices. The amounts towards which the balance amount of Rs. 51,77,404/- payable said to have been adjusted and the alleged excess payment are the very amounts claimed under counterclaim Nos.1 to 3 which Claimant has denied. Therefore, in the light of the admission made by Respondent in the SOD as referred supra, it has to be held that Claimant has proved its entitlement to an extent of Rs.51,77,404/- being the balance amount payable by Respondent. However, this is subject to the finding that may be recorded on the counterclaims put forth by Respondent.

(emphasis supplied)

14. With regard to the minutes of the meeting held on 18.01.2017 (Ex.R1) it was noticed by the Tribunal that the appellant had alleged that on behalf of the respondent/claimant one Mr.Shrikumar, Mr.Anoopam and Mr.Girish were alleged to have attended the said meeting. However, the respondent/claimant had



denied the same and disputed Ex.R1. The witness examined on behalf of the respondent/claimant - PW.1, in the cross-examination, denied the suggestion that there was a meeting held on 18.01.2017. PW.1 however admitted that the persons mentioned were his colleagues and is conversant with their signatures. PW.1 has denied that Ex.R1 contained the signatures of the persons mentioned therein.

15. The representative of the appellant, who was examined as RW.1 asserted that a meeting was held on 18.01.2017 and that Ex.R1 was the minutes of the said meeting. It was noticed that on behalf of the respondent/claimant the said minutes were signed by Mr.Shrikumar who was the Director - Sales Marketing and Business Development. The said minutes was sent by e-mail by Mr.Anoopam of the respondent/claimant to the respondent and others from his e-mail ID, which e-mail was also sent to PW.1. However, RW.1 admitted that he was not present in the said meeting dated 18.01.2017. The appellant has not examined any witness who allegedly attended the said meeting dated 18.01.2017 on their behalf.



16. It was further noticed by the Tribunal that although Ex.R1 was produced along with a certificate under section 65B of the Indian Evidence Act, 1872 [**Evidence Act**] by way of an affidavit sworn to by RW.1 (which was marked as Ex.R19), in the said certificate RW.1 had not stated that at the relevant time he was in lawful control over the use of the computer in which the said e-mails were stored.

17. The Arbitral Tribunal noticed that no official of the appellant who had attended the meeting dated 18.01.2017 had been examined and after holding that the certificate produced to prove Ex.R1 did not satisfy the requirement of law held that "there was no acceptable evidence placed by the respondent to establish that the revised contract value was mutually fixed at ₹20,69,60,604/- and that the respondent/claimant agreed to bear the demurrage and storage charges, as also agreed for retention of amounts payable to the respondent/claimant by the respondent as guarantee towards demurrage charges."

18. The Tribunal has appreciated the various e-mail correspondences exchanged between the parties and held that the



appellant was liable to pay the respondent/claimant a sum of ₹51,77,404/- towards unpaid invoices amount. It was further noticed that although the respondent/claimant had claimed a sum of ₹66,27,380/- as payable from the appellant, the respondent/claimant had not produced any material to demonstrate the same. Hence, the Tribunal held that the respondent/claimant had proved that the appellant was liable to pay a sum of ₹51,77,404/- towards unpaid invoices.

19. The Tribunal while noticing the counter claims had held that the appellant had not adduced any material in support of the said claims and hence rejected the same.

20. The Commercial Court while considering the appeal filed by the appellant with respect to the amounts claimed by the respondent/claimant under the invoices, held as under:

13. In paragraph No.16 of the statement of defense, under the heading 'Payments made by respondents to claimant' the petitioner admitted that the respondent had raised its invoices on various dates amounting to a total value of Rs 21,37,35,273/- against which the petitioner made a Payment of Rs.20,17,83,200/- by leaving the balance of Rs. 1,19,52,073/-. On the basis of averments made in the statement of defense, the learned arbitral tribunal in paragraph No.44 recorded its finding that a sum of Rs.47,44,371/- was retained by the petitioner on the premise



that in the meeting said to have been held on 18.01.2017, it was agreed that the said amount be retained by the respondent as guarantee against demurrage charges to be paid. According to the petitioner on account of reduction in the total tonnage, the revised contract value was reduced to Rs.20,69,60,604/- and the respondent said to have withdrawn and canceled some its invoices amounting to Rs.67,74,669/- and thus, the balance would Rs.51,77,404/-. Thus, it is clear that only on the basis of the averments made in the statement of defense, the learned arbitral tribunal came to the conclusion that the petitioner was liable to pay the respondent a sum of Rs.20,69,60,604/- against which the petitioner has paid Rs.20,17,83,200/- and thus, the balance payable by the petitioner to the respondent was Rs.51,77,404/-. The basis for the decision of the learned arbitral tribunal was the pleadings of the petitioner and not the evidence adduced by the respondent. Therefore, the decision of the learned arbitral tribunal in so far as directing the petitioner to pay the respondent a sum of Rs.51,77,404/- cannot be termed as an award without evidence. It should be bear in mind that evidence includes the admissions. As per Section 17 of the Indian Evidence Act, an admission is a relevant fact. An admission is a statement made oral and writing by the party to the proceedings with respect to facts in issue or relevant fact. In the present case, the learned arbitral tribunal on the basis of facts admitted by the petitioner has come to the conclusion that the petitioner is liable to pay Rs.51,77,404/- to the respondent and therefore, this court does not find any acceptable reason to interfere with the arbitral award. The learned arbitral tribunal has granted the respondent interest at the rate of 9% p.a. On the principal amount of Rs.51,77,404/-. The arbitral tribunal has a discretion to grant interest on the award amount. Therefore, this court does not wish to interfere with the findings of the arbitral tribunal in so far as granting of interest at the rate of 9% is concerned.

(emphasis supplied)



21. It is clear that the commercial court noticed the fact that the appellant in its statement of defence had admitted that the respondent/claimant had supplied goods of a sum of ₹20,69,60,604/- and that the appellant had admittedly paid a sum of ₹20,17,83,200/-. Accordingly, it was held that the finding of the arbitral tribunal that appellant was liable to pay the respondent/claimant a sum of ₹51,77,404/- cannot be said to be without evidence. The commercial court had arrived at the said finding without going into the question as to whether the appellant had proved the meeting dated 18.01.2017.

22. As noticed above, although the respondent/claimant had claimed a sum of ₹66,27,380/-, it had not produced the invoices in support of the said claimed amount. The summary of the invoices [Exhibit P16] was not accepted/relied upon both by the arbitral tribunal as well as the Commercial Court. However, the appellant in its statement of defence had admitted that the respondent/claimant had supplied goods to a total sum of ₹20,69,60,604/-. The respondent/claimant had admittedly received a sum of ₹20,17,83,200/-. Hence, the balance amount to ₹51,77,404/- was held due and payable by the appellant to the respondent/claimant.



23. The appellant sought to retain a sum of ₹47,44,371/- by placing the reliance on the meeting date of 18.01.2017 (Ex.R1) by stating that the said fact was agreed between the parties in the said meeting. Although the minutes of meeting dated 18.1.2017 was produced, the said meeting having been denied by the respondent/claimant, the claimant was required to prove the said meeting. The appellant did not examine any of its representative who had participated in the said meeting. Further, although the appellant had produced a copy of the minutes of the said meeting along with a certificate under Section 65B of the Evidence Act, the Tribunal held that the said certificate did not comply with the requirements of Section 65B of the Evidence Act.

24. Although it is the vehement contention of the learned counsel for the appellant that the Evidence Act is not applicable to arbitration proceeding and the finding of the Tribunal is erroneous, the Tribunal having noticed the said certificate and having recorded a finding that the said certificate does not comply with Section 65B of Evidence Act, as also that since the appellant did not examine



any of its representatives who allegedly participated in the meeting on 18.01.2017, the appellant had failed to prove the said meeting.

25. It is well settled that the Arbitral Tribunal is the master of the quality and quantity of evidence, and the court cannot re-evaluate the evidence and supplant its view in place of that of the Arbitral Tribunal. In the present case, the Arbitral Tribunal's finding cannot be said to be patently illegal, as it is a plausible view based on the material on the record. The said finding does not merit an interference under Section 34 of the A&C Act.

26. In view of the same, the above appeal is dismissed as being devoid of merit.

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

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

nd/BS
List No.: 1 Sl No.: 10