



O.P.No.690 of 2018

In the High Court of Judicature at Madras

Reserved on
06.1.2026

Delivered on:
09.1.2026

Coram:

The Honourable Mr.Justice N.ANAND VENKATESH

O.P.No.690 of 2018

Corporation of Chennai rep.
By S E Bridges Department,
Ripon Building, EVR Road,
Chennai-3.

...Petitioner

Vs

- 1.M/s.National Building Construction
Corporation Ltd., Lodhi Road,
New Delhi-110003.
- 2.Mr.A.V.Rangaraju, Presiding Arbitrator,
No.65/6, Sakthi Flats, Kamarajar Salai,
Virugaumbakkam, Chennai-92.
- 3.Dr.D.Thirunakarasu, Arbitrator,
No.60, Anjuman Nagar 3rd Street
Ashok Nagar 3rd Street,
Ashok Nagar, Chennai-83.
- 4.Er.K.Srinivasan, Arbitrator
Block No.1, Flat No.C-2, Mayfair
Apartments, No.2A, LIC Colony Main
Road, Velachery, Chennai-90.

...Respondents



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PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 31.5.2012 passed by the 2nd to the 4th respondents herein in the matter of arbitration between the petitioner and the 1st respondent.

For Petitioner	:	Mrs.Malini Ganesh, SC for M/s.Malini Ganesh & Dr.P.Vasudevan
For R1	:	Mr.Prasad Vijayakumar
For R2 to R4	:	Served and no appearance

ORDER

The Corporation of Chennai has assailed the award dated 31.5.2012 passed by the Arbitral Tribunal.

2. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned counsel appearing for the first respondent.

3. The facts leading to filing of the above petition are as follows:

(i) The Corporation of Chennai, in order to provide better infrastructure facilities, planned to construct a flyover near Perambur Railway Station with the objective of easing traffic congestion. This flyover was supposed to be constructed over the existing subway. The



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work was awarded in favour of the first respondent after complying with all the formalities by issuing a letter of acceptance dated 05.1.1999. This was followed by an agreement dated 16.3.1999 executed between the parties.

(ii) The work was awarded at a contract price of Rs.10,69,43,275/- with the construction period of 18 months. It was also agreed between the parties that the contract was meant to be an item rate contract with a bill of quantity.

(iii) There were several hitches during the initial stage and as a result, a revised agreement for additional work was entered into on 18.7.2001 so as to enable the first respondent to execute the work at the increased value on the same terms and conditions stated in the original agreement.

(iv) Due to change in the political scenario, the entire work came to a grinding halt from August 2001 to October 2006 since a Commission of Inquiry was appointed. Later, an effort was made to resume the project and hence, a supplementary agreement dated 10.11.2006 was entered into by both parties. By virtue of this supplementary agreement, the cost was increased and a fresh timeline was also fixed for the completion of the contract.



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(v) The first respondent was not able to commence and continue with the work due to various reasons and by letter dated 06.1.2007, the first respondent informed their decision to demobilise their resources from the site. Ultimately, on 11.1.2008, a termination letter was issued by the petitioner to the first respondent. Thereafter, the petitioner issued a fresh tender notice and proceeded to complete the work.

(vi) The first respondent made a claim for compensation from the petitioner and it was turned down by the petitioner. Hence, the dispute was referred to the Arbitral Tribunal. Before the Arbitral Tribunal, the first respondent made seven claims. In turn, the petitioner filed a statement of defence denying the claim made by the first respondent. The petitioner also made counter claims against the first respondent.

(vii) Ultimately, the Arbitral Tribunal, by a majority award of 2:1, awarded a nett amount of Rs.4,40,24,946/-, which included both pre-suit interest and pendente lite interest. The counter claims that were awarded in favour of the petitioner were adjusted from the claims awarded in favour of the first respondent. The Arbitral Tribunal ordered for future interest at the rate of 10% per annum if the amount



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was not settled within one month from the date of the award till the date of payment of the amount. Aggrieved by that, the Corporation of Chennai has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act).

4. The learned Senior Counsel appearing on behalf of the petitioner made the following submissions:

- The Arbitral Tribunal ignored the contractual precondition under Clauses 24 and 25 of the conditions of contract, which require reference of the dispute to an adjudicator. Since the first respondent did not invoke Clause 24, no dispute existed in the eye of law and hence, the very proceedings before the Arbitral Tribunal is unsustainable.
- The Arbitral Tribunal did not even examine the cause for the delay, the person responsible for the delay, the effect of the supplementary agreement and the legality of the termination notice and the Arbitral Tribunal virtually treated the claims as disputes without any factual foundation.
- The Arbitral Tribunal ignored the vital documents like running account (RA) bills, M-books, etc., and as a result, the award



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passed was perverse.

- The Arbitral Tribunal undertook an exercise of improper and unjustified quantification of claims since the Arbitral Tribunal, instead of invoking Clause 42.4 of the conditions of contract, which dealt with the value of the work executed relatable to the value of the quantities of items in the bill of quantities completed, applied Clause 60.2 and it would amount to misreading of the clauses of the conditions of contract.
- The Arbitral Tribunal went wrong in reopening RA bill Nos.8 and 9, which were already certified by the Engineer without considering the evidence that was available on record.
- The Arbitral Tribunal awarded Claim No.2, which dealt with idle cost without there being any proof of loss sustained by the first respondent.
- The Arbitral Tribunal awarded loss of profit without the first respondent proving any loss sustained by them.
- The Arbitral Tribunal went wrong in awarding pre-suit and pendente lite interest.
- The award passed by the Arbitral Tribunal was in complete disregard to the evidence available on record, wrong application



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of the terms of the contract and without following the proper procedure and hence, it suffers from perversity and patent illegality and is contrary to the public policy.

5. The learned Senior Counsel appearing on behalf of the petitioner, in order to substantiate her submissions, relied upon the following judgments of the Hon'ble Apex Court:

(i) in ***M/s.Unibros Vs. All India Radio [Civil Appeal No.6895 of 2023 (arising out of SLP (Civil) No.8791 of 2020) dated 19.10.2023];***

(ii) in ***Batliboi Environmental Engineers Ltd. Vs. Hindustan Petroleum Corporation Ltd. [Civil Appeal No.1968 of 2012 dated 21.9.2023];***

(iii) in ***Associate Builders Vs. Delhi Development Authority [reported in 2015 (3) SCC 49]; and***

(4) in ***Delhi Development Authority Vs. M/s.R.S.Sharma & Co., New Delhi [Civil Appeal No.2424 of 2002 dated 26.8.2008].***



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6. Per contra, the learned counsel appearing for the first respondent submitted that the Arbitral Tribunal has dealt with each and every claims independently in line with the evidence available on record and also taken into consideration the terms of the agreement and that such a view taken by the Arbitral Tribunal is a possible view, which cannot be interfered under Section 34 of the Act.

7. To substantiate the same, the learned counsel appearing for the first respondent relied upon the following judgments of the Hon'ble Supreme Court:

(i) in ***Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI [reported in 2019 (15) SCC 131]***; and

(ii) in ***Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [reported in 2019 (7) SCC 236]***.

8. The learned counsel appearing for the first respondent further submitted that though the first respondent had made a larger claim, what was granted was very minimal, that instead, certain counter claims were also allowed, which were given credit to while arriving at



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the nett award amount, that the interest awarded by the Arbitral Tribunal is also in line with the terms of the agreement and Section 31(7) of the Act and that the award does not require the interference of this Court. Accordingly, the learned counsel sought for dismissal of this petition.

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

10. In order to appreciate the award passed by the Arbitral Tribunal, certain background facts will have to be necessarily taken into consideration in this case since the letter of acceptance was issued in the year 1999 whereas nothing substantial happened till the year 2006 when the supplementary agreement was entered into between the parties.

11. The first respondent was awarded the work of construction of flyover at Perambur by issuing the letter of acceptance dated 05.1.1999. The first respondent also started the construction work and

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installed nearly 133 Nos. of piles out of 264. The petitioner issued the structural drawings for the purpose of enabling the first respondent to carry out the work on retaining walls and test piles. In the load test that was carried out, it was found that the dia-piles as suggested by the petitioner did not withstand the load. Therefore, on 07.12.1999, the petitioner instructed the first respondent to halt all the construction activities except for construction of retaining wall works.

12. After a gap of nearly eight months i.e. on 14.8.2000, the petitioner instructed the first respondent to resume the work after giving the redesign of the piles. Further, the updated cost estimates were also provided and the scope of the work was revised. Even thereafter, there were issues regarding the structural integrity and quality of the installed piles. Hence, on 19.2.2001, the petitioner instructed the first respondent that the piles should be terminated at the depth of 2 meters into the hard rock stratum instead of 3 meters.

13. The first respondent had difficulties with the revised drawings and test results. This was highlighted through their representation dated 15.3.2001 and it was acted upon by the



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petitioner. Further, the Chief Engineer of the petitioner communicated to the Indian Institute of Technology, Madras expressing problems with the revised design. Since the work was getting unduly delayed, a revised agreement (Ex.C.6) was entered into between the petitioner and the first respondent on 18.7.2001 and it was aimed at addressing the delays, clarifying the revised terms and adjusted project goals to align with the updated designs and project conditions.

14. A Commission of Inquiry was appointed by the Government of Tamil Nadu to enquire into the alleged irregularities in the construction of various flyovers, which included the flyover at Perambur. As a result, the entire work came to a standstill from August 2001 to October 2006. In the meantime, the first respondent was sending various communications regarding the loss sustained by them and to compensate them as per the terms of the agreement. Ultimately, on 10.11.2006, the supplementary agreement (Ex.C.11) was entered into between the parties to formalize the revised scope of work and cost adjustments.



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15. After the parties entered into the said supplementary agreement, the petitioner, through the letter dated 08.12.2006 (Ex.C.26), informed the first respondent that there was a change in the seismic zone of Chennai city from seismic zone II to seismic zone III and that the structural design of the flyover required updation conforming to seismic zone III. On receipt of this letter, the first respondent, through the letter dated 11.12.2006 (Ex.C.126), informed the petitioner that they had undertaken the job of deploying the required manpower and equipment and that they could take up the updation of design only if extra cost was paid and if the petitioner would provide the complete design data for updating the design.

16. A series of communications was made by the first respondent as could be seen from Ex.C.126 to Ex.C.128. The petitioner also issued a revised bill of quantities for the sub-structure and foundation on 03.7.2007, to which, the first respondent raised certain issues on the ground that all the items mentioned in the letter were differing from the existing bill of quantities. Therefore, the first respondent insisted that the revised supplementary agreement must be executed in view of the change of foundation of sub-structure,

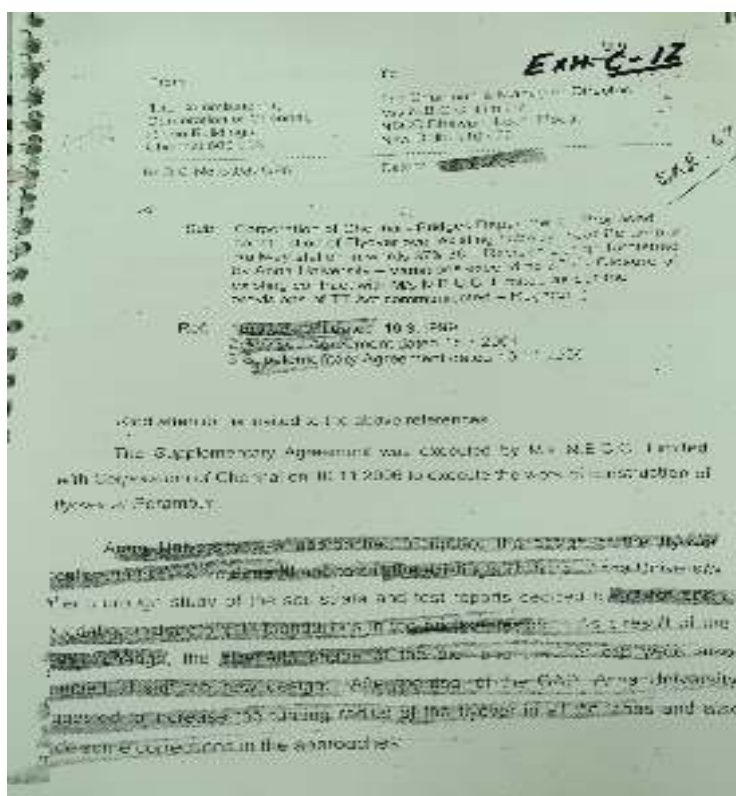
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which needed a revision of rates.

17. At one point, the first respondent decided to withdraw its men and material from the project site. Accordingly, by letter dated 06.9.2007 (Ex.R.62), the first respondent informed their decision to the petitioner and withdrew the men and material from the project site. Pursuant to that, the petitioner issued the termination letter dated 11.1.2008 (Ex.R.67). It will be relevant to scan this termination letter as hereunder (2 pages):

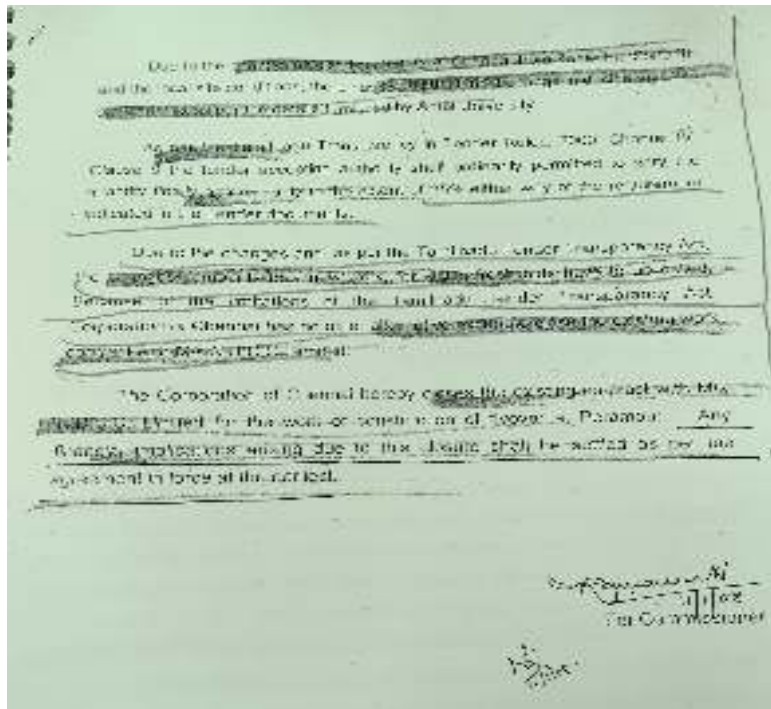




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18. An attempt was made on the side of the petitioner as if there was a delay on the part of the first respondent in effectively commencing the work after the parties entered into the supplementary agreement dated 10.11.2006 and therefore, the petitioner was left with no other option except to cancel the contract.

19. A careful reading of the said scanned termination letter would show that the petitioner wanted to close the existing contract with the first respondent since Anna University, which was approached

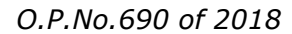


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to update the design of the flyover conforming to seismic zone III, had decided to opt for open foundation instead of pile foundation, which resulted in introducing substantial changes in design and bill of quantities and that since the variation of quantity finally ordered was beyond 25% of the requirements indicated in the tender documents, as per the relevant Act and the Rules, the petitioner had no other alternative except to close the existing work contract with the first respondent.

20. Thus, it is clear that the above communication does not anywhere blame the first respondent for any delay in the completion of work. Consequently, it is not a case of any breach of contract on the part of the first respondent, which resulted in the termination of the contract. A proper appreciation of this background is essential before going into the majority award passed by the Arbitral Tribunal.

21. The first issue that was raised on the side of the petitioner is that the contract clearly stipulated the dispute to be referred to the adjudicator and provided the procedure under Clauses 24 and 25 of the conditions of contract. According to the petitioner, this prerequisite



22. Clauses 24 and 25 of the conditions of contract are extracted as hereunder:

24.1 If the contractor believes that a decision taken by the Engineer was either outside the authority given to the Engineer by the contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator within 14 days of the notification of the Engineer's decision.

25.1 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.

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Adjudicator's decision will be final and binding.

25.3 The arbitration shall be conducted in accordance with the arbitration procedure stated in the Special Conditions of Contract."

23. A careful reading of Clause 24.1 makes it clear that only where there is a dispute with reference to the decision taken by the Engineer, the said Clause will apply.

24. In the case on hand, the contract itself was closed by the petitioner and therefore, in *stricto sensu*, Clauses 24 and 25.1 will not apply to the facts of the case.

25. The Arbitral Tribunal, while dealing with this preliminary objection raised by the petitioner, found that there was a named adjudicator when the original agreement was entered into between the parties. In the subsequent contract data, the name was left blank and no adjudicator was named or appointed. The Arbitral Tribunal also found that when the Arbitrators were nominated, the petitioner voluntarily nominated an Arbitrator from their side and thereby they had acquiesced the action initiated by the first respondent by invoking



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Clause 25.3. Accordingly, the preliminary objection raised by the petitioner was rejected. The reasoning given by the Arbitral Tribunal is perfectly in order and it does not suffer from either perversity or manifest illegality warranting the interference of this Court.

26. In so far as the award rendered in favour of the first respondent for claim No.1 towards value of the 9th RA bill remaining unpaid was concerned, it was contended on the side of the petitioner that the first respondent originally made a claim for a sum of Rs.87 lakhs in the claim petition, that however, at the time of filing the rejoinder, the sum was increased to Rs.1.38 Crores, that apart from that, the quantities of the 9th RA bill were already incorporated in the 8th RA bill, which was certified on 19.7.2001, that Clause 42.4 of the conditions of contract only contemplated the value of completed items of work and that therefore, the incomplete works were not entitled for payment.

27. It was further contended on the side of the petitioner that this assumes significance since it was an item rate contract with a bill of quantity, that after the supplementary agreement dated 10.11.2006



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was entered into between the parties, nothing remained payable to the first respondent and that the first respondent could not make any claims thereafter.

28. To appreciate the above stand taken by the petitioner, it will be necessary to take note of Clauses 42.3, 42.4 and 42.5 and 60.2 of the conditions of contract, which read as follows:

"42.3 The value of work executed shall be determined by the Engineer.

42.4 The value of work executed shall comprise the value of the quantities of the items in the bill of quantities completed.

42.5 The value of work executed shall include the valuation of Variations and Compensation Events.

.....

60.2 If the contract is terminated at the employer's convenience or because of a fundamental breach of contract by the employer, the Engineer shall issue a certificate for the value of the work done, the reasonable cost of removal of equipment, repatriation of the contractor's personnel employed solely on the works and the contractor's costs of protecting and securing the work and less advance payments received up to the date of the certificate."



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29. This Court has already held that the contract was terminated not due to any breach of contract and in such an event, the relevant clause that is applicable would be Clause 60.2. This Clause provides for payment of reasonable cost to repatriate the contractor for the loss suffered by him. While doing so, the item rate contract with bill of quantity will not apply.

30. This was properly appreciated by the Arbitral Tribunal and a finding was rendered to the effect that the value of work as given in Clause 42.4 of the conditions of contract will apply only to Clause 42 and it cannot be used for understanding the other clauses and therefore, the value of work as found in Clause 60.2 has a different connotation and it should cover even part items of work done at the site. This is certainly a possible view taken by the Arbitral Tribunal. Thereafter, the Arbitral Tribunal proceeded to quantify the claim and found that on receipt of the 9th RA bill, the measurements submitted by the first respondent were checked at site and the quantities of fully completed works were included in the 8th RA bill. The payment was not made on the ground that partly completed works could not be paid.



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31. After having rendered such a finding, the Arbitral Tribunal went into each item of claim made by the first respondent starting from paragraph 14.3.1 of the award upto paragraph 14.6. In fact, some of the claims were rejected and whatever claims were awarded were supported by reasons. These are factual findings based on appreciation of evidence and this Court cannot exercise its jurisdiction under Section 34 of the Act as against such factual findings.

32. The contention on the side of the petitioner as if nothing was payable to the first respondent after they entered into the supplementary agreement dated 10.11.2006 is again unsustainable since there were amounts that were due and payable to the first respondent under various heads and the supplementary agreement certainly cannot foreclose all the claims, to which, the first respondent would be entitled. ***Thus, the compensation awarded under claim No.1 is fully justified and the same does not warrant the interference of this Court.***

33. Claim No.2 pertains to idling cost claimed by the first respondent.



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34. The Arbitral Tribunal rendered a specific finding to the effect that the first respondent failed to prove the damages suffered by them under this head. The Arbitral Tribunal also acknowledged the fact that Section 73 of the Indian Contract Act would apply wherein the damages must be proved. In spite of it, the Arbitral Tribunal fixed an arbitrary sum of Rs.10 lakhs payable to the first respondent under Claim No.2. In the considered view of this Court, such an amount has been fixed by the Arbitral Tribunal on surmises without any reasoning and without any proof whatsoever on the side of the first respondent. ***Hence, the compensation fixed under Claim No.2 suffers from perversity and patent illegality warranting the interference of this Court.***

35. Claim No.3 pertains to loss of profit.

36. While dealing with this issue, the Arbitral Tribunal applied 15% to be a reasonable profit lost by the first respondent and awarded a sum of Rs.365 lakhs.



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37. The main contention raised on the side of the petitioner is that such an amount cannot be granted without proving the loss of profit.

38. I had an occasion to deal with the difference between loss of profit and loss of profitability in the decision in ***M/s.SIPCOT Ltd. Vs. M/s.RPP Infra Projects Ltd. [O.P.No.494 of 2018 dated 06.10.2025]***. I considered various decisions on the issue including the judgment of the Hon'ble Apex Court in ***Batliboi Environmental Engineers Ltd.,*** which is relied upon by the learned Senior Counsel appearing on behalf of the petitioner. After considering all the judgments, I have held that loss of profit stands for the loss incurred due to non completion of/prevention from completing the contract whereas the loss of profitability refers to the loss incurred due to the delay in the project attributable to the other side, on account of which, the claimant lost opportunity to earn profits through other projects after the contractual period. When it comes to loss of profit, the Arbitral Tribunal is permitted a leeway to employ an honest guess work and/or a rough and ready method for quantifying the damages by applying the Hudsons formula or Emden's formula or Eichleay's



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formula. It is also the usual practice to adopt 10% to 15% of the value of the work to decide the loss of profit. However, when it comes to loss of profitability, it has to be necessarily proved, failing which, such guess work will not be permitted. In fact, claim No.2, which was interfered by this Court, falls under this category.

39. In the case in hand, the first respondent was stuck in this contract from the year 1999 onwards till it was terminated by the petitioner on 11.1.2008. Considering the same, the Arbitral Tribunal fixed 15% as reasonable loss of profit. ***Such a decision taken by the Arbitral Tribunal on claim No.3 does not suffer from patent illegality and it is in line with the settled law on the issue of loss of profit.***

40. The next issue pertains to pre-suit and pendente lite interest granted by the Arbitral Tribunal.

41. While dealing with this issue, the Arbitral Tribunal has taken into consideration Section 31(7)(a) of the Act. The Arbitral Tribunal has also taken into consideration Clause 43 of the conditions of



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contract. Hence, in so far as the pre-suit interest and the pendente lite interest are concerned, each and every claim was considered and for certain claims, interest at 12% was fixed and for other claims, interest at 10% was fixed. ***In the considered view of this Court, there was certainly application of mind on the part of the Arbitral Tribunal while fixing the interest rate and it does not warrant the interference of this Court.***

42. The Arbitral Tribunal also considered each and every counter claim that was made by the petitioner. Further, out of four counter claims, counter claim Nos.1 and 4 towards unrecovered advances and towards pendente lite interest and future interest were awarded and counter claim Nos.2 and 3 were rejected. Thus, a total sum of Rs.1,66,48,507/- was awarded in favour of the petitioner. This would show that the Arbitral Tribunal properly applied its mind towards each claims and counter claims made by the respective parties. In so far as the award granted towards the counter claims were concerned, they had become final and they had not been challenged by the first respondent.



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43. In the light of the above discussions, except for the finding and the award made towards claim No.2, all the other findings and the award granted with respect to the other claims do not warrant the interference of this Court and the award passed towards claim No.2 alone should be severed and the valid portion of the award should be sustained in the light of the judgment of the Hon'ble Apex Court in ***Gayatri Balasamy Vs. ISG Novasoft Technologies Ltd. [reported in 2025 SCC OnLine SC 986 : 2025 (7) SCC 1]***.

44. Accordingly, the above original petition is partly allowed and the impugned award passed by the Arbitral Tribunal in so far as claim No.2 alone is set aside. The impugned award is sustained in all other respects. Considering the facts and circumstances of the case, there will be no order to costs.

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