



O.P.No.190 of 2016

In the High Court of Judicature at Madras

Reserved on 09.12.2025	Delivered on: 15.12.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

O.P.No.190 of 2016

M/s.Ramky Infrastructure Ltd.,
Ramky House, Rajbhavan Road,
Somajiguda, Hyderabad-500 082.

...Petitioner

Vs

1.M/s.I.T.Expressway Limited,
No.171, 2nd Floor, TNMB Building,
South Kesavaperumalpuram,
Raja Annamalaipuram, Chennai-28.

2.Mr.S.Arunachalam,
Arbitrator, Plot No.69,
3rd Street, Soumya Nagar,
Medavakam, Chennai.

3.Mr.V.K.Shrotriya,
Arbitrator, A-3, Sector J,
Aliganj, Lucknow-225 024.

4.Mr.P.Sridharan,
Arbitrator, Plot No.50,
U.R.Nagar, Anna Nagar
West Extension, Chennai-101.

...Respondents



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PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 25.7.2015 passed by the respondents 2,3 and 4 to the extent of dismissing the claim made by the petitioner, allow the claim petition filed by the petitioner before the Arbitral Tribunal and dismiss the counter claim filed by the first respondent and for costs.

For Petitioner	:	Mr.V.Kuberan for M/s.Rank Associates
For R1	:	Mr.D.Balaraman and Mr.B.Lakshman Prasad

ORDER

This is a petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the award dated 25.7.2015 passed by the Arbitral Tribunal to the extent it dismissed the claim petition filed by the petitioner, allow the claim petition filed by the petitioner before the Arbitral Tribunal and dismiss the counter claim filed by the first respondent and for costs.

2. Heard both.



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3. The facts leading to filing of this petition are as follows:

(i) The first respondent awarded a work of construction and maintenance of service ducts on IT Corridor and improvement and maintenance of East Coast Road (ECR) Link Road to the petitioner through a letter of intent (LoI) dated 29.9.2005. The parties formally entered into an agreement on 12.10.2005. The agreement originally covered two components of work namely the construction and maintenance of service ducts on the IT Corridor for a length of 37,250 RMTs and the improvement and maintenance of the ECR Link Road to construct four laning ECR Link Road for 2.2 Kms connecting Old Mahabalipuram Road (OMR) and the ECR.

(ii) The duration of the contract was fixed as 7 months (221 days) and the intended commencement date was fixed as 12.10.2005 and the intended completion date was fixed as 12.5.2006. In so far as the first work was concerned, it was divided into three milestones. The first milestone (MS1) was from Madhya Kailash Temple to SRP Tools Km 0/0 - Km 3/050. The second milestone (MS2) was from Karapakkam Bridge to Siruseri Km 20/400 - Km 30/400. The third milestone (MS3) was from SRP Tools to Karapakkam Bridge Km 13/282 - Km 20/400.



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(iii) Due to delay in the completion of works, the first extension was granted for three months upto 14.8.2006. There was a further delay in the completion of works and hence, the second extension of time was granted for two months upto 14.10.2006.

(iv) In view of the above delay, a separate agreement called as supplemental agreement dated 29.11.2006 was entered into and the work pertaining to the ECR Link Road was specifically excluded from the original contract. A fresh tender was called for by the first respondent and the petitioner submitted a fresh quote on 26.6.2007, based on which, a fresh agreement was entered into on 06.7.2007 for a total contract price of Rs.6,63,44,978/-. The ECR Link Road was supposed to be completed within six months from 03.7.2007. The scope of this work was construction of road and cross drainage, improvement of the existing road, formation of new road and maintenance works.

(v) An additional supplemental agreement dated 04.7.2008 was entered into between the parties and time for completion of work was extended in respect of MS2 for 6½ months and in respect of MS3 for 7½ months. There was a further delay in the completion of works and therefore, the additional supplemental agreement was entered into on



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04.7.2008. Once again, time was extended for a further period of 15½ months in respect of MS2 and for a further period of 15 months in respect of MS3.

(vi) The petitioner took a stand that the first respondent did not make any payments for the invoices raised and the petitioner addressed various letters dated 18.7.2008, 18.8.2008 and 01.9.2008 regarding pending bills with a request to clear the same immediately. In these letters, the petitioner informed the first respondent that they would not be able to continue with the work on account of financial constraints owing to the delay in payment. Since there was no response from the first respondent, the petitioner suspended the work and stopped all further works after issuing the letter dated 18.8.2008.

(vii) Thereafter, the petitioner was called for a meeting, in which, the petitioner informed the first respondent that only if the pending bills were cleared, the petitioner would be able to resume the work. Till then, the men and machinery were available in the work site. In spite of the petitioner making their stand very clear, the first respondent did not release the payment. Further, the first respondent issued a notice dated 04.10.2008 informing the petitioner that the contract was terminated since the petitioner suspended the work and committed



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fundamental breach of the contract. The petitioner was also informed that the remaining work would be completed with the help of third parties at the risk and cost of the petitioner and liquidated damages to the tune of Rs.49 lakhs were also levied.

(viii) Pursuant to that, the petitioner invoked the arbitration clause through their letter dated 15.12.2008 and requested the first respondent to constitute an arbitral tribunal. Accordingly, the present Arbitral Tribunal was constituted.

(ix) Before the Arbitral Tribunal, the petitioner made the following claims:

"Claim I: directing the respondent to pay the claimant a sum of Rs.10,35,39,844/- being the amount withheld by the respondent in respect of the invoices submitted by the claimant and certified by the Engineer for the work done by the claimant for the period from 01.11.2007 to 30.6.2008 together with interest at 18% per annum payable from expiry of 60 days from the respective invoices till date of realisation;

Claim II: directing the respondent to pay the claimant a sum of Rs.2,03,77,025/- being the amount incurred by the claimant towards manufacturing, fabricating and storing the cable trace for use at the site which remained unutilised



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on account of the unilateral termination of the contract together with interest at 18% from July 2008 till the date of payment;

Claim III: directing the respondent to pay the claimant a sum of Rs.41,74,623/- being the amount lost by the claimant as interest at 18% for 9 months on Rs.3,09,23,136/- being the value of the materials (steel reinforcement and angles) which were lying unutilised for the said period;

Claim IV: directing the respondent to pay the claimant a sum of Rs.36,08,247/- being the amount incurred by the claimant towards transportation, load and unloading of the materials (steel reinforcement and angles) which could not be utilised for the project on account of the unilateral termination of the contract together with interest at 18%;

Claim V: directing the respondent to pay the claimant a sum of Rs.12,99,602/- being the amount incurred by the claimant towards bank charges for extending/renewing the bank guarantees furnished in terms of the contract together with interest at 18%;

Claim VI: directing the respondent to pay the claimant a sum of Rs.15,27,30,301/- together with interest at 18% being the amount incurred by the claimant towards idling charges for men and machinery on account of the delay on the respondent in handing over work site and designs



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and drawings to the claimant;

Claim VII: directing the respondent to pay the claimant a sum of Rs.3,22,84,582/- towards loss of profit to the claimant on account of the respondent unilaterally terminating the contract prematurely and denying the claimant the chance of completing the project and thereby the balance value of work, together with interest at 18%;

Claim VIII: directing the respondent to pay the claimant a sum of Rs.4,82,28,379/- towards balance escalation in the price of BoQ for milestones 2 and 3 being the difference between the actual escalation of 35% on account of delay in project and the escalation of 23.80% which was offered to the claimant together with interest at 18%;

Claim IX: directing the respondent to pay the claimant a sum of Rs.4,08,46,024/- towards additional overheads incurred by the claimant on account of the project delay caused by the respondent together with interest at 18%; and

Claim X: directing the respondent to pay the claimant a sum of Rs.41,63,815/- towards unrecovered advances paid for material and labour, which went unutilised on account of the delays and premature termination of the contract by the respondent together with interest at 18%."



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(x) The first respondent filed a statement of defence and denied all the claims made by the petitioner. The first respondent also made a counter claim of 20% of the works not completed, towards which, the first respondent incurred additional costs. The first respondent made a counter claim as follows:

"(i) to declare that the respondent is entitled to a sum of Rs.4,00,40,543/- towards additional costs for the default committed by the claimant;

(ii) to declare that after adjusting the amounts payable to the claimant, the respondent is entitled to a sum of Rs.1,68,64,297/-;

(iii) to direct the claimant to pay a sum of Rs.1,68,64,297/- with interest at 8% per annum from 15.9.2008 to till the date of payment; and

(iv) to direct the claimant to pay the cost of arbitration."

(xi) The Arbitral Tribunal, based on the pleadings, framed the following issues:

"(1) Whether the claimant submitted the programme as per the terms of contract?

(2) Whether the respondent delayed in issuing the drawings, issuing coordinates and levels?

(3) Whether the claimant had mobilised required men and machinery as per the requirements of the work?



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(4) Whether there were hindrances in the site handed over by the respondent that has hampered the progress of work and caused delays as contended by the claimant?

(5) What was the reason/necessity for the execution of (i) supplementary agreement dated 29.11.2006 and (ii) additional supplementary agreement dated 04.7.2008?

(6) Was there delay on the part of the respondent in making payment to bills as contended by the claimant?

(7) Who is the causer of delays – is it the claimant or the respondent? Whether this has any significance in view of the two supplementary agreements executed by both the parties?

(8) Was the claimant right in stopping the works citing reasons of non payment of bills for a period of more than 60 days?

(9) Whether the respondent was right in terminating the contract citing reasons of fundamental breach committed by the claimant?

(10) Whether the claims of the claimant are admissible under the terms of contract? And

(11) Whether the counter claim of the respondent is admissible under the terms of contract?"



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(xii) The petitioner examined C.W.1 and C.W.2 and marked Ex.C.1 to Ex.C.88. The first respondent examined R.W.1 and marked Ex.R.1 to Ex.R.95 and towards the counter claim, the first respondent marked R.C.1 to R.C.8.

(xiii) The Arbitral Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, passed the following award:

"Claim I: Rs.3,55,21,680/- plus interest @ 8% from 30.6.2008 to the date of award;

Claim II: Rs.9.75 lakhs plus 8% interest from the date due to the award;

Claim III: The escalation @ 23.80% is payable for the IPC-15 and 16 and design charges from the date due to the date of award;

Claim IV(a) : For non utilization of material Rs.37.76 lakhs with interest 8% w.e.f. 03.4.2007 to the date of award;

Claim IV(b) : The claim is allowed for Rs.20.70 lakhs;

Claim V : Claim for bank charges Rs.9,15,213/- plus 8% interest from 01.4.2009 to date of award. If not paid within 60 days from the date of award, interest to be paid @ 18% till the date of payment;

Claim VI : Idling charges Rs.5,97,52,520/- is payable and no interest is payable;



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*Claim VII : Loss of profit Rs.1,82,91,548/-
and no interest is payable;*

*Claim VIII : Escalation of balance amount
NIL;*

Claim IX : NIL

Claim X : NIL."

(xiv) The counter claim was allowed and the counter claim made towards 20% of the value of the work not executed under the contract was quantified at Rs.4,00,40,543/- and the said amount was set off from the amounts due and payable to the petitioner and the petitioner was directed to pay a sum of Rs.1,68,63,167/- to the first respondent towards the counter claim. Further, 8% simple interest was also allowed from 01.2.2011 till date of payment of the award amount. Aggrieved by that, the petitioner filed the above original petition.

4. The learned counsel appearing on behalf of the petitioner submitted as follows:

(a) The petitioner was constrained to suspend the work during the first week of August 2008 due to the breach committed by the first respondent on failure to make payments for the bills for more than 60 days. Since the work was suspended, the first respondent proceeded to terminate the contract on 04.10.2008 with effect from 15.9.2008 at



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the risk and costs of the petitioner. The petitioner was further informed that the first respondent would start the pending work through a third party. A sum of Rs.49 lakhs was also imposed on the petitioner towards liquidated damages.

(b) The nature of work warranted cooperation and timely support by the utility agencies and since the other contractors were also involved in the same project, a synchronised effort from all concerned was of paramount importance for the timely completion of the project. The petitioner had made all arrangements for the completion of the project by engaging men and materials and incurred extensive administrative expenditure in this regard. There was a delay in the completion of the project only due to the reasons attributable against the first respondent. Therefore, only MS1 was achieved and the work in MS2 and MS3 was getting delayed and it resulted in idling of the built up capacities and shooting up of overheads.

(c) The supplemental agreement and the additional supplemental agreement, through which, the period was extended for MS2 and MS3 and the rates were also increased, did not help in the completion of the project. To add to the woes of the petitioner, the first respondent did not make payments for the invoices, which were raised and several



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reminder letters sent also did not evoke any response. As a result, the first respondent committed the fundamental breach of the agreement and the petitioner was forced to suspend the work. Taking advantage of the same, the first respondent terminated the contract through the notice dated 04.10.2008.

(d) The Arbitral Tribunal did not approach the dispute in a proper perspective and the findings rendered by the Arbitral Tribunal were contrary to the evidence. The petitioner submitted certain modifications in the working drawings and it was approved only on 09.12.2005. Apart from that, the issue of delay pales into insignificance in view of the supplemental agreement and the additional supplemental agreement that were entered into between the parties by extending the period for completion of MS2 and MS3. However, the Arbitral Tribunal attributed the delay against the petitioner.

(e) As per Clause 54.2, the non payment of bills for more than 60 days would result in breach of the agreement and therefore, the petitioner was entitled to suspend the work. Such suspension of work was done after issuing three letters dated 18.7.2008, 18.8.2008 and 01.9.2008 whereas without considering any of these letters the



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termination notice was issued by the first respondent. Ultimately, the first respondent was able to complete the work by fixing the rates, which were exorbitantly higher than what were fixed for the petitioner.

(f) Even though the balance work was executed with the help of third parties as per Clause 55.1, the first respondent could recover from the petitioner only 20% of the value of the work not executed under the contract by the petitioner, which would mean that it must be recovered at the rate of 20% of the additional costs only and even such costs could be recovered only in the event of termination on account of the fundamental breach by the contractor. In the case in hand, the fundamental breach was committed only by the first respondent.

5. Per contra, the learned counsel appearing on behalf of the first respondent submitted that the Arbitral Tribunal took into consideration the entire evidence available and also the relevant clauses in the agreement and rendered the findings and that the same were not liable to be interfered with by this Court.

6. This Court has carefully considered the submissions of the



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learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. Two major issues that arise for consideration in this case are as follows:

(i) Whether the first respondent committed fundamental breach under Clause 54 of the contract, which resulted in the petitioner suspending the work? And

(ii) Whether certain claims made by the petitioner, which were rejected and the counter claim made by the first respondent, which was allowed, suffer from perversity and/or patent illegality.

8. In the case in hand, the work was divided into three milestones starting from Madhya Kailash Temple upto Siruseri. It involved construction and maintenance of service ducts on the IT corridor for a length of 37,250 RMTs. Initially, a period of seven months was fixed and it was thereafter extended for three months upto 14.8.2006 and once again, for a further period of two months upto 14.10.2006. Due to further delay in the completion of the work, the supplemental agreement was entered into on 29.11.2006 and the period was



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extended with a marginal increase in the rates. The additional supplemental agreement was entered into on 04.7.2008 further extending the period for completion of works.

9. The main allegation that has been made on the side of the petitioner is that there was a delay in issuing the drawings, coordinates and finished road levels.

10. While dealing with the issue of delay, the Arbitral Tribunal took into consideration the fact that the drawings and the other specifications such as providing size of angles, pipe sleeves, etc., were available with the petitioner prior to 21.10.2005. This was spoken to by C.W.2 during examination. Apart from that, the petitioner was also provided with the required coordinates, levels, drawings, etc., and this was confirmed by the letter dated 21.11.2005 (Ex.R.15) and the letter dated 14.11.2005 (Ex.R.27). This was once again discussed during the meetings held on 23.11.2005 and it was mentioned in the letter dated 24.11.2005 (Ex.R.81).

11. It is also seen from the letter dated 24.4.2006 wherein the



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Team Leader expressed his concern that as on 24.4.2006, the petitioner was not even able to complete one single running meter of duct whereas the petitioner was supposed to complete 37,250 RMTs of duct work by 12.5.2006. In any event, extension of time was granted at least four times upto 31.8.2008 and in the supplemental agreement, it was agreed that the petitioner would pay the liquidated damages at the rate of Rs.1 lakh per day for the works that remained incomplete beyond the stipulated completion dates. In fact, to reduce the burden on the petitioner, the ECR Link Road was segregated and it was made a separate contract.

12. The petitioner stopped/suspended the work from the first week of August 2008 and it was stated that the work was abandoned from the first week of September 2008, which, according to the first respondent, was the fundamental breach under Clause 54.2 of the contract and which resulted in the termination of the contract.

13. On the other hand, the contention raised on the side of the petitioner was that the non payment of the certified dues was a fundamental breach of contract, which entitled the petitioner to



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suspend the work under Clause 54. The main reason that was assigned by the petitioner for the suspension of work was the non payment of Interim Payment Certificate (IPC) – 15 and 16.

14. It must be borne in mind that the running account bill is submitted by the contractor and only if the said bill is certified, it becomes an IPC. Once the payment is certified, it has to be paid within a period of 60 days from the date of the Engineer's certificate, failing which, it will result in the fundamental breach of contract under Clause 54.2(c).

15. Even though the petitioner claims that the certified bill was not cleared under IPC – 15 and 16, the evidence proves otherwise. The petitioner has admitted and agreed that for the works carried upto 30.6.2008, which were certified by the Engineer upto IPC – 14, the payments have been made. As per Clause 39.1(f), the petitioner should submit to the Engineer monthly statements with supporting documents/details. Running account bill No.14 was submitted on 01.11.2007 and it was certified under IPC – 14 and paid to the petitioner.

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16. However, nearly after six months, the petitioner submitted running account bill No.15 dated 13.5.2008 for a sum of Rs.5,85,71,824/-, which was received by the Engineer on 14.5.2008. This involved reconciliation of quantities from November 2007 onwards and therefore, it had to be verified by the Engineer. The petitioner did not provide a supporting material and therefore, the Engineer was asking the petitioner to explain the basis of the claim made. The various correspondences that are available on record would show that the bills were submitted without enclosing the request for inspection (RFI) and the supporting documents. The Engineer is expected to act upon the same and conduct supervision while carrying out the works. Therefore, on one occasion, the Engineer, through the letter dated 19.2.2008 (Ex.R.45), advised the petitioner to strictly submit the RFI 48 hours in advance to the Engineer. None of these formalities was complied with by the petitioner.

17. After submission of running current bills – 15 and 16, there were series of correspondences exchanged between the parties and it is evident from Ex.R.46 to Ex.R.51. But, for the reasons best known to

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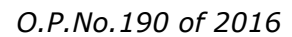


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the petitioner, running account bill -15 submitted on 13.5.2008 for Rs.5.85 Crores was withdrawn and it was substituted by another running account bill for Rs.5.87 Crores for the works done during November 2007 to June 2008. The Engineer, on receipt of the same, directed the petitioner to rectify the defects mentioned in the RFI and to get the approval for those works done without the knowledge of the Engineer. For this purpose, the petitioner was supposed to regularise the work by conducting standard tests to ensure the quality of the work.

18. The petitioner had chosen to address the letter dated 18.7.2008 wherein the petitioner complained that bill No.15 for Rs.5.87 Crores has been pending for a long time and that therefore, the petitioner informed that they were not able to continue with the work due to financial commitments. When the letter dated 18.7.2008 was addressed by the petitioner, all the earlier correspondences exchanged between the petitioner and the Engineer (Ex.R.40, Ex.R.41, Ex.R.46 and Ex.R.47 to Ex.R.53) were suppressed.

19. In short, the petitioner was attempting to get the payment as



20. Under Clause 54.2(a), when a contractor stops the work for 28 days, when no stoppage of work was shown in the current programme and when the stoppage has not been authorised by the Engineer, it results in the fundamental breach of contract on the part of the contractor. Thus, the suspension of work by the petitioner, which was subsequently abandoned, was considered as a fundamental breach of contract under Clause 54.2(c) of the agreement.

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asking the petitioner to countersign and send back the revised IPC – 15 for further action. Only thereafter, the petitioner acted upon the same and the Engineer forwarded the bill for payment of a sum of Rs.38,00,720/-. Thus, the petitioner became eligible for payment under the revised IPC – 15 only from 16.9.2008 and this payment was also made on 23.9.2008. The bill, which was certified on 16.9.2008, was cleared and paid to the petitioner on 23.9.2008. Therefore, there was no fundamental breach of contract in so far as IPC – 15 is concerned.

22. In the meantime, the petitioner had already stopped the work from the first week of August 2008. On the day when the petitioner suspended/abandoned the work, no amount was due and payable to the petitioner on a certified bill. The availability of unsecured advances paid to the petitioner to the tune of Rs.5 Crores was outstanding from the petitioner and it was also admitted by C.W.2 in the course of giving evidence.



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23. In so far as IPC – 16 is concerned, it was certified on 20.8.2009 and the net amount payable to the petitioner was Rs.2,98,20,245/- under IPC – 16. In any case, the certification of this bill and the payment was much after the petitioner had suspended/ abandoned the work.

24. The Arbitral Tribunal had taken into consideration the issue regarding the delay, appreciated the evidence available on record and rendered its findings. In so far as the delay caused by the petitioner is concerned, the Arbitral Tribunal discussed the same in paragraphs 8.3.5 to 8.3.7 of the award and came to the conclusion that the petitioner caused the delay in mobilizing the required major equipment and mobilizing insufficient labour force, for which, the first respondent could not be held responsible. This finding was rendered on appreciation of evidence and this Court cannot sit on appeal on such a factual finding.

25. In so far as the necessity for execution of the supplemental agreement is concerned, the discussion has been done from paragraphs 8.5.21 to 8.5.28 and the grounds raised by the petitioner



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had been rejected. Even these findings are as a result of appreciation of evidence and on appreciation of relevant clause in the supplemental agreement and they do not warrant the interference of this Court.

26. The findings regarding the stoppage/abandonment of work and the fundamental breach committed on the side of the petitioner have been properly dealt with by the Arbitral Tribunal and the same do not require the interference of this Court.

27. Each claim made by the petitioner has been independently considered and wherever the claim has to be granted, the same has been granted by quantifying the same.

28. The other major grievance pertained to the counter claim granted in favour of the first respondent and the set off of the claims granted in favour of the petitioner from the counter claim awarded in favour of the first respondent.

29. In so far as the counter claim is concerned, the entire details regarding the additional costs incurred by the first respondent was



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placed before the Arbitral Tribunal. R.C.1 to R.C.10 were relied upon and it was spoken to by R.W.1.

30. This Court has already upheld the termination of the contract by the first respondent due to fundamental breach of the contract on the part of the petitioner. Hence, Clause 55 of the contract gains significance since it provides for payment upon termination. As per this clause, the amounts payable to the petitioner will be derived taking into consideration the value of the work done **less** the advance payments received **less** the other recoveries due in terms of the contract **less** taxes due to be deducted at source as per applicable law and **less** the percentage to apply to the works not completed as indicated in the contract data. Under the contract data, which formed part of the agreement, the percentage to the works not completed is indicated as 20%.

31. The petitioner had executed the works to the tune of Rs.16,41,02,267/-, which covers IPC - 1 to IPC -16. The petitioner had executed only 45% of the value of works after a lapse of 35 months. Since the petitioner suspended the work and abandoned the project,



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the contract was terminated due to fundamental breach of the contract. In view of the same, the first respondent had to necessarily complete the remaining works through the third parties at the risk and cost of the petitioner.

32. As per Clause 55.1 read with the contract data, the balance work amounting to Rs.20,02,02,715/- was not executed by the petitioner. As per the contract data, 20% of the value of the work not completed is recoverable from the petitioner. This amount was arrived at Rs.4,00,40,543/-.

33. The petitioner has taken a ground that it had to be read as 20% of the additional costs only and that even this recovery could not be made since there was a breach of the contract by the first respondent.

34. This Court has already held that the fundamental breach of contract was on the part of the petitioner and the finding of the Arbitral Tribunal has been upheld.



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35. In so far as the recovery of 20% is concerned, it can only be out of the additional cost incurred by the first respondent. This cost is determinable from the balance work that was completed by awarding the contract in favour the third parties. The final bill value showing the actual cost incurred by the first respondent was submitted under R.C.9 along with the supporting documents, which were the final bills annexed as R.C.10 series. The balance works were quantified as Rs.20,02,02,715/- and 20% of the same was quantified at Rs.4,00,40,543/-. The Arbitral Tribunal dealt with the counter claim in paragraphs 8.11.1 to 8.11.4 and rendered a finding that the first respondent would be entitled to 20% of the works not executed amounting to Rs.4,00,40,543/- towards additional cost incurred by executing the balance works on termination through the third party contractors.

36. This finding of the Arbitral Tribunal is well in line with Clause 55.1 of the conditions of contract read with the contract data. The Arbitral Tribunal has rightly set off this amount from the amounts payable towards various claims allowed in favour of the petitioner. While undertaking this exercise, the Arbitral Tribunal also took into



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consideration the amount that was available to the petitioner with respect to the other contract pertaining to the ECR Link Road. Ultimately, the Arbitral Tribunal determined the sum of Rs.1,68,63,167/- as the amount payable to the first respondent by the petitioner towards the counter claim after adjustment of the amounts payable to the petitioner.

37. The above findings rendered by the Arbitral Tribunal are supported by sufficient reasons and this Court does not find any reasoning to suffer from perversity or patent illegality warranting the interference of this Court.

38. In the light of the above discussions, this Court finds that the award does not fall foul of any of the contingencies provided under Section 34 of the Act.

39. Accordingly, the above original petition stands dismissed. No costs.

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Neutral Citation : Yes (or) No

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