IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2025

PRONOUNCED ON : 05.11.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

OP No. 918 of 2018

1.Southern Railway
Rep.by The Chief Engineer (South)
Office of the Chief Administrative
Office / 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.20/Dy.CE/GC/VRI/2005 dated 22.10.2005 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 yard earth work, cess work, provision of pale fencing at level crossing as per Agreement No. 20/Dy.CE/GC/VRI/2005 dated 22.10.2005. The project was to be completed within a period of four months. However, due to various reasons, it was extended from time to time and ultimately it ended in the termination of contract by the Petitioner on 29.01.2007.

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 the defaults and breaches of the contract by the Respondent and prevention of Claimant from completing	The Claimant claimed Rs. 8,83,434/-(15% of the unfinished work value) as loss of profit and stated that the Respondent's defaults and breaches prevented smooth progress and completion of the contract.	The Respondent denied the claim contending that the Claimant was a defaulting contractor and not entitled to any compensation for loss of profit.	The Tribunal held that the Respondent's breaches and failures justified compensation for loss of profit. It accepted the 15% rate as reasonable (since the Respondent used the same in their counter-claim) but recalculated the base value, and ultimately

	the work			awarded Rs. 5,70,422/- to the Claimant.
Claim 2	Losses due to infructuous overheads	The Claimant claimed Rs. 20,12,261/- towards losses from infructuous overheads and contended that although they had mobilized resources to finish the contract in 4 months, they were compelled to remain on-site for over 14 months due to delays caused by the Respondent. This prolonged duration led to severe under-utilization of manpower and resources, resulting in financial loss.	The Respondent denied the claim entirely and stated that the Claimant was the defaulting party and therefore not entitled to any compensation.	The Tribunal held that theoretical calculations using Hudson's formula were not reliable but accepted the Claimant's audited accounts as authentic. It found that only overheads attributable to the extended period beyond the original 4-month term were compensable, as the initial period's costs were part of normal contract expenses. The separate claim for loss of profit was rejected. Accordingly, the Tribunal awarded Rs. 10,10,533/-.
Claim 3	Damages due to non-availability of part of the site	The Claimant did not pursue this as an independent claim. The issues related to the non-availability of the site were merged by the Claimant into other claims, specifically those for loss of infructuous overheads and the extended use of machinery and labour.	-	Since the Claimant chose not to make a distinct and separate claim for damages due to the non-availability of part of the site, the Tribunal made no award under this claim.
Claim 4	Losses due to extended use of machinery, equipment, materials and infrastructure.	The Claimant claimed Rs. 29,82,912/- for losses from extended detention of machinery and equipment at site for 14.3 months due to Respondent's delays which prevented their use elsewhere.	The Respondent denied liability and disputed the machinery list and asserted that the Claimant was the defaulting party.	The Tribunal held that the Claimant was entitled to compensation as the prolonged retention was due to Respondent's breach. However, considering partial fault on the Claimant's side, the Tribunal awarded 50%

				of the claim amounting to Rs. 14,91,456/-.
Claim 5	Losses due to extended use of labour	The Claimant claimed additional costs for extended labour deployment caused by Respondent's delays and stated that labour records were held by the Department and could not be produced after a decade.	The Respondent denied liability and stated that the Claimant was at fault and failed to produce mandatory labour registers as proof.	The Tribunal held that compensation is valid only with clear evidence. As no credible proof was produced and labour deployment wasn't substantiated, the claim was rejected.
Claim 6	Final Bill	The Claimant claimed Rs. 22,77,221/- contending that a significant portion of completed earthwork was not measured or paid for by the Respondent.	The Respondent disputed the figures and alleged that the Claimant was at default and refused to refund the Earnest Money deposits (EMD) and Security deposits.	The Tribunal held the Respondent's records unreliable and Claimant's figures credible. Consequently, the Tribunal awarded Rs. 22,01,501/- along with the refund of deposits and directed return of the Bank Guarantee of Rs. 2,52,400/- and held that the Claimant not at fault.
Claim 7	Damages due to nonpayment / delay on various claims	The Claimant sought damages for financial loss due to delayed payments since 2007 and claimed 18% interest per annum as fair compensation instead of the Respondent's own contractual interest rate.	The Respondent denied payment of interest by relying on contract clauses and Railway circulars which prohibits payment of interest on such amounts.	The Tribunal held the Respondent's stance unjustified and noted prolonged deprivation of dues. By relying on Principles of Natural Justice and Apex Court judgments reduced the rate and awarded 7% simple interest per annum from 19.01.2007 till actual payment.
Claim 8	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	The Tribunal directed that each party shall bear its own costs of the Arbitration proceedings. Consequently, no

			by the prescribed rule for sharing the cost.	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 the 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 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, losses due to infructuous overhead, losses due to extended use of machinery, equipment, material 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 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. Enexio 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 termination of contract 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 not handing over the adequate sites at appropriate time 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.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.

19.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.

20.The next issue pertains to losses due to infructuous overheads. 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.

21.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.

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

23.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 have were to have committed most breaches.

24.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.

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

26.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.

27.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 19.01.2007 until the date of actual payment.

28.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:

> ***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 adverting 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.*

29.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.

30.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.*

31.On carefully going through the award, it is seen that the Sole Arbitrator has 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 Petitioners.

32.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.

33.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 19.01.2007.

34.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.

35.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 the interference of this Court.

36.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

Internet: yes
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
KP

N.ANAND VENKATESH J.

KP

Pre Delivery order in
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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

Internet: yes
Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No
ds/kp

N.ANAND VENKATESH J.
KP

OP No. 918 of 2018

05.11.2025