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

ARBITRATION PETITION NO.1158 OF 2014
WITH
NOTICE OF MOTION NO. 1148 OF 2018
IN
ARBITRATION PETITION NO.1158 OF 2014

The Municipal Corporation of Greater Mumbai. .... Petitioner

Vs.

Bucon Engineers & Infrastructure Pvt. Limited .... Respondent

WITH
ARBITRATION PETITION NO.256 OF 2015

The Municipal Corporation of Greater Mumbai. .... Petitioner

Vs.

Bucon Engineers & Infrastructure Pvt. Limited .... Respondent

Mr. P.G. Lad, Senior Advocate a/w Mr. Paras Pawar, Ms. Pooja Yadav i/by Ms. Komal Punjabi for Petitioner- MCGM in both Petitions.
Mr. Faran Khan i/b Ms. Pranjali Bhandari, Advocate for Respondent in both Petitions.

CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 28th AUGUST 2026

PRONOUNCED ON : 11th SEPTEMBER 2026

JUDGMENT :

1. Heard the learned Counsel for the parties.

2. By the present Petitions, the Petitioners challenge the arbitral awards dated 24th April 2014 and 10th October 2014 under Section 34 of the Arbitration and Conciliation Act, 1996.

3. Learned counsel appearing for the Petitioners–MCGM submits that both the Awards are identical and that he has advanced his arguments in Arbitration Petition No. 1158 of 2014, and the facts are set out from Arbitration Petition No. 1158 of 2014.

4. The Municipal Corporation invited a tender for the planning, designing, and construction of community toilet blocks in slums in R-Central Ward, Lot-7, Mumbai. The tender had two phases, one of which related to the publicity for slum sanitation, community participation, and health and hygiene education by creating awareness and understanding through Community Based Organisations (**CBOs**), while the Second Phase related to Construction. The slums in Mumbai are situated on Government land, MHADA land, Municipal Corporation land, and private land.

5. After the CBO was registered and the required upfront contribution had been paid, the Bidder was required to prepare an architectural layout of the proposed community toilet in consultation with the concerned CBO and

QAC and submit the said layout to the Petitioner-MCGM. Once the layout and RCC drawings were approved, the Bidder could commence construction.

6. The contract period was for 21 months, commencing on 25th January 2001 and ending on **31st October 2002**. The tendered work could not be completed within the stipulated contractual period, and multiple extensions were consequently granted. The contract ultimately remained operative until 31st December 2005, with the final extension being granted without levy of liquidated damages. Thereafter, no further sites were available for construction, and the work could not be proceeded with.

7. The proposed construction comprised a total of 20 toilet blocks, each having a maximum capacity of 20 seats. These toilet blocks were proposed to be constructed in the slum areas and involved different types of disposal systems.

8. All the sites could not be handed over to the Respondent-Claimant at one time. The sites that were made available to the Claimant were allotted at different points in time and, consequently, the work was required to be completed over an extended period. Accordingly, the Respondent-Claimant raised various claims before the learned Arbitrator on different dates. The Arbitrator has awarded certain amounts in respect of the said claims, against which the present Petitions have been filed.

9. The learned Arbitral Tribunal rejected Claim No. 1 relating to excavation of hard rock, disallowed the claim for idle establishment in its entirety, and rejected Claim Nos. 9 and 12 in full. It further directed that the costs of the Reference and the Arbitrator's fees be borne equally by the parties. The learned Tribunal rejected four heads of claim, substantially reduced the claim of Rs.77 lakhs to Rs.14.69 lakhs, reduced the rate of interest from 24% to 12%, and corrected the Respondent's/Claimant's own computation against it. The total amount awarded against the Claims is set out in the table below:

Claim No.	Claim Particulars	Claim Awarded (Rs.)
1(i)	Excavation of hard rock at Kulupwadi site, Rs.94,597.20.	Rejected
1(ii)	Construction of UCR masonry wall at Shantidoot Site	45,883.00.
1(iii)	Providing and fixing individual tap to each W.C. of toilet block	1,78,500.00.
2	Compensation towards revision of rates.	13,92,853.47
3	Loss of interest due to delay in payment	3,49,998/-
4	Compensation	14,69,388/-
5	Infructuous expenditure	1,82,500/-
6	Delay in returning the Retention money	41,252.80

7	Extra cost incurred	56,111/-
8	Loss of profits and overheads	3,180/-
9	Compensation towards miscellaneous expenses	Rejected
10	Appointment of sole Arbitrator	50,000/-
11	Compensation towards loss of interest on due amounts as per above claims	Rejected
12	Cost of Arbitration	Rejected
	Total :	**37,69,666.07**
12% interest on above amounts from 28.2.2008 to 24.4.2014		

10. Before considering the claims and the findings thereon, it is necessary to examine the relevant clauses of the contract and the alleged breaches thereof, if any. The General Conditions of Contract and the relevant clauses, including the provisions defining the site and area under the contract, are set out below.

> **14** : **Site Investigation Report**s :
>
> 14.1 The Contractor, in preparing the Bid, shall rely on any Site, Investigation Reports referred to in the Contract Data, supplemented by any information available to the Bidder.
>
> **17.** The Works to be completed by the Intended Completion Date :
>
> 17.1 The Contractor may commence execution of the Works on the Start date and shall carry out the Works in accordance

with the Programme submitted by the Contractor, as updated with the approval of the Engineer, and complete them by the Intended Completion Date.

18. Approval by the Engineer :

18.5 All Drawings prepared by the Contractor for the execution of the Temporary or Permanent Works, are subject to prior approval by the Engineer before their use.

21. Possession of the Site :

21.1 The Employer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date stated in the Contract Data, the Employer is deemed to have delayed the start of the relevant activities, and this will be a compensation event.

39. Variations :

39.1 All Variations shall be included in updated programmes and Activity Schedule produced by the Contractor.

40. Payments for Variations :

40.1 The contractor shall provide the Engineer with a quotation (with breakdown of unit rates) for carrying out the Variations when requested to do so by the Engineer. The Engineer shall assess the quotation, which shall be given within 7 days of the request or within any longer period stated by the Engineer and before the Variations is ordered.

40.4 If the Engineer decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.

48. Retention :

48.1 The Employer shall retain from each payment due to the Contractor, the proportion stated in the Contract Data until completion of the whole of the Works.

48.2 On completion of the whole of the Works, half the total amount retained is repaid to the Contractor and half when the Defects Liability Period has passed and the Engineer has certified that all Defects notified by the Engineer to the Contractor before the end of this period have been corrected.

11. Before deciding each claim, the law governing interference under Section 34 with an arbitral award passed by a technical expert may be noted from the judgment of **Hindustan Construction Company Limited v. National Highways Authority of India**[1],wherein the Supreme Court observed as under:

> "25. This Court in Voestalpine Schienen GmbH v. DMRC2 commenting on the value of having expert personnel as arbitrators, emphasised that "technical aspects of the dispute are suitably resolved by utilising their expertise when they act as arbitrators". Such an approach was commended also in Delhi Airport Metro Express (P) Ltd. v. DMRC3 wherein this Court held that: (Delhi Airport Metro Express case4, SCC p. 155, para 41)
>
>> "41. The members of the Arbitral Tribunal, nominated in accordance with the agreed procedure between the parties, are engineers and their award is not meant to be scrutinised in the same manner as one prepared by legally trained minds. In any event, it cannot be said that the view of the Tribunal is perverse. Therefore, we do not concur with the High Court's opinion21 that the award of the Tribunal on the legality of the termination notice is vitiated due to the vice of perversity."

1 (2024) 2 SCC 613

26. The prevailing view about the standard of scrutiny review, of an award, by persons of the disputants' choice being that of their not judicial decisions to stand and not interfered with, (save a small area where it is established that such a view is premised on patent illegality or their interpretation of the facts or terms, perverse, as to qualify for interference, courts have to necessarily choose the path of least interference, except when absolutely necessary). By training, inclination and experience, Judges tend to adopt a corrective lens; usually, commended for appellate review. However, that lens is unavailable when exercising jurisdiction under Section 34 of the Act. Courts cannot, through process of primary contract interpretation, thus, create pathways to the kind of review which is forbidden under Section 34."

(ii) In the case of **PSA Sical Terminals Private Limited v. Board of Trustees of V.O. Chidambaranar Port Trust, Tuticorin & Ors**.[2], the Supreme Court considered the scope of judicial interference with an arbitral award under Section 34 of the Arbitration and Conciliation Act, 1996, and observed as under:

40. It will thus appear to be a more than settled legal position, that in an application under Section 34, the court is not expected to act as an appellate court and reappreciate the evidence. The scope of interference would be limited to grounds provided under Section 34 of the Arbitration Act. The interference would be so warranted when the award is in violation of "public policy of India", which has been held to mean "the fundamental policy of Indian law". A judicial intervention on account of interfering on the merits of the award would not be permissible. However, the principles of natural justice as contained in Sections 18 and 34(2)(a)(iii) of the Arbitration Act would continue to be the grounds of challenge of an award. The ground for interference on the basis that the award is in conflict with justice or morality is now to

2 (2023) 15 SCC 781

be understood as a conflict with the "most basic notions of morality or justice". It is only such arbitral awards that shock the conscience of the court, that can be set aside on the said ground. An award would be set aside on the ground of patent illegality appearing on the face of the award and as such, which goes to the roots of the matter. However, an illegality with regard to a mere erroneous application of law would not be a ground for interference. Equally, reappreciation of evidence would not be permissible on the ground of patent illegality appearing on the face of the award."

12. **Claim No.1**-

(i) Excavation of hard rock at Kulupwadi site, Rs.94,597.20.
This Claim is rejected.

Claim No.1-

(ii) Construction of UCR masonry wall at Shantidoot Site and is of Rs.45,883.00.

. This Claim relates to the construction of UCR masonry wall at the Shantidoot Site and is of Rs.45,883.00. The Petitioner objected to this Claim on the ground that the same could not be claimed as an extra item. Claimant had not shown the work to the Petitioner during the site visit nor demanded any of the interim payment certificate or in final certificate, and that the work was not certified by the Engineer.

. The learned Tribunal, however allowed the claim on the ground that the existing compound wall collapsed due to heavy rains at site and the Petitioner had directed the Respondent to construct the wall at the site again. The item was not included in the tender and as such it is an extra amount of

Rs.45,883.00.

13. The learned Arbitrator has observed that the UCR masonry wall at the Shantidoot Site, which was constructed in place of existing compound wall had collapsed due to heavy rains at the site and that the Claimant had thereafter completed the work. The Claimant submitted that, contrary to the contention of the Petitioners, said work was not done as a variation, as there was no description of the compound wall in the contract. The Arbitrator observed that the construction of wall was an existing fact and the Employer did not object for the construction of the wall, which was required to make good the collapsed wall and though the Claimant did not have the written approval of the Employer, since the work had been completed, as admitted by the Respondent, and physically existing at the site, the claim merits considerations and hence the claim amounting to Rs.45,883.00 is allowed.

14. Considering that the actual work had in fact been completed, and that the same constitutes a measure ordinarily required to be undertaken and was existing at the site, the claim allowed by the learned Arbitrator for Rs. 45,883.00 is a reasonable allowance towards the construction. Merely because there appears to be a violation of Clause 44.04, and there is no dispute regarding the necessity of the work, the award cannot be interfered with. Since the entire work has been executed and the Tribunal has granted the claim, it would not be permissible for this Court, in exercise of its jurisdiction under Section 34 of the Arbitration and Conciliation Act, to interfere with the same on any of the grounds available under Section 34.

. The Claim has been correctly decided and no case is made out to interfere with.

15. **<u>Claim No.1</u>**- (iii) <u>Providing and fixing individual tap to each W.C. of the toilet block for Rs.1,78,500.00</u>.

. The learned Tribunal observed that the drawing did not provide for taps, nor were such taps mentioned in the specifications forming part of the contract. Accordingly, the Respondents/Claimants placed an order for the supply of taps at the negotiated rate of Rs. 1,050/- per tap. The learned Tribunal further held that the contract did not obligate the Respondents/Claimants to provide individual taps for each W.C. However, since it subsequently became necessary to provide such taps, and the Claimants accordingly supplied them, the Tribunal found the claim to be reasonable and justified.

16. It is the submission of the learned counsel for the Petitioner-MCGM that the provision of taps formed part of the contract. However, the Tribunal has recorded a finding that the provision of taps was not included in the original contract. The learned counsel for the Respondent/Claimant, in the course of arguments, has also submitted that one of the reasons for the same was that the tap was initially intended to be provided only outside the common toilet block, as the provision of individual taps in each W.C. would result in the taps being left open and thereby cause wastage of water. Initially, it was contemplated that the persons using the toilets would carry water collected in the tank situated outside the toilet block. Subsequently, however, it was decided that each W.C. should have an individual tap. Accordingly, taps were fixed in each of the toilets. In view of the aforesaid facts and circumstances, the finding recorded by the Tribunal cannot be interfered with in the exercise of appellate jurisdiction under Section 34 of the Arbitration Act.

17. The finding of the Tribunal are that the original contract did not provide for taps, and that taps were subsequently provided, thereby justifying the claim, and the same cannot be interfered with in the Petition under Section 34.

. The Claim has been correctly decided and no case is made out to interfere with.

18. **Claim No. 2** : Compensation towards revision of rates.

The compensation towards revision of rates for execution during the extended period i.e. from 1st November 2002 to 31st December 2005 of Rs.13,92,853.47. The said claim is allowed by the learned Tribunal.

. Learned counsel appearing for the Petitioner submits that the learned Tribunal has erred in allowing the claim. It is contended that the Respondent, by letter dated 7th February 2003, had sought an extension of time and expressly stated that it would carry out the work at the same rates and on the same terms and conditions as stipulated in the contract, without claiming any compensation under the contract. It is further submitted that, relying upon the said terms, the Petitioner granted an extension of time to the Respondent on three occasions. In these circumstances, learned counsel contends that the Arbitrator erred in allowing the said claim.

. The learned Tribunal has analysed the Petitioner's contention that they were required to hand over all the sites to enable the Claimant to commence and proceed with the work. However, the Petitioner-MCGM were able to hand over only five sites pursuant to their letter dated 12th February 2001. Even these sites were subsequently cancelled on 31st January 2002.

. Thereafter, the Petitioner-MCGM, vide letter dated 15 February 2001, issued work orders in respect of five additional sites. Out of these, four sites were subsequently cancelled on 28th June 2001 and 9th January 2002, respectively. Further, two sites were handed over on 9th May 2001 and 13th July 2001. The Petitioner thus failed to hand over all the sites to the

Respondent-Claimant within the time contemplated, thereby preventing the Claimant from proceeding with and completing the work as stipulated.

19. It is significant to note that the last site was handed over only on 15 September 2001 and, even thereafter, the said site was cancelled on 31st January 2002 for various reasons. Consequently, the Respondent-Claimant was left with substantially reduced time to complete the work within the stipulated period of 21 months, which was due to expire on 24th October 2002.

20. Clause 21.1 of the Contract provides that the Employer shall give possession of all parts of the sites to the Contractors. It further provides that if possession of any part is not given by the date stated in the Contract Data, the Employer shall be deemed to have delayed the commencement of the relevant activities, and such delay shall constitute a compensation event.

21. Further, by letter dated 23rd September 2002, the Respondent-Claimant had informed the Petitioner as to how the delay was being caused in giving possession of the sites in accordance with the Contract. The Respondent-Claimant also stated therein that the undertaking given by them, to the effect that the work on the alternative sites would be carried out at the rates specified in the original contract, was withdrawn.

22. It is further noted that the method adopted for computing the excess amount claimed is set out by the Tribunal in paragraph 10.79. It cannot be said that the valuations have not been worked out appropriately by the learned Arbitrator. The contention is that the higher rates could not have been granted in view of the undertaking given. However, the Tribunal has noticed the breach of contract as well as the withdrawal of the undertaking during the subsistence of the contract. The increase granted is also marginal, as the same is based on the prevailing SSR rates and determined on the basis of the increase in costs for work executed in 2003, 2004 and 2005.

23. The challenge is essentially with regard to the consideration of the escalation in the cost of raw materials and the natural increase in costs. The Arbitrator has merely granted the amount towards such increase in cost.

. The Claim has been correctly decided and no case is made out to interfere with.

24. **Claim No. 3** : <u>Compensation towards loss of interest due to delay in payment of Rs.7,88,406/-</u> - <u>granted Rs.3,49,998/-</u>

The Respondent-Claimant has submitted that its claim for interest is based on Clause 43.1 of the Conditions of Contract, which provides that payments shall be adjusted for deductions towards advance payments, retention, other recoveries under the Contract, and taxes at source applicable under law. Clause 43.1 further provides that the Employer shall pay the Contractor the amount certified by the Engineer within 28 days from the date of each certificate. In the event of delayed payment by the Employer, the Contractor shall be paid interest on the delayed payment in the next payment, calculated from the date on which the payment became due until the date on which the delayed payment is actually made, at the rate of 12% per annum.

25. The Respondent-Claimant has accordingly claimed interest on the ground that the R.A. Bills were not cleared within 28 days from the date of their submission. The Petitioner-MCGM, however, has contended that, in terms of Clause 43.1, the period of 28 days is to be reckoned from the date of certification of each R.A. Bill by the Engineer and not from the date of submission of the bill by the Claimant.

26. The Petitioner-MCGM denied that the Claimant was entitled to make any claim for compensation and submitted that, as per Clause 43.1 of the Conditions of Contract, read with Clause 6 of the Special Conditions of Contract, the Employer was under an obligation to pay the amount certified by the Engineer within 28 days from the date of each certificate, and not within 28 days from the submission of the bill, as contended by the Respondent-Claimant. Learned counsel for the Petitioner-MCGM submitted that, despite having received the advance payment, the Claimants considerably delayed the commencement of the work. It was further submitted that the Petitioner-MCGM had taken a liberal view of the matter and had refrained from imposing any penalty for the breach committed by the Claimants. It was also submitted that the Claimants had never made any request for payment of interest, nor had they raised or included any such demand in any of the Interim Payment Certificates or the Final Certificate. Accordingly, the Petitoner-MCGM contended that it was not liable to make any payment towards interest.

27. The learned Tribunal allowed the claim, observing that neither the Respondents-Claimants nor the Petitioner-MCGM had furnished the dates on which the R.A. Bills were certified by the Engineer. The learned Tribunal further noted that Annexure-III to the Statement of Claim ("S.O.C.") contained complete particulars of the bills, including the bill numbers, bill amounts, etc. It was also held that the Petitioner-MCGM had merely denied the contents of the claim without furnishing any particulars or supporting details to substantiate such denial. In the absence of any contrary material, the learned Tribunal accepted the dates of submission of the bills as furnished by the Respondents-Claimants for the purpose of determining the period of delay and consequential interest. Accordingly, the learned Tribunal awarded a sum of Rs. 3,49,998/- towards compensation for loss of interest arising out of the delay in payment of the R.A. Bills. This Court finds no error in the same.

. The Claim has been correctly decided and no case is made out to interfere with.

28. Claim No. 4 : Compensation due to idle labour, staff, machineries etc. Rs.77,07,468.00.

It is the contention of the Petitioner-MCGM that they have brought to the notice of the Respondent-Claimant, on several occasions, the slow progress of the work and asked the Respondent-Claimant to expedite the work or face action under the provisions of the Contract. The claim also does not fall under any of the conditions of Clause 44.1 and is not covered under any Compensation Event. It is also submitted that the Contract is an item-rate contract, and the grievance of the Respondent-Claimant that, due to non-provision of sufficient sites, a claim for idle resources is being made.

29. It is further submitted that the Tribunal has failed to consider that, in terms of the contract between the Respondent-Claimant and the Petitioner-MCGM , the Respondent-Claimant will execute the said work at the same work site and will not ask for compensation, and that the work would not commence at the site on account of the failure of the N.G.Os. to convince the slum dwellers. The Tribunal has noted that the Petitioner has not initiated any action against the Claimants for not adhering to the programme submitted by them, in spite of the provisions available in the contract for levying liquidated damages. The Claimants were granted three extensions of time after expiry of the original period without liquidated damages, which would indicate that there was no fault on the part of the Respondents/Claimants for not maintaining the progress of the work as per the programme.

30. In terms of Clause 44.1(a), if the Employer does not give access to any part of the Site as per the stated date in the Contract, it shall be a Compensation Event. So also, Clause 44.2 provides that if a Compensation Event would cause additional cost or would prevent the work from being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Engineer shall decide whether, and by how much, the Contract Price shall be increased and whether, and by how much, the Intended Completion Date shall be extended.

31. Since the Petitioner-MCGM had granted an extension of time, it was required to take into consideration the increased cost incurred in executing the contract works. Accordingly, the additional expenditure incurred by the Claimants towards idle labour, machinery, establishment, etc., was found to be tenable by the learned Arbitrator. The Arbitrator, therefore, assessed the charges towards labour, staff, machinery and establishment, setting out the details of each component, which aggregated to Rs. 77,07,408.00, with the following break-up:

a)	Idle labour	:	Rs.19,78,250/-
b)	Idle Staff	:	Rs. 9,60,350/-
c)	Idle Machinery	:	Rs.27,25,700/-
d)	Idle establishment	:	Rs.20,43,108/-

The grant is made in terms of the Chart given below :

Sr. No.	Period	Value of W.D. (Rs.)	Compensation towards idle labour claimed	% of idle charges on the value of work done
1	Agreement period 1.3.2001 to 1.10.2002	12,69,894/-	7,50,100/-	59%
2	1st extension 1.11.2002 to 31.12.2003	69,13,000/-	2,94,310/-	4.25%
3	2nd extension 1.1.2004 to 31.12.2004	28,37,000/-	2,20,230/-	7.8%
4	3rd extension 1.1.2005 to 31.12.2005	11,54,000/-	7,13,610/-	61.8%
			19,78,250.00	

32. It has been held that the Petitioner-MCGM committed breaches of the contract by failing to hand over proper sites for execution of the works entrusted to the Claimants. To the extent that the sites were handed over, the works were carried out in different spells over a period of 59 months, as against the 21 months stipulated under the agreement. Consequently, the Claimants were required to deploy labour for the execution of the works over an extended period. Accordingly, the Tribunal proceeded to award the claim after undertaking a detailed and voluminous examination of the matter.

. This Court finds no error in the same. The Claim has been correctly decided and no case is made out to interfere with.

33. Claim No.5. : Compensation due to infructuous expenditure incurred on appointment of N.G.O. due to certain sites becoming infeasible later Rs.1,82,500/-:

. Learned counsel for the Petitioner-MCGM submits that the claim arises out of the additional expenditure incurred in appointing an N.G.O. for various sites, as contemplated under the contract. However, the sites made available by the Petitioner-MCGM subsequently turned out to be infeasible, thereby rendering the expenditure incurred by the Claimants infructuous. Accordingly, the Claimants are entitled to recover the infructuous expenditure so incurred, the consequences of which could not have been reasonably foreseen at the time of incurring such expenditure.

. Learned Counsel for the Petitioner–MCGM submits that the expenditure incurred by the Respondent–Claimant towards NGO/CBO activities was not infructuous. Guideline A-2, sub-clauses (e) to (h), required registration of the CBO, payment of the upfront contribution, and approval of the layouts and drawings before construction could commence. The Contract, therefore, compelled the Respondent-Claimant to incur such expenditure before the feasibility of the sites could be ascertained. The Petitioner subsequently cancelled the sites on the basis of the very reports for which the Respondent-Claimant had incurred the expenditure and which it had duly submitted. Accordingly, the Petitioner/MCGM submits that the Respondent-Claimant is not entitled to claim the said expenditure as infructuous.

. The learned Tribunal has rendered a finding that the Bidder was expected to engage a non-governmental organisation for the purpose of programme publicity, to create awareness about the programme and an understanding among the community about the conditions to be satisfied to qualify for participation in the programme, and to assess the interested slum communities' willingness to pay an upfront contribution towards the operation and maintenance of improved sanitation facilities. Twenty-two sites were found to be infeasible for various reasons, such as the community being interested in 10 seats, but the land being unsuitable; the toilet having recently been repaired by the Corporation and, the people not being interested; as well as political misunderstandings. The same was communicated by the Respondent-Claimant to the Petitioner-MCGM.

. After carrying out the activities expected to be performed by the NGO, the sites were thereafter not made available for the work. As such, the cost incurred by the Respondents-Claimants towards expenditure on engaging NGOs and undertaking the groundwork was allowed to the extent of ₹1,82,000/-. There is no material to interfere with the finding that the computation is ex facie erroneous. There is no error in the Tribunal granting the claim.

. The Claim has been correctly decided and no case is made out to interfere with.

34. Claim no. 6 : Interest due to delayed payment of Retention money :

. Learned counsel for the Petitioner-MCGM submits that the claim arises out of the delay in returning the retention money, both in the form of cash and bank guarantee. Learned counsel further submits that the Petitioner had quoted its tender on the premise that the entire retention money would be returned upon completion of the Defect Liability Period of 12 months, following completion of the stipulated contract period of 21 months. However, owing to the extension of the completion period from 21 months to 60 months, the release and return of the retention money, both in the form of cash and bank guarantee, were abnormally delayed, thereby necessitating the payment of heavy interest charges.

. Learned counsel for the Petitioner-MCGM submits that the Claimants had not submitted the MOU in respect of certain works and, consequently, the bank guarantee was required to be extended. It is therefore contended that the works could not be treated as completed and that the claim is wholly misconceived.

. The Tribunal has observed that Clause 48.2 provides that, upon completion of the whole of the work, half of the total amount retained is to be repaid to the Contractor, while the remaining half is to be repaid after the expiry of the Defect Liability Period and upon certification by the Engineer that all defects notified by the Engineer to the Contractor before the expiry of the said period have been duly rectified.

. Clause 48.3 further provides that, upon completion of the whole of the works, the Contractor may substitute the retention money with an on-demand Bank Guarantee (BG).

. The value of the work executed by the Claimant as on 31.12.2005 was accordingly taken into consideration. Thus, half of the amount retained was required to be paid to the Contractor upon completion of the whole of the work, while the remaining half became payable after the expiry of the Defect Liability Period, i.e., on 31.12.2006. There was a delay in making payment of the said amounts. Accordingly, interest at the rate of 12% per annum was awarded on the delayed payments, which worked out to Rs. 41,252.80. I find no error in the aforesaid reasoning or in the award of interest.

. The Claim has been correctly decided and no case is made out to interfere with.

35. Claim no.7 : Compensation towards extra cost incured towards supplies made by B.S.E.S. Ltd. (Electricity Supply Company Rs.56,111.00)

. Learned counsel for the Respondent-Claimant submits that the claim arises out of the Petitioners'/MCGM's failure to pay certain charges levied by the Electric Supply Company towards the supply of service cables, GT land, earthing charges, connection fees, etc. The Petitioner-MCGM was required to make payment of the said charges pursuant to the demand notice; however, they failed and neglected to do so, thereby compelling the Claimants to make payment of the same, contrary to Condition No. 1 under the General Specifications for Electrical Installation Works forming part of the contract. It is further submitted that, although the Petitioner-MCGM had initially paid the said charges, they subsequently recovered the amounts from the Respondents-Claimants through deductions from their R.A. bills.

. Learned counsel for the Petitioner-MCGM submits that the Petitioners-MCGM were liable to pay only the security deposit required for obtaining the electricity connection from the electricity supply company, whereas all other incidental charges were to be borne by the Claimants themselves. The Petitioner-MCGM further submitted that, during the pre-bid meeting, it was expressly clarified that the cost of the cables, meter, and the connection from the meter room to the cabin would be borne by the Contractor. The minutes of the said meeting form part of the contract and are binding upon the parties.

. The learned Tribunal held that, as per the contract, the electrical installation work, including the arrangement for supplying a connection to the meter room, was the responsibility of the Petitioner/MCGM. Thereafter, other electrical connections, such as providing the main switch, fuses, MCBs, etc., were to be carried out as approved by the Engineer.

. It was further observed that the Claimant had made a provision of Rs. 30,000/- in respect of electrical works in each block, for each type of work, towards other expenditure to be incurred as described in the General Specifications for Electrical Installation Works. The said amount was accordingly allowed by the Tribunal.

. The demand raised by the electricity supply company against the Petitioner-MCGM was initially paid by the Claimants. Although the Petitioner-MCGM had paid the charges, the same were subsequently recovered from the running account (R.A.) bill. The Tribunal found that the liability to pay the said charges was that of the Petitioner-MCGM and, accordingly, awarded an amount of Rs. 37,000/-. No case is made out for interference with the said findings under Section 34 of the Arbitration and Conciliation Act, 1996.

. The Claim has been correctly decided and no case is made out to interfere with.

36. Claim No. 8 : Compensation towards loss of profits and overheads Rs.1,27,33,000/- :

. Learned counsel for the Respondents-Claimants submitted that the present claim arises out of the loss suffered by the Claimants on account of the Petitioners'-MCGM failure to permit the Respondent-Claimants to execute the entire contracted work. It was further submitted that approximately 40% of the work that was permitted to be executed was not carried out within the original stipulated contract period, but during the extended contract period, which ultimately extended to 59 months. The Claimants, therefore, contend that the Respondents are liable to compensate them for the losses suffered on this account.

. Learned counsel for the Petitioner-MCGM denied the submissions, contending that the contract was admittedly based on a demand-based programme and, therefore, the quantum of work could not be ascertained in advance. It was further submitted that it was the obligation of the NGO appointed by the Respondent-Claimants to create awareness among the public regarding S.S.P., generate demand, and facilitate the formation of C.B.Os. The Petitioner-MCGM permitted the Respondents-Claimants to utilise the funds in the P/North Ward during the extended period, subject to the same terms and conditions as stipulated in the contract.

. The learned Tribunal considered 15% of the value of the work that could not be executed, amounting to Rs.212 lakhs, as a reasonable measure of loss of profit. Accordingly, the claim towards loss of profit, quantified at Rs. 31.80 lakhs, was allowed.

. The Claim has been correctly decided and no case is made out to interfere with.

37. Claim No.9 : Compensation towards miscellaneous expenses, Rs.7,82,050/- :

. Learned counsel for the Respondent-Claimants submits that the various expenses like (a) Consultation charges, (b) Diesel and Petrol charges for inspection vehicles, (c) Telephone, Fax, Mobile etc. charges, (d) Emergency Repairs required to be carried out to machineries, (e) Medical expenses, (f) Insurance Charges, (g) Electric & Water charges and (h) Other Miscellaneous Charges.

. Learned Counsel for the Petitioner-MCGM submitted that any such expenses alleged to have been incurred by the Respondents-Claimants are part of the rates quoted by the Respondents-Claimants and are not separately payable.

. Learned Tribunal held that the Respondents-Claimants are not justified to claiming this amount and rejected the claim.

. The Claim has been correctly decided and no case is made out to interfere with.

38. **Claim No.10** – <u>Compensation towards expenses incurred towards appointment of Sole Arbitrator Rs.75,000.00</u> :

. The learned Tribunal granted Rs.50,000.00 on the ground that Petitioner-MCGM failed to follow the contractual obligation and neglected to settle the genuine claim, disputes and differences of the Respondents-Claimants as per Clause 3.1(d) of Special Condition of Contract which states that the expenses incurred by each party in connection with preparation, presentation, etc. shall be borne by each party itself. However, the fees and expenses paid to the Arbitrator appointed shall be shared equally by both the parties.

. The Claim has been correctly decided and no case is made out to interfere with.

39. **<u>Claim No. 11</u>** – <u>Compensation towards loss of interest on due amounts as per above claims</u> :

.	Learned counsel for the Claimant/Respondent submits that this claim is arising out of interest on amounts claimed and not paid by the Petitioners-MCGM and that is claimed from the due dates considered for each of the claims from 1 to 9 till the actual date of payment for the ante-lite, pendent-lite and post-pendent-lite.

.	Learned counsel for the Petitioner-MCGM submitted that since no amount is due to be paid to the Claimants, question of payment of interest does not arise and that the claims for interest made are prior to 3 years of invoking the Arbitration clause and are hopelessly barred by law of limitation.

.	The learned Tribunal held that the Respondent-Claimant submitted the claim towards loss of interest on due amount. The submission of the Petitioner-MCGM that no payment is due to be paid to the Respondent-Claimant is considered untenable in as much as analysis made earlier with reference to each claim. The learned Tribunal considers it appropriate to allow the interest @ 12% and accordingly awards interest @ 12% on the amounts awarded on all the claims, from the date of final bill i.e. 28th February 2008 till the date of the Award.

.	The Claim has been correctly decided and no case is made out to interfere with.

40. Claim No. 12 : Cost of Arbitration Rs.10,00.000/- :

. Learned counsel for the Respondent-Claimant submits that this claim is arising out of the extra expenses required to be incurred on account of arbitration process, which was thrust upon them and that this at present tentative, on the probable expenditure which is likely to be incurred by them and they crave leave to amend this claim amount at the end of arbitration proceedings, on the basis of actual expenditure incurred by them.

. Learned counsel for the Petitioner-MCGM submitted that since the proceedings filed by the Respondents-Claimants are totally false and frivolous, they are not liable to pay any amount towards the alleged cost of Arbitration and that in Clause 3.1(d) of the Special Conditions of Contract, it is clearly provided that the expenses incurred by each party in connection with preparation, presentation etc. of its proceedings, shall be borne by each party itself and that is further provided that the fees and expenses paid to the Arbitrator shall be shared equally by both the parties and submitted that the claim is liable to be rejected.

. The learned Tribunal held that as per Sub-Clause 4 (c) of Clause 7 of Arbitration and Conciliation Act, the Arbitration Agreement deem to have been made when an exchange of statements and defence in which the existence of the agreement allegedly by one party and not denied by the other. In as much as the Arbitration clause is invoked by the Respondent-Claimant which has been agreed to by the Petitioner-MCGM in the present case, no question of considering that the Arbitration has been thrust upon the Respondent-Claimant and as such he cannot claim any amount so claimed. Hence, the claim is rejected. Accordingly, the learned Tribunal has not awarded cost to either party, the cost of Arbitration proceedings and the fee of the Arbitrator is borne by both the parties on 50:50 basis. No case is made out for interference.

41. The arguments regarding the alleged overlapping of claims, particularly in respect of idle charges and revision of rates, are misconceived. The revision of rates pertains to the cost of executing the work and constitutes a price claim in respect of the work actually executed. In contrast, idle charges relate to the costs incurred towards labour, staff, machinery and other resources that remained available at the site but could not be utilised, or were under-utilised, due to circumstances beyond the Respondent/claimant’s control. Thus, the two claims arise from distinct heads of loss and compensate for different consequences. The revision of rates compensates for the increased cost of executing the work, whereas idle charges compensate for the resources that remained idle or under-utilised during the relevant period. Accordingly, there is no overlap between the two claims, and both are independently recoverable.

42. The Tribunal has awarded compensation under different heads and at different rates. In particular, the Tribunal has awarded compensation towards idling charges for the extended period required to complete the works at the sites. Separately, it has awarded compensation towards loss of profits. Thus, there is no overlap between the respective claims, as they pertain to distinct heads of compensation, and the Tribunal has correctly treated them as such.

43. As held by the Supreme Court in the judgment of **Associate Builders V. Delhi Development Authority**[3], the limited scope of Judicial interference under Section 34, at paragraph 33 is noted below :-

> "33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score 17. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. 18, this Court held: (SCC pp. 601-02, para 21)."

. Thus, once the quantum of compensation awarded by the Tribunal is

3 (2015) 3 SCC 49

found to be reasonable, free from patent illegality, and within the terms of the contract, the same cannot be interfered with in a petition under Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, no case for interference with the impugned order is made out.

44. Learned counsel submitted that the claims in both petitions, i.e. Arbitration Petition No. 1158 of 2014 and Arbitration Petition No. 256 of 2015, are identical, and that the contracts and claims therein are also identical. The difference in the amounts awarded is attributable to the respective allotment of the sites. Since the principal issues involved are similar, no separate arguments were advanced in respect of the second petition. In view of the same, no case is made out for interference in the second petition also.

45. The Arbitration Petitions stand dismissed.

46. In view of dismissal of the Arbitration Petitions, Notice of Motion does not survive, the same is also disposed of.

47. Learned counsel appearing for the Petitioner prays for a stay of the order passed today. However, as the Award is in favour of the Claimant and the challenge thereto has also been dismissed, the prayer for stay of the order is rejected.

(ARUN R. PEDNEKER, J.)

BHALCHANDRA
GOPAL DUSANE

Digitally signed by
BHALCHANDRA
GOPAL DUSANE
Date: 2026.09.11
19:51:12 +0530