

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR. N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE K. V. ARAVIND

COMMERCIAL APPEAL No. 427 OF 2024

CONNECTED WITH

COMMERCIAL APPEAL No. 428 OF 2024
COMMERCIAL APPEAL No. 429 OF 2024
COMMERCIAL APPEAL No. 430 OF 2024
COMMERCIAL APPEAL No. 431 OF 2024
COMMERCIAL APPEAL No. 432 OF 2024
COMMERCIAL APPEAL No. 433 OF 2024
COMMERCIAL APPEAL No. 434 OF 2024
COMMERCIAL APPEAL No. 435 OF 2024
COMMERCIAL APPEAL No. 436 OF 2024
COMMERCIAL APPEAL No. 437 OF 2024
COMMERCIAL APPEAL No. 438 OF 2024

IN COMAP No. 427 OF 2024

BETWEEN:

BRUHAT BENGALURU MAHANAGARA PALIKE,
OFFICE AT N. R. SQUARE,
BANGALORE 560002,
REPRESENTED BY
CHIEF COMMISSIONER.

...APPELLANT

(BY SRI SATYANAND B. S., ADVOCATE)

AND:

1. M/S ASHOKA BIOGREEN PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,

HAVING ITS REGD. OFFICE AT
No.861, ASHOKA HOUSE,
ASHOKA MARG, WADALA,
NASHIK-422 011,
MAHARASHTRA,
EMAIL: vijay.technical308@ashokabuildcon.in

HAVING ITS DIVISIONAL OFFICE AT
WIN-1, 2ND FLOOR, SURVEY No.93,
SAI HEERA BUILDING,
OPPOSITE TVS SHIRLEY SHOWROOM,
GHORPADI ROAD,
MUNDWA, PUNE-411 036,
MAHARASHTRA,
alp@alparashuram.in,

REPRESENTED THROUGH ITS
AUTHORIZED REPRESENTATIVE,
SHRI BALASAHEB ANIL AWHADE,
S/O ANIL AWHADE,
AGED ABOUT 36 YEARS,
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- 2 . SHRI ASHOK B. HINCHIGERI,
JUDGE OF HIGH COURT OF KARNATAKA (RETD),
SOLE ARBITRATOR,
ARBITRATION AND CONCILIATION CENTER,
BENGALURU (DOMESTIC AND AMP; INTERNATIONAL);
KHANIJA BHAVANA, RACE COURSE ROAD,
BENGALURU 560001,
KARNATAKA.

...RESPONDENTS

(BY SRI KAMLESH GHUMRE, ADVOCATE A/W
SRI A.L. PARASHURAM, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13
(1A), PROVISIO OF THE COMMERCIAL COURTS ACT, 2015 R/W
SECTION 37 (1) (C), OF THE ARBITRATION AND CONCILIATION
ACT, 1996, PRAYING TO SET ASIDE THE ORDERS PASSED IN COM.
AP 115 OF 2023, DATED 03.08.2024, PASSED BY THE LEARNED
LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE
(CCH No. 86), ALONG WITH CONSEQUENTIAL ORDERS.

IN COMAP No. 428 OF 2024

BETWEEN:

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IN COMAP No. 430 OF 2024

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IN COMAP No. 431 OF 2024

BETWEEN:

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IN COMAP No. 432 OF 2024

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IN COMAP No. 433 OF 2024

BETWEEN:

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AP 106 OF 2023, DATED 03.08.2024, PASSED BY THE LEARNED
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IN COMAP No. 434 OF 2024

BETWEEN:

BRUHAT BENGALURU MAHANAGARA PALIKE,
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IN COMAP No. 435 OF 2024

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IN COMAP No. 436 OF 2024

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IN COMAP No. 437 OF 2024

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THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13
(1A), PROVISIO OF THE COMMERCIAL COURTS ACT, 2015 R/W
SECTION 37 (1) (C), OF THE ARBITRATION AND CONCILIATION
ACT, 1996, PRAYING TO SET ASIDE THE ORDERS PASSED IN COM.
AP 110 OF 2023, DATED 03.08.2024, PASSED BY THE LEARNED
LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE
(CCH No. 86), ALONG WITH CONSEQUENTIAL ORDERS.

IN COMAP No. 438 OF 2024

BETWEEN:

BRUHAT BENGALURU MAHANAGARA PALIKE,
OFFICE AT N. R. SQUARE,
BANGALORE 560002,
REPRESENTED BY
CHIEF COMMISSIONER.

...APPELLANT

(BY SRI SATYANAND B. S., ADVOCATE)

AND:

1. M/S ASHOKA BIOGREEN PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956,
HAVING ITS REGD. OFFICE AT
No.861, ASHOKA HOUSE,
ASHOKA MARG, WADALA,
NASHIK-422 011,
MAHARASHTRA,
EMAIL: vijay.technical308@ashokabuildcon.in

HAVING ITS DIVISIONAL OFFICE AT
WIN-1, 2ND FLOOR, SURVEY No.93,
SAI HEERA BUILDING,
OPPOSITE TVS SHIRLEY SHOWROOM,
GHORPADI ROAD,
MUNDWA, PUNE-411 036,
MAHARASHTRA,
alp@alparashuram.in,

REPRESENTED THROUGH ITS
AUTHORIZED REPRESENTATIVE,
SHRI BALASAHEB ANIL AWHADE,
S/O ANIL AWHADE,
AGED ABOUT 36 YEARS,
OCCUPATION: SERVICE,
R/A GHORPADI ROAD MUNDWA,
PUNE-411 036,
MAHARASHTRA.

2. SHRI ASHOK B. HINCHIGERI,
JUDGE OF HIGH COURT OF KARNATAKA (RETD),
SOLE ARBITRATOR,

ARBITRATION AND CONCILIATION CENTER,
BENGALURU (DOMESTIC AND AMP; INTERNATIONAL);
KHANIJA BHAVANA, RACE COURSE ROAD,
BENGALURU 560001,
KARNATAKA.

...RESPONDENTS

(BY SRI KAMLESH GHUMRE, ADVOCATE A/W
SRI A.L. PARASHURAM, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1A), PROVISIO OF THE COMMERCIAL COURTS ACT, 2015 R/W SECTION 37 (1) (C), OF THE ARBITRATION AND CONCILIATION ACT, 1996, PRAYING TO SET ASIDE THE ORDERS PASSED IN COM. AP 112 OF 2023, DATED 03.08.2024, PASSED BY THE LEARNED LXXXV ADDL. CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH No. 86), ALONG WITH CONSEQUENTIAL ORDERS.

THESE COMMERCIAL APPEALS HAVING BEEN HEARD AND RESERVED FOR JUDGMENT, COMING ON FOR PRONOUNCEMENT THIS DAY, JUDGMENT WAS PRONOUNCED AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE
N. V. ANJARIA
and
HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE K. V. ARAVIND)

Heard learned advocate Mr. B.S. Satyanand for the appellant and learned advocate Mr. Kamlesh Ghumre along with learned advocate Mr. A.L. Parashuram for the respondents.

2. These appeals arise from a common award passed by the Arbitration Tribunal in A.C. Nos.76 to 87 of 2020, dated 18.05.2023 and common judgment in Com.A.P.Nos.106 of 2023 to 117 of

2023, dated 03.08.2024 by LXXXV Additional City Civil and Sessions Judge, Bengaluru (Commercial Court).

3. The dispute between the parties is common, however, arises from different contracts. The facts, disputes and contentions raised by both parties are common. Learned advocates for both parties have addressed common arguments dealing all the appeals. Hence, all the above appeals are heard and disposed by this common judgment.

4. Facts in COMAP.No.427 of 2024 are referred to for convenience and to avoid repetition.

5. Respondent No.1 was the claimant and the appellant was the respondent before the Arbitral Tribunal. The claimant Company is involved in developing, operating and maintaining a biomethanization plant for solid waste management. The appellant invited tenders for 12 projects to set up and operate biomethanization plants for the generation of energy from biodegradable waste of 5MTPD in various wards. The claimant/respondent was successive bidder and was awarded contract.

6. The dispute arose between the parties about the non-availability of land, delay in the issue of work orders, handing over possession of plots and the claimant incurring expenses while keeping his men and machinery idle, thereby incurring loss and the interest incurred on the borrowings. Further dispute was also regarding non-availability of roads to the project sites and the imposition of fine for delay in the work execution.

7. The claimants invoking the arbitration clause, filed petition before this Court for appointment of Arbitrator. This Court appointed the Arbitrator. The claim is towards shortage in waste material supply, compensation for non-production of slurry, towards idling of manpower, planted machinery, reimbursement of expenditure incurred on security, deduction of fine, charges for obtaining power and water and interest. The heads of claims in all the claim petitions are substantially similar except for the difference in project sites and the amounts.

8. The respondent filed a statement of defence contending that the claims are excessive, repetitive, fanciful and imaginary. It is the stand of the respondent that the claimant was aware of difficulties and stumbling blocks in executing the contract, till the handing over of the site, no work was commenced. In that view, the loss

suffered by idling of manpower, plant and machinery is not justified.

9. It is further stand of the appellant before the Arbitral Tribunal that an Expert Committee was appointed to examine the claims of the claimant. The Committee has recommended to pay Rs.6 crores as against claim of Rs.27.04 crores, whereas the Executive Engineer was of the view that the claimant was entitled to Rs.3 crores only. This amount has been paid and accepted by the claimant without any further claim or dispute. The Arbitral Tribunal after considering the pleadings, oral evidence and the documents passed an award holding that the claimant is entitled to compensation towards shortage in supply of waste for idling of manpower, plant and machinery, towards reimbursement of expenditure on security, return of fine amount, segregation charges, water and electricity charges, interest at 18% and other charges.

10. The respondent preferred petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Act'). The Commercial Court by order dated 03.08.2024 dismissed the petitions by common order.

11. The respondent is in appeal under Section 37 of the Act.

12. Learned advocate Mr. B.S. Satyanand for the appellant submits that the order of the Commercial Court is without considering the various contentions raised. Hence, the same is not sustainable. It is submitted that the Commercial Court, while exercising power under Section 34 of the Act, has to provide findings on all the grounds, whereas the order impugned is cryptic.

12.1 Learned advocate for the appellant further submitted that the claim by the respondent company was for Rs.27 Crores. The appellant constituted the Committee to examine the claims. The Committee determined and directed to pay Rs.6,01,42,502/-. The appellant, considering all other aspects, has paid the sum of Rs.3,50,00,000/- towards a full and final settlement of the entire dues, which the Company accepts without any protest. This aspect is not considered by the Arbitral Tribunal and the Commercial Court. In the alternative, it is the submission that the amount of Rs.3,50,00,000/- paid should have given credit/adjustment to the award amount.

12.2 Learned advocate for the appellant further submits that all the heads under which the award is considered, were considered

by the Committee, which is evident from the Committee report. The payment of the amount as awarded without credit to Rs.3,50,00,000/- would be double payment for the same claim one by the Tribunal and the other by the Committee.

12.3 Learned advocate for the appellant further maintains that there is no breach of contract by the appellant-BBMP. The delay in commencement/completion of the project is attributable in entirety to the claimant. If the delay was at the instance of the BBMP, the claimant either had an option to terminate the contract or withdraw itself from the contract. Both are not exercised.

12.4 Learned advocate further submits that the Commercial Court in exercise of its jurisdiction under Section 34 of the Act is required to answer every ground within the parameters of Section 34 of the Act. It is the submission that the Commercial Court except recording the judgments dealing with the scope of Section 34 of the Act has merely approved the conclusion drawn by the Arbitral Tribunal, which is contrary to the scope and spirit of Section 34 of the Act.

12.5 Learned advocate for BBMP further submits that the respondent has admitted receipt of Rs.3.5 crores towards the claim

amount after the filing of CMP. This admission is overlooked by the Arbitral Tribunal and the Commercial Courts.

12.6 The appellant in furtherance of its contention submits that the amount of Rs.3.5 crores paid was in respect of the very claim before the Tribunal along with the memo dated 20.11.2024. The tabulation with details having Job No., payment details including the work's name is filed. With these documents, the learned advocate for BBMP would submit that each payment refers to work order. The Claim under this work order was considered by the Committee and the Arbitral Tribunal.

12.7 Learned advocate relies on the judgment of this Court in **Union of India vs. Warsaw Engineers and another, ILR 2022 Kar. 251** and the judgment in **Special Leave to Appeal (C) No. 14936 of 2024 dated 26.07.2024 in Kalanidhimaran vs. Ajay Singh and another.**

13. Learned advocate Mr. Kamlesh Ghumre appearing along with learned advocate Mr. A.L. Parashuram for respondents submits that the grounds raised by the appellant are answered by the Commercial Court.

13.1 Learned advocate for the respondents would submit that receipt of Rs.3.5 Crores was against a different work unrelated to the work/claim before the Tribunal. The respondent under the contract was to carry out various construction activities, towards which Rs.3.5 Crores is paid and acknowledged.

13.2 Learned advocate would further submit that the appellant has not raised any ground about the payment of Rs.3.5 Crores towards the claims considered by the Tribunal. The ground on payment of Rs.3.5 Crores to satisfy the claim involved in these matters is raised for the first time before this Court. The said contention is without any foundational facts and evidence. The said ground not having been raised before the Commercial Court, it is not open to the appellant to raise such new grounds in the appeal.

13.3 Learned advocate submits that the appellant-BBMP has categorically made a statement before the Tribunal to the effect that the claims made are not covered by payments made by the respondent to the claimant.

13.4 Learned advocate for the respondents further submits that the arbitral award cannot be interfered on re-appraisal of evidence, even if two views are possible.

13.5 Learned advocate has relied on the following judgments dealing with the scope of interference by the Court while invoking Sections 34 or 37 of the Act.

- (i) Associate Builders vs. Delhi Development Authority, [(2015) 3 SCC 49];
- (ii) Punjab State Civil Supplies Corporation Ltd., and another vs. Sanman Rice Mills & others, (2024 SCC OnLine SC 2632);
- (iii) Reliance Infrastructure Ltd., vs. State of Goa, [(2024) 1 SCC 479];
- (iv) UHL Power Company Ltd., vs. State of Himachal Pradesh, [(2022) 4 SCC 116];
- (v) Konkan Railway Corpn. Ltd., vs. Chenab Bridge Project Undertaking, [(2023) 9 SCC 85];

14. Heard learned advocate for the parties and perused the appeal papers.

15. The point that arises for consideration of this Court is as to whether the award passed by the Arbitral Tribunal and the judgment of the Commercial Court warrants interference by this Court.

16. These appeals are under Section 37 of the Act. Section 34 of the Act stipulates the grounds under which the award of an Arbitral Tribunal can be interfered. The Hon'ble Supreme Court in ***MMTC Limited Vs. Vedanta Limited [(2019) 4 SCC 163]***, has held jurisdiction under Section 37 of the Act is akin to jurisdiction of the Court under Section 34 of the Act. While entertaining appeal under Section 37 of the Act, the interference is restricted and subject to the grounds enumerated in Section 34 of the Act. It is further held that the scope of jurisdiction under Sections 34 and 37 of the Act is not akin to normal appellate jurisdiction and Courts ought not to interfere with the Arbitral Award in a casual and cavalier manner. Further, the mere possibility of an alternative view on facts or interpretation of a contract does not entitle Courts to reverse the findings of the Arbitral Tribunal. These principles are reaffirmed in various judgments cited by the respondents, emphasizing the limited and circumscribed role of courts in matters concerning arbitral awards.

17. However, as held in the judgments cited by the learned counsel for the respondents, interference with an Arbitral Award is permissible only when a case is made out under the specific grounds enumerated in Section 34 of the Act. Upon careful

consideration of the legal principles, the appellant has not established sufficient grounds for interference with the Arbitral Award or the judgment of the Commercial Court. However, there exists a specific and unequivocal ground that necessitates consideration. Failure to examine and address this ground would render the Arbitral Award arbitrary and capricious, thereby justifying limited judicial intervention to uphold the principles of fairness and justice.

18. It is evident from the record that the claim made by the respondents was for a sum of Rs. 27 Crore. In response, the appellant constituted a Committee to examine the claims and the Committee determined that an amount of Rs. 6,01,42,502/- was payable to the respondents. The appellant's case is that, pursuant to the recommendation of the Committee, a payment of Rs. 3,50,00,000/- was made, which has been duly acknowledged by the respondent. The very same dispute, which was the subject matter of the Committee's determination, also formed the basis of the proceedings before the Arbitral Tribunal. The appellant contends that the payment of Rs. 3,50,00,000/-, which was made in respect of the same contract, should have been duly considered by the Arbitral Tribunal. It is further asserted that the Arbitral Tribunal,

in arriving at its award, ought to have granted appropriate credit or adjustment for the amount already paid.

19. The aforesaid contentions are evident from the Arbitral Award, wherein the counsel for the claimant has explicitly acknowledged the credit of the sum to the claimant's account. However, the Arbitral Tribunal, in addressing this issue, has noted that no document was produced to establish that the claimant had received the sum of Rs. 3,50,00,000/- as a full and final settlement. This finding is, however, inconsistent with the undisputed facts. The appellant has unequivocally stated that the amount of Rs. 3,50,00,000/- was paid, which was duly accepted by the claimant. When the receipt of such payment is acknowledged and accepted by the claimant, the requirement to produce further documentation to prove the payment is irrelevant. This critical aspect, however, has been overlooked by the Commercial Court.

20. Now, It is required to consider whether the error committed by the Arbitral Tribunal and subsequently upheld by the Commercial Court, warrants interference, in light of the limited scope of judicial intervention under Section 37 of the Act.

21. Section 34 (2) (b) reads as under,

"(b) the Court finds that -

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) the arbitral award is conflict with the public policy of India.

[Explanation: 1- For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if, -

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation: 2- For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."

22. If the facts of the present case are evaluated in light of Section 34 of the Arbitration and Conciliation Act, the issue at hand pertains to a double payment for the same claim. It is well-established in law that double payment for the settlement of a single claim is impermissible. In the event that part of the claim is settled before the Arbitral Tribunal's award, such payment must be duly adjusted in the final award. The appellant has furnished bank statements and vouchers which clearly substantiate the payments made towards the same job work. The respondent, on the other

hand, contends that the payment of Rs. 3,50,00,000/- was made for a different work unrelated to the claim, however, no supporting evidence has been presented. It is undisputed that the payment of Rs. 3,50,00,000/- is linked to the same job work that forms the basis of the claim.

23. The issue of double payment for the same claim would undoubtedly be in direct conflict with the Public Policy of India and would violate the Fundamental Policy of Indian Law, as well as the basic principles of morality and justice. The Arbitral Tribunal has addressed the Committee's report, which determined the liability to be Rs. 6,01,42,502/-, and examined the correctness of the same. However, when the payment of Rs. 3,50,00,000/- is asserted to have been made in accordance with the Committee's recommendation, the Arbitral Tribunal ought to have carefully examined and recorded a finding on the purpose of the payment of Rs. 3,50,00,000/-.

24. The error committed by the Arbitral Tribunal and subsequently upheld by the Commercial Court, if not rectified, would amount to an arbitrary decision. The statement made by the learned advocate for the appellant before the Arbitral Tribunal, asserting that no amounts were received by the claimant in relation

to the claims, cannot be considered a conclusive fact, particularly when the record clearly reflects that such a submission is *prima facie* incorrect or contrary to the facts.

25. This Court is inclined to interfere with the Arbitral Award and the judgment of the Commercial Court to this limited extent. The Commercial Court, while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, committed an error by failing to record any finding regarding the payment of Rs. 3,50,00,000/-. One fact that remains undisputed is the payment and receipt of Rs. 3,50,00,000/-. The error in the Arbitral Tribunal's award lies in its failure to examine the purpose of the payment of Rs. 3,50,00,000/-. A bare perusal of the statement of payments placed before the Court would clearly indicate that the payment of Rs. 3,50,00,000/- was made in relation to the same job work for which the claim petition has been filed.

26. The issues raised above cannot be examined by this Court in proceedings under Section 37 of the Act. However, considering the material evidence on record, although the error can be identified in the Arbitral Tribunal's award, given the restricted scope of judicial intervention, it is appropriate and just necessary to direct

the Commercial Court to examine and record finding on this aspect.

27. Considering the limited extent of interference made by this, the judgments cited at bar are not specifically discussed, as it is unnecessary at this stage.

28. In the light of the above aspects and the aforesaid findings, the following,

ORDER

- (i) The appeals are allowed in part.
- (ii) The judgment and order in Com.A.P. Nos.106 to 117 of 2023 dated 03.08.2024 passed by the by LXXXV Additional City Civil and Sessions Judge, Bengaluru (Commercial Court) is hereby set aside and the matter is remitted for fresh consideration.
- (ii) The Commercial Court shall examine the aspect of payment of Rs. 3,50,00,000/- and, if it is found to be part of the claim amount before the Arbitral Tribunal, appropriate set-off or adjustment shall be made to that extent.

- (iii) The findings recorded by this Court however shall not influence the Court below while undertaking the exercise as directed above.
- (v) The other findings as recorded by the Arbitral Tribunal and in Application under Section 34 of the Act are not interfered with and they are maintained.

In view of disposal of main appeals, pending interlocutory applications stand disposed of as not surviving.

Sd/-
(N. V. ANJARIA)
CHIEF JUSTICE

Sd/-
(K. V. ARAVIND)
JUDGE