IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO. 41 OF 2024

Midaas Construction Company Private Limited ...Petitioner

Versus

Hindustan Construction Company Ltd. ...Respondent

Mr. Rahul Dev *a/w Ms Risha Alva i/b. Argus Partners, for Petitioner.*

Mr. Deepak Kumar Thakur *a/w Mr. Harsh Sawant , Mr. Puspak Chamariya i/b Puspak Chamariya, for Respondent*

CORAM: SOMASEKHAR SUNDARESAN, J.

RESERVED ON: APRIL 30, 2026

PRONOUNCED ON: JUNE 8, 2026

<u>JUDGEMENT :</u>

<u>Context and Factual Background:</u>

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ***("the Act")***, by the Petitioner, Midaas Construction Company Private Limited ***("Midaas")***, challenging a part of an Arbitral Award dated August 1, 2023 ***("Impugned Award")*** passed by the Learned

Arbitral Tribunal in relation to a claim raised against the Respondent, Hindustan Construction Company Ltd. ***("HCC")***.

2. While the Learned Arbitral Tribunal has partly allowed some of the Petitioner's claims, the grievance in the Petition is regarding the rejection of various other claims, including Midaas' claim for damages in its entirety.

3. The factual matrix underlying these proceedings can be summarized thus:

A] On November 11, 2014, HCC entered into a contract ***("Main Contract")*** with the Ministry of Road Transport and Highways ***("MORTH")***, for rehabilitation and upgradation of a sector in the National Highway 233 along the Indo-Nepal border. The scope of work bagged by HCC from MORTH covered construction of three major bridges, one rail overbridge, two underpasses, nine minor bridges, ninety two minor structure works including one public underpass, a toll plaza and other related infrastructure works for the entire road stretch of 65.87 kilometres;

B] Midaas and HCC entered into an arrangement by which Midaas would act as a sub-contractor of HCC, in connection with the works covered by the Main Contract. This culminated in a Work Order dated

August 27, 2015 ***("Work Order")***, signed by the parties for a value of Rs.~124 crores issued by HCC in favour of Midaas. The Work Order entailed construction of road works for the road length involved, including widening and strengthening of two lanes with paved shoulder. The scope of work under the Work Order, according to Midaas, mapped the entirety of the work under the Main Contract except for construction of the major bridges. Midaas was to procure all materials for the Work Order except for certain ingredients which were to be supplied by HCC;

C] Running account bills ***("RA Bills")*** were raised from time to time and certain payments were also made thereon against them;

D] Eventually, on December 14, 2017, HCC asked Midaas to vacate the materials lying at the site, within a period of four days. HCC informed Midaas that MORTH intended to foreclose the Main Contract and that the completed works were to be inspected and measured jointly as a preparatory measure;

E] Finally, by a letter dated February 2, 2018, HCC called upon Midaas to stop all ongoing activities and proceed with demobilisation, with the assurance that after completion of joint measurements and valuation of the unbilled work at site, payment for the work done would be released; and

F] According to Midaas, joint inspection was abandoned, resulting in Midaas having to complete the inspection unilaterally, and issue a Pre-Final Bill dated April 11, 2018 in conformity with the measurements. HCC did not certify or pay the Pre-Final Bill resulting in Midaas invoking arbitration under the Work Order, making a claim in the sum of Rs.~32.51 crore.

4. The components of the Impugned Award with which Midaas raises a grievance in this Petition, can be summarized thus:

A] The true value of the Work Order according to Midaas was Rs. 165 crores and not Rs. 124 crores, and this has been rejected by the Learned Arbitral Tribunal, ignoring vital evidence in the form of HCC's email dated August 28, 2015 and Minutes of Meeting dated April 14, 2016;

B] A claim for Rs.~5.95 crores towards rate revision has been rejected by the Learned Arbitral Tribunal, ignoring vital evidence in the form of correspondence between the parties ranging from Midaas' letter dated June 13, 2016 to Minutes of Meetings held on July 7, 2016 and July 8, 2016, followed by revised rate analysis submitted by Midaas; and HCC's letter to MORTH on December 28, 2017, giving the very same justification for revision of rates;

C] The Learned Arbitral Tribunal has rejected the claim for Rs.~32.51 crores towards the Pre-Final Bill dated April 11, 2018, on the premise that supporting material for the Pre-Final Bill had not been provided, ignoring vital evidence in the form of oral evidence of Midaas' witnesses, testifying submission of the supporting documents and an admission by HCC's witness that such documents had been received. The other vital evidence allegedly ignored is the evidence led by Midaas' witnesses as to the methodology unilaterally devised by HCC for preparing its own bills, which Midaas was forced to accept, and corroborative evidence in the form of the scope of work contained in the tender issued by MORTH or the balance unexecuted work;

D] Foreclosure of the Main Contract was attributable not to Midaas but to HCC, but the Learned Arbitral Tribunal has ignored the correspondence between HCC and MORTH, specifically HCC's letter dated December 28, 2017 and MORTH's letter dated January 16, 2018. According to Midaas, the termination of the Work Order was for reasons not attributable to Midaas and therefore, Midaas would be entitled to costs, expenses and damages as a consequence of the termination; and

E] The claim for damages has been entirely dismissed by the Learned Arbitral Tribunal solely on the premise that the damages were based on the Work Order being valued at Rs.165 crores and not Rs.124 crores, and there was no alternative prayer or basis presented by Midaas in respect of any lower amount. According to Midaas, it was always open to the Learned Arbitral Tribunal to adopt any other suitable method for computation of damages without considering any facet of the material supplied by Midaas. The Learned Arbitral Tribunal has simply rejected the claim for damages on the sole premise that the Work Order was for Rs.~124 crores and not Rs.~165 crores.

5. Midaas would contend that there are various instances in the Impugned Award where a document has been mentioned but eventually the same has not been considered or has even been ignored altogether. Towards this end, the following references are drawn by Midaas:

A] HCC's email dated May 13, 2015, HCC’s letter dated December 28, 2017 issued to MORTH, cross-examination of HCC's witness and response to questions 103 to 108 in connection with the Pre-Final Bill;

B] Monthly Progress Report of November 2017. and the new tender issued by MORTH;

C] Correspondence exchanged between MORTH and HCC about the termination and the ultimate foreclosure of the Main Contract; and

D] Chartered Accountant's certificates, monthly progress reports and invoices to establish the amounts expended by Midaas towards the project.

6. Midaas would contend that in each of the foregoing, HCC has sought to explain, clarify and avoid the aforesaid by supplying its own reasons in these proceedings, but such reasons are not found in the Impugned Award. The Impugned Award should speak for itself and a successful party cannot be permitted to supplement such reasons in support of the conclusion drawn by the Learned Arbitrator . Towards this end, reliance is placed on ***Bhanumati Bhuta***[1] and ***Deccan Chronicle Holdings***[2]**.**

7. Likewise, Midaas would point out that HCC is blowing hot and cold in connection with the relation between the Main Contract and the Work Order, seeking to contend that they are not back-to-back contracts and in the same breath contending that foreclosure of the Main Contract would culminate in automatic foreclosure of the Work Order.

8. In sharp contrast, according to HCC, none of the grievances raised by Midaas justify any interference by this Court in exercise of jurisdiction under Section 34 of the Act, for the following reasons :-

1 *Bhanumati Jaisukhbhai Bhuta Vs. Ivory Properties & Hotels Private Limited and Another* - ***2020 SCC OnLine Bom 157***

2 *Board of Control for Cricket in India Vs. Deccan Chronicle Holdings Ltd.* - ***2021 SCC OnLine Bom 834***

A] The Work Order represented a selective back-to-back contract and was not a uniformly back-to-back contract. The Main Contract was for Rs.393 crores while the Work Order was for Rs.124 crores. Moreover, the Main Contract and the Work Order cannot be held to be uniformly back-to-back contracts, simply because the Main Contract is an Engineering Procurement and Construction ***("EPC")*** Contract while the Work Order represented an Item-Rate Contract;

B] The Section 34 Petition is barred by limitation inasmuch as it was filed on January 9, 2024, although the Impugned Award had been received on August 2, 2023. However, HCC had filed an application under Section 33(1)(a) of the Act on August 30, 2023, which was dismissed on October 11, 2023. The starting point for computation of limitation ought not to be the date of rejection of HCC's Section 33 Application and should instead be the date of receipt of the Impugned Award;

C] The Learned Arbitral Tribunal correctly held that the value of the Work Order was Rs. 124 crores and not Rs. 165 crores. By email dated August 28, 2015, HCC stated that it would issue Midaas "an initial order" of Rs.124 crores and that any expansion would need internal approval, which clearly indicates that there was no approval for an order value of Rs.165 crores. As regards the Minutes of Meeting dated April 14, 2016, a holistic reading of the same would point out that they do not evidence issuance of a Work Order of Rs.165 crores;

D] As regards the email dated July 1, 2016 sent by HCC to Midaas, the said email merely proposes to revise the rates proposed by HCC. and it was not really a confirmation of any kind or any particular revision of rates;

E] Midaas did not contemporaneously protest in any way or at any time after the termination, all the way until November 2018 when it issued a notice of dispute to trigger arbitration. In fact, about a week before the termination of the Work Order, by a communication dated January 25, 2018, Midaas admitted that it had executed the work in consonance with the Work Order and requested HCC to keep the rate, value, quantum and other terms and conditions of the original Work Order unchanged. This email being subsequent to the two documents sought to be relied upon by Midaas in this Petition, constitutes contemporaneous evidence to indicate that the Learned Arbitral Tribunal did not fall in any material error in its findings on the value of the Work Order, to be regarded as perverse;

F] As regards the claim for rate revision, HCC would submit that the Work Order was explicit in multiple clauses, namely Clause 3.1, Clause 3.2.2, Clause 5 and Clause 15(q) that the rates agreed were fixed and firm. These are expressly agreed contractual provisions and no rate revision was at all possible unless the parties had mutually agreed to a revision in rate. Dealing with the breakup of the revision of rates, HCC would contend that out of the Rs.~5.95 crores claimed by Midaas, the component of revision attributable to Granular Sub-Base ***("GSB")*** and Wet Mix Macadam ***("WMM")*** is Rs.~4.45 crores, almost 75% of the total claim;

G] The claim for rate revision was attributed by Midaas to increase in the lead distance, with no correlation as to how the alleged change in the lead distance affected the rates for GSB and WMM, when the material for GSB and WMM was being supplied by HCC and not by Midaas. For the balance, 25% of the claim for rate revision, according to HCC, Midaas had executed nearly 12% of the total quantum of structural works and therefore, the claim for rate revision was a farce and superfluous, without being backed by evidence. In any case, documents applied by Midaas would evidence that Midaas had assumed the lead distance of 360 kilometers and not 90 kilometers as contended in the arbitration;

H] The Minutes of Meetings held on July 7, 2016 and July 8, 2016, relied upon by Midaas only record that Midaas had requested HCC for a review and does not document even an in-principle agreement for revision in rates. Even assuming that discussions for a potential revision were being held for a while, there is nothing to indicate the quantity on which any revised rate should apply. Therefore, Midaas has made its own assumption on the quantity for application of the revised rate;

I] Likewise, the correspondence between the parties coupled with the aforesaid Minutes of Meeting would not indicate any certainty of revision and merely shows that the parties were discussing the rate analysis and had not reached any agreement on rate revision. As regards HCC's letter dated December 28, 2017 sent to MORTH, HCC would contend that it is a letter explaining the difficulties faced by HCC in the execution of the Main Contract, and does not concern Midaas in any manner. Therefore, HCC would contend that it was not open to the Arbitral Tribunal to arrive at its own reasonable and fair revised rate as Midaas desired;

J] Clause 14 of the Work Order (Page 30 of HCC Compilation) points to the power of the Arbitral Tribunal to effect revisions being available in the context of termination of the Work Order, but the discussions in relation to revision of rates took place in 2016 while the termination took effect in 2018, and as such Clause 14(i) is not at all relevant;

K] As regards the Pre-Final Bill and the RA bills not having been paid and Midaas' contention that its claim for Rs.~32.51 crore towards the Pre-Final Bill has been wrongly rejected ignoring the oral evidence of witnesses; the corroborative evidence of Midaas; and the scope of work contained in a new tender issued by MORTH for the balance work, HCC would contend that the Pre-Final Bill was indeed submitted without any supporting documents to demonstrate how the computation had been made. The calculations were purely arithmetic without any documentation in support of the calculations and therefore, the Learned Arbitral Tribunal rightly rejected the claim in this regard.

L] HCC would also contend that the evidence purported was ignored is a misconceived submission. Relying on contemporaneous correspondence alongside the issuance of the RA Bills, HCC would contend that HCC had always demanded the backup details to support the bills raised. The disputed RA bills, in contrast with the RA bills raised and paid by HCC, would point out the stark difference between them;

M] Moreover, Midaas is seeking to rely upon the supporting documents based on which certified works agreed and accepted by HCC had actually been paid, in order to seek payment of amounts which are not appropriately invoiced, certified and accepted and therefore disputed. HCC also contends that Midaas' reliance on other purportedly corroborative evidence, such as the scope of work contained in the tender issued by MORTH for the balance of work is misconceived because there is nothing to correlate and compute how the quantities claimed by Midaas would be borne out by the tender issued by MORTH. Therefore, the Learned Arbitral Tribunal had correctly appreciated the situation and accurately held that the Pre-Final Bill was not supported by adequate evidence, which warrants no interference;

N] As regards the contention that the foreclosure of the Main Contract was attributable to HCC, and that the Impugned Award ignores HCC's letter dated December 28, 2017 to MORTH and MORTH's letter dated January 16, 2018 to HCC, it is contended that these are irrelevant. The foreclosure of the Work Order was issued by HCC on February 2, 2018, which was not disputed at that time by Midaas, which only stated in its reply dated February 6, 2018, with Midaas confirming that it would demobilize pursuant to Clause 14(h) and 14(i) of the Work Order. The Work Order contains a separate provision for foreclosure in Clause

15(m) and considering that Midaas had unconditionally accepted the foreclosure, there is no question of challenging the foreclosure and attributing blame for it. The Learned Arbitral Tribunal has rightly relied on Clause 15(m) of the Work Order and refused the grant of the claim. HCC would contend that its letter dated December 28, 2017 to MORTH is of no assistance to Midaas, inasmuch as the main reason for foreclosure of the Work Order as well as foreclosure of the Main Contract cited by MORTH was the non-availability of aggregates and other materials and the unprecedented increase in the cost of inputs;

O] Midaas was obliged to procure materials including aggregates for approximately 59% of the works. Therefore, according to HCC, the letter dated December 28, 2017 deals with the larger issue of the interests of all stakeholders and in fact protected Midaas from imposition of liquidated damages to which it would have otherwise been exposed to for failure of performance under the Work Order which in turn could have resulted in HCC's non-performance under the Main Contract;

P] MORTH's reference to poor cash flow on the part of HCC, is misplaced because the performance by HCC under the Main Contract was dependent on the performance by Midaas under the Work Order. The Learned Arbitral Tribunal has arrived at a finding that Midaas' financial condition was poor, and that it had failed to perform its fundamental obligations under the Work Order, completing only 12% of the total quantum of structural works. Specifically, under Clause 15 (m) of the Work Order, if any work forming part of the Main Contract were to be terminated as a result of such termination, the corresponding work under the Work Order would automatically stand terminated without any claim on the part of Midaas. Therefore, the Learned Arbitral Tribunal, HCC would contend, has accurately interpreted the contract between the parties to repel the claim raised by Midaas;

Q] Finally, as regards the claim for damages HCC would submit that the foreclosure of the Work Order could not automatically lead to claim for damages inasmuch as Midaas would need to plead and prove that there was a breach on HCC's part or that HCC has wrongfully terminated the Work Order. Therefore, in the absence of any “cause” shown by Midaas in respect of the termination, there cannot be any consequence in the form of damages. On the other hand, the claim for damages is simply based on the Work Order being for a value of Rs.165 crores as opposed to Rs.124 crores and were not backed by any evidence and represented purely mathematical calculations. Since the premise that foreclosure would automatically lead to damages is misconceived, the Learned Arbitral Tribunal had rightly held that there is inadequate evidence to establish a case for damages; and

R] HCC would also contend that Midaas had revised the claim for damages on multiple occasions–originally the claim was for Rs.~125.83 crores which was then reduced to Rs.~114.06 crores and further reduced to Rs.~100.58 crores. This, according to HCC is a strong pointer to the fact that the claim for damages was not based on any cogent material or evidence and was purely a speculative claim without any substance. The delay of eight months while alleged, is not coupled with any pleading on the prolongation of the Work Order being attributable to HCC. Therefore, it is contended that in the absence of any pleading or contemporaneous material contending that delay was attributable to HCC, and in the absence of any delay analysis coupled with the alleged delay on the part of Midaas, the Learned Arbitral Tribunal was right in its view of not awarding any damages to Midaas.

9. I have considered the submissions made by the respective advocates for the parties. I have examined the material on record with the assistance of the advocates and their oral and written submissions. Initially, the captioned proceedings had been heard last year, but due to efflux of time, the matter was

listed afresh for directions and by joint request of the parties, a refresher hearing was held and judgement was reserved.

Analysis and Findings:

10. The core grounds on which the Impugned Award is challenged do not present a case for intervention under Section 34 of the Act. The Learned Arbitral Tribunal has indeed allowed some of the claims of Midaas and has rejected HCC's counterclaim. In a nutshell, the findings of the Learned Arbitral Tribunal, in my opinion, fall within the ambit of reasonable and plausible conclusions based on the Learned Arbitral Tribunal's best judgement of the evidence before it. It is not open to this Court to re-appreciate evidence or to substitute one plausible reading of the evidence with another. I do not find that any vital evidence has been missed out by the Learned Arbitral Tribunal either to render the outcome to be patently illegal or perverse. With that overall conclusion, I have set out below my findings on each of the grounds of challenge in this Petition.

Value of the Work Order and Consequential Findings:

11. To begin with, the Learned Arbitral Tribunal's findings that the Work Order was for a value of Rs. ~124 crores and not Rs. ~165 crores cannot be faulted. The Work Order was explicitly for the former sum. The evidence

sought to be brought to bear to contend that there was a legitimate expectation of a larger order, and invoking of business efficacy principles did not turn the needle with the Learned Arbitral Tribunal. Having carefully examined the Impugned Award, it is apparent that this issue squarely falls in the realm of appreciation of evidence, which squarely is in the domain of the Learned Arbitral Tribunal. Even if it is arguable that there was some indication of a potentially larger work coming Midaas' way, it is simply not possible to substitute a plausible view of the Learned Arbitral Tribunal with another.

12. Indeed, there are elements of reference to a larger scale of work that could be said to have been under consideration. HCC's email dated August 28, 2015; email dated May 13, 2015 and Minutes of Meeting held on April 14, 2016 fall within this ambit. However, it is equally true that a reasonable view has been reached on Midaas' inability to comply with financial obligations such as provision of guarantees even on the Work Order size of Rs. ~124 crores.

13. In a much later communication dated January 25, 2018 from Midaas itself, it is apparent that Midaas itself could be said to have had a view that the size was Rs. ~124 crores, and this is pressed into service by HCC. To get over this, it is contended by Midaas that HCC cannot bring in basis and reasons other than what is relied upon by the Learned Arbitral Tribunal in returning its findings to defend the Impugned Award. Be that as it may, considering that

Midaas itself desired the Learned Arbitral Tribunal to bring in a business efficacy test, the manner of the issue being answered by the Learned Arbitral Tribunal is a reasonable and logical view. That apart, such view even if not supported by the reasons now canvassed by HCC, in my view, the factual matrix would point to such reasons being implicit.

14. Therefore, considering the provisions of Section 34, the case sought to be made out by Midaas in this regard does not lend itself to acceptance.

<u>Rejection of Rate Revision:</u>

15. On this count, Midaas contends that the vital evidence ignored is correspondence ranging from Midaas' letter dated June 13, 2016 to Minutes of Meeting held on July 7 and 8, 2016, followed by HCC's own letter to MORTH on December 28, 2017 adopting the justification for rate revision.

16. Here again, the contention is that the Learned Arbitral Tribunal has not interpreted evidence properly, including evidence relating to lead distance for the supply of materials and the increase in price of materials. To my mind, the finding that there was no firm agreement on revised rates is not a perverse finding. It is hard to see how the Learned Arbitral Tribunal could have revised the rates as a judicial finding and that too, when the parties were only in discussions over rate revision, without a firm agreement. Here too,

subsequent correspondence in the form of a letter dated January 25, 2018, although contended as irrelevant since the Learned Arbitral Tribunal did not rely on it, lends itself to the same reasoning as set out under the earlier head of value of Work Order.

17. Therefore, on this count too, in my view, no interference is called for.

<u>Pre-Final Bill and RA Bills:</u>

18. Here too, the same approach informs my view of there being no need for interference. Midaas' submission can be summarised as a prayer calling upon this Court to interpret the evidence including the questions posed to HCC's witness and interpretation of the answers. The Pre-Final Bill, if backed by material already provided by Midaas, it would not have been necessary for Midaas to call for records from HCC and pray for an adverse inference from HCC not producing them.

19. In a nutshell, on this count too, the issue falls within the domain of appreciation of evidence and the reasoning contained in the Impugned Award being adequate to support the findings rendered. The elements that Midaas submits were not dealt with are not of a nature that presents a perversity of such a nature that it cuts to the root of the matter.

Responsibility for Foreclosure and Damages:

20. Indeed, foreclosure of the Main Contract need not be attributable to Midaas but considering that MORTH terminated the Main Contract, the Work Order indeed would come to an end. However, this by itself would not be adequate to grant damages to Midaas.

21. As for the refusal to grant damages, the Learned Arbitral Tribunal's findings are assailed on the ground that the Learned Arbitral Tribunal based its rejection on the size of the Work Order alone and the absence of a prayer linking the value to Rs. ~124 crores. A careful reading of the Impugned Award would indicate that the case for not granting damages is well borne out by the reasoning in the Impugned Award. The fact that Midaas was not compliant with its financial obligations would also be a pointer to the fact that a case for damages is not made out, regardless of what caused the foreclosure.

22. Indeed, HCC has blown hot and cold on the interplay between the Main Contract and the Work Order – in some facets, contending that it is a back-to-back contract and in others, asserting that the two were distinct and not directly a sub-contract of the same nature. However, the Learned Arbitral Tribunal has noticed that the Main Contract had to be borne in mind when performing under the Work Order on operational parameters. At the same time, HCC's insinuation that Midaas' conduct led to termination was repelled.

That would still not mean that the foreclosure by MORTH would automatically lead to damages having to be granted to Midaas, without any default on the part of HCC. MORTH may have contemplated imposing liquidated damages on HCC but instead chose to foreclose it. That would not mean that Midaas' own delays and contribution to the delays in the project would count for nothing.

23. That apart, the Work Order indeed contemplated that if the Main Contract came to an end, the Work Order too would automatically come to an end. This is a distinct and separate reason that weighed with the Learned Arbitral Tribunal and not just the size of the Work Order. Therefore, in my opinion, the Impugned Award cannot be faulted on these two counts (foreclosure and denial of damages) too.

24. The scope of review under Section 34 is now subject matter of multiple judgements. This is well laid down in the cases of ***Dyna Technologies***[3], ***Associate Builders***[4], ***Ssangyong***[5], ***Konkan Railway***[6] and ***OPG Power***[7]. Even implied reasons, where discernible and may be inferred to support the just and fair outcome arrived at in arbitral awards. To avoid

3 *Dyna Technologies Private Limited v. Crompton Greaves Ltd* – ***(2019) 20 SCC 1***
4 *Associate Builders vs. Delhi Development Authority* – ***(2015) 3 SCC 49***
5 *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India* – ***(2019) 15 SCC 131***
6 *Konkan Railways v. Chenab Bridge Project Undertaking* – ***2023 INSC 742***
7 *OPG Power Generation Pvt. Ltd. v. Enexio Power Cooling Solutions India Pvt. Ltd. & Anr.*– ***(2025) 2 SCC 417***

prolixity, I do not think it necessary to burden this judgement with quotations from these judgements. Suffice it to say, no case has been made out for interference and therefore the Petition is ***dismissed***.

25. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]