

IN THE HIGH COURT OF JHARKHAND AT RANCHI

I.A. No. 12521 of 2024

In/and

Commercial Appeal No. 16 of 2024

and

Commercial Appeal No. 16 of 2024

Ranchi Municipal Corporation, having its office at Kutchery Road, P.O. G.P.O., P.S. Kotwali, District Ranchi, Jharkhand through its Administrator, Sri Sandeep Singh son of Sri Vijay Pal Singh aged about 40 years resident of Jawahar Nagar, Kanke Road, P.O. Gonda & P.S. Gonda, District : Ranchi ... Appellant

Versus

M/s A2Z Waste Management (Ranchi) Limited, a Company incorporated under the Companies Act, 1956 having its registered office at O-116, First Floor, DLF Shopping Mall, Arjun Marg, DLF, Phase-I, Gurgaon, P.O. & P.S. Gurgaon, District Gurgaon, Haryana, PIN-122002.

... Respondent

with

Commercial Appeal No. 3 of 2024

M/s A2Z Waste Management (Ranchi) Limited, a Company incorporated under the Companies Act, 1956 having its registered office at O-116, First Floor, DLF Shopping Mall, Arjun Marg, DLF, Phase-I, Gurgaon, P.O. & P.S. Gurgaon, District Gurgaon, PIN-122002, State of Haryana, through its Authorized Signatory, namely, Vishal G Gussain, aged about 26 years, Son of Chandan Singh Ghurdaura, resident of Flat No. 427, P And T Flats, R.K. Puram, Sector-6, Postal Sb, P.O. and P.S.-R.K. Puram, New Delhi, Pin Code-110022. Appellant

Versus

Ranchi Municipal Corporation, through its Municipal Commissioner, having its Registered office at Kutchery Road, P.O. G.P.O., P.S. Sukhdeo Nagar, District Ranchi, Jharkhand, PIN – 834001 ... Respondent

CORAM: HON’BLE THE CHIEF JUSTICE

HON’BLE MR. JUSTICE RAJESH SHANKAR

For the Appellant	: Mr. Sachin Kumar, Advocate Mr. Sashank Sekhar, Advocate.
For Respondent	: Mr. Sumeet Gadodia, Advocate. [Commercial Appeal No. 16 of 2024]
For the Appellant	: Mr. Sumeet Gadodia, Advocate.
For Respondent	: Mr. Sachin Kumar, Advocate Mr. Sashank Sekhar, Advocate. [Commercial Appeal No. 3 of 2024]

C.A.V. On: 17.04.2025

Pronounced On: 6.5.2025

M.S. Ramachandra Rao, C.J. (Oral)

Commercial Appeal No. 3 of 2024 is filed by M/s A2Z Waste Management (Ranchi) Limited against the Ranchi Municipal Corporation (for short the RMC) challenging the judgment dt. 05.01.2024 in Commercial Arbitration Case No. 11 of 2023 of the Additional Judicial Commissioner-III-cum-Presiding Officer, Commercial Court, Ranchi under Section 37 of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

2. The same judgment is also questioned by the RMC in Commercial Appeal No. 16 of 2024, but the said appeal has been filed under Section 37 of the Act with a delay of 320 days and I.A. No. 12521 of 2024 is filed by it under Section 5 of the Limitation Act, 1963 to condone the said period of delay.

3. Since both appeals arise out of the same judgment, we deem it desirable to decide these matters together.

The Background facts

4. An agreement dt. 29.01.2011 was entered into by the RMC with M/s. A to Z Infrastructure Limited for a project dealing with Municipal Solid Waste Management in Ranchi after a process of tendering in which M/s. A to Z Infrastructure Limited was the successful bidder.

5. M/s. A to Z Infrastructure Limited established a special purpose vehicle namely M/s. A to Z Waste Management, Ranchi Limited (for short 'Contractor') and a Concessionaire agreement was formalized on 03.06.2011 with retrospective effect from 01.04.2011.

6. In the course of execution of the contract, disputes arose between the parties and the Contractor terminated the contract on 27.12.2013 citing clause

9.2 (C) and invoked the arbitration clause Article 11.2 (a) of the Concessionaire agreement dt. 03.06.2011 on 07.04.2014.

7. The Contractor appointed its nominee arbitrator and requested the RMC to appoint their arbitrator.

8. As RMC failed to appoint its nominee arbitrator the Contractor approached the High Court of Jharkhand by filing Arbitration Application No. 3 of 2015. The High Court appointed Shri S. K. Murari as a nominee arbitrator on behalf of RMC.

9. Subsequently, both arbitrators appointed Justice S.B. Sinha, Former Judge of the Supreme Court of India as Presiding Arbitrator.

10. The parties submitted their claims, objections and counter claims and presented oral and documentary evidence to support their respective positions.

The Arbitral Award

11. On 11.05.2018, arbitral award was passed in favour of the Contractor directing RMC to pay Rs.6,41,24,500/-. The summary of the arbitral Award is as under: -

Claims and order of the learned Arbitral Tribunal-

Sl. No	Claim No.	Brief Description of Claims	Amount of Claim (In Rs.)	Whether Claim Allowed or Rejected or modified	If Allowed for What amount	Remarks If any
1	Claim No. 1	Failure to make payments for the monthly bills submitted towards tipping fees for collection and transportation of MSW for the period for the period for	Rs.1,71,95,156	Allowed	Rs.1,71,95,156	

		01.04.2011 to 31.12.2013				
2.	Claim No. 2	Failure to make payments towards investment over Capital Grant for the vehicles, equipment and assets engaged in C&T operations.		Rejected		
3.	Claim No. 3	Failure to make payments towards investment over Capital Grant for development of T & D facility		Rejected		
4.	Claim No. 4	Illegal encashment of Performance Security Bank Guarantee of the Contractor by the Respondent		Rejected (appropriated towards general damages)		Encashment not illegal. Respondent was entitled to invoke Bank Guarantee.
5.	Claim No. 5	Claim for reimbursement of additional cost incurred by the Contractor on account of Force Majeure, change in law and Government policies resulting in material adverse effect on the operating cost of the Contractor		Rejected		
6.	Claim No. 6	Termination charges due to RMC Event of Default as per Article 9.2 (f) (i)		Rejected		
7.	Claim No. 7	Accrued losses due to non-production of compost & RDF during the Operational Period (April 11 to Dec. 13) due to delay in handing over of land for MSW Waste Processing Project.		Rejected		Contractor itself is guilty of breach of contract.
8.	Claim No. 8	For opportunity losses due to cancellation of the		Rejected		

		contract during the remaining concession period (Jan 14 to Mar 14)				
9.	Claim No. 9	Loss of Goodwill & Reputation of the company		Rejected		
10.	Claim No. 10	Interest on the above sums from the date the same became due till the date of payment.		Allowed		Contract envisages 15 % interest.
11.	Claim No. 11	On account of costs of Arbitration	Rs.25,00,000/-			
		Arbitral Fee not paid by Respondent	Rs.30,00,000/-			
		Nominal Damages	INR 2,00,00,000/			

Counter-Claims and order of the learned Arbitral Tribunal-

Counter-Claim No.	Particulars	Amount Award
Counter Claim No. A	Loss/damage/injury to Respondent's image in the eyes of Government and public.	Rejected.
Counter Claim No. B	Refund of Rs.18,00,96,225 paid towards C &T and P &D operations alongwith SBI Prima Lending Rate the amount of loss incurred upon Capital expenditure.	Rejected.
Counter Claim No. C	Refund of Rs.17,65,166/- on account of expenditure towards initiation of Special drive for Zone I, II and III due to lockout in the Contractor Company	Counter claim for Rs.17,65,166/- Allowed.
Counter Claim No. D	Legal expenses likely to be incurred on account of the Respondent being impleaded as a party in MSW pending Labour Court Ranchi wherein labour employed by the Contractor are claiming unpaid wages to the extent of Rs.1 Crore.	Rejected. Held-the matter is still pending in a proceeding before Labour Court, Ranchi. The counter Contractor is to show that it is not a necessary party nor it is liable to pay.
Counter Claim No. E	Refund of Rs.37,00,000/- on account of direction given to the Respondent to pay the said sum pursuant to n Audit carried out by the CAG.	Rejected.

Counter Claim No. F	Sum of Rs.125 Crore for preparation of DPR.	Rejected.
Counter Claim No. G	Refund of sum of Rs.100 crore incurred by the Respondent on account of preparation of fresh tender and DPR for the new incumbent, considering after the closure of JuNURM Scheme, all the grants under the said Scheme have been withdrawn.	Rejected.
Counter Claim No. H	Refund of Rs.24,85,73,552/- paid to the Contractor towards tipping fee under the JuNURM Scheme.	Rejected.
Counter Claim No. I	Refund of Rs.100 Crores on account of loss due to cancellation of the remaining period of Concession period (January 2014 to March 2014).	Rejected
Counter Claim No. J	A sum of Rs.10,00,00,000/- on account of loss of goodwill and reputation along with 15 % interest.	Rejected.
Counter Claim No. K	A sum of Rs.50,00,000/- for frivolous litigation.	Rejected.
Counter Claim No. L	Pre Arbitration, Pendent elite and Future Interest of 25 %	Rejected.
	General Damages	INR 3,50,00,000/-

The Section 34 Application of RMC

12. The RMC filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the Additional Judicial Commissioner-III-cum-Presiding Officer, Commercial Court, Ranchi which was initially numbered as Commercial Suit Case No. 04 of 2018 and later re-numbered as Commercial Arbitration Case No. 11 of 2023.

13. As many as 61 grounds were raised by the RMC before the Commercial Court.

14. The Contractor refuted the said contentions of RMC in Commercial Court contending that grounds raised by the RMC in the Section 34

application are outside the scope of Section 34 of the Act; some of the grounds require re-appreciation of facts/evidence which cannot be done in the Section 34 application and the arbitral tribunal has dealt with these aspects in detail.

15. It was also contended that the arbitral tribunal is a sole judge of the quantity and quality of evidence before it and factual conclusions arrived at by the arbitral tribunal cannot be questioned.

16. According to the Contractor, contractual interpretation is the prerogative of the arbitral tribunal and ought not to be interfered with unless, it is shown to be of such a nature that it shocks the conscience of the Court and that the arbitral tribunal has found that there is a breach by both the RMC and the Contractor. The Contractor therefore prayed for the dismissal of the application under Section 34 filed by the RMC with cost.

The decision of the Commercial Court

17. The Commercial Court noted the 44 decisions cited by both sides before it.

18. It rejected the plea of limitation raised by the Contractor who contended that the application under Section 34 is time-barred.

19. The Commercial Court considered the said decisions and concluded that under Section 34 of the Act scope of challenge to an arbitral award is very narrow and no party should be permitted to re-argue or re-agitate the submissions raised before the arbitrator; and a possible view by the arbitrator on facts has necessarily to pass Muster as the arbitrator is the sole judge of the quantity and quality of evidence.

20. It also held that every error of law committed by the arbitral tribunal would not fall within the expression patent illegality and a patent illegality should be such as to go to the root of the matter.

21. According to it, no re-appreciation of evidence is permitted, since the Court does not sit in appeal against the arbitral award; contractual interpretation is the sole prerogative of the arbitral tribunal; and determination of damages need not necessarily be done and the guest estimates (honest guess work) is permitted, where damages are awarded.

22. While applying the above principles to the arbitral award challenged before it by the RMC, in Para V at page 59 of its order, the Commercial Court noted that of all the grounds mentioned in Section 34, no ground has been advanced except the argument that it is against public policy of India with its explanation and that the term public policy of India covers a wide connotation.

The Commercial Court then contradicted itself in Para VI by saying that the counsel for the RMC had not stated much in explicit terms about the award being against the public policy.

23. It also stated that much of the argument advanced by the RMC was devoid of merit and cannot be considered in isolation.

24. It then referred to Para 230 of the arbitral award where the arbitral tribunal was considering the claims made by the Contractor regarding “Failure to make payments towards investment over Capital grant for the vehicles, equipment and assets engaged in C & T Operations” i.e. the Contractor had contended that it had procured a large number of vehicles and incurred to expenditure of Rs.1.68 crores.

The arbitral tribunal rejected the said claim and observed at Para 230 that the registration numbers of the vehicles provided by the Contractor to RMC on verification showed that some of the registration numbers were of two wheelers and others were found to be non-existent.

The arbitral tribunal held that the Contractor was guilty of committing fraud and fraud would vitiate all solemn acts and so the Contractor is not entitled to any amount regarding this claim.

The Commercial Court applied this finding on that particular claim No.2 regarding supply of vehicles to the entire award and set aside *the entire arbitral award* even on other claims awarded in it's favor by the arbitral tribunal such as 'tipping fee for collection and transportation of MSW', nominal damages and costs, which is entirely different and which are covered by other claims.

Also the Commercial Court set aside even that portion of the award of the arbitral tribunal awarding certain counter claims in favor of the RMC.

The Contractor's Appeal under Section 37 of the Act

25. Challenging the arbitral award, the Contractor has filed Commercial Appeal No. 3 of 2024.

RMC's Appeal under Section 37 of the Act with application under Section 5 of the Limitation Act

26. To the extent the Commercial Court set aside the entire award including the award of counter claims by the arbitral tribunal to the RMC, the RMC filed Commercial Appeal No. 16 of 2024 but with a delay of 320 days and had filed I.A. No. 12521 of 2024 for condonation of the said delay under section 5 of the Limitation Act, 1963.

Consideration by the Court

27. We may point out that claim 1 dealt with ‘delay in payment of tipping fee’ which is governed by Article 7.3 of the concessionaire agreement.

The arbitral tribunal held that non-payment of the tipping fee for December, 2013 and delay in payment of the tipping fee from April, 2011 to August, 2011 is established and in this regard there was a breach of contract on the part of the RMC.

28. The claim regarding ‘supply of vehicles’ has nothing to do with claim for ‘non-payment of the tipping fee’ made by the Contractor before the arbitral tribunal and the former had admittedly not been granted by the arbitral tribunal to the Contractor on the ground of fraud.

29. When the claims are unrelated to each other, on the basis of a fraud with regard to the claim regarding procurement of vehicles, the Commercial Court could not have interfered with the arbitral award with regard to the award of the claim to the Contractor regarding tipping fee.

30. In our opinion, this is a perverse approach.

31. Also, the arbitral tribunal had granted Rs.2 crores by way of nominal damages to the Contractor instead of Rs.9,62,04,313/- towards another claim for C&T operations and also costs of Rs.55 lacs.

32. The counsel for the Contractor contended that this aspect has been dealt with in Para 475 and is not linked in any way with the ‘supply of vehicles aspect’ and the Commercial Court erred in interfering with the award of damages of Rs.2 crores on this count. We agree with the said submission.

33. The award of costs of Rs.55 lacs was made in favor of the Contractor on the ground that the RMC, despite the mandate of the arbitral tribunal,

refused to pay the arbitral fee of Rs.30 lacs to each of the members of the arbitral tribunal, which the Contractor had to pay, and it was therefore held entitled to the said amount by the arbitral tribunal.

Cost of Rs. 25 lacs was also awarded to the Contractor against the RMC.

34. This aspect of award of costs of Rs.55 lacs has also no relation to the findings of the arbitral tribunal about fraud being made by the Contractor with regard to claim of 'procurement of vehicles'.

35. We are therefore satisfied that the award of the arbitral tribunal, in so far as the Contractor is concerned, was erroneously interfered with by the Commercial Court in a perverse manner.

36. Therefore to the extent the Commercial Court interfered with the award of the arbitral tribunal in favour of the Contractor, its judgment is set aside. Commercial Appeal No.3 of 2024 is allowed.

I.A. No. 12521 of 2024 In/and Commercial Appeal No. 16 of 2024

37. Coming to the appeal filed by the RMC as per Section 13 (1-A) of the Commercial Court's Act, 2015, an appeal can be preferred from a judgment of a Commercial Court at the level of District Judge exercising original civil jurisdiction to the Commercial Appellate Division of the High Court within 60 days from the date of judgment or order.

38. This aspect came to be considered in the judgment of the Supreme Court in the *State of Maharashtra-Vs.-Bose Brothers Engineers & Contractors Private Limited*¹.

¹ (2021) 6 SCC 460

In the said judgment the Supreme Court considered the provisions of Commercial Court's Act as well as the Arbitration & Conciliation Act, 1996 and concluded that the object and context of the said statute is speedy disposal of appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996; the delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of Rule; in a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned.

In Para 15 of the said judgment, the Supreme Court held that the expression 'sufficient cause' in section 5 of the Limitation Act, 1963 is not elastic enough to cover long delays *beyond the period provided by the appeal provision itself*; and that the expression sufficient cause is not itself a loose panacea for the ill of pressing negligent and stale claims.

39. In other words, the Supreme Court indicated that in exercise of power under Section 5 of the Limitation Act, 1963, a delay beyond the period of 60 days from the date on which the appeal could have been filed, can be condoned i.e. delay below 120 days from the date of pronouncement of the judgment by invoking Section 5 of the Limitation Act, 1963.

40. But where there is negligence, inaction or lack of bona fides, such power ought not to be exercised. It also held that merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down.

41. In ***Jharkhand Urja Utpadan Nigam Limited and Another-Vs. M/s. Bharat Heavy Electricals Limited, Commercial Appeal No. 1 of 2025*** a Division Bench of this Court has also taken the same view by following the

judgment of the Supreme Court and held that the rule laid down by the Supreme Court equally applies to instrumentalities of Government like the applicant in the Commercial Appeal No. 16 of 2024 i.e. the RMC.

42. In I.A. No. 12521 of 2024 filed under section 5 of the Limitation Act, 1963 for condonation of delay of 320 days in filing the Commercial Appeal, the stand of the RMC is that the judgment dt. 05.01.2024 of the Commercial Court was challenged by the Contractor in Commercial Appeal No. 3 of 2024 which was taken up on 16.10.2024; and at that time, the applicant in the delay application revisited the judgment of the Commercial Court and discovered that the entire award including counter claims granted in its favour had been set aside, though there was no discussion in the entire judgment of the Commercial Court as far as counter claims are concerned.

43. It is also contended that the delay in filing the appeal is not intentional but bona fide, and the applicant was prevented by sufficient cause from filing the appeal within time, that it was pursuing the matter diligently and so the delay in filing the appeal of 320 days is to be condoned.

44. The explanation offered by the applicant, RMC for filing the appeal with a delay of 320 days is not bona fide because no valid reason is found therein.

45. When the judgment of the Commercial Court was received by its counsel in the said court and forwarded to it, then itself, the applicant or its counsel should have detected the error in the judgment of the Commercial Court, and taken steps to file the appeal within 60 days or within 120 days from 05.01.2024.

46. However, the appeal was filed on 21.11.2024, more than six months later than the last date for filing the appeal.

47. We therefore hold that the applicant, RMC did not provide any sufficient cause for condoning the said period of delay of 320 days in filing the Commercial Appeal No. 16 of 2024 against the judgment of the Commercial Court dt. 05.01.2024 in Commercial Arbitration Case No. 11 of 2023.

48. Therefore, I.A. No. 12521 of 2024 in Commercial Appeal No. 16 of 2024 is dismissed. Consequently, Commercial Appeal No. 16 of 2024 is dismissed.

49. However, Commercial Appeal No. 3 of 2024 filed by the Contractor is allowed for the reasons indicated above. No costs.

(M. S. Ramachandra Rao, C.J.)

(Rajesh Shankar, J.)

APK