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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2025

PRONOUNCED ON : 05.11.2025

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

OP No. 917 of 2018

1.Southern Railway
Rep.by The Chief Engineer (South)
Office of the Chief Administrative
Officer / Construction
183, E.V.R.Periyar High Road,
Egmore, Chennai-600 008.

2. The Deputy Chief Engineer
Gauge Conversion Unit-I,
Southern Railway, State Bank Road,
(MC Donalds Road), Tricchy-620 001.

..Petitioner (s)

.Vs.

M/s.Sri N.Jayachandran
M/s.Nilakantan and Son Pvt. Ltd. ,
No.2, First Floor, Gokul Towers, No.7,
C.P.Ramasamy Road, Alwarpet,
Chennai-600 018.

..Respondent(s)

**PRAYER**

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the arbitral award passed by the Learned Arbitrator herein dated 05.03.2018 made in relation to disputes arising out of Agreement No.154/CN/05 dated 18.05.2005 is concerned.

For Petitioner(s): Mr. P.T. Ramkumar

For Respondent(s): Mr. K.Harishankar

ORDER

This Original Petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, herein after referred to as 'the Act') against the award dated 05.03.2018 passed by the Sole Arbitrator.

2.The Respondent is a construction Company involved in the infrastructure projects. They were awarded a contract relating to the work of construction of Bridge No.140 at KM 143/9-10(6*19.20) with PSC box girders with open foundations as part of Cuddalore, Vriddhachalam-Salem section as part of gauge conversion project. The total value of the work was



Rs.2,43,89,324/-. The contract period was fixed for six months from the date of

Letter of Acceptance however it was periodically extended from time to time

and ultimately the contract was foreclosed by the Respondent on 28.08.2006.

3.The dispute was referred to the Sole Arbitrator and the Respondent made various claims pertaining to the payment of compensation, losses, claim for final bill, etc.

4.The substantiation made by the Respondent/Claimant, the defence that was raised by the Petitioner/Railways and the findings rendered by the Arbitral Tribunal are tabulated hereunder:

S. No.	Description of Claim	Substantiation made by the Claimant	Defence raised by the Respondent	Findings rendered in the Arbitral Award
Claim 1	Loss of profit due to foreclosure of work.	The Respondent's unjustified foreclosure of the contract valued at Rs. 2,43,89,324/-, after execution of work worth Rs. 97,73,450/-, deprived the Claimant of expected profit. The Claimant accordingly claims 15% of the balance contract value, amounting to Rs. 21,92,238/-, towards loss	The Claimant's own letter dated 28.08.2006 shows that foreclosure was sought by the Claimant. Hence, the Claimant cannot claim any loss for the same.	The Tribunal held that the Respondent is liable for denying the Claimant the opportunity to earn profit on the unfinished work. Awarded compensation at



		of profit.		a rate of 15% on the recalculated balance value, the Tribunal directed payment of Rs. 21,92,381/-.
Claim 2	Losses due to Flood Damages	The Claimant seeks Rs. 9,21,196/- towards losses allegedly caused by unprecedented floods during October–December 2005, contending that the delay and the exposure to floods were due to the Respondent's breaches and failure to hand over the full site and drawings in time.	The losses due to floods fall under Act of God (Force Majeure), and therefore, the Railways cannot be held responsible for such damages.	The Tribunal held that the Respondent was predominantly responsible for the delays which necessitated an overstay during the floods. Consequently, the Respondent was directed to compensate the Claimant for the established losses and awarded the claimed sum of Rs. 9,21,196/-.
Claim 3	Losses due to infructuous overheads	Though the contract period was six months, due to delays and breaches by the Respondent, the Claimant had to remain mobilised at site till October–November 2007 with staff and equipment, leading to infructuous expenditure. Applying Hudson's formula and relying on audited accounts accepted by the Income Tax Authorities, the loss towards overheads and profit was quantified at Rs. 70,84,176/-, and reimbursement of the said amount was sought from the Respondent	As per the agreement and General Conditions of Contract, there is no provision for compensating infructuous overheads. Further, since foreclosure was sought by the Claimant, they cannot claim such losses.	The Tribunal held that the Claimant, due to the Respondent's breaches, was required to remain on site with its establishment for a prolonged period beyond the original contract period, incurring infructuous overheads. While the Claimant proposed a



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				theoretical calculation, the Tribunal found the amount derived from the Claimant's audited accounts and balance sheets, amounting to Rs. 61,06,831/-, to be a more realistic and acceptable basis for the actual overheads incurred. However, the award was limited to the proportion attributable to the extended period of 16 months and awarded Rs. 44,41,332/- for this claim. The Tribunal further held that no separate amount was warranted for "loss of profitability," as the Claimant was adequately compensated through this and other claims.
Claim 4	Losses due to the extended use of machinery, equipment,	The contract period was for 6 months. However, due to delays and breaches by the Respondent, the Claimant had to retain its machinery, equipment, materials, and	The claim is untenable as the extension of time was granted under relevant clauses, which form part of the contract	The Tribunal held that the Claimant was entitled to compensation as they were disabled from



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	materials and infrastructure	infrastructure at site from 24.02.2005 to October 2007, incurring additional costs. Based on standard hire charges and allowing 15% towards maintenance, the loss for the extended period was quantified at Rs. 82,90,626/-, which was claimed as compensation for the prolonged use of machinery and infrastructure caused due to Respondent's defaults.	terms.	deploying its resources elsewhere due to delays attributable predominantly to the Respondent. The methodology of calculating losses based on reasonable hire charges, after accounting for deductions for monsoon periods and maintenance, was accepted. The computed loss for the extended period was Rs. 33,91,620/-. However, taking into account certain deficiencies attributable to the Claimant, the Tribunal awarded 50% of this amount and directed the Respondent to pay a sum of Rs. 16,95,810/- against this claim.
Claim 5	Losses due to extended use of labour	Due to delays and breaches by the Respondent, the Claimant had to retain labour at site for 28 months up to June 2008. Taking 20% of the contract value (Rs.	The claim, raised after more than a decade, is unsupported by records such as M-books or relevant documents. The	The Tribunal held that while compensation for extended labour deployment was generally



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		2,43,89,324/-) as the labour component and allowing a 75% reduction for decreased labour strength, the loss for the extended period of 16 months was computed at Rs. 32,51,904/-, claimed as compensation for extended labour deployment.	alleged idling of labour and machinery remains unsubstantiated and no valid reason has been offered for the delayed submission.	justifiable due to the Respondent's breaches, the Claimant failed to discharge its burden of proof. The Claimant could not produce cogent labour records, such as registers, to substantiate the claim, citing the lapse of time and stating the documents were in the Respondent's custody. The Tribunal found it difficult to quantify the claim with reasonable accuracy and noted that labour deployment would not have remained at full complement during periods of slow progress. Consequently, this claim was rejected for lack of merit.
Claim 6	Losses due to the increased cost of carrying out the works	Due to the Respondent's delays, the Claimant executed major portions of work during the extended period from 24.08.2005 to 23.08.2006 and 24.08.2006 up to June 2007. The work value increased from Rs. 38,22,741/- to Rs.	The contractor failed to note that the contract period had been extended on 4 occasions (24.08.2005 to 30.09.2006) under Clause 17A(ii) of the GCC, which clearly	The Tribunal held that the Claimant was justifiably entitled to compensation for increased costs incurred during the extended



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		70,76,078/-, causing additional costs of Rs. 3,25,337/- for paid work and Rs. 5,39,874/- for unpaid work, totalling Rs. 8,65,211/- as compensation.	stated that no rate increase would be payable due to extension. Hence, no claim for escalation or increased cost is maintainable.	period of contract, which was predominantly due to the Respondent's defaults. However, the Tribunal found the Claimant's specific calculation method unacceptable. Instead, a simplified calculation was adopted, applying a 10% escalation rate to 85% of the work value executed after the original contract date. Consequently, the Tribunal directed the Respondent to pay a sum of Rs. 5,05,810/- against this claim.
Claim 7	Final Bill	Due to stoppage of payments after CC Bill No. V (paid on 03.08.2006), the Claimant was deprived of cash flow despite the execution of further works. The value of work done but not billed, including additional items, was Rs. 26,97,372/-. Amounts due included Rs. 7,07,608/- (retention), Rs. 50,000/- (EMD), and Rs. 86,250/- (Bank Guarantee	The final bill is to be quantified and vetted by the Associate Finance before submission to the Arbitral Tribunal. The Claimant's own letter dated 28.08.2006 seeking foreclosure establishes that no loss due to foreclosure can be claimed.	The Tribunal held that the Claimant's figures for the final bill were more reliable and credible than the Respondent's varying figures. The award includes the value of works



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		commission). The total claim towards the final bill was Rs. 35,41,230/-, sought as payable by the Respondent.		executed but not billed, the retention amount, and the E.M.D., totalling Rs. 34,54,980/-. The claim for Bank Guarantee commission was denied for lack of proof, and the Respondent was found unreasonable in seeking recoveries for delays in pre-stressing, which were attributable to its own deficiencies.
Claim 8	Consultancy fees for the preparation of designs and drawings for the foundation and substructure	For approved foundation and substructure designs, the Claimant executed work worth Rs. 68,59,924/-, adding 70% of steel and cement value (Rs. 56,26,880/-), totalling Rs. 1,24,86,804/-. A 4% consultancy fee was applied, claiming Rs. 4,99,472/- from the Respondent.	The contractor engaged M/s. Jayshila Consultants without prior approval or adherence to tender procedures. Since such engagement was unilateral and irregular, the claim for consultancy charges is not admissible.	The Tribunal held that the Respondent was justified in paying a design fee, as the Claimant's consultant prepared the designs and drawings that were adopted for the bridge construction. Noting the industry practice and the Respondent's own history of paying a 5% fee for such services, and given that the designs covered



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				approximately 40% of the total contract value, the Tribunal awarded a sum of Rs. 4,87,786/- for this claim.
Claim 9	Damages due to nonpayment / delay on various claims	Due to non-payment and delays caused by the Respondent, the Claimant suffered financial losses and had to borrow at high interest rates from Banks and Private financiers. Damages were sought at 18% interest per annum for pre-reference, pendente lite and future periods, calculated from 27.10.2007- the date on which Arbitration was invoked.	Payments up to the fifth bill, amounting to Rs. 70,76,078/-, were made by 09.06.2006. The delay arose only because the contractor failed to renew the guarantee bond beyond 05.04.2006. Therefore, there was no delay attributable to the Railways.	The Tribunal held that the Claimant was entitled to compensation for the grievous business losses and irretrievable damages inflicted by the abnormal delay of over ten years in receiving monies rightfully due, a situation predominantly caused by the Respondent's breaches and failure to timely initiate Arbitration. While the Claimant sought damages at 18% per annum, the Tribunal held this rate as unreasonable. However, rejecting the Respondent's stand to deny interest entirely based on contract clauses, and relying on principles of natural justice,



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				the Indian Contract Act, and Apex Court judgments, the Tribunal directed the Respondent to pay damages at a simple interest rate of 7% per annum on the awarded amounts from 27.10.2007 until the date of actual payment.
Claim 10	Cost of Arbitration	The Claimant sought reimbursement of the actual cost of Arbitration proceedings, as they were compelled to initiate Arbitration due to the Respondent's actions.	As per law, the cost of Arbitration is to be equally borne by both parties. Since the proceedings were initiated by the claimant, he is bound by the prescribed rule for sharing the cost.	The Tribunal directed that each party shall bear its own costs of the Arbitration proceedings. Consequently, no amount is payable by either party to the other under this claim.

5.This Court has carefully considered the submissions made on either side and perused the materials available on record.

6.Before this Court proceeds to consider the grounds raised in this petition, this Court must bear in mind that the Arbitrator was a former CAO of



Southern Railways (Chief for all Chief Engineers), Additional Member of Railway Board, Director of Chennai Metro and Advisor of Nagpur Metro and Cochin Metro. It is quite evident that the Arbitrator was a highly technically qualified person who understands the nature of the project involved in depth from top to bottom.

7. In considered view of this Court, whenever the Court is called upon to exercise its jurisdiction under Section 34 of the Act, the Court must bestow its attention as to the qualification of the Arbitrator. This is more so, where it involves projects with technical specifications which is best understood by an Arbitrator who is technically qualified. Therefore, while dealing with an award passed by an Arbitrator with such technical qualification in a case involving a project governed by technical specification and time period, the Court should not sit on an appeal on the findings rendered touching upon the areas hovering around those technical specifications and time period and the Court must only see if such findings are perverse and it suffers from patent illegality.



8. Keeping the above in mind, this Court will now go into the various grounds taken against the award passed by the Sole Arbitrator.

9. The submissions of the learned counsel for the Petitioners mainly focused on the award granted under the heads of loss of profit due to foreclosure of work, losses due to flood damages, losses due to infructuous overhead and losses due to extended use of machinery, equipment, materials and infrastructure.

10. The learned counsel for the Petitioners further questioned the award on the ground of granting pendente lite interest when there was a specific bar under Clause 64.5 of the General Conditions of Contract (hereinafter called as 'GCC'). The learned counsel also relied upon Clauses 17A(ii) and 17A(iii) of the GCC which makes it clear that even if there is a delay on part of the Railways, it will not vitiate the contract and that the contractor cannot claim for any compensation on damages.



11. The learned counsel for the Petitioners also submitted that the Sole Arbitrator while granting compensation for loss of profit or loss due to extended use of machinery, equipment, materials, etc., has not even assigned reasons as to how the damages/compensation was quantified and therefore the award is unintelligible.

12. The above submission made by learned counsel for the Petitioners cannot be sustained for the simple reason that the Sole Arbitrator had structured the award in such a manner that he first goes into the various documents filed on either side and deals with them in detail and thereafter he gives his reasoning and after undertaking that exercise, the Sole Arbitrator discusses each and every claim that was made by the Respondent and grant/reject the claim. Therefore, while dealing with such an award, this Court must bear in mind the judgement of the Apex Court in ***Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd*** reported in ***(2019) 20 SCC 1*** and the relevant portions are extracted hereunder:

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair



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reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier



manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

13. This Court must also keep in mind the judgement of the ***OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd.***, reported in ***(2025) 2 SCC 417*** and the relevant portions are extracted hereunder:

80. We find ourselves in agreement with the view taken in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1, paras 27-43] , as extracted above. Therefore, in our view, for the purposes of addressing an application to set aside an arbitral award on the ground of improper or inadequate reasons, or lack of reasons, awards can broadly be placed in three categories:

(1) where no reasons are recorded, or the reasons recorded are unintelligible;

(2) where reasons are improper, that is, they reveal a flaw in the decision-making process; and

(3) where reasons appear inadequate.



81. Awards falling in Category (1) are vulnerable as they would be in conflict with the provisions of Section 31(3) of the 1996 Act. Therefore, such awards are liable to be set aside under Section 34, unless:

- (a) the parties have agreed that no reasons are to be given, or*
- (b) the award is an arbitral award on agreed terms under Section 30.*

82. Awards falling in Category (2) are amenable to a challenge on ground of impropriety or perversity, strictly in accordance with the grounds set out in Section 34 of the 1996 Act.

83. Awards falling in Category (3) require to be dealt with care. In a challenge to such award, before taking a decision the Court must take into consideration the nature of the issues arising between the parties in the arbitral proceedings and the degree of reasoning required to address them. The Court must thereafter carefully peruse the award, and the documents referred to therein. If reasons are intelligible and adequate on a fair reading of the award and, in appropriate cases, implicit in the documents referred to therein, the award is not to be set aside for inadequacy of reasons. However, if gaps are such that they render the reasoning in support of the award unintelligible, or lacking, the Court exercising power under Section 34 may set aside the award.



14.If the above yardstick fixed by the Apex Court is applied to the award passed by the Sole Arbitrator, this Court does not find the award to suffer from lack of reasons or the reasons recorded are unintelligible or the reasons are improper in view of the flaw in the decision-making process. What is mandated under Section 34(3) of the Act is that the award must contain reasoning which is intelligible, adequate and which is discernible from a fair reading of the award and the documents referred thereunder.

15.In so far as the issue regarding loss of profit due to foreclosure of work is concerned, the Sole Arbitrator had first taken into consideration all the relevant clauses in the agreement and also in the GCC and taken note of the objections raised by the Southern Railways and the Sole Arbitrator first holds that those objections are relevant and it cannot be overlooked and brushed aside. While giving these findings, the Sole Arbitrator states that he had worked in Railways and had experience of managing the Railway projects for several years and appreciates the importance of these clauses. He also cautioned himself that these clauses are meant to prevent the contractors from coming up



with unreasonable claims at every little opportunity when the delays are minor and manageable without any large-scale financial implications and are presumed to be taken into consideration while quoting for the tender.

16.The Sole Arbitrator after making all the above observations gets into the nitty-gritties of the various documents qua the clauses in the agreement and the GCC. Ultimately, the Sole Arbitrator has reached a finding that the Claimant was putting adequate effort to speed up the work in the available sites but however, the Railways was found to have defaulted by causing long delays in issuing the execution of drawings and thus it is the Railways which has caused serious breach of contract.

17.The above findings rendered by the Sole Arbitrator are supported by reasons and it is intelligible and such findings have been rendered after appreciation of the evidence qua relevant clauses in the contract and GCC.



18. The Sole Arbitrator had taken into consideration yet another important fact which is that the Southern Railways did not hand over the necessary drawings to the Claimant and it was only the Claimant who had organised those drawings and started the substructure and foundation which was also approved by the Chief Engineer. In fact, the Southern Railways was not even able to produce the drawings pertaining to this work and the work of foundation and substructure went on only based on the drawings prepared by the consultant belonging to the Claimant. The Sole Arbitrator also took into consideration the fact that there were serious misgiving/differences between the Deputy Chief Engineer and the Executive Engineer and as a result of which there was poor progress in the completion of the project. That apart, the Sole Arbitrator also took into consideration the damages incurred by the Claimant due to untimely floods. In so far as the ground raised by learned counsel for the Petitioners, that the Claimant had foreclosed the work on 28.08.2006 and in spite of the same, was claiming for compensation beyond that period up to June 2007. The Sole Arbitrator had applied his mind and considered the fact that hindrance free site was possible only during the year 2007 and Claimant was able to transfer all the



unused materials only during the end of December 2006 which is evident from various communication sent by the Claimant and which was relied upon by the Sole Arbitrator.

19. In so far as loss of profit and loss of profitability is concerned, I had an occasion to deal with these concepts in a recent judgement in OP No. 494 of 2018 dated 06.10.2025. After considering all the relevant judgements, this Court held that a contractor who is wrongfully prevented from completing a contract is entitled to damages for loss of profit calculated broadly and not requiring detailed proof. However, when it comes to loss of profitability from delays or lost opportunities/missed opportunities from other available contract, it requires specific evidence. In the former, applying Hudson's formula or Eichleay's formula or even an amount of reasonable guess work, is allowed. However, in the latter, for the purpose of assessing losses, the contractor has to necessarily prove with evidence the loss of profit and opportunities if suffered owing to the prolongation of the period of contract.



20. In so far as loss of profit is concerned, the Sole Arbitrator has granted 15% of the value of the unfinished goods based on the percentage claimed by the Petitioner/Railways in the counter claim. This is a very reasonable method adopted by the Sole Arbitrator while determining the compensation under the head of loss of profit.

21. In so far as compensation under the head loss due to flood damages is concerned, the Sole Arbitrator has taken into consideration the severe flood conditions at Cuddalore based on the paper reports and also the communication that were sent by the Claimant. The learned counsel for the Petitioners submitted that there is no scope for awarding any compensation for the Act of God. However, the Sole Arbitrator has not awarded the compensation by treating it as an Act of God but has only taken into consideration the fact that such loss was in fact incurred by the Claimant and as a result at paragraph 7.2 of the award, it is seen that this compensation was granted within the four corners of the agreement between the parties.



22.The next issue pertains to losses due to infructuous overheads. As stated supra the learned counsel for the Petitioner submitted that, there was no reason for Claimant to overstay up to June 2007 and therefore the Claimant is not entitled for any compensation under this head. The Sole Arbitrator had taken into consideration the period between the Letter of Foreclosure till December 2006 and the Sole Arbitrator considered the works that were entrusted to the Claimant post foreclosure. This is a factual finding which cannot be interfered by this court. This Court also rejects the submissions made by the learned counsel for the Petitioner as if the findings in paragraphs 6.12 and 6.13 are contradicting each other. There is no contradiction in those findings since what the Sole Arbitrator has inferred in these two paragraphs pertains to a hindrance free site.

23.The Sole Arbitrator first adopted the formula for computing the overheads and carried out a theoretical calculation. Thereafter, the Sole Arbitrator adverts to the audited accounts and balance sheets for the years submitted before the Income Tax Authorities and relies upon the same to arrive



at a second method of computation and fixes the compensation under this head.

The compensation fixed under this head is well thought out and reasoned and it does not suffer from any perversity.

24. That apart, it was submitted that the books of accounts contained the overall overheads and it was not confined only to the site overhead. It must be borne in mind that there is an office work that happens in the background and while dealing with the overhead, it must include both the site overhead as well as the office overhead. Hence, this Court finds that the compensation awarded by the Sole Arbitrator is reasonable and does not require interference of this Court.

25. The next issue pertains to losses due to extended use of machinery, equipment, materials and infrastructure.

26. While dealing with this issue, the Sole Arbitrator had first taken into account the fact that, the Southern Railways was not responding to any of the



letters that was sent by the Claimant in order to remove the materials from the site. The Sole Arbitrator takes into account the extended use of the assets in the site and what has been ultimately awarded is only 50% of the amount arrived at. This is in view of the fact that the Sole Arbitrator finds that there were breaches committed on both sides and Railways were found to have committed most breaches.

27. It was attempted to be argued that such compensation claimed by the Claimant is virtually duplication of the claim that was already made under the head loss of infructuous overhead. This ground is not sustainable since it is an independent claim made by the Respondent and the Arbitrator had taken into consideration the additional hire charges paid by the Respondent and even though the Railways claim that they had given Letter of Acceptance to another contractor, that does not take away the eligibility of Respondent to claim losses under this head which has been substantiated through documents.



28.This Court finds that the compensation fixed under this head is reasonable and intelligible and it does not require the interference of this Court.

29.The last issue that was strenuously contended on the side of the Southern Railways pertained to the interest that was granted under the head of damages due to non-payment/delay on various claims.

30.The learned counsel for the Petitioner/Southern Railways submitted that there was a specific bar under Clause 64.5 of the GCC which states that no interest is payable on whole or any part of the money for any period till the date on which the award is made. Whereas the Sole Arbitrator has disregarded this clause and awarded pendente lite interest at the rate of 7% per annum from 27.10.2007 until the date of actual payment.

31.The learned counsel for the Petitioners relied upon the judgement of the Division Bench in ***OSA No. 388 of 2011 and 43 of 2012*** dated ***20.10.2023*** and the relevant portion relied upon is extracted hereunder:



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37. He had sought to interpret the provisions of the contract differently to enable interference with the award. We do not think that such an action can be sustained by us. However, while advertent to the award of interest, we find that the Arbitrator has granted interest against the provisions of the contract. We have extracted Clause 64.5, it very clearly prohibits the Arbitrator from granting pendente lite interest. Therefore, we do not think that that portion of the award could be sustained.

32. Per contra, the learned counsel for the Respondent/Claimant relied upon various judgements to contend that what has been granted as compensation by the Arbitrator is only interest as damages and not stricto sensu pendente lite interest.

33. The Division Bench of this Court had an occasion to deal with this issue in ***CMA (MD) Nos. 864 & 865 of 2019*** dated ***23.04.2025***. The relevant portion is extracted hereunder:

38. Granting of interest is well within the Public Policy Interest Act, 1975 allows the Courts to award interest as damages, and debts or in any proceedings in which as claim for interest in respect of any debt or damages if it thinks fit proper to the person



making the claim at the rate not exceeding the correct rate of interest for the whole or any part of period stipulate in the claim.

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34. On carefully going through the award, it is seen that the Sole Arbitrator had only granted damages by way of interest and it is not strictly a pendente lite interest as was attempted to be projected by the learned counsel for the Petitioner.

35. Interest can be awarded in terms of an agreement or statutory provision and it can also be awarded by reason of usage or trade having the force of law or on equitable consideration. However, when it comes to award of interest by way of damages, such a claim is awarded only when money due and payable has been wrongfully withheld and there are equitable grounds for which written demand has been made by the Claimant. In ascertaining the rate of interest payable under this head, the courts of law can take judicial notice of both inflation and also fall in bank rate of interest.



36. In the case in hand, the Sole Arbitrator had taken into consideration the fact that the monies were due and payable to the Claimant from the year 2007 itself. The Claimant made repeated demands, which were not settled. Therefore, the Sole Arbitrator found justification by ordering damages by way of interest. While undertaking this exercise, the Sole Arbitrator placed reliance upon various earlier judgements and directed the damages to be paid by way of interest at the rate of 7% (without compounding) per annum from 27.10.2007.

37. This Court finds that the damages awarded by way of interest and the interest that has been fixed by the Sole Arbitrator is in accordance with law and a very reasonable interest rate has been fixed and therefore it does not require the interference of this Court.

38. In so far as the compensation that has been granted under the other heads, it was purely based on appreciation of evidence and the same does not warrant interference of this Court.



39. In light of the above discussion, this Court finds that the award passed by the Sole Arbitrator does not suffer from any perversity or patent illegality and the award passed is supported by reasons which are intelligible and the amount awarded is also very reasonable. Accordingly, this Original Petition stands dismissed with cost of Rs.1,50,000/- payable by the Petitioners to the Respondent.

05-11-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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32

OP No. 917 of 2018



N.ANAND VENKATESH J.
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For Petitioner(s): Mr. P.T. Ramkumar

For Respondent(s): Mr. K.Harishankar

ORDER

After pronouncing the orders in the above original petition, it is brought to the notice of the Court that the petitioners have deposited 50% of the award amount with interest and it is lying in the account of the petition. Hence, the respondent is permitted to withdraw the amount already deposited along with the accrued interest. The balance amount shall be paid to the respondent, since the petition has been been dismissed.

05-11-2025

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35

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