



WEB COPY

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 09TH DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P.No.306 of 2015

and

A.No. 850 of 2020

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of the Arbitration to
set aside the Award dated
02.08.2014 passed by the Hon'ble
Arbitral Tribunal in the disputes
between M/s. Roman Tarmat Ltd.,
and M/s. IT Expressway Ltd.,

O.P No.306 of 2015

M/s. Roman Tarmat Limited,
Rep. by its General Manager,
Door No.6, Plot No.60,
15th Cross Street, Tansi Nagar,
Velachery, Chennai – 600 042.

Having its Registered Office at
Tarmat Chambers – Sector – 24,
Plot No.19, Near Turbhe Fly Over
Sanpada, Navi Mumbai – 400 705.

... Petitioner

-Vs-

1. M/s. IT Expressway Limited,
171, 2nd Floor, TNMB Building
South Kesavaperumalpuram,
Pasumpon Muthuramalingam Road,



(Greenways Road) Raja Annamalaipuram,
Chennai – 600 028.

WEB COPY

2. Mr.S.P.Krishnamoorthy,
Presiding Arbitrator,
C/o. Dr.K.Vasanth,
New No.1, Old No.9,
Police Commissioner Office Road,
Opp. to Police Hospital,
Egmore, Chennai – 600 008.
3. Mr.B.K.Thanupillai
Arbitrator,
Flat No.4-10-1, Arihant Majestic Towers,
J.N.Salai, Koyambedu,
Chennai – 600 107.
4. Mr.P.Sridhar,
Arbitrator,
Plot No.50, U.R.Nagar,
Anna Nagar, West Extension,
Chennai – 600 101.

... Respondents

Original Petition praying that this Hon'ble Court be pleased to set
aside the arbitral award dated 02-08-2014 passed by the Respondents 2 to 4.

A.No.850 of 2020

In the matter of section 34 of the
Arbitration & Conciliation Act,
1996

And

In the matter of the Arbitration
Award dated 02/08/2014 passed by
Arbitral Tribunal and in the disputes
between M/s. Roman Tarmat Ltd.,
and M/s. IT Expressway Ltd.

**A.No.850 of 2020**

WEB COPY

M/s. IT Expressway Limited,
171, 2nd Floor, TNMB Building
South Kesavaperumalpuram,
Pasumpon Muthuramalingam Road,
(Greenways Road) Raja Annamalaipuram,
Chennai – 600 028.

... Applicant

-Vs-

1. M/s. Roman Tarmat Limited,
Rep. by its General Manager,
Door No.6, Plot No.60,
15th Cross Street, Tansi Nagar,
Velachery, Chennai – 600 042.

Having its Registered Office at
Tarmat Chambers – Sector – 24,
Plot No.19, Near Turbhe Fly Over
Sanpada, Navi Mumbai – 400 705.

2. Mr.S.P.Krishnamoorthy,
Presiding Arbitrator,
C/o. Dr.K.Vasanth,
New No.1, Old No.9,
Police Commissioner Office Road,
Opp. to Police Hospital,
Egmore, Chennai – 600 008.
3. Mr.B.K.Thanupillai
Arbitrator,
Flat No.4-10-1, Arihant Majestic Towers,
J.N.Salai, Koyambedu,
Chennai – 600 107.
4. Mr.P.Sridhar,
Arbitrator,
Plot No.50, U.R.Nagar,
Anna Nagar, West Extension,
Chennai – 600 101.

... Respondents



Application praying that this Hon'ble Court be pleased to adjourn the above proceedings in OP No.306 of 2015 and remit the award dated 02.08.2014 to the Arbitral Tribunal comprising of Respondents 2 to 4 and resume the arbitral proceedings for assigning reasons for its findings in the award.

This Original Petition along with the application coming on this day before this court for hearing in the presence of Ms.Nalini Chidambaram, Senior Counsel for Ms.C.Uma, advocates for the petitioner in O.P No.306 of 2015 and for the 1st respondent in A.No.850 of 2020 and Mr.D.Balaraman, advocate for the 1st respondent in O.P No.306 of 2015 and for the applicant in A.No.850 o 2020 and upon reading the petition, the award dated 02/08/2014 and the counter affidavit of Y.R.Balaji filed in O.P No.306 of 2015 and the Judges Summons and the affidavit of Y.R.Balaji and the counter affidavit of N.V.Natarajan filed in A.No.850 of 2020 and this court having observed that learned Arbitrator, in fact, has considered the submissions of the petitioner that tender has not invited and bidding was not in a transparent manner, in fact, the learned Arbitrator has perused the files relating to the subsequent tenders and on a perusal of the records found that the said contention of the petitioner is not maintainable and has no merits and in fact, opined that tender has been invited, as per law, and the



Department has in fact allowed the claim of the petitioner for the work done, merely because an application has been filed with abundant caution, cannot be a ground to hold that the petitioner is automatically entitled to succeed, this Court is of the considered view that none of the grounds contemplated under Section 34 of the Act is made out to interfere with the well reasoned award.

It is ordered as follows:-

That the O.P.No.306 of 2015 be and is hereby dismissed.

2. That the A.No.850 of 2020 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
09TH DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



ED

25.10.2021

WEB COPY

O.P.No.306 of 2015

and

A.No.850 of 2020

ORDER:

DATED : 09/08/2021

THE HON'BLE MR. JUSTICE

N. SATHISH KUMAR

FOR APPROVAL: 26.10.2021

APPROVED ON : 27.10.2021



WEB COPY

7

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/8/2021

C O R A M

THE HONOURABLE Mr.JUSTICE N. SATHISH KUMAR

O.P.No.306 of 2015

a n d

A.No.850 of 2020

Roman Tarmat Limited
rep. By its General Manager
Door No.6, Plot No.60
15th Cross Street, Tansi Nagar
Velacherry
Chennai 600 042.

...

Petitioner

Vs

1. M/s. IT Expressway Limited
171 II Floor, TNMB Building
South Kesavaperumalpuram
Pasumpon Muthuramalingam Road
(Greenways Road) Raja Annamalaipuram
Chennai 600 028.
2. S.P.Krishnamoorthy
Presiding Arbitrator
C/o.Dr.K.Vasantha
New No.1, Old No.9 Police Commissioner Office Road
Opp. To Police Hospital
Egmore,
Chennai 600 008.
3. Mr.B.K.Thanupillai
Arbitrator
Flat No.4-10-1 Arihant Majestic Towers
J.N.Salai, Koyambedu
Chennai 600 107.

...

Respondents



PRAYER : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award dated 2/8/2014 passed by the respondents 2 to 4.

For Petitioner ... Ms.Nalini Chidambaram
Senior Counsel
for Ms.C.Uma

For Respondents ... Mr.D.Balaraman
for R.1.

- - - - -
ORDER

This Original Petition has been filed, to set aside the arbitral award, dated 2/8/2014, passed by the respondents 2 to 4, directing the petitioner to pay a sum of Rs.9,09,40,880/- to the first respondent.

2. The brief facts which lead to the filing and disposal of this Original Petition are as follows:-

3. A contract was entered into between the petitioner and first respondent, for construction of service road and foot path on LHS and RHS in Rajiv Gandhi Salai (IT corridor), Chennai, Tamil Nadu. The salient features of the contract agreement are as under:-

1	Date of submission of bid	23/2/2020
2	Issue of letter of Intent	31/3/2010



1	Date of submission of bid	23/2/2020
3	Date of signing of Agreement	12/4/2010
4	Date of commencement of work	12/4/2010
5	Time period for completion of work	12 months
6	Contractual date of completion	11/4/2011
7	Contract price as per Agreement	Rs.31,75,30,560/-

4. The first respondent terminated the contract for slow progress and for fundamental breaches committed by the petitioner. Hence, the matter has been referred to the Three Member Arbitral Tribunal. The petitioner has raised the dispute, to declare the termination notice, dated 30/11/2010, issued by the first respondent, as arbitrary, illegal and premature and directed the first respondent to pay a sum of Rs.7.68 crores, along with interest, at the rate of 12%, from the date of filing of the claim statement, till the date of payment.

5. The petitioner has completed only 17% of the work and from the very inception, the work was slow and he has not provided with proper designs. Therefore, as per the terms governing the parties, under the contract, the contract has been terminated and there was no proper planning in executing the work.



6. The first respondent has narrated and given the detailed reasons for the delay attributable by the petitioner in the defence statement, which may not be repeated once again.

7. Proceedings recorded by the Tribunal would indicate that the claim statement filed originally did not contain any details and supporting documents. Only after filing the statement of defence, an application has been filed to seek amendment and thereafter, additional grounds have been raised. Before the Tribunal, no oral evidence has been let in. They relied on documentary evidence and contractual terms.

8. Challenging the order passed by the arbitral Tribunal, the present Original Petition has been filed, praying for the relief stated supra.

9. Heard Ms.Nalini Chidambaram, learned Senior Counsel for the petitioner and Mr.D.Balaraman, learned counsel for the first respondent.

10. Learned Senior Counsel appearing for the petitioner submitted that award passed by the learned Tribunal has to be set aside, mainly on the ground of inadequacy of reasons. The Arbitral Award was passed, based on the submissions made by both sides and no proper discussion was made by the learned Arbitrator.



the p

the p



13. Learned counsel appearing for the first respondent submitted that A.No.850 of 2020 has been filed with abundant caution, wherein it is clearly mentioned that the award is the result of proper reasoning given by the Tribunal.

14. With regard to the termination of the contract, no submission was made by either side. Therefore, it is contended that the first respondent cannot take advantage of such application which has been objected. Hence, it is submitted that application was filed on the basis of the judgment of the Hon'ble Apex Court to the effect that such application can be filed only during the pendency of the petition, under Section 34 of the Act. Therefore, with abundant caution, such application has been filed and that itself cannot be a ground to hold that the petitioner is automatically entitled to succeed.

15. As far as the merits of the contention is concerned, the learned Arbitrators have considered the entire documentary evidence and particularly, the terms governing the parties, passed an award. Therefore, the same cannot be interfered with, under Section 34 of the Act and no grounds were made out to interfere with the award, under Section 34 of the Act.



16. On a perusal of the entire award, learned Arbitral Tribunal has given an anxious consideration, from paragraph 13 of the award. Arbitrators have framed necessary issues in this regard and after considering the submissions made by both sides, found that though the period of completion of the work was 210 days, the completion period was extended from 210 days 7 months to 12 months and the schedule of handing over site possession under Section IV by the petitioner in S.O.C stands superseded. The learned Arbitrator, after taking note of the drawings enclosed in the bid documents, answered the second issue against the petitioner. Though the reasons were not elaborate running to several pages, the reasons were based mainly on the documents relied upon by the parties.

17. It is relevant to note that both sides have relied upon only on documentary evidence. Merely because elaborate reasons have not been given, it cannot be said that such order is bereft of any details. For every issues, the learned Arbitrator has given proper reasons.

18. Clause 16.1 and 2 reads as follows:-

"16.1 – The Contractor shall commence execution of the construction/improvement works on the start date and shall carry out the construction/improvement works in accordance with the program submitted



by the Contractor, as updated with the approval of the Engineer and complete them in all respects by the intended Completion Date.

16.2. All the time during the construction period, Contractor shall notify the Engineer details of drawings and instructions required and of why and by when it is required. This notice shall be given by the contractor at least one month advance correlating approved construction program."

19. Clause 45.1 deals with Penalty and Liquidated Damages and the same reads as follows:-

"For Construction/Improvement Works

(a). In case of non-completion of the entire construction/improvement works within the Intended Completion Date as indicated in the Contract Data, the Contractor shall pay liquidated damages to the Employer at the rate per day stated in the Contract Data for each day that the actual Completion Date is later than the Intended Completion Date. The liquidated damages amount shall be deducted from



WEB COPY

payments due to the Contractor and shall not be refundable. The total amount of liquidated damages shall not exceed the amount defined in the Contract Data.

b. Time is the essence of the Contract and payment or deduction of penalty or liquidated damages shall not relieve the Contractor from his obligation to complete the works as per agreed Construction Program and Milestones or from any other of the Contractor's obligations and liabilities under the Contract or the Employer's right to invoke the Performance Security.

c. If the Intended Completion Date is extended after liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages have been paid, the Engineer shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the over payment calculated from the date of payment to the date of



WEB COPY

20. Clause 45.2 of the Conditions of Contract, reads as follows:-

"(a). In case the Contractor has not rectified or addressed deficiencies as directed by the Engineer at the time of Site Inspections during defects liability period, the Employer retains the right to get works done through a third party and debit the cost and expenses incurred to the Contractor. Alternatively, the Engineer may recommend invoking of Performance Security in part or full, as the case may be. In case, the Contractor still fails to rectify or address deficiencies even after Invoking Performance Security, as described earlier, then the Employer shall treat the event as fundamental breach of Contract in terms of Clause 54 of Conditions of Contract."

21. A bare reading of the above makes it clear that in the event of

work has not been completed and if any defect is pointed out has not been

rectified during the defect liability period, cost and expenses incurred to get



the work done through the third parties should be recovered by the employer.

22. Clause 54 of the Conditions of Contract deals with the Termination of the contract. When the employer of the Contractor commits fundamental breach of contract which may lead to termination of the contract. It is the case of the first respondent that despite agreed to complete the work, as agreed in the contract, the petitioner has completed only 17% of the work. Despite two show cause notices issued, no progress has been shown.

23. 54.2 (g) and (i) of the Conditions of Contract reads as follows:-

(g). The Contractor has defaulted in fulfilling his obligations under his Contract.

(i). If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in completing for or in the executing the Contract.



WEB COPY

24. Last paragraph of 54.2 reads as follows:-

"In case of default on the part of the Contractor in carrying out the work as per programme, the employer is entitled to employ and pay others to carry out the work. The additional cost if any will be recovered from the defaulting contractor."

25. It is to be noted that in case of default on the part of the Contractor, in carrying out the work, as per programme, the employer is entitled to employ and pay others to carry out the work. Admittedly, in this case, the petitioner had completed only 17% of the work and the remaining works ought to be completed by issuing another tender for a sum of Rs.45.33 crores.

26. It is the further contention of the learned Senior Counsel appearing for the petitioner that such amount has been escalated which is unreasonable. The contract provides only for the work by engaging third parties and not by separate tender. Therefore, that cost cannot be recovered from the petitioner herein.

27. It is to be noted that when the contract provides and

empowering the employee to complete the remaining work and recover the



additional cost incurred for such completion, such contractual term is binding on the parties to the contract. The petitioner cannot complain the manner in which the remaining work to be completed. It is not for the petitioner to dictate the manner in which the remaining work to be completed by the employer. The very terms referred under Clause 54.2 makes it very clear that the employer is entitled to get the remaining works done through other persons and recover the additional cost. Merely because for remaining 83% work, the contract was awarded for 45.33 crores that cannot be a reason that such bid is not according to law.

28. Learned Arbitrator, in fact, has considered the submissions of the petitioner that tender has not invited and bidding was not in a transparent manner. In fact, the learned Arbitrator has perused the files relating to the subsequent tenders and on a perusal of the records found that the said contention of the petitioner is not maintainable and has no merits and in fact, opined that tender has been invited, as per law.

29. The learned Arbitrators, who are the retired Chief Engineers of the Highways Department has in fact allowed the claim of the petitioner for the work done. Merely because an application has been filed with abundant caution, cannot be a ground to hold that the petitioner is



automatically entitled to succeed. This Court is of the considered view that none of the grounds contemplated under Section 34 of the Act is made out to interfere with the well reasoned award.

30. Accordingly, this Original Petition is dismissed. Consequently, Application No.850 of 2020 is closed.

Sd./-N.S.K.J.

09/08/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.