

**IN THE HIGH COURT AT CALCUTTA
(ORIGINAL SIDE)
COMMERCIAL DIVISION**

Present:

The Hon'ble Justice Krishna Rao

C.S. (COM) No. 8 of 2023

Narayan Kumar Infrastructure Private Limited

Versus

Bongaon Municipality

Mr. Shiv Ratan Kakrania

Mr. Tanish Ganeriwala

Mr. Tanuj Kakrania

Mr. Sagnik Mukherjee

Ms. Jiya Bose

Ms. Shreya Goenka

Ms. Surabhi Mehta

... For the plaintiff.

Hearing Concluded On : 25.03.2026

Judgment On : 30.04.2026

Krishna Rao, J.:

1. The plaintiff has filed the suit praying for a decree for a sum of Rs. 4,92,36,921.80 along with interim interest and interest upon judgment at the rate of 18% per annum.
2. The defendant floated a tender being tender No. WBMAD/51/2017-2018/B-M/PWD dated 21st November, 2017 inviting offers from prospective tenderers for the work of “Construction of Bus Terminions along with Commercial (Market Complex) and Residential Complex” at Gandhipally in Ward No.14 under Bongaon Municipality.
3. The plaintiff, who was known as M/s. Narayan Kumar, participated in the said tender and submitted an offer to execute the work at the rate of 0.20% below the rate put to tender.
4. The defendant found the offer of the plaintiff to be the lowest and accordingly the defendant issued a work order in favour of the plaintiff on 9th February, 2018.
5. Simultaneously, the parties executed various documents, i.e. the conditions of contract, the additional conditions, the detailed notice inviting tenders, the special terms and conditions, etc. which together comprised a final, binding and concluded contract between the parties.
6. The work order was issued by the defendant on 9th February, 2018, wherein the stipulated time given for the work to be completed by the plaintiff was within a period of 365 days to be reckoned with effect from

the commencement date which was to begin within seven days from the date of the issuance of the work order.

7. The work order as well as the various other contractual documents forming part and entirety of the contract also contains detailed provisions regarding the rights, obligations, liabilities and responsibilities of either parties with respect to execution of the contract. The contract documents further contained, a work schedule in the nature of a bill of quantities which stipulated the various items of work which were required to be undertaken by the plaintiff, as the tenderer, apropos which item wise rates were prescribed.
8. Immediately after the issuance of the work order dated 9th February, 2018, the plaintiff, in right earnest, mobilised itself by engaging sufficient men, materials, equipment and infrastructural capabilities so as to be able to execute the work within the period prescribed in the contract.
9. Right from the beginning, the plaintiff has faced numerous obstacles and hindrances which added a severe and substantial impact on the progress of the work. The plaintiff at various points of time faced with the following problems:

(i) It was always agreed and understood between the parties and, in fact, made explicit in the contract, by Clause 11 of the Conditions of Contract that the plaintiff would be obliged to execute the whole and every part of the work in accordance with the specifications and in conformity to the

designs, drawings and instructions issued in writing by engineer-in-charge. Unfortunately however, the engineer-in-charge of the defendant, despite repeated requests and reminders having been issued by the plaintiff from time to time, failed to provide the plaintiff with the requisite drawings or to even approve of the drawings which were prepared and made over to the engineer-in-charge by the plaintiff. The plaintiff has sent various emails and letters to the defendant in this regard.

- (ii)** *The plaintiff was under an obligation to have the site surveyed through a competent third party, which it had duly engaged. However, in order to effectively carry out the survey, the plaintiff needed necessary reference points to be furnished by the defendant, but the defendant had failed to furnish such reference points and the points which were submitted by the defendant were completely otiose since they did not pertain to the work site in question.*
- (iii)** *That due to the lackadaisical attitude displayed by the defendant, the work was delayed at every stage where drawings were supplied since the layouts thereof were not in conformity with the survey conducted or proposed to be conducted at the work site. The plaintiff time and again wrote to the defendant regarding this issue and several letters and emails were exchanged between the plaintiff to the defendant.*
- (iv)** *In addition to the above, sometimes around August, 2018, the plaintiff was faced with the predicament wherein one of the drawings supplied to the plaintiff by the defendant authorities indicating the requirement for Pile Cap Casting*

or (TECC of 75mm) to be executed. Considering the same fact, such item was not mentioned in the bill of quantities and was thus outside the scope and ambit of the work entrusted to the plaintiff, therefore, the plaintiff called upon the defendant for appropriate instructions and to advise the plaintiff on what was required to be done regarding the Pile Cap Casting since execution of such additional work would entail the plaintiff to get extra item appropriate to the work to be done. Even after repeated requests by the plaintiff, the defendant maintained stoic silence and having no alternative the plaintiff was constrained to execute the work.

(v) *The conditions of contract further stipulated that the plaintiff would have to raise periodical or monthly running account bills upon the defendant. Therefore, it was a reciprocal obligation for the defendant to disburse payments against such running account bills in periodical fashion and within a reasonable time. However, the defendant failed to discharge its liabilities, the plaintiff, thus, was required to repeatedly issue letters to remind the defendant of its obligation to make payment, particularly with regard to the 9th Running Account Bill.*

(vi) *Numerous letters have been issued regards to the non-payment of running account bill and for payment regarding the additional works of land filling, etc., by the plaintiff to the defendant. Not only did the defendant failed miserably in discharging its obligation under clauses 8 and 9 of the conditions of contract but there were also instances where the defendant made over cheques to the plaintiff against the running account bills raised by the plaintiff, only for the same to be dishonoured upon presentation. On or*

around July, 2019, while the plaintiff was contending with the various issues, obstacles and hindrances, the defendant issued formal instructions upon the plaintiff to slow down the rate of work at the worksite on the pretext that the defendant did not have adequate funds to make payment to the plaintiff. Thereafter, the plaintiff made several representations to the defendant requesting it to issue instructions to resume the work given that the plaintiff was suffering from several losses on account of idle men, machinery and infrastructure.

(vii) *On or around May 2020, the plaintiff got to know that the defendant had already sanctioned the establishment of a fish market at the exact same premises where the bus terminions were to be constructed and as a result, most of the material and establishment left behind at the worksite had been removed and/or pilfered. Roadside vendors, etc., had also set up shop at the worksite which makes it impossible for the plaintiff to once again resume the work.*

(viii) *Notwithstanding the apparent exigencies involved, the defendant in an attempt to avoid liability, by a letter dated 29th August, 2020 purported to shift the entire blame upon the plaintiff and instructed the plaintiff to resume execution of the work, knowing fully well that the same was impossible given the prevailing the situation.*

10. There has been material breach on the part of the defendant in discharging its obligations under the contract, and such breach has resulted in direct and consequential losses to the plaintiff. Not only has the plaintiff suffered monetary losses and injury owing to such breach,

but it also entitled to claim the unpaid value of the 9th Running Account Bill.

- 11.** The plaintiff states that the plaintiff is entitled to unbilled amount of work done as well as the earnest money which had been deposited at the outset and also the security deposit that has been deposited at the outset and also the security deposit that has been deducted periodically from the 1st to the 8th Running Account Bills, wherein the Running Account Bills will itself reflect that an aggregated sum of Rs.45,59,116/- has been deducted on account of security deposit and additionally a sum of Rs.41,13,041/- was furnished at the commencement of the contract in terms of the work order.
- 12.** The plaintiff has received payments against Running Account Bill Nos. 1 to 7 in its Bank Account from the defendant.
- 13.** The plaintiff further submits that additionally it has suffered losses to the tune of approximately Rs. 2,77,73,825.24, on account of damages suffered on the following heads:

 - (i) The plaintiff has from time to time submitted bills to the defendant but the defendant has failed and neglected to make payments amounting to Rs. 39,09,330.24 for the pending 9th Running Account Bill of the plaintiff.*
 - (ii) Damages for abruptly stopping work at the worksite upon intimation by the defendant to the plaintiff.*

(iii) Claim for release of Earnest Money Deposit (EMD) and security deposit deducted from various Running Account Bills amounting to a total sum of Rs. 41,13,041/- and Rs. 45,59,116/- which have become due and payable.

(iv) Claim for compensation on account of losses suffered due to extended stay on the site, which after reasonable quantification by the plaintiff leads to an amount of Rs.73,86,535/-.

14. The plaintiff states that it has suffered losses with respect to its profit earnings since all the resources, facilities, infrastructure were deployed during the contractual period on the project site and due to that the plaintiff has not been able to obtain any pecuniary benefit from anywhere else since everything remained arrested in the worksite and this amounted to a loss of Rs.78,05,803/-.
15. Before filling of the suit, the plaintiff had instituted pre-institution mediation process but the defendant failed to appear before the Mediation and accordingly a non-starter report dated 11th September, 2023, was issued by the Member Secretary, Mediation and Conciliation Committee, High Court.
16. According to the report of the Deputy Sheriff of Calcutta dated 20th February, 2024, on 2nd February, 2024, the original writ of summons along with a copy of the plaint were served upon the defendant, which was duly received by the defendant on 10th February, 2024, and a copy of the writ of summons along with a copy of the plaint was sent to the

defendant by post which was duly delivered to the defendant on 7th February, 2024.

17. According to the report issued by the Deputy Registrar (Legal) dated 14th May, 2024, the defendant has not entered appearance, therefore by an order dated 25th June, 2024, this Court had placed the matter in the list of "Undefended Suit"
18. The plaintiff in order to prove its case has examined one witness, namely, Mr. Manik Bhunia, as P.W.1 and had exhibited altogether total number of 17 (Seventeen) documents and are marked as **"Exhibit A to Exhibit Q"** which are as follows:

Exhibit A: *Copy of the Tender Notice dated 21st November, 2017 released by the defendant.*

Exhibit B: *Copy of the work order dated 9th February, 2018 issued by the defendant to the plaintiff.*

Exhibit C (Collectively) : *Set of documents which are copies of all the contracts entered between the parties are marked and exhibited collectively.*

Exhibit D (Collectively) : *Original Copies of Work Schedule marked and exhibited collectively.*

Exhibit E (Collectively) : *Original Copies of Letters and/or Emails dated 2nd April, 2018, 19th May, 2018, 5th September, 2018, 23rd November, 2018, 24th November, 2018, 11th December, 2018, 5th February, 2019, 7th February, 2019, 8th February, 2019, 13th February, 2019, 14th February, 2019, 11th March, 2019 and 27th April, 2019, marked and exhibited collectively.*

Exhibit F (Collectively) : *Another set of original copies of Letters and/or E-mails dated 6th October, 2020, 11th October, 2018, 12th October, 2018, 26th October, 2018, 27th October, 2018, 27th December,*

2018, 12th January, 2019 and 15th January, 2019 marked and exhibited collectively.

Exhibit G (Collectively) : original copies of Letters and/or E-mails dated 7th March, 2019, 14th June, 2019, 15th June, 2019, 17th June, 2019, 18th June, 2019, 11th July, 2019, 12th July, 2019, 19th July, 2019, 26th July, 2019, 11th August, 2019, 12th August, 2019, 9th September, 2019, 10th September, 2019, 3rd December, 2019, 16th December, 2019, 17th December, 2019, 8th February, 2020, 24th February, 2020, 24th March, 2020, 25th March, 2020, 26th March, 2020, 3rd April, 2020, 5th April, 2020, 28th July, 2020, 21st August, 2020, 6th October, 2020, 7th October, 2020, 5th November, 2020, 8th February, 2021, 9th February, 2021, 22nd June, 2021 and 26th July, 2021, marked and exhibited collectively.

Exhibit H: Copy of a Letter dated 11th July, 2019, sent by the plaintiff to the Chairman of the Defendant regarding payment of the 7th RA Bill and regarding restraining of stopped civil work.

Exhibit I: Copies of a Letter dated 4th August, 2018 and 11th October, 2018 along with an e-mail dated 12th October, 2018 sent by the plaintiff addressing the Chairman of the Defendant.

Exhibit J (Collectively): Copies of Original Correspondences exchanged between the parties dated 11th June, 2018; 2nd January, 2019; 3rd January, 2019 and 6th March, 2019.

Exhibit K (Collectively) : Original Copies of Running Account Bills dated from 13th July, 2018 to 15th July, 2019.

Exhibit L (Collectively) : Copies of Bank Statements of the Plaintiff maintained with Karnatak Bank and ICICI Bank.

Exhibit M: Original Copy of an e-mail dated 7th May, 2020 sent by the plaintiff to the defendant.

Exhibit N: Original Copy of the 9th Running Account Bill with measurement sheets.

Exhibit O: Original Copy of the extract of the cost (cost sheet) dated 29th May, 2019.

Exhibit P (Collectively) : *Original Copies of the challans and receipts and money receipts from 8th February, 2019 upto 2021 marked and exhibited collectively.*

Exhibit Q: *Copy of Tabular Computation.*

19. The defendant floated a tender dated 21st November, 2017 for construction of Bus Terminions along with Commercial Market Complex and Residential Complex at Gandhipally in ward No. 14 under Bongaon Municipality. The plaintiff has proved the said tender notice being "Exhibit-A". The plaintiff had participated in the tender process and the plaintiff has declared as a successful tenderer. After acceptance of the tender, on 9th February, 2018, a work order was issued by the defendant to the plaintiff which has been proved being "Exhibit-B". As per the work order, the date of commencement of the work is dated 16th February, 2018 and completion of the work is dated 15th February, 2019.
20. As per the case of the plaintiff, the defendant failed to discharge its reciprocal obligation. As per the work order dated 9th February, 2018, the plaintiff has to undertake survey of the site and to prepare lay out within 10 days from the date of issuance of work order. By a letter dated 2nd April, 2018, the plaintiff requested the defendant to confirm the reference points so that the same could be used for preparing the lay out in terms of the work order. On 5th September, 2018, the plaintiff had again requested the defendant to confirm the reference points so as to enable the plaintiff to prepare the layout plan. By a letter dated 23rd

November, 2018 and e-mail dated 24th November, 2018, the plaintiff had informed the defendant that though the plaintiff has received the drawing for Block-A on 1st November, 2018 but the work for the same could not be started as there were difficulties on layout of the same. By a letter dated 11th December, 2018, the plaintiff had informed the defendant that the plaintiff has received revised version of drawing of Block-A but the plaintiff is waiting for the hardcopy of the said drawing. By a letter dated 5th February, 2019, the plaintiff has also requested the defendant for providing drawings for electrical, plumbing, duct details and other works which needs to be taken care of before casting of slab. On 8th February, 2019, the plaintiff had again requested the defendant to provide all the drawings as sought for by the plaintiff by its letter dated 19th May, 2018. On 13th February, 2019, the plaintiff had again requested the defendant to provide balance set of drawings while enumerating the discrepancies in the existing set of drawings furnished by the defendant. On 14th February, 2019, the defendant had issued a letter to the plaintiff responding to the queries raised by plaintiff in its email dated 13th February, 2019. On 11th March, 2019, the plaintiff had requested the defendant to provide balance drawings to the plaintiff. By an email dated 27th April, 2019, the plaintiff had intimated the defendant that no provisions of “Chajja” have been made in terms of the deliberation and discussions between the parties. All the above mentioned correspondences have been marked as “Exhibit-E” collectively.

- 21.** It is admitted by the plaintiff that the defendants have released the amount with respect to the Running Account Bill No. 1 to Running Account Bill No. 8. The plaintiff had submitted 9th Running Account Bills on 17th December, 2019 and thereafter the plaintiff had made several correspondences with the defendant on 24th February, 2020, 25th March, 2020, 28th July, 2020, 21st August, 2020 but the defendant has not paid the 9th Running Account Bill. By a letter dated 29th August, 2020, the defendant has admitted that one bill is remain pending for lack of fund due to the Covid-19 situation and it will be paid as soon as the condition will became normal. In the said letter, the defendant has also requested the plaintiff to start executing the work of the project as per direction, subsequently, payment will be made accordingly. All the said correspondences are marked as “Exhibit-G” collectively.
- 22.** 9th Running Account Bill along with measurement sheets are marked as “Exhibit-N” collectively. As per 9th RA Bill, the measurement sheet, the measurement of the work was done on 30th September, 2019. After submission of 9th RA bill, the plaintiff has submitted request to the defendant for release of the said amount by a letter dated 17th December, 2019, and the same is marked as “Exhibit-G” but neither the defendant has sent any reply nor has made any payment.
- 23.** Clauses 7 and 8 of the Conditions of Contract reads as follows:

“Clause 7. --- *No payment shall be made for works estimated to cost less than rupees one thousand, till after the whole of the work shall have been completed and a certificate of completion given. But in the case of work estimated to cost more than rupees one thousand the contractor shall on submitting the bill thereof be entitle to receive a monthly payment from the Municipality proportionate to the part thereof then approved and passed by*

Payment on Intermediate Certificate to be regarded

the Engineer-in-charge whose certificates of such approval and passing of the sum so payable shall be final and conclusive, against the contractor. According to the bill passed by the Engineer-in-charge payment will be made by the Chairman to the contractor. But all such intermediate payments shall be regarded as payments by way of advance against the final payment only and not as payments for work actually done and completed and shall not preclude the requiring of bad unsound, and imperfect or unskilful work to be removed and taken away and reconstructed, or re-erected, or be considered as an admission of the due performance of the contractor, or any part thereof, in any respect, or the according of any claim, nor shall it conclude, determine or affect in any way the powers of the Engineer-in-charge under these conditions or any of them as to the final settlement and adjustment of the accounts or otherwise or in any other way.very or effect the contract. The final bill shall be submitted by the contractor within one month of the date fixed for completion of the work, otherwise the Engineer-In-charge's certificates of the measurement and of the total amount payable for the work accordingly shall be final and binding on all parties. The Engineer-in-charge. will be in no way responsible for actual payment to the contractor but he will rather pass the bill and send the bill to the Chairman for payment.

Clause 8. - *A bill shall be submitted by the contractor each month on or before the date filed by the Engineer-in-charge for all work executed*

in the previous month, and the Engineer-in-charge shall take or cause to be taken the *Submitted monthly*

requisite measurements for the purpose of having the sum verified, and, the claim as far as admissible as adjusted, if possible, before the expiry of ten days from the presentation of the bill. If the contractor does not submit the bill within the time fixed as aforesaid the Engineer-in-charge may dispute. subordinate to measure up the said work in the presence of the contractor, whose countersignature to the measurement list will be sufficient warrant; and the Engineer-in-charge may prepare a bill from such list which shall be binding on the contractor in all respects.

In terms of the said Clauses, the plaintiff has submitted 9th RA Bill but neither the Engineer-in-Charge has disputed the same nor the defendant has released the amount claimed in the 9th R.A. Bill.

- 24.** The plaintiff has deposited an amount of Rs. 41,13,041/- being an earnest money deposit as per tender condition on 21st November, 2017 and the same is marked as “Exhibit-A”. From the RA Bills No.1 to 8, the defendant has deducted an amount of Rs. 45,59,116/- being the security deposit and the same is marked as “Exhibit-K” collectively. The plaintiff also requested the defendant for release of earnest money deposit and security deposit but the defendant failed to release the same in favour of the plaintiff.
- 25.** It is also the case of the plaintiff that the plaintiff has executed extra/ additional work beyond the contract as per the advice of the defendant and on completion of additional work, the plaintiff has abstract of the work executed by the plaintiff total amounting to Rs. 62,18,386.84 and the same are marked as “Exhibit-O”. The defendant has neither disputed the additional work executed by the plaintiff as mentioned in the abstract of the work nor has paid the amount to the additional work executed by the plaintiff. The plaintiff has also made several correspondences with the defendant but no payment is released. Supplementary work is defined in Clause 28 of the Conditions of Contract, which reads as follows:

***“28.** Any item of work which can legitimately be considered as not stipulated in the schedule of probable items of work but becomes necessary as a*

supplementary items reasonable contingent item during actual execution of the work will have to be done by the contractor when so desired by the Engineer-in-charge.

The rate of a supplementary item shall be derived to the maximum extent possible from the rates of the accepted items of works appearing in the schedule of probable items.

To complete the analysis if necessary the rates appearing in the P.W.D. Schedule (as defined in clause I of the special terms and conditions) shall be applicable for the portion remaining after application of the principles laid down in the preceeding paragraph.

In Case, extra Items do not appear in the "Specified schedule" such class of works will be paid at the rates entered in the schedule of the Eastern Circle P.W.D. which was in vogue on the last date of the dropping of the tender.

If the analysis cannot be completed even after application of the principles laid down in the preceeding 3 paragraphs, the balance shall be determined from the then market rates (i.e: the market rates on the last date of dropping of the tender) of materials and labour, plus profit and overhead charges which (both together) shall be taken as 10 (ten) percent on the cost of labour and materials (excluding materials that may be supplied by the Deptt.)

Contractual percentage should be applied over the rates or the portion of the rates which have been derived from rates of specific period schedule of probable items, the specified schedule 199 9 or the Eastern Circle schedule, P.W.D. No contractual percentage is However, applicable on the rates or the portion of the rates analysed on the basis of the then market rate, But for the facility or preparing bill, such rates based on market rates should be so adjusted that the contractual precentage can be applied over the gross amount of the bills.

Claims to the supplementary Items shall not be entertained unless supported by entries in the work-order book or by any written order.

- 26.** The plaintiff has made all together four claims against the defendant. Claim No.1 is non-payment of 9th RA Bill total amounting to Rs. 39,09,330.24/-. 9th RA Bill is marked as “Exhibit-N”. the said bill contains the details of the work executed by the plaintiff. Even after receipt of the said bill, the defendant has neither raised any dispute nor payments were released.
- 27.** The claim no.2 is additional work/ supplementary work executed by the plaintiff to the extent of Rs. 62,18,386.84. The plaintiff has submitted its bill and is marked as “Exhibit-O”. The said bill also received by the office of the defendant but neither any objection/ dispute is raised nor the payment was made.
- 28.** The claim no.3 is the security deposit of Rs. 45,59,116/- which was deducted from the RA Bill Nos. 1 to 8 of the petitioner as per the terms of the contract. The plaintiff also claimed Rs. 41,13,041/- being the Earnest Money Deposit. After termination of contract, the plaintiff has made request for release of the said amount but the defendant has not released the same. It is not the case of the defendant that upon termination of contract, the EMD and Security Deposit is forfeited.
- 29.** Claim no. 4 is with regard to the compensation on account of loss suffered by the plaintiff to the tune of Rs. 73,86,535/- .
- 30.** Considering the pleading, evidence of the plaintiff and the documents relied by the plaintiff, this Court finds that the plaintiff has proved its case with respect of claim nos. 1, 2 and 3 but the plaintiff failed to

prove with regard to claim no.4. The plaintiff is entitled to get an amount of Rs. 39,09,330.24/- being the claim in respect of 9th RA Bill, Rs. 62,18,386.84 being the amount of the supplementary/ additional work executed by the plaintiff, Rs. 45,59,116/- being the Security Deposit deducted by the defendant from RA Bills No. 1 to 8 and Rs. 41,13,041/- being the earnest money deposit made by the plaintiff, total amounting to Rs. 1,87,99,874.08. The plaintiff is also entitled to get interest at the rate of 10% per annum from the date of filing of the suit till the realisation of the total amount.

31. The defendant is directed to pay an amount of Rs.1,87,99,874.08 to the plaintiff along with interest at the rate of 10% per annum from the date of filing of the suit till the realisation of the total amount.

32. C.S. (Com) No. 8 of 2023 is disposed of. Decree be drawn accordingly.

(Krishna Rao, J.)