

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Commercial Arbitration Petition No. 444 of 2024

WITH

Interim Application (L) No.2001 OF 2022

The Commissioner,
Solapur Municipal Corporation and Ors.

.....PETITIONERS

: VERSUS :

M/s. S.M.C.-G.E.C.P. Ltd (J.V.)

....RESPONDENT

WITH

Commercial Arbitration Petition No. 252 of 2024

M/s. S.M.C.-G.E.C.P. Ltd (J.V.)

.....PETITIONER

: VERSUS :

The Commissioner,
Solapur Municipal Corporation and Ors

....RESPONDENTS

Mr. M.P. Rao, Senior Advocate with Mr. Vishwanath Patil, Ms. Nidhi Chauhan & Mr. Akshay Naidu, for Petitioner in CARBP/444/2024 & for Respondent in CARBP/252/2024

Mr. Shardul Singh with Ms. Prerna Gandhi, Mr. Anisa Shahapurkar & Mr Ninad Thikekar, for Respondent in CARBP/444/2024 & for Petitioner in CARBP/252/2024.

Judg. Reserved On: 21 January 2026.

Judg. Pronounced On: 06 February 2026.

Judgment:-

1) These are cross Petitions filed by the parties challenging the Award of the learned sole Arbitrator dated 18 June 2020. By the impugned Award, the learned sole Arbitrator has awarded a sum of Rs.32,15,94,780/- alongwith interest in favour of the Contractor by setting aside penalties as well as order of termination of contract dated 9 December 2013 and order of blacklisting dated 11 April 2014.

2) The Solapur Municipal Corporation has filed Commercial Arbitration Petition No.444 of 2024 challenging the entire Award. The Contractor, on the other hand, has filed Commercial Arbitration Petition No.252 of 2024 challenging the Award to the limited extent of rejection of certified amounts beyond Rs.19,25,91,000/- towards Claim-I, directing reductions from Claim No.1 on the basis of old and non-operative tax regime, non-grant of damages on account of loss of profit on actual cost but on estimated cost of tender and non-grant of post-award interest.

3) It must be observed at the very outset that the Contractor has decided not to press challenge to the impugned arbitral Award in Commercial Arbitration Petition No. 252 of 2024. Thus, this Court is tasked upon to decide only the challenge raised by Solapur Municipal Corporation to the impugned Arbitral Award.

4) Solapur Municipal Corporation decided to set up a Sewerage Treatment Plant (**STP**) for improving sewerage scheme in zones-III, V, VI, VII and VIII. The Municipal Corporation decided to set up the STP of 75 Million Liters per Day (**MLD**) in main Solapur city in respect of zones-III, V and VI, STP of 12.5 MLD at zone-VII and another STP of 15 MLD in zone-VIII. For the purpose of carrying the sewerage to STP, Municipal Corporation also envisaged laying of concrete sewerage pipes within the city as well as in the outskirts. For execution of the work, the Municipal Corporation floated tender on a percentage rate basis vide Tender Notice dated 7 September 2011. The estimated cost of the tender was Rs.139,12,52,239/-. The Respondent-S.M.C.-G.E.C.P. Ltd. is a joint venture of M/s. S.M.C. Infrastructure Pvt. Ltd. and Gharpure Engineering Construction Pvt. Ltd.(**the JV**). The joint venture was formed as a special purpose vehicle for bidding and for execution of work. The joint venture participated in the bidding process and the Municipal Corporation awarded contract in its favour vide Agreement dated 2 January 2012. The period of completion of the contract work was 24 months commencing from the date of work order (27 February 2012) and the work was supposed to be completed by 26 February 2014. However, the *Bhoomi Pujan* in respect of the project was held on 3 June 2012 and it appears that the Municipal Corporation agreed to exclude period of 97 days by extending the time on account of non-commencement of work due to delay in conducting *Bhoomi Pujan*. After the JV commenced the work, the Municipal Corporation decided to penalise the contractor due to delay in progress of work and accordingly first penalty order was

issued on 20 September 2012 imposing penalty of Rs.2,500/- per day. Thereafter on 13 December 2012 second penalty of Rs.10,000/- per day was imposed. The third penalty order was issued on 15 April 2013 imposing penalty of Rs.50,000/- per day. The fourth penalty order was issued on 6 September 2013 imposing penalty of Rs.11,44,000/- per day.

5) Before expiry of the agreed period of two years (26 February 2014), the Municipal Corporation issued show cause notice to the JV on 9 October 2013 for termination of the contract. Reply to the show cause notice was filed by the JV on 17 October 2013. By order dated 9 December 2013, the Municipal Corporation proceeded to terminate the contract of the JV. On 11 April 2014, the Municipal Corporation also passed an order blacklisting the JV. It appears that the balance work was completed by the Municipal Corporation through another contractor by splitting it into two parts.

6) The disputes and differences between the parties arose on account of termination of the contract and on account of blacklisting of the JV. The JV filed Writ Petition No.11657 of 2013 challenging the order of blacklisting, which was disposed of by order dated 2 April 2014 constituting Arbitral Tribunal for adjudication of disputes and differences between the parties.

7) After constitution of the Arbitral Tribunal comprising of the learned sole Arbitrator, the JV filed Statement of Claim before the Arbitral Tribunal on 13 December 2014. In its Statement of Claim, the

JV challenged all the four penalty orders, termination order dated 9 December 2013 and blacklisting order dated 11 April 2014. The JV claimed amount of Rs. 25,49,76,121/- alongwith interest towards balance amount due under the 18th RA bill, Rs.4,35,79,728/- towards excess recovery on mobilisation advance from RA bill No.9, Rs.6,37,56,075/- towards encashment of security deposit. The JV further claimed sum of Rs.28,93,60,160/- towards delay damages alongwith interest and Rs.21,16,43,693/- towards damages for wrongful and illegal termination of the contract. The JV also claimed sum of Rs.50 crores towards damages arising out of blacklisting and Rs.10,87,26,000/- towards losses suffered in ongoing contracts.

8) The Municipal Corporation filed Statement of Defence resisting the claims of the JV. Additionally, the Municipal Corporation also filed various counterclaims against the JV. It claimed an amount of Rs. 11,72,41,023/- towards expenses /additional costs incurred in the re-tendering, amount of Rs. 8,75,67,657/- towards tax recovery from general public. Rs. 5,07,08,651/- towards loss of income from sale of treated water and manure from STPs, Rs. 9,20,00,000/- towards loss of income in providing new drainage connections, Rs. 12,96,27,052/- towards excess amount recoverable from JV, Rs. 139,97,80,822/- towards damages on account of loss of reputation, Rs. 1,82,032/- towards fine paid to Maharashtra Pollution Control Board and Rs. 1,00,00,000/- towards damages on account of reinstatement of roads/lands. This is how Municipal Corporation claimed total Rs.188,71,07,237/- towards counterclaims against the JV.

9) Based on the pleadings, the Arbitral Tribunal framed issues. Parties led evidence in support of their respective claims. After evaluation of pleadings, documentary and oral evidence, the Arbitral Tribunal proceeded to make Award dated 18 June 2020 allowing only some of the claims of the JV and rejecting all the counterclaims of the Municipal Corporation. The claims sanctioned in favour of the JV, as reflected in the Award, are as under:-

The First claim (elaborated in para 37.1 to 37.6 of the SOC) is granted for recovery of the sum of.	Rs.16,45,96,753/-
The Third claim (elaborated in para 38.2 to 37.6 of the SOC) is granted for recovery of illegal deduction of local body tax in the sum of.	Rs.62,41,952/-
The Sixth claim (elaborated in para 33.2 to 37.6 of the SOC) is granted for refund of security deposit illegally forfeited in the sum of.	Rs.6,37,56,075/-
The seventh claim (elaborated in para 40 to 40.24 of the SOC) is granted for compensation/damages in the sum of.	Rs.8,70,00,000/-
Total	32,15,94,780/-

10) Additionally, the Arbitral Tribunal has set aside orders dated 20 September 2012, 13 December 2012, 15 April 2013 and 6 September 2013 imposing penalties on the JV. The Arbitral Tribunal has also set aside order of termination of contract dated 9 December 2013 and order of blacklisting dated 11 April 2014. The Arbitral Tribunal has awarded interest @12% per annum on amount of

Rs.32,15,94,780/- from the date of termination of contract (9 December 2013) till the date of passing of the Award. The Arbitral Tribunal has also granted post Award interest @9% per annum. The Tribunal has also directed payment of costs in the sum of Rs.51,00,000/- in favour of the JV.

11) Aggrieved by the Award dated 18 June 2020, the Municipal Corporation has filed Commercial Arbitration Petition No.444 of 2024. Since the Arbitral Tribunal has not granted all the claims raised by the JV, it has also challenged the impugned Arbitral Award by filing Commercial Arbitration Petition No.252 of 2024, paragraph 27 whereof enumerates the exact challenge to the impugned Award, which reads thus:-

27. As stated above the Petitioner is challenging the said Award dated 18.06.2020 and Order dated 26.12.2020 only to the extent of the following:-

- (i) Rejection of certified amounts beyond Rs.19,25,91,000/- towards Claim No.1.
- (ii) Patent and Ex-facie Error in Calculations for Claim No.1.
- (iii) Directing Deductions from Claim No.1 on the basis of old and non-operative tax regime.
- (iv) Not granting Damages on account of loss of profit on actual cost but on estimate cost of tender.
- (v) Not granting post award interest in terms of Section 31 of the Act.

12) As observed above, the JV has decided not to press Commercial Arbitration Petition No.252 of 2024. Accordingly, only the challenge raised by the Municipal Corporation in Commercial Arbitration Petition No.444 of 2024 needs to be adjudicated.

13) By order dated 29 June 2022, this Court admitted the Petition of the Municipal Corporation. When stay to the Award was sought under Section 36 of the Arbitration Act, this Court directed deposit of the entire awarded amount as a condition for stay to the execution of the Award. The Municipal Corporation challenged the order of this Court dated 29 June 2022 before the Hon'ble Supreme Court by filing Special Leave to Appeal (c) No.14697 of 2022. By order dated 21 March 2023, the Supreme Court modified the order dated 29 June 2022 directing the Municipal Corporation to secure 50% awarded amount by Bank Guarantee and to deposit the balance 50% amount in the Court. The Supreme Court expedited the hearing of the Petition. It appears that there was some delay on the part of the Municipal Corporation in depositing 50% of the awarded amount alongwith interest *pendene lite*. The Apex Court extended time for deposit by two weeks by order dated 28 August 2023. Accordingly, the Municipal Corporation deposited amount of Rs.33,05,59,785/- in this Court. The JV took out Interim Application for withdrawal of the deposited amount. By order dated 29 January 2024, this Court permitted the JV to withdraw the deposited amount subject to furnishing Bank Guarantee. Accordingly, the deposited amount has been withdrawn by the JV. The Petition is called out for final hearing.

SUBMISSIONS

14) Mr. Rao, the learned Senior Advocate appearing for the Municipal Corporation would submit that the Arbitral Tribunal has patently erred in allowing various claims of the JV in absence of any

positive evidence by the JV to prove that the Municipal Corporation was responsible for delay in execution of the work. That it is fundamental principle that the burden of proof is on the shoulder of party, who raises the claim. That in the present case, the JV raised a claim that termination of contract was illegal on account of which the Municipal Corporation is responsible for delay. If that was the case, it becomes incumbent for the JV to lead positive evidence to prove as to how the delay was caused by the Municipal Corporation. Instead of considering the total absence of any evidence on the part of the JV, the Arbitral Tribunal only took into consideration the oral evidence of witnesses of the Municipal Corporation for awarding various claims of the JV. That the approach of the Arbitral Tribunal is clearly faulty rendering its findings in conflict with public policy doctrine. That while unnecessarily laying stress on oral deposition of witnesses of the Municipal Corporation, the Arbitral Tribunal completely ignored numerous letters/memos issued by the Municipal Corporation demonstrating delay at various stages on the part of the JV. That the Arbitrator failed to take into consideration vital and critical evidence in the form of minutes of meetings highlighting delay in execution of the work. That ignorance of vital evidence on record constitutes a valid ground for setting aside the Award. In support, he relies on judgment of the Apex Court in **Associate Builders V/s. Delhi Development Authority¹**.

¹ (2015) 3 SCC 49

15) Mr. Rao further submits that the Arbitral Tribunal has not considered or decided the issue as to whether the alleged delay on the part of the Municipal Corporation resulted in actual stoppage of work by the contractor. He would submit that various findings relating to delay in non-procurement of permission, removal of electric poles, change of transformer, approving of the STP layout at Degaon, approving line out, etc. are recorded without even instituting an enquiry as to whether such delay actually resulted in stoppage of work at the site. That in a construction contract, it becomes incumbent for the Contractor to prove that any delay on the part of the principal/employer actually caused stoppage of work at the site. That in the present case, the contractor raised hypothetical pretext of delay in various aspects without proving whether such delay resulted in actual stoppage of work.

16) Mr. Rao would then attack the findings of the Arbitral Tribunal on various sub-heads of delay contending that the findings of the Arbitral Tribunal are grossly perverse. That the contractor was not supposed to submit second or third bar chart and that therefore the alleged delay in approving the same cannot be a ground for holding the Municipal Corporation responsible. That there was no contractual condition of *bhoomi poojan* and if the JV waited for *bhoomi poojan* on its own, the Municipal Corporation cannot be held responsible for the same. That the Arbitral Tribunal has rewritten the terms of contract by holding the Municipal Corporation responsible in respect of the alleged delay caused due to *bhoomi poojan*. That the award is

invalidated on account of rewriting of terms of contract. In support, he would rely upon judgments of the Apex Court in **PSA SICAL Terminals Private Limited Versus. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others²** and **Ssangyong Engineering and Construction Company Limited Versus. National Highways Authority of India (NHAI)³**. Mr. Rao further submits that the findings relating to delay in approving line out are grossly perverse as no case was put up before the Arbitral Tribunal by the JV that absence of line out actually stopped the work. That no enquiry was conducted by the Arbitral Tribunal as to whether contractor has even reached the stage/phase/site and was required to stop the work due to absence of line out. Similar is the position in respect of findings relating to delay in approving the STP layout at Degaon, as the contractor could not prove actual stoppage of work on account of delay in approving the STP layout.

17) Mr. Rao would further submit that the Arbitral Tribunal has grossly erred in setting aside penalties imposed on the JV. That the Municipal Corporation followed principles of natural justice to the hilt by issuing show cause notices before imposition of penalty on each occasion. That this aspect is completely ignored and ignorance of vital evidence again invalidates the Award as held by the Apex Court in **Mc Dermott International Inc V/s. Burn Standard Co. Ltd. and Others⁴, Associate Builders** (supra) and **Ssangyong Engineering and**

² (2023) 15 SCC 781

³ (2019) 15 SCC 131

⁴ (2006) 11 SCC 181

Construction Company Limited (supra). Mr. Rao further submits that the Arbitral Tribunal has grossly erred in misconstruing penalty Clause No.10 in the contract, which gave option of imposing fine upto Rs.500 per day or such fine as may be decided by the Municipal Corporation. That the penalty has rightly been imposed in the present case in accordance with law, which is invested with Municipal Corporation under the contractual covenant. That the Arbitral Tribunal conflated the issue of penalty by unnecessarily mixing the same with Clause No.2 of condition of contract providing for compensation. That Clause-10 and Clause-2(a) operate independently. That under Clause-10, the Municipal Corporation was entitled to levy fine on the Contractor for slow progress of work as compared to bar chart approved on 4 May 2012 and for not working to the satisfaction of the Municipal Corporation. That the Arbitral Tribunal erroneously laid emphasis only on Clause-2(a) which was meant purely for the purpose of recovery of compensation for losses suffered by the Municipal Corporation. That in the present case, penalty is levied under Clause-10 and not under Clause-2(a). That Clause-10 was not under challenge and therefore the Municipal Corporation cannot be faulted for levying penalty in accordance thereof. That the Tribunal also erred in holding that time was not the essence of the contract.

18) So far as the award of damages in favour of the JV is concerned, Mr. Rao submits that the Arbitral Tribunal has grossly erred in awarding hypothetical figures of 10% of remaining value of

work under the Contract in absence of any direct, tangible or credible evidence of any actual damages being suffered by the JV. That the Tribunal has not applied any yardstick for computation of damages. That it has completely given a go-bye to the principles under Sections 73 and 74 of the Indian Contract Act, 1872. That the JV failed to produce any evidence as to how delay allegedly caused by the Municipal Corporation resulted in actual damages for the JV. That no claim was raised for idling of manpower or machinery on account of termination of contract. That no evidence of loss of actual profit was adduced before the Tribunal. That award of hypothetical damages @10% of balance amount of contract is not the correct yardstick to be applied. That what is awarded is speculative and hypothetical damages and not the one actually suffered by the JV.

19) Mr. Rao further submits that the Municipal Corporation had raised a vital issue of sub-contracting on the part of the JV in violation of contractual conditions. That the Municipal Corporation placed on record name of the sub-contractor and led documentary evidence to prove sub-contracting. However, the learned Arbitrator has still erred in awarding various claims in favour of the JV. As to the certification of the RA bill, Mr. Rao has submitted that witness of the contractor deposed on oath that the RA bill was not certified whereas the Tribunal has erroneously concluded that the RA bill is certified contrary to the JV's own case. That the Tribunal has erroneously awarded claim for local body tax contrary to Clause-20 of the contract

and Clause-27 of the GCC under which all taxes were required to be borne by the contractor.

20) Mr. Rao would conclude that the Award passed by the Arbitral Tribunal is patently illegal. That the findings recorded by the Arbitral Tribunal are such that no fair minded person would have ever recorded the same. That the Tribunal has ignored vital evidence on record. That the findings of the Arbitral Tribunal are also grossly perverse. That the case does not involve taking of a mere plausible view by the Arbitral Tribunal. He would therefore submit that the Award is liable to be set aside. In support, he relies on judgments of the Apex Court in **Oil and Natural Gas Corporation V/s. Saw Pipes Ltd.**⁵ **OPG Power Generation Pvt. Ltd. V/s. Enxio Power Cooling Solutions and Another**⁶, **State of Chattisgarh and Another V/s. SAL Udyog Private Limited**⁷ and **Indian Oil Corporation Limited V/s. Shree Ganesh Petroleum Rajgurunagar**⁸

21) Mr. Shardul Singh, the learned counsel appearing for the Respondent -JV opposes the Petition filed by the Municipal Corporation and supports the Award. He submits that the Arbitral Tribunal has conservatively awarded very few claims of the JV. He submits that the RA bill No.18 of the JV was for Rs.29.65 crores whereas the Arbitral Tribunal has taken into account only certified amount of Rs.19.25 crores and after deducting the amount of Rs.2.79

⁵ (2003) 5 SCC 705

⁶ (2025) 2 SCC 417

⁷ (2022) 2 SCC 275

⁸ (2022) 4 SCC 463

crores towards VAT, TDS and labour cess has sanctioned claim only for Rs.16.45 crores. That in the process, the JV has already incurred loss of Rs.10.39 crores even though work of that value is actually performed by it.

22) Mr. Singh would further submit that termination of contract and imposition of penalty is an arbitrary act on the part of the Municipal Corporation. That though the contract period was to expire on 26 February 2014, the Municipal Corporation arbitrarily proceeded to impose penalties right since 20 September 2012 and after imposition of penalty on four occasions terminated the contract well before the expiry date on 9 December 2013 itself. That the decision to terminate the contract was based only on allegations of delay in performance of work. That the Arbitral Tribunal has conducted a factual enquiry in the aspect of delay by subdividing delay into about 15 sub-heads and has recorded findings in favour of the JV in respect of all the sub-heads except one. Except in respect of allegation of delay in approving the first bar chart, the Arbitral Tribunal has recorded findings in favour of the JV in respect of the rest of the sub-heads of delay. That in exercise of power under Section 34 of the Arbitration Act this Court cannot be urged to re-appreciate the evidence and to arrive at a conclusion different than the one recorded by the Arbitral Tribunal. He would submit that the objection Petition is being filed and is argued as if it is an appeal over the Award. That the challenge to the Award is clearly outside the limited scope outlined under Section 34 of the Arbitration Act. In support of his

contention, he relies on judgment of this Court in **Godrej And Boyce Manufacturing Company Limited Versus. Remi Sales and Engineering Limited⁹**

23) Mr. Singh further submits that most of the objections orally argued before this Court are not even pleaded in the Petition filed by the Municipal Corporation. That therefore non-pleaded objections cannot be taken into consideration while determining the validity of the Award. In support, he would rely upon judgment of this Court in **Shri Ravi Raghunath Khanjode & Ors. Versus. Harasiddh Corporation¹⁰**.

24) Mr. Singh further submits that the challenge to the Arbitral Award is premised on a factually incorrect assumption that the JV completed only 2% of the work. He submits that the Arbitral Tribunal has recorded a finding of fact that the JV completed work worth Rs.53 crores prior to termination, which represents 25% of the awarded work. He submits that despite several challenges posed by the Municipal Corporation and after excluding the period of 97 days prior to *Bhoomi Pujaan* and after exclusion of about three months' balance work period after termination, the JV still completed 25% work in just one and half years. That in respect of balance work, the two agencies were given two separate contracts in parts with completion period of 12 months and that both agencies were granted extension upto to the year 2018 without imposition of any penalty

⁹ Commercial Arbitration Petition No.232 of 2024, decided on 24 December 2025

¹⁰ Arbitration Petition No.95 of 2024 decided on 19 November 2025.

though balance work was performed by the other agencies for over four years. That considering this position, completion of 25 % work by the JV in one and half years cannot be treated as gross negligence. In that view of the matter the findings of fact recorded by the Arbitral Tribunal absolving the JV of allegations of delay cannot be found fault with especially in exercise of jurisdiction under Section 34 of the Arbitration Act.

25) Mr. Singh would further submit that the Arbitral Tribunal has rightly set aside penalty imposed on the JV. That the contract never provided imposition of penalties even before completion of contract period. That the question of imposition of penalty usually arises at the time of grant of extension after expiry of agreed contract period. That in the present case, the contract has been terminated well before the period of two years and that therefore no action arose for penalising the JV. That the penalties were imposed solely for the purpose of denying amount demanded of RA bill No.18. He further submits that the project management consultant appointed by the Municipal Corporation viz. Maharashtra Jeevan Pradhikaran (another Government agency) certified RA bill No.18 in the sum of Rs.19.25 crores and that the same certification has been accepted by the Municipal Corporation's officials also. That therefore, the Municipal Corporation is now estopped from questioning the correctness of the said amount.

26) So far as amount of damages for loss of profit is concerned, Mr. Singh would submit that the Arbitral Tribunal has awarded 10% compensation/damages on remaining value of the work under the contract. That while determining the value of the work the Arbitral Tribunal did not take into consideration the actual value of work of 210 crores but considered lower value of Rs.140 crores, which was the initial tender value. That if 10% damages were to be awarded by taking into consideration the contract value of 210 crores, the JV could have been granted damages in the sum of Rs.15.70 crores whereas the Arbitral Tribunal has awarded highly conservative damages at only Rs.8.70 crores. That though consideration of erroneous figure of Rs.140 crores as contract value is challenged by the JV in Commercial Arbitration Petition No.252 of 2024 it has decided not to press the said objection. That the Arbitral Tribunal has thus, awarded damages @ of 5.5% of the actual contract value of Rs.210 crores.

27) Mr. Singh would further submit that it is not necessary to adduce any separate evidence in respect of the claim of loss of income and that the same can be awarded as a reasonable percentage of balance value of contract once the termination is held to be illegal. He relies on judgment of this Court in **New India Assurance Co. Ltd. Versus. Shirdi Industries Ltd.**¹¹ in support of his contention that the Tribunal is empowered to apply rough and ready formula to arrive at the damages payable. Mr. Singh draws distinction between the

¹¹ 2025 SCC OnLine Bom 5005

concepts of 'loss of profit' and 'loss of profitability'. He submits that when contract is terminated what needs to be determined is loss of profit in respect of balance value of the contract. On the other hand, if the work is delayed and the contractor is required to remain at the site for longer period, principle of 'loss of profitability' arises requiring leading of evidence to prove actual loss of profitability. In support, he relies on judgment of Madras High Court in **State Industries Promotion Corporation of Tamil Nadu Ltd. Versus. RPP Infra Projects Limited**¹². In support of his contention of assessment of damages for loss of profits in case of unlawful termination, he relies on judgments of the Apex Court in **M/s. A.T. Brij Paul Singh & Ors. Versus. State of Gujarat**¹³ and **Dwaraka Das Versus. State of M.P. & Anr.**¹⁴. In support of his contention of correct application of principle of *contra proferentem* in works contract, he relies on judgment of this Court in **Bellamy Constructions and Infrastructure Private Limited Versus. Bank of India**¹⁵. He accordingly, seeks dismissal of the Commercial Arbitration Petition No.444 of 2024.

REASONS AND ANALYSIS

28) Though the rival parties have challenged the arbitral Award by filing cross Petitions under Section 34 of the Arbitration Act, the Contractor-JV has given up its challenge to the arbitral award by not pressing Commercial Arbitration Petition No. 252 of 2024.

¹² 2025 SC OnLine Mad 8166.

¹³ (1984) 4 SCC 59

¹⁴ (1999) 3 SCC 500

¹⁵ 2018 SCC OnLine Bom 692

Therefore, only the challenge mounted by Solapur Municipal Corporation to the Arbitral Award needs to be examined in Commercial Arbitration Petition No. 444 of 2024.

29) Perusal of the Award would indicate that the Arbitral Tribunal has held termination of contract to be invalid. It has set aside the penalties imposed on the JV. It has also set aside the order of blacklisting. As a consequence of declaration of termination as invalid and setting aside the penalties, the Arbitral Tribunal has awarded three broad claims of (i) payment for work done, (ii) refund of security deposit and (iii) damages at the rate of 10% of balance contract value and insignificant fourth claim towards illegal deduction of local body tax has already been awarded, which is not seriously disputed before me.

BROAD SCOPE OF INTERFERENCE IN ARBITRAL AWARD UNDER SECTION 34

30) Before examining whether any of the enumerated grounds under Section 34 of the Arbitration Act are made out in respect of the arbitral Award, it must be observed that what is conducted by the Arbitral Tribunal is a factual inquiry on the issue of delay in execution of the project. In exercise of powers under Section 34 of the Arbitration Act, this Court cannot sit over the award as an appellate Court by undertaking the exercise of reevaluation of evidence. It is only when the findings of the Arbitral Tribunal are found to be based on no evidence at all that a conclusion of perversity

can be recorded. Similarly, in a case where factual findings of Arbitral Tribunal are recorded by ignoring vital piece of evidence, the element of perversity may creep in. Also, if the conclusion reached by the Arbitral Tribunal is so grossly irrational that no fair-minded person would ever record the same, such conclusion can be interfered with by Section 34 Court. All the judgments relied upon by Mr. Rao deal with scope of court exercising power under Section 34 of the Arbitration Act. In **OPG Power Generations Pvt. Ltd.** (supra), the three Judge Bench of the Apex Court has summarized the broad contours of jurisdiction of Court in interfering with arbitral award under Section 34 of the Arbitration Act. The Apex Court has discussed the principles perversity in paras-69 to 72 as under:

69. Perversity as a ground for setting aside an arbitral award was recognised in **Western Geco**. Therein it was observed that an arbitral decision must not be perverse or so irrational that no reasonable person would have arrived at the same. It was observed that if an award is perverse, it would be against the public policy of India.

70. In **Associate Builders** certain tests were laid down to determine whether a decision of an Arbitral Tribunal could be considered perverse. In this context, it was observed that where:

- (i) a finding is based on no evidence; or
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

However, by way of a note of caution, it was observed that when a court applies these tests it does not act as a court of appeal and, consequently, errors of fact cannot be corrected. Though, a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It was also observed that an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on that score.

71. In **Ssangyong**, which dealt with the legal position post the 2015 Amendment in Section 34 of the 1996 Act, it was observed that a decision which is perverse, while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. It was pointed out that an award based on no evidence, or which ignores vital evidence, would be perverse and thus patently illegal. It was also observed that a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse .

72. The tests laid down in Associate Builders to determine perversity were followed in **Ssangyong** 5 and later approved by a three-Judge Bench of this Court in **Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd.**

31) The broad scope of interference with the arbitral award is dealt with by the Apex Court in **OPG Power Generations Pvt. Ltd.** in paras-74 and 75 as under:

74. The aforesaid judicial precedents make it clear that while exercising power under Section 34 of the 1996 Act the Court does not sit in appeal over the arbitral award. Interference with an arbitral award is only on limited grounds as set out in Section 34 of the 1996 Act. A possible view by the arbitrator on facts is to be respected as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon. It is only when an arbitral award could be categorised as perverse, that on an error of fact an arbitral award may be set aside. Further, a mere erroneous application of the law or wrong appreciation of evidence by itself is not a ground to set aside an award as is clear from the provisions of sub-section (2-A) of Section 34 of the 1996 Act.

75. In **Dyna Technologies**, a three-Judge Bench of this Court held that courts need to be cognizant of the fact that arbitral awards are not to be interfered with in a casual and cavalier manner, unless the court concludes that the perversity of the award goes to the root of the matter and there is no possibility of an alternative interpretation that may sustain the arbitral award. It was observed that jurisdiction under Section 34 cannot be equated with the normal appellate jurisdiction. Rather, the approach ought to be to respect the finality of the arbitral award as well as party's autonomy to get their dispute adjudicated by an alternative forum as provided under the law.

32) The principles of recording of reasons in the arbitral award are discussed by the Apex Court in ***OPG Power Generations Pvt. Ltd.*** in paras 80 to 83 as under:

80. We find ourselves in agreement with the view taken in Dyna Technologies, 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.

33) On the issue of interpretation/construction of contract by Arbitral Tribunal, the Apex Court has held in ***OPG Power Generations Pvt. Ltd.*** in para-84 as under:

84. An Arbitral Tribunal must decide in accordance with the terms of the contract. In a case where an Arbitral Tribunal passes an award against the terms of the contract, the award would be patently illegal. However, an Arbitral Tribunal has jurisdiction to interpret a contract having regard to terms and conditions of the contract, conduct of the parties including correspondences exchanged, circumstances of the case and pleadings of the parties. If the conclusion of the arbitrator is based on a possible view of the matter, the Court should not interfere. But where, on a full reading of the contract, the view of the Arbitral Tribunal on the terms of a contract is not a possible view, the award would be considered perverse and as such amenable to interference

34) Since this court is called upon to examine correctness of findings of fact recorded by the Arbitral Tribunal on the issue of delay subdivided into 15 heads, Petitioner will have to make out a case that either the findings are based on no evidence or that the Tribunal has taken into account something irrelevant or has ignored vital evidence in arriving at its decision. However, this does not mean that this Court can correct errors of facts. So long as the view is held to be plausible and there is some evidence to support the findings, it is not for this Court to measure the quality and quantity of evidence. As held by the Apex Court in ***Dyna Technologies Pvt Ltd. Versus. Crompton Greaves Ltd.***¹⁶ and in ***OPG Power Generations Pvt. Ltd.*** (supra), the approach of the Court ought to be to respect finality of the arbitral award based on the principle of party autonomy rather than interfering with the same in a casual and cavalier manner.

¹⁶ 2019 20 SCC 1

35) Keeping in mind the above broad contours of jurisdiction of this Court in examining the objection of perversity *qua* findings of facts recorded on the aspect of delay, I proceed to examine whether the Petitioner-Municipal Corporation has made out any case for interference in the Award.

DELAY

36) The contract was terminated by the Municipal Corporation on the ground that JV had delayed execution of the project. Levy of penalty was also premised on the allegation of delay. Thus, the issue of delay is at the fulcrum of the subject matter of controversy between the parties. Answering the issue of delay solves the other problems relating to award of claim for work done, refund of security deposit and damages. If the allegation of delay is upheld, termination becomes valid. Upholding the allegation of delay also justifies imposition of penalties. The amount towards work done has been offset by the Municipal Corporation against penalties levied. Therefore, if penalties are held to be valid, JV does not become entitled to the claim of work done under 18th RA bill. If termination is held valid, withholding the amount of security deposit also becomes valid. Similarly, validity of termination of contract automatically disentitles the JV to claim any damages in respect of balance of work. This is how the allegation of delay levied by the municipal corporation against JV while executing the contract is at fulcrum of the entire controversy between the parties.

37) The Tribunal has recorded detailed findings on the issue of delay by subdividing the aspect of delay into 15 subheads as under:

- (A) Delay on account of late performance of *bhoomi poojan* Ceremony.
- (B) Delay in approval of Bar charts
- (C) Delay in obtaining necessary permission from PWD and NHAI.
- (D) Delay in securing possession of land for setting up STPs.
- (E) Delay in approving the lineout.
- (F) Delay in approving STP layout at Degaon.
- (G) Delay in resolving the issue of change of transformer at Degaon location where STP was to be built.
- (H) Delay in removal of live electric poles and structures which were in existence at the Degaon STP plant site.
- (I) Delay in approving basic engineering package for Degaon STP.
- (J) Delay in approval of billing breakup for Degaon STP.
- (K) Delay in approving general arrangement drawings.
- (L) Delay in approving underground sewerage, networking design.
- (M) Delay in approval of KT wear.
- (N) Delay in payment of R.A. bills.
- (O) Delay on account of total lack of coordination between Corporation and MJP/ its project management consultant and incompetency of engineer in-charge of the Project/PHE.

38) Out of the above subheads, the subhead of delay in approving the bar charts was further subdivided in first bar chart,

second bar chart and third bar chart. The issue relating to delay in approval of first bar chart is answered in favour of the Municipal Corporation and against the JV. However, the issue of delay in approving the second and third bar chart is answered in favour of the JV and against the Municipal corporation. Similarly, the other subheads of delay are answered by the Arbitral Tribunal against the Municipal Corporation and in favour of JV.

39) Mr. Rao has taken me through the findings recorded in each of the subheads of delay by Arbitral Tribunal to demonstrate perversity therein.

40) I accordingly proceed to examine the findings recorded by the Arbitral Tribunal in respect of each of the 15 subheads of delay:

40.1) The First aspect of delay was with regard to late performance of *bhoomi poojan* ceremony. The work was to begin on 27 February 2012. However, the *bhoomi poojan* was apparently conducted on 3 June 2012. The Tribunal has evaluated the evidence on record and has arrived at a conclusion that there was confusion about the exact dignitary for performance of *bhoomi poojan* work. The JV took a defence that it was orally informed not to start work till performance of *bhoomi poojan* ceremony. The Tribunal took into consideration the minutes of meeting held under Chairmanship of the Municipal Commissioner on 15 July 2013 in which a decision was taken to condone delay of 97 days on account of non-holding of *bhoomi poojan* ceremony. The Tribunal has also taken into consideration admissions given by

R.W.1 (Engineer In-charge of the project holding the post of Public Health Engineer) who gave emphatic admissions that the work was held up on account of non-performance of *bhoomi poojan*. The findings are thus well supported by evidence and cannot be treated as perverse in any manner.

40.2) The Second sub-head is of delay relating to approval of bar charts. As observed above, findings on delay in approving first bar chart are recorded in favour of the Municipal Corporation. It is only the findings on delay in approval of second and third bar chart which are recorded against the Municipal Corporation. Again, the Tribunal has considered the evidence on record for holding Municipal Corporation responsible for not approving the second and third bar chart within reasonable time. Faced with this situation, Mr. Rao has sought to contend that the contract never provided for submission/approval of second or third bar chart. However, JV took a stand that PMC-MJP directed the JV to submit second/revised bar chart. This has been proved in evidence. Similar is the position in respect of third bar chart which was again requisitioned by the Municipal Corporation in the meeting held on 12 December 2012. It therefore cannot be contended that any delay in approving second or third bar chart is inconsequential. The contract was to be performed by giving future projections of progress of work. Once multiple bar charts are submitted, further progress cannot be made unless the bar charts are approved. The Tribunal has examined the evidence on record for holding Municipal

Corporation responsible for delay in approval of second and third bar chart. It cannot be contended that the Tribunal has rewritten the contractual covenants or has foisted a new commercial bargain on the parties by taking into consideration delay in approval of second and the third bar chart.

40.3) The Third sub-head of delay was in respect of securing permissions from PWD, NHAI and Railways. Faced with the situation that the findings of Arbitral Tribunal could not be termed as perverse and that there was indeed delay in securing such permissions, Mr. Rao has pressed into service the objection that the Tribunal ought to have considered and decided whether any work was withheld on account of delay in securing such permissions. However, R.W. 1 (Project Engineer In-charge) gave specific admission that the work could not be carried out without necessary permissions from PWD since sewage pipes were passing under Solapur-Hodgi-Auj-Ingagdi Road. The witness further gave an admission that the application to PWD for permission was made by the Municipal Corporation for the first time after 1 and ½ years from 'start date' on 16 July 2013 and the amount demanded by PWD was never deposited by the Municipal Corporation till the contract was terminated. R.W.1 also gave admissions about sewage line passing through various road crossings requiring permissions of PWD and NHAI. Similar was the position regarding permission from Railways for passing of sewage lines underneath the railway line. Since Municipal Corporation terminated the contract on the ground

of delay, the onus shifted on the Municipal Corporation to demonstrate that though permissions of PWD, NHAI and Railways were not secured, execution of the work was not affected and that it was possible for the contractor to continue with execution of the work in absence of such permission. However, no evidence is led by the Municipal Corporation in this regard. I am therefore unable to draw a surmise that non-procurement of permissions did not affect actual execution of work by the Contractor. I am therefore unable to trace any element of perversity on the third subheading relating to delay in procurement of permission.

- 40.4) The *Fourth* subhead of delay was with regard to non-possession of land and failure to acquire the same for the purpose of setting up two STPs. The two STP plants were to be constructed at Kumthe/Manjrewadi and Nehru Nagar. It was JV's case that till the contract was terminated, the land needed for construction of STP's was neither acquired nor made available to the contractor. The Tribunal went into the cross-examination of R.W.1 who was specifically asked Question No. 278 about availability of land required for setting up of the two STP plants to which the witness replied 'I do not remember'. The witness also agreed that construction of those two STP plants involved 40% value of contract. The Tribunal also considered the evidence of R.W.2 and R.W.3. After analyzing the entire evidence on record, the Tribunal has recorded a finding of fact that the requisite land was never available for construction of

the two STP plants till the contract was terminated. During the course of hearing of the Petition, no attempt is made by the Petitioner inviting my attention to any particular evidence to demonstrate that the lands for setting up of two STP plants were indeed available with the Municipal Corporation. I therefore do not notice any element of perversity in the finding of fact recorded on this aspect.

40.5) The Fifth subhead of delay was in respect of approval of line out. For execution of the work comprising *inter alia* of sewerage pipelines, it was necessary that the Municipal Corporation had with it properly surveyed map/plan of the exact roads that were required to be dug up. It appears that the JV had intimated to the engineer that it was to depute an agency for conducting survey. No response was given by the engineer. Additionally, MJP (PMC) in its letter dated 20 September 2012 had written to the Municipal Corporation that the roads indicated in the drawings were found to be missing. Thus, it was proved that the drawings available with the Municipal Corporation were faulty. R.W.2 admitted this position to some extent. Based on evidence on record, the Arbitral Tribunal has recorded a finding of fact that many roads in the drawings were non-existent. Here again I do not find any element of perversity in the findings recorded by the Arbitral Tribunal.

40.6) The Sixth aspect of delay relates to approval of STP layout at Degaon. The JV was supposed to construct a large STP with

capacity of 75 MLD at Degaon. There is no dispute to the position that the JV had forwarded the layout plan for construction of STP on 27 July 2012 and the layout was approved only on 29 October 2012. Though Municipal Corporation admitted delay, it sought to attribute the delay to Walchand College of Engineering. In my view, so long as JV is not held responsible for delay, which agency of the Municipal Corporation causes delay becomes irrelevant. As observed above, the Contractor had spent about 1 and ½ years for execution of the work before it was terminated. In such short period spending of time of over 3 months in just approving the layout for STP plant at Degaon was clearly fatal and a major factor to be considered against the Municipal Corporation. This finding is again supported by evidence on record not exhibiting any perversity.

- 40.7) The Seventh aspect of delay was in respect of issue of change of transformer at Degaon STP location. The Arbitral Tribunal has observed that this issue was raised by Municipal Corporations (MGP) by letter dated 4 October 2013. It appears that procurement of 33 KV transformer circuit breaker was required at Degaon site for 75 MLD STP. The Arbitral Tribunal has recorded a finding of fact on the basis of admission given by Municipal Corporation's witnesses that even tenders were not floated for procurement of the said transformer till termination of the said contract. It is also admitted that the issue was ultimately resolved in the year 2015 much after the contract was

terminated. This finding based on evidence warrants no interference.

- 40.8) The Eighth aspect of delay is in respect of removal of electric poles and structures at Degaon STPs site. Apart from the fact that the entire land at the plant site was not made available with the Municipal Corporation, it appears that the existing structure thereat was also required to be removed. The Municipal Corporation took a defense that no hindrance in the work could be caused due to existing structures. The Arbitral Tribunal considered the evidence on record and has recorded a finding that permission for demolition of existing structure was granted on 23 August 2013 i.e. before few months of termination of the contract on 9 December 2013.
- 40.9) The Ninth aspect of delay is about approval of basic engineering package for Degaon STP. Here again, the Tribunal has recorded a finding that basic engineering package was submitted by the JV on 7 July 2012 seeking approval from PHE and the same was granted on 13 May 2013 after delay of 10 long months. The finding is thus on documentary evidence warranting no interference.
- 40.10) The Tenth aspect of delay is about approval for billing breakup for Degaon STP. This is not a major factor, but the Arbitral Tribunal has considered oral evidence of R.W.1 for recording a finding that the belated grant of approval to billing break-up for STP plant at Degaon resulted in delay of four months.

40.11) The Eleventh, Twelfth and Thirteenth aspect of delay are about approval for general arrangement drawings, underground sewerage network designs and KT-Weir. In respect of the general arrangement drawings, approval was sought on 26 September 2012 and the same was granted on 13 May 2013. In respect of the underground sewerage, networking design was sought on 16 July 2012 and the same was granted in December 2012. In respect of KT-Weir, the approval was sought on 10 October 2012 and the same was granted on 19 March 2013. Thus, the findings are well supported by documentary evidence on record.

40.12) The Fourteenth aspect of delay is about payment of RA bills. Under Clause-10 of the contract, bills were supposed to be submitted by the Contractor each month and the same were supposed to be paid as far as possible within 10 days after certification of work. The Tribunal has taken into account the dates of submissions and payment of bills upto 8th RA bill for which there was insignificant delay ranging between 78 days to 183 days. However, it appears that after 9th RA bill, no payment was made and what was undertaken was merely an exercise of adjustment against the penalties. The Tribunal has recorded a finding of fact that there has been delay on the part of Municipal Corporation in payment of R.A. bills and has further held that such delay was one of the reasons for disruption of pace of execution of work under the contract. It cannot be

contended that this finding is something which no fair-minded person would ever record.

40.13) The Fifteenth aspect of delay was in respect of the lack of coordination between Municipal Corporation and its PMC (MJP) and the incompetency of the Engineer In-charge of the project/PHE. The Tribunal took into account evidence of R.W.2 and R.W.3. R.W.3 who was the then Municipal Commissioner admitted during the course of cross-examination that there was defect in functioning of MJP in respect of the contract. He also gave certain admissions about actions of PHE requiring him to intervene on occasions. Thus, there are emphatic admissions in the evidence of the part of R.W.2 and R.W.3 which have been taken into consideration by the Arbitral Tribunal for recording a finding of fact that there was total lack of coordination between MJP and Municipal Corporation and the then PHP was also not competent enough in taking various decisions in a timely manner. These findings are again clearly borne out by the evidence on record and cannot be termed as perverse by any stretch of imagination.

41) After discussing each 15 sub-heads of delay, the Arbitral Tribunal concluded in para-58 of the Award as under :-

58. After scanning the evidence touching the delay caused in the progress of the work at every crucial stage, what emerges is that; the execution of the work was hindered and obstructed on account of inaction on the part of PHE / Engineer in-charge. Barring grant of timely approval to the first bar chart no approvals have been granted in reasonable time. It is the failure on the part of the PHE to take timely decisions that has resulted in causing inordinate delay in execution of the work. Strangely enough instead of extending the period of contract, the contract has been terminated after

imposing penalties and that too on the ground of alleged delay caused by the claimant. The delay is solely attributable to the respondents and not to the claimant. Hence the issue is answered accordingly.

42) After having discussed findings of the Tribunal in respect of each sub-heads of delay, I have satisfied myself that the same are well supported by the evidence on record. The Tribunal has not eschewed any vital piece of evidence while recording these findings. What the Municipal Corporation has done is to merely issue letters to the Contractor accusing it of causing delay in execution of the work. However, when it came to leading evidence before the Arbitral Tribunal, no evidence was led by the Municipal Corporation to demonstrate as to how particular work sites or approvals were available for execution of the work. Therefore, mere letters issued by the Municipal Corporation to the Contractor by themselves are not sufficient to record a finding of fact that the Contractor delayed execution of the work when the evidence on record suggests to the contrary. Far from leading any positive piece of evidence, the three witnesses examined by Petitioner (which included the Municipal Commissioner and the Engineer-in-Charge), gave vital admissions in the cross examinations, which are highlighted in the arbitral Award. Mr. Rao has sought to defend the admissions by contending that the burden was on the contractor to prove that there was no delay and that it could not have relied only on admissions given in the cross examinations. I am unable to agree. It is well settled that admissions in cross examination, by themselves, constitute best evidence. An admission is the best evidence that an opposing party can rely

upon, and though not conclusive is decisive of matter, unless successfully withdrawn or proved erroneous. [SEE Narayan Bhagwantrao Gosavi Balajiwale v. Gopal Vinayak Gosavi and Ors.¹⁷ and United India Insurance Co. Ltd. & Anr Vs. Samir Chandra Chaudhary¹⁸]

43) In my view, therefore the arbitral Award is based on evidence on record. It does not suffer from the vice of ignorance of any vital piece of evidence. In my view, therefore, the findings recorded by the Arbitral Tribunal on the issue of delay clearly pass the muster of scrutiny under Section 34 of the Arbitration Act.

PENALTIES

44) The Municipal Corporation imposed penalties at Rs.2500/- per day by order dated 20 September 2012, Rs.10,000/- per day by order dated 13 December 2012, Rs.50,000/- per day by order dated 15 April 2013 and Rs.11,44,000/- per day by order dated 6 September 2013. There is no dispute to the position that the penalties were imposed on the ground of delay in execution of the work. I have already upheld the findings of the Arbitral Tribunal on the aspect of delay. Therefore, once the JV is not held responsible for delay in execution of work, the action of the Municipal Corporation in levying penalties is automatically rendered invalid. Nonetheless, the Arbitral Tribunal has made detailed discussions with regard to each penalty

¹⁷ AIR 1960 SC100

¹⁸ (2005) 5 SCC 784

orders. It has also found fault with the manner in which penalty orders were imposed. However, once the overarching findings of absence of delay on the part of the contractor is upheld, in my view, none of the penalty orders would have any legs to stand. The penalties are imposed because of allegations of delay in execution of project. Since the allegations of delay could not be proved before the Arbitral Tribunal, the penalties must necessarily go. In my view, therefore the Arbitral Tribunal's directions setting aside the penalty orders do not warrant interference in exercise of powers under Section 34 of the Arbitration Act.

TERMINATION OF CONTRACT

45) Here again, the only reason for termination of contract of the J.V. was delay in execution of work. As observed above, the contract was terminated before expiry of the contract tenure. Though few other allegations are also raised in the show cause notice and the termination order, ultimately termination is on account of alleged delay in execution of the work. Once the JV is absolved of the allegations of delay, the termination is automatically rendered invalid. Therefore, no interference is warranted in the conclusion reached by the Arbitral Tribunal that termination of contract by the Municipal Corporation was illegal.

BLACKLISTING

46) The JV was blacklisted by the Municipal Corporation initially by order dated 24 January 2014 for a period of 10 years. The order of blacklisting was question before this Court by filing Writ Petition No. 11657 of 2013. After observing that the order of blacklisting was passed without following the principals of natural justice, the same was set aside and liberty was granted to pass the order. Again, after grant of opportunity of hearing, fresh order dated 11 April 2014 was passed again blacklisting the JV for a period of 10 years.

47) The Tribunal has observed that in the blacklisting order, certain allegations not to be found in the termination notice were added. One of the reasons was the alleged subcontracting of the work by the JV to M/s. KEC International. However, the Arbitral Tribunal has considered the effect of Clause 39 of the agreement which prohibited sub-contracting of 'whole' works. Thus, there was no prohibition on sub-contracting part of the works. It is otherwise difficult to hold that in a contract of large magnitude of over Rs.210 crores, the contractor cannot sub-contract areas such as supply of manpower, supply of machinery, etc. The Tribunal's interpretation of Clause-39 of the agreement is sound and therefore no interference is warranted in the conclusions reached by the Arbitral Tribunal. Also delay in execution of work was also in the mind of the Municipal Commissioner by taking decision to blacklist the JV. The allegation of

delay is found to be factually incorrect. In my view, therefore no interference is warranted in the direction of the Arbitral Tribunal setting aside the blacklisting order.

AWARD OF CLAIM FOR RA BILL

48) The Arbitral Tribunal has upheld the claim of JV in respect of final RA bill only partially. The JV had claimed amount of Rs.29,65,65,000/-. The Tribunal has however allowed the claim of Rs.19,25,91,000/- and after deducting VAT, TDS etc. net amount sanctioned is Rs.16,45,96,753/-.

49) Sanction of claim in the sum of Rs.19,25,91,000/- is essentially on account of findings of the Arbitral Tribunal that the 18th and final RA bill was certified both by the PMC as well as by the Municipal Corporation. Mr.Rao has joined issues with the said findings and has contended that the Municipal Corporation had never certified the said RA bill. He has placed on record the relevant documents pertaining to the final bill. I have gone through those documents. It appears that after the contractor submitted final RA bill for Rs.29.65 crores, a joint inspection was conducted on 14 December 2013 to 25 December 2013 by MJP who was the PMC for the project. It appears that the PMC certified the work worth Rs.19.25 crores. The JV was aggrieved by such certification and raised objections in respect of each of the items and insisted for certification of total bill of Rs.29.65 crores. By letter dated 15 January 2014, MJP gave its comments on

each of the objections raised by the JV. It appears that to consider the objections, a meeting was convened in the office of the Municipal Commissioner on 18 January 2014 in which the JV once again raised various issues on each item of the bill. The Public Health Engineer of the Municipal corporation issued letter dated 18 January 2014 to the JV forwarding his comments on each objection raised by the JV. This is how both MJP as well as Municipal Corporation did not accept the objections of JV and stood by the final certification of amount of Rs.19.25 crores.

50) Thus, the correspondence dated 15 January 2014 and 18 January 2014 was essentially to deal with the objections of the JV relating to non-certification of entire RA bills of Rs.29.65 crores. So far as the Municipal Corporation is concerned, it was emphatic in its stand that certification of amount of Rs.19.25 crores was correct. It therefore cannot be contended the amount of Rs. 19.25 crores was not certified. The correspondence only shows that the JV's claim for certification of amount of Rs. 29.65 crores was rejected. This position is also borne out from the evidence of R.W.1, R.W.2 and R.W.3 all of whom emphatically agreed that the said documents indicated certified bill amount.

51) Mr. Rao has contended that it was JV's own case that the final RA bill was never certified and that therefore the Tribunal erroneously ruled contrary to JV's own case. Here the contention raised by the JV needs to be appreciated in its correct perspective. The

JV had raised claim of Rs.29.65 crores in the Statement Of Claim and its opposition to certified figure of Rs.19.25 crores was essentially in that regard. It was attempting to secure higher sum than Rs.19.25 crores by raising a plea that the figure of Rs.19.25 crores did not arise out of certification of the bill. However, raising of this stand by the JV did not provide handle or a license to the Municipal Corporation to disown even the amount of Rs.19.25 crores which was clearly shown to be certified by its own PMC. In my view therefore there is no patent illegality or perversity in the Tribunal awarding the claim of Rs.19.25 crores towards final RA bill. As observed above, the net claim awarded is in the sum of Rs.16,45,96,753/- after deducting the amount towards VAT and TDS.

52) The Municipal Corporation had refused to pay even certified amount of Rs.19.25 crores by setting off the amount levied towards penalties. Since the penalty orders are held to be illegal and are set aside, withholding of RA bill amount of Rs.16,45,96,753/- was clearly erroneous and the Tribunal has rightly directed payment of the same.

CLAIM TOWARDS RECOVERY OF DEDUCTED LOCAL BODY TAX

53) The Municipal Corporation has contended that the JV had contractually agreed to bear all tax including LBT and that therefore sanctioning the claim towards LBT is contrary to the terms of the contract. However, the Arbitral Tribunal has taken note of decisions in

pre-bid meeting in which it was clarified that LBT was to be paid only in respect of the materials procured within the limits of Solapur Municipal Corporation. The JV took a stand that it purchased all materials required for execution of the contract outside the city limits and that therefore it was not contractually liable to pay LBT on such purchased items. The Tribunal has held that on account of the above clarification in the pre-bid meeting, the Contractor did not add the value of the LBT in the bid amount. In my view, the view taken by the Arbitral Tribunal is a plausible view and it cannot be contended that the conclusion reached by it is such that no fair-minded person would ever reach the same. Therefore, the objection to award of claim towards LBT raised by the Municipal Corporation deserves rejection.

DAMAGES

54) The Arbitral Tribunal has awarded 10% damages on remaining value of the work under the contract. While doing so, the Tribunal has considered only the original tender value and not the value at which the bid was accepted and work order was issued. The initial tender value was only Rs.140 crores whereas the bid of JV was accepted in the sum of Rs.210 crores. However, the Arbitral Tribunal has considered only the original tender value of Rs.140 crores and after holding that the JV performed work of Rs.53 crores, the balance executable work was for Rs.87 crores. The Tribunal accordingly awarded 10% compensation as loss of profits on the remaining value

of Rs.87 crores. This is how damages/compensation for the sum of Rs.8.70 crores is granted by the Arbitral Tribunal.

55) Mr. Rao has questioned the method of awarding damages/compensation as a fixed percentage of remainder value of the contract. He submits that it was incumbent for the JV to lead positive evidence of sufferance of any loss/damages. No doubt, in **Bharat Cooking Coal Ltd. Versus. L.K. Ahuja¹⁹** and **Unibros Versus. All India Radio²⁰**, the Apex Court has highlighted the need to lead evidence for proving the claim for loss of profits. However, both the cases related to overstay of the contractor at the contract site leading to sufferance of damages. In such cases, the Apex Court has held that evidence needs to be adduced to prove sufferance of actual damages by the contractor. In the present case, however the claim of loss of profit arises out of termination of the contract as the contractor believes that it is denied opportunity to earn profit in respect of the remainder value of the contract.

56) There is a marked difference between the concepts of 'loss of profit' and 'loss of profitability'. The former claim of 'loss of profit' arises out of reasonable expectation to earn profits if the contract was not terminated. On the other hand, the latter claim of 'loss of profitability' involves reduction in estimated profit margin due to prolongation of contract. Therefore, in cases involving loss of profitability, leading of positive evidence becomes mandatory.

¹⁹ (2004) 5 SCC 109

²⁰ (2023) SCC Online SC 1366

However, in a case involving pure loss of profit arising out of termination of contract, Courts can award a reasonable percentage of balance value of contract towards damages.

57) The concept of difference between 'loss of profit' and 'loss of profitability' has been dealt with by learned Single Judge of Madras High Court in **State Industries Promotion Corporation of Tamil Nadu Ltd. Versus. RPP Infra Project** (supra). The Learned Judge has surveyed all the judgments of the Apex Court dealing with the difference in the concepts between 'loss of profit' and 'loss of profitability'. Therefore instead of me separately discussing various judgments on the issue, it would be apposite to extract the discussion by the learned Judge of the Madras High Court in paras-23 to 27, which read thus:

23. One of the main grievance expressed on the side of the petitioner is with respect to the award of compensation under the head of loss of profit. It was submitted that even though no evidence was let in on the side of the respondent to substantiate this claim and the learned Arbitrator also after rendering a finding that the respondent has not let in any evidence, has fixed an adhoc amount of 10% of the balance value of the work by relying upon the judgment of the Apex Court in the case of A.T. Brij Paul Singh v. State of Gujarat, (1984) 4 SCC 59. Accordingly, a compensation of a sum of Rs. 65,59,000/- was granted.

24. The above issue that was raised by the learned Additional Advocate General requires the consideration of this Court. **It is important to understand the difference between loss of profit and loss of profitability. Insofar as loss of profit is concerned, the contractor will be entitled to recover his profits on the basis of reasonable expectation of profits which could be earned if not for the illegal termination of the contract. Insofar as loss of profitability is concerned, it involves claims for reduction in the estimated profit margin due to prolongation of the contract or claims for loss of opportunity to take up other projects during the extended period, where the contractor could have earned a profit. When it comes to loss of profitability, the same will not be allowed unless there is evidence to prove such loss.**

25. The march of law, in order to understand the difference between loss of profit and loss of profitability, is traced hereunder:

a) The first judgment is in ***Mohd. Salamatullah v. Government of Andhra Pradesh***, (1977) 3 SCC 590 and the relevant portions are extracted hereunder:

xxx

We are not able to discern any tangible material on the strength of which the High Court reduced the damages from 15 per cent of the contract price to 10 per cent of the contract price. If the first was a guess, it was at least a better guess than the second one. We see no justification for the appellate court to interfere with a finding of fact given by the trial court unless some reason, based on some fact, is traceable on the record. There being none we are constrained to set aside the judgment of the High Court in regard to the assessment of damages for breach of contract. We restore the award of Rs. 1,87,500 made by the trial court on account of estimated profits (it transpires that when the trial court passed the decree the amount was recovered by the appellants with the result that there was nothing more to be paid by the State to the respondents herein). Of course, having regard, to all the circumstances of the case we direct the parties to bear the costs in this court. We may make it further clear that in regard to other items of claim we uphold what the High Court has awarded. In view of the fact that shortly after the decree was passed by the trial court the decree amount appears to have been recovered by the respondents, we do not award any interest under the decree.

b) ***A.T. Brij Paul Singh v. State of Gujarat***, (1984) 4 SCC 59 and the relevant portions are extracted hereunder:

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11. Now if it is well-established that the respondent was guilty of breach of contract inasmuch as the rescission of contract by the respondent is held to be unjustified, and the plaintiff contractor had executed a part of the works contract, the contractor would be entitled to damages by way of loss of profit. Adopting the measure accepted by the High Court in the facts and circumstances of the case between the same parties and for the same type of work at 15 per cent of the value of the remaining parts of the work contract, the damages for loss of profit can be measured.

c) ***Dwaraka Das v. State of M.P.***, (1999) 3 SCC 500 and the relevant portion is extracted hereunder:

9. The claim of the petitioner for payment of Rs. 20,000 as damages on account of breach of contract committed by the respondent-State was disallowed by the High Court as the appellant was found to have not placed the material on record to show that he had actually suffered any loss on account of the breach of contract. In this regard, the appellate court observed:

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Such a finding of the appellate court appears to be based on wrong assumptions. The appellant had never claimed Rs. 20,000 on account of alleged actual loss suffered by him. He had preferred his claim on the ground that had he carried out the contract, he would have earned profit of 10% on Rs. 2 lakhs which was the value of the contract. This Court in *A.T. Brij Paul Singh v. State of Gujarat* [(1984) 4 SCC 59] while interpreting the provisions of Section 73 of the Contract Act, 1872 has held that damages can be claimed by a contractor where the Government is proved to have committed breach by improperly rescinding the contract and for estimating the amount of damages, the court should make a broad evaluation instead of going into minute details. It was specifically held that where in the works contract, the party entrusting the work committed breach of contract, the contractor is entitled to claim the damages for loss of profit which he expected to earn by undertaking the works contract. Claim of expected profits is legally admissible on proof of the breach of contract by the erring party.

xxx

To the same effect is the judgment in *Mohd. Salamatullah v. Govt. of A.P.* [(1977) 3 SCC 590 : AIR 1977 SC 1481] After approving the grant of damages in case of breach of contract, the Court further held that the appellate court was not justified in interfering with the finding of fact given by the trial court regarding quantification of the damages even if it was based upon guesswork. In both the cases referred to hereinabove, 15% of the contract price was granted as damages to the contractor. In the instant case however, the trial court had granted only 10% of the contract price which we feel was reasonable and permissible, particularly when the High Court had concurred with the finding of the trial court regarding breach of contract by specifically holding that “we, therefore, see no reason to interfere with the finding recorded by the trial court that the defendants by rescinding the agreement committed breach of contract”. It follows, therefore, as and when the breach of contract is held to have been proved being contrary to law and terms of the agreement, the erring party is legally bound to compensate the other party to the agreement. The appellate court was, therefore, not justified in disallowing the claim of the appellant for Rs. 20,000 on account of damages as expected profit out of the contract which was found to have been illegally rescinded.

26. Insofar loss of profitability which always is considered only based on the evidence, was discussed in the following judgments:

a) The first judgment is ***Unibros v. All India Radio***, 2023 SCC OnLine SC 1366 and the relevant portions are extracted hereunder:

16. To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts

that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

17. One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been undertaken if not for the delays, the total number of tendering opportunities that the contractor received and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim.

18. Hudson's formula, while attained acceptability and is well understood in trade, does not, however, apply in a vacuum. Hudson's formula, as well as other methods used to calculate claims for loss of off-site overheads and profit, do not directly measure the contractor's exact costs. Instead, they provide an estimate of the losses the contractor may have suffered. While these formulae are helpful when needed, they alone cannot prove the contractor's loss of profit. They are useful in assessing losses, but only if the contractor has shown with evidence the loss of profits and opportunities it suffered owing to the prolongation.

19. The law, as it should stand thus, is that for claims related to loss of profit, profitability or opportunities to succeed, one would be required to establish the following conditions : first, there was a delay in the completion of the contract; second, such delay is not attributable to the claimant; third, the claimant's status as an established contractor, handling substantial projects; and fourth, credible evidence to substantiate the claim of loss of profitability. On perusal of the records, we are satisfied that the fourth condition, namely, the evidence to substantiate the claim of loss of profitability remains unfulfilled in the present case.

b) ***Batliboi Environmental Engineers Limited v. Hindustan Petroleum Corporation Limited***, (2024) 2 SCC 375 and the relevant portion is extracted hereunder:

23. Ordinarily, when the completion of a contract is delayed and the contractor claims that s/he has suffered a loss arising from depletion of her/his income from the job and hence turnover of her/his business, and also for the overheads in the form of workforce expenses which could have been deployed in other

contracts, the claims to bear any persuasion before the arbitrator or a court of law, the builder/contractor has to prove that there was other work available that he would have secured if not for the delay, by producing invitations to tender which was declined due to insufficient capacity to undertake other work. The same may also be proven from the books of accounts to demonstrate a drop in turnover and establish that this result is from the particular delay rather than from extraneous causes. If loss of turnover resulting from delay is not established, it is merely a delay in receipt of money, and as such, the builder/contractor is only entitled to interest on the capital employed and not the profit, which should be paid.

27. The marked difference between the loss of profit and loss of profitability was discussed by the Calcutta High Court in ***State of West Bengal v. S.K. Maji***, 2025 SCC OnLine Cal 3945 and the relevant portions are extracted hereunder:

14. There lies a fundamental difference between claims raised by contractors against employers for loss of profit and loss of profitability. While loss of profit indicates claims for loss of expected profit due to unexecuted work resulting from an illegal or premature termination of the contract, loss of profitability of loss of business signifies claims for reduction in the estimated profit margin due to prolongation of the contract or claims for loss of opportunity to take up other projects during the extended period where the contractor could have earned a profit. Loss of profit and loss of profitability are often mistakenly used interchangeably which has been noted by the Delhi High Court in ***Ajay Kalra v. DDA*** as follows : (SCC OnLine Del para 137)

“137. ‘Loss of Profits’ and ‘Loss of Profitability’ has often been interchangeably used in recovery cases. The former stands for the loss incurred due to the non-completion/prevention from completing of the contract on account of breach committed by the respondent. The latter refers to the loss incurred due to the delay in the project attributable to the respondent, due to which the claimant has lost the opportunity to earn profits through other projects after the contractual period.”

15. It is now an established position of law that claims for loss of profitability are not generally allowed in the absence of evidence to prove such loss. The view of the courts on this issue is explicit through judgments like Unibros case¹; Bharat Coking Coal Ltd. case² and Batliboi Environmental Engg. Ltd. case³, as has also been relied upon by the appellants in this matter. However, reliance on such cases is not apposite in the present case since those conflate the concepts of loss of profit and loss of business. It is pertinent to note here that even though the Supreme Court used the expression “loss of profits” in essence the claim was that of “loss of profitability” and thus, the requirement to prove actual loss was mandated only for losses arising out of delay and should not be misunderstood to be applicable to loss of profits for unexecuted works.

16. In Unibros case¹ the Supreme Court was faced with a similar situation wherein the appellant's claim for loss of profit stemmed from the delay attributable to the respondent in completing the project. It had also been established that the loss of profit claimed was based on the ground that the appellant having been retained longer than the period stipulated in the contract and its resources being blocked for execution of the work relating to the contract in question, it could have taken up any other work order and earned profit elsewhere.

25. It is a general principle of law of contract that in case of breach of contract, the injured must be put back in the same position that he would have been if he had not sustained the wrong. Once the contractor has established an illegal and unjustified termination of contract and a breach thereof on the part of the employer, which was also a finding of fact by the sole arbitrator in the present case, the contractor cannot be further obligated to establish a loss suffered on account of such breach, because a reasonable expectation of profit is implicit in a works contract. [See MSK Projects India (JV) Ltd. case¹²]. Therefore, any loss occasioned due to illegal termination of works contract, has to be compensated by way of damages once the breach on part of the erring party is established. This is obviously subject to the caveat that the compensation must be reasonable and the parties should not be allowed to make a windfall profit, by a mere allegation of breach of contract. However, it is a settled position of law that for estimating damages, courts are not required to go into the minute details; a broad evaluation of the same would suffice.

26. In J.G. Engg. (P) Ltd. v. Union of India¹⁸ the Supreme Court upheld the award of loss of profits measured at 10 per cent of the value of the remaining part of the contract which could not be performed due to illegal termination of the contract. The measure of profit was assessed at 15 per cent of the value of the remaining part of the work in A.T. Brij Paul Singh case⁷. The Delhi High Court in R.K. Aneja v. DDA¹⁹ was of the view that the petitioner was entitled to 10 per cent loss of profit on the balance amount of work left undone without proof of loss of profit which he expected to earn by executing the balance work.

27. In the statement of claim, it has been stated that the respondent contractor had submitted the tender after considering the profit as 15 per cent over the entire value of the work and considering the period of the work as 18 months. Owing to failure and negligence on the part of the appellants herein in discharging their contractual obligation and further by illegal termination of the contract when time was no longer of essence the appellants had restrained the contractor from executing the work valued at Rs. 1,12,83,262.14 and thus, the claimant had suffered loss to the tune of Rs. 16,92,489 being the 15 per cent profit over the unexecuted value of the work.

28. In the facts of the present case, the arbitrator has given his reasons for not accepting the said rate of 15 per cent as claimed by the respondent contractor and instead have awarded loss of profit at the rate of 10 per cent amounting to Rs. 9,66,711 based on the decisions cited by the claimant as well as the books of G.T. Gajaria. This seems to be a rational, plausible and possible approach that has been adopted by the learned arbitrator. The award is also in sync with the authorities and judicial pronouncements on similar issues.

(emphasis added)

58) In **State Industries Promotion Corporation of Tamil Nadu Ltd.**, Madras High Court relied on judgment of the Apex Court, *inter-alia* in **A.T. Brij Paul Singh** (supra) on which independent reliance is placed by Mr. Singh, in which the Apex Court has concluded that once a party is guilty of breach of contract and once recession of contract is held to be unjustified, the contractor is entitled to damages by way of loss of profits in respect of remaining parts of the works. The Apex Court accepted grant of damages of 15% of remaining value of the contract work. The learned Single Judge of the Madras High Court has also referred to the judgment of the Apex Court in **Dwaraka Das** (supra) on which also independent reliance is placed by Mr. Singh. In **Dwaraka Das**, the Apex Court, following the ratio of the judgment in **A.T. Brij Paul Singh**, (supra) upheld the claim for loss of profit for 10% on remaining value of contract.

59) The learned Single Judge of Madras High Court in **State Industries Promotion Corporation of Tamil Nadu Ltd.** also took note of the judgment of Calcutta High Court in **State of West Bengal Versus. S.K. Maji**²¹ which discusses the difference between the

²¹ (2025) SCC Online Calcutta 3945

concepts of ‘loss of profit’ and ‘loss of profitability’. Referring to the judgments of the Apex Court in **Bharat Cooking Coal Ltd., Unibros and Batliboi Engineering Ltd. Versus. HPCL**²² the Calcutta High Court held that the said judgments are not relevant as the same deal with the concept of loss of profitability and therefore emphasized on the requirement to prove actual loss caused. The Calcutta High Court upheld the claim for 15% loss of profit in respect of unexecuted value of work.

60) The conceptus of the above discussion is that the concept of ‘loss of profit’ and ‘loss of profitability’ cannot be conflated. The former refers to damages arising out of wrongful termination of contract, whereas the latter arises out of overstay of the contractor at the site due to delay in execution of the work. In the former case, the contractor is an injured party who is prevented from executing balance work. Therefore, his claim for loss of profit is dependent only on the issue of validity of termination of contract. Once termination is found to be unjustified, it is permissible for the Court to award reasonable percentage of unexecuted work as damages. However, in a case involving claim for loss of profitability it, becomes necessary for the contractor to prove as to how delay in execution of work and his overstay at the site has led to actual sufferance of damages. In such case, it is necessary to prove as to how detention of manpower or machinery at the contract site prevented the contractor from utilizing

²² (2024) 2 SCC 109

the same at some other contract site and how he suffered loss on account of the same.

61) In the present case, the Arbitral Tribunal has awarded 10% of balance value of contract as damages in favour of the JV. Since termination of contract is found to be unjustified, the claim arose out of loss of profit due to wrongful termination of contract. It was therefore not necessary for JV to lead independent evidence of actual sufferance of losses. Therefore, the objection raised on behalf of the Municipal Corporation about absence of any evidence to prove actual cause of loss is misplaced deserving rejection.

62) The quantum of damages awarded by the Arbitral Tribunal is also extremely conservative. Apart from the fact that only 10% of value of unexecuted work is awarded as damages, the Arbitral Tribunal has not considered the actual value of unexecuted work which could have been performed by the contractor. The contract was awarded to the JV for Rs.212,52,02,467/-. However, the Tribunal has taken into consideration the approximate tender estimate of Rs.139,12,52,239/- for award of damages. Though this was sought to be challenged by the JV, it has fairly decided not to press its Commercial Arbitration Petition No. 252 of 2024. As a matter of fact, if the JV was permitted to execute contract, it would have received the entire contract amount of Rs.212,52,02,467/-. However, the Tribunal has taken into consideration only the tender estimate value. Seen from the amount of difference between the contract value of Rs.212.52

crores and actually performed work of Rs.53 crores, the value of unexecuted work would have been Rs.159 crores and 10% compensation/damages would have been in the range of Rs.15.90 crores. The Arbitral Tribunal has awarded only Rs.8.70 crores as damages by taking into consideration tender estimate of about Rs.140 crores. This would mean that what is actually awarded to the JV are damages of only 5.5% of the actual unexecuted value of contract.

63) The damages are thus awarded by adopting extremely conservative approach. I therefore do not find any valid reason to interfere in the award of damages by the Arbitral Tribunal.

CONCLUSION

64) Considering the overall conspectus of the case, I am of the view that no case is made out by the Municipal Corporation to interfere in the impugned arbitral Award. The Arbitral Tribunal has awarded only four claims in favour of the JV by rejecting rest of the claims. The first claim in respect of unpaid RA bill is conservatively sanctioned by accepting only certified figure of Rs.19.25 crores and by rejecting claim amount of Rs.29.65 crores. After deducting VAT and TDS, only Rs.16.45 crores is awarded. The second claim is in respect of refund of deducted amount of LBT which represents insignificant amount of Rs.62.41 lakhs. Nonetheless, award of the said claim is found to be in order. The third claim is in respect of the withheld amount of security deposit and once termination is found to be

unjustified, the Municipal Corporation cannot withhold the amount of security deposit. The last claim is in respect of award of damages awarded in the sum of Rs.8.70 crores. As observed above, this claim is again allowed by adopting extremely conservative approach where only 5.5% of actual value of unexecuted work is awarded by the Arbitral Tribunal. The Award to my mind appears to be unexceptional warranting dismissal of the Arbitration Petition.

65) I accordingly proceed to pass the following order:

- (i) Commercial Arbitration Petition No. 444 of 2024 filed by Solapur Municipal Corporation is dismissed.
- (ii) Commercial Arbitration Petition No. 252 of 2024 filed by the JV is dismissed as not pressed.
- (iii) The Bank Guarantee given by the JV shall be returned to it.
- (iv) In respect of the Bank Guarantee submitted by the Solapur Municipal Corporation, the Prothonotary and Senior Master shall encash the same and pay on to the JV the amount in respect thereof.

66) Both the Petitions are accordingly disposed of. Considering the facts and circumstances of the case, I find it appropriate not to award any further costs in both the Petitions. With dismiss of the Petitions nothing would survive in the Interim Application and the same is disposed off.

[SANDEEP V. MARNE, J.]

67) After the judgment is pronounced, the learned counsel appearing for Solapur Municipal Corporation prays for stay on directions in respect of the Bank Guarantees submitted by the rival parties. The request is opposed by the learned counsel appearing for JV. For a period of eight weeks from today, direction for return of Bank Guarantee to JV as well as direction for encashment of Bank Guarantee submitted by Solapur Municipal Corporation shall stand stayed.

[SANDEEP V. MARNE, J.]

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signed by
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SAWANT
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