IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF MARCH, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 515 OF 2025

BETWEEN:

1. M/S S S POLICE PATIL AND COMPANY
ENGINEERS AND CLASS I CONTRACTORS
"MAHA SHARANU", P-149, FIRST FLOOR
APMC YARD, AMARGOL
HUBLI - 580 025
REPRESENTED BY
SAYASGOUDA S POLICE PATIL
AGED ABOUT 59 YEARS

...APPELLANT

(BY SRI YASHODHAR HEGDE, ADVOCATE)

AND:

Digitally signed by SRIDEVI S
Location: High Court of Karnataka

1. THE DEPUTY COMMISSIONER
DHARWAD DISTRICT
DHARWAD - 580 001

...RESPONDENT

(BY SRI S.SANTHOSH GOGI, ADDITIONAL ADVOCATE GENERAL
A/W SRI K.S. HARISH, GOVERNMENT ADVOCATE)

THIS COMAP IS FILED UNDER SECTION 13(1-A) OF COMMERCIAL COURTS ACT, 2015 PRAYING TO PASS AN ORDER SETTING ASIDE THE ORDER DATED 04.08.2025 PASSED IN COM.A.P. NO.85/2024 BY THE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU (CCH-84) (ANNEXURE-A) & ETC.

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

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning an order dated 04.08.2025 passed by the learned LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru [**Commercial Court**] in COM.A.P.No.85/2024.

2. The respondent had filed the said petition under Section 34 of the A&C Act, praying for setting aside of the arbitral award dated 14.03.2024 [**impugned award**] delivered by an Arbitral Tribunal comprising a sole arbitrator [**Arbitral Tribunal**]

3. The impugned award was rendered in relation to disputes that had arisen between the parties concerning the agreement dated 09.07.2018 [**the Agreement**].

4. On 18.11.2017, the respondent issued a notice inviting tenders for "Improvements of Roads and Drains in Annigeri Town Municipal limits of Dharwad District under Nagarothana (Municipality) 3rd phase project". The appellant submitted its bid pursuant to the said notice. The appellant's bid was accepted and he was declared as the successful bidder. The appellant was entrusted with the execution of works at a total value of ₹6,23,67,867/- (Rupees Six Crores Twenty-Three Lakhs Sixty-Seven Thousand Eight Hundred and Sixty-Seven only). The Letter of Acceptance [**LOA**] was issued by the respondent on 22.02.2018, accepting the appellant's bid. Thereafter, the parties entered into the Agreement. The appellant was issued a notice dated 09.07.2018 to proceed. Under the Agreement, the appellant was required to commence work within two weeks of the notice.

5. The appellant claimed that immediately after receipt of the work order, it mobilised all the necessary resources to commence and complete the work in accordance with the construction programme. The execution of works was delayed on account of various reasons, which the appellant claims were attributable to the respondent. It claimed that the road from the bus stand to *Agse cross* traversed a private property for about 688 meters. The said

property was not acquired by the respondent, and thus, the appellant was unable to enter the same to execute the works. Additionally, there was a delay in issuing the 'Good fit for construction' drawings for the road works; a portion of the site was not handed over, and the relocation of electrical poles was delayed. These issues delayed the execution of the works. The appellant claimed that for various reasons, it would execute works to an extent of only ₹4,50,29,972/-, that is, only 72.2% of the total work to be executed under the Agreement. This was solely for the reason attributable to the respondent. The appellant claimed that it submitted its fourth and final bill along with a price adjustment bill for a sum of ₹46,87,473/-. It claimed that the respondent was unable to provide all work fronts even after 17 months had elapsed, and that it had become aware that the respondent was also proposing to take up alternative works from the remaining amount allocated for the said works under the Agreement.

6. The principal dispute concerns the appellant's claim for price adjustment. The project management consultant, M/s. Niketan Consultants, Bengaluru, recommended the payment of the price adjustment bill amounting to ₹46,87,473/- in terms of Clause 40 of the Conditions of Contract [**GCC**]. The appellant claimed that the

Director, Directorate of Municipal Administration, also furnished a report regarding the price adjustment bill. However, the respondent failed to pay the amounts due. In view of the above, the appellant invoked the arbitration agreement and sought the appointment of a sole arbitrator under Clause 4 of the Special Conditions of Contract. Since the Arbitral Tribunal was not constituted, the appellant filed a petition (CMP No. 100001/2023), and, by an order dated 10.03.2023, a former Judge of this Court was appointed as the Sole Arbitrator.

7. The appellant filed the statement of claims before the Arbitral Tribunal, raising the following claims.

> "(i) Pending Price Adjustment Bill : Rs.44,48,415.00
> (ii) Interest on delayed payment of RA Bill No.2: Rs.1,07,567.00.
> (iii) Expenditure on Legal and other Charges.
> (iv) Interest charges on the above Claim No.(i) At 18% per annum from the date they arose i.e., from 21-10-2020 to 31-08-2023"

8. The respondent did not participate in the arbitral proceedings despite receiving notice thereof. Consequently, the Arbitral Tribunal proceeded to examine the claim without awaiting the respondent's participation. The appellant led evidence in order to establish its claims. The Arbitral Tribunal formulated various points for determination, including whether the appellant established that it

was entitled to a pending price adjustment bill to the extent of ₹44,48,415/-.

9. We consider it apposite to refer to the following extract of the impugned award, which indicates that the Arbitral Tribunal had examined the material before and had accepted the appellant's claim for the pending price adjustment bill:

> "23. The Ex.P7 is the submission of Price Adjustment Bill as per clause 40 of condition of contract and Claimant has also sent a copy of it to the team leader Niketan Consultants. Ex.P8 is the letter addressed to the Respondent by the Claimant claiming Price Adjustment Bill. Ex.P9 is a letter addressed by Niketan Consultants wherein they have also referred to the agreement and letter of Claimant and they have also recommended that the Claimant is entitled for Price Adjustment Bill for Rs.46,87,473/-. Based on that letter the Respondent has sent a letter as per Ex.P10 to the Director of Directorate Municipal Administration. In the said letter, it is mentioned by the Respondent that the Claimant has carried out the work as per the tender in respect of 9 works out of 12 and he could not take up the remaining 3 works because of obstruction and objection by the public. Therefore on 06.12.2020 after discussion with the District Incharge Minister, the department decided to take up alternative work. It is also mentioned that the bills in respect of 9 carried out work was paid within due date. It is also mentioned that as the problems could not be solved Inspite of expiry of tender period, the Claimant was requested Respondent to close the tender and has claimed the Price the Adjustment Bill. The said letter also shows that the project management consultants has also recommended for payment of the said bill. It is also mentioned that the bill was prepared with star rate and labour charge. Therefore it is requested that as the tender amount was more than Rs.5 crores and as the tender was approved by the Director and as per clause 40 of the conditions of contract, requested to grant the Price

Adjustment Bill.

24. Ex. P11 is a letter in reply to Ex. P10 addressed by Director, Municipal Administration dated 24.12.2021 wherein the Director has informed the Respondent to take action as per the tender contract terms and conditions at his level.

25. These Exs.P9, P10 and P11 documentary evidence which are produced by the Claimant are not disputed or denied by the Respondent. There is no statement of objection filed by the Respondent nor the evidence given by PW1 on oath is denied by the Respondent. Documentary evidence Exs.P9, P10 and P11 corroborate the oral evidence of PW1 and contents of claim statement. The evidence placed before the Tribunal clearly shows that the Claimant could not complete all the 12 works in view of inaction on the part of the Respondent. He could complete 9 works within the stipulated period of tender and three works he could not complete because of the delay and inaction on the part of the Respondent to hand over the drawing and sites. On the other hand the Claimant has brought to the notice of the Respondent the delay and obstruction in carrying out the work because of inaction on the part of the Respondent. But inspite of that the tender was not closed nor Claimant was allowed to carry out the three works. On the other hand on 06.12.2020 alternative work was taken by a discussion with the local MLA the monitoring committee submitted a alternative action plan proposal on 06.12.2020 and got its approval on 07.12.2020. Therefore, the Claimant is entitled for the Price Adjustment Bill. The Claimant has also produced Ex. P18 letter addressed to team manager wherein he has enclosed details for consideration in arriving the price adjustment calculation, The Claimant has taken the location, price adjustment formula used and base index. The said document is not denied by the Respondent. On the other hand, it is deem to have been admitted by the Respondent and the said bill is also recommended by the project management consultant also.

26. If at all the Claimant is not entitled for the said Price Adjustment Bill in terms of clause 40 of conditions of contract, the Respondent could have denied it or could have shown that the calculation arrived by the Claimant is not correct or not admissible. The Respondent has neither

> denied the claim statement by filing the statement of objection nor denied oral evidence and documentary evidence placed by the Claimant. Therefore, an adverse inference will have to be drawn against the Respondent to the effect that the claim in respect of price adjustment bill amounting to Rs.44,48,415/- is not denied by the Respondent on the other hand it is admitted by the Respondent. Absolutely I find no grounds to deny the said relief claimed by the Claimant which is supported by both oral and documentary evidence. Accordingly, I answer point no.1 in the affirmative."

10. The Arbitral Tribunal allowed the claim for price adjustment along with interest at the rate of 9% per annum from 09.03.2022 till the date of the impugned award. However, it rejected the appellant's claim for interest on delayed payment. Additionally, the Arbitral Tribunal also awarded future interest at the rate of 15% per annum on the claims awarded and awarded ₹2,50,000/- towards arbitrator's fee, costs and expenses.

11. The respondent challenged the impugned award before the learned Commercial Court mainly on two grounds. First, it claimed that the impugned award was rendered without compliance with the principles of natural justice, and the respondent was disabled from effectively contesting the case. It gave an elaborate explanation of why it could not attend the hearing before the Arbitral Tribunal despite the notices. Second, it claimed that the price adjustment bill under Clause 40 of the GCC was applicable only to contracts that

stipulated a completion period of more than 12 months. It argued that since the Agreement was for a term of 12 months, the said clause was inapplicable.

12. The learned Commercial Court rejected the contention that the impugned award was rendered in violation of principles of natural justice. The court found that the respondent had been given notice of the Arbitral proceedings, and it was unable to establish any impediment to appearing before the Arbitral Tribunal to present its defence.

13. However, the learned Commercial Court concluded that there was a conflict between Clause 40 and Clause 40.1 of the GCC. Whereas, in terms of Clause 40.1, the contract price was required to be adjusted for an increase or decrease in rates and prices of labour, materials, fuels and lubricants. However, Clause 40 also referred to two government orders: the Government Order dated 26.11.2004 and the Government Order dated 21.11.2008. The Court noted that in terms of the Government Order dated 21.11.2008, where the period of execution was more than 6 months, but less or equal to 12 months, “star rates” in respect of specified material (cement, steel and bitumen) only would be payable. The Court noted an inherent contradiction between Clauses 40 and 40.1

of the GCC, as Clause 40.1 of the GCC also provided price adjustment on account of variation in rates and prices of labour and fuel.

14. The learned Commercial Court also referred to the letter written by the appellant to the respondent, which indicated that the price adjustment bill had been prepared, adopting the formula in respect of the components of labour, cement, steel, bitumen, fuel, lubricants, plant and machinery and other materials.

15. The learned Commercial Court concluded that the price adjustment bill was contrary to the Government Order dated 21.11.2008, which would necessarily require the price adjustment to be confined to cement, steel and bitumen. The Court observed that this crucial aspect had not been brought to the learned Arbitral Tribunal's notice and had escaped its attention. Additionally, the learned Commercial Court also noted that under Cause 40.1, price adjustment only for labour, material, fuel and lubricants was permissible. But, the appellant had claimed price adjustment for plant and machinery as well. The learned Commercial Court noted that plant and machinery was not one of the resources for which price adjustment is provided under Clause 40.1 of the GCC.

16. In view of the above, the learned Commercial Court set aside the impugned award.

REASONS AND CONCLUSIONS

17. It is apparent from the above that the learned Commercial Court has embarked on adjudication of the question whether the price adjustment bill would fall within the terms of the Government Order dated 21.11.2008. This was not an issue raised before the Arbitral Tribunal.

18. A plain reading of the grounds of challenge indicates that it was the respondent's case that Clause 40 of the GCC is inapplicable because the duration of the contract was twelve months. The appellant has contested the same. The appellant argued that the contract term should be extended because the delay was attributable to the respondent. The impugned judgment proceeds beyond the grounds of challenge raised by the respondent. The learned Commercial Court has proceeded on the basis that there were issues regarding, (a) the questions regarding a conflict between Clauses 40 and 40.1 of the GCC and whether Clause 40 or Clause 40.1 of the COC was applicable; and (b)

whether the price adjustment on account of plant and machinery fell within the scope of Clause 40.1 of COC.

19. We may at this stage note the clauses that were interpreted by the learned Commercial Court. Clause 40 and 40.1 of the GCC are set out below:

> "40. **Price Adjustment:** (Refer GOK Order No.FD 59 Pro.Cell 2004, Bangalore Dated 26th November 2004 AND Government order No. FD 3 PCL 2008, Bangalore, Dated :21-11-2008).
>
> 40.1 Contract price shall be adjusted for increase or decrease in rates and prices of labour, materials, fuels and lubricants in accordance with the following principles and procedures and as per formulae given in the Contract Data.
>
> (a) The price Adjustment shall apply for the work done from the date of commencement up to the end of original period of completion or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated period of completion for reasons attributable to the Contractor;
>
> (b) Price Adjustment shall be admissible from the date of opening of tenders (original or extended)
>
> (c) The price adjustment shall be determined during each quarter from the formulae given in Contract Data.
>
> (d) Following expressions and meanings are assigned to the work done during the quarter.
>
> R = Total value of work done during the quarter. It will exclude value for works executed under variations for which price adjustment (if any) will be worked out separately based on the terms mutually agreed."

20. Since Clause 40.1 also refers to the formulae in Contract data, it is necessary to refer to the said formulae as well. The same are set out below:

"**Price Adjustment Formula**

R=Value of work as defined in Clause 40.1 of Conditions of Contract.

Adjustment for labour component:

(i) Price adjustment for increase or decrease in the cost due to labour shall be paid in accordance with the following formula:

VL=0.85 X PL/100 X R X(Li - Lo Where,

VL = Increase or decrease in the cost of work during the quarter under consideration due to changes in rates for local labour;

Lo = The average consumer price index for industrial workers for .....Centre for the quarter preceding the date of opening of tenders as published by the Labour Bureau, Ministry of Labour, Government of India;

Li=The average consumer price index for industrial workers for .....Centre for the quarter under consideration as published by Labour Bureau, Ministry of Labour, Government of India.

PL = Percentage of labour component of the work

Adjustment for cement component

(ii) Price adjustment for increase or decrease in the cost of cement component procured by the contractor shall be paid in accordance with the following formula.

Vc=0.85 X Pc/100 X R X (Ci-Co)/Co, Where,

Vc= Increase or decrease in the cost of the work during the quarter under consideration due to changes in the rates for cement,

Co=The all India average wholesale price index "for cement (Ordinary Portland Cement) for the quarter preceding the date of opening of the tenders as published by the Office of Economic Advisor, Ministry of Commerce and Industry, Government of India, New Delhi;

Ci = The all India average wholesale price index for cement (Ordinary Portland Cement) for the quarter under consideration as published by the Office of Economic Advisor, Ministry of Commerce and Industry, Government of India, New Delhi

Pc = Percentage of cement component of the work.

Note: For the application of this clause index of Ordinary Portland Cement has been chosen to represent Cement Group

Adjustment for steel component.

(iii) Price adjustment for increase or decrease in the cost of steel procured by the contractor shall be paid in accordance with the following formula.

Vs=0.85 XPs/100 X R X (Si-So/So, where,

Vs=Increase or decrease in the cost of work during the quarter under consideration due to changes in the rates for steel;

So=The all India average wholesale price index for steel (steel rods) for the quarter preceding the date of opening of Bids as published by the Office of Economic Advisor, Ministry of Commerce and Industry, Government of India, New Delhi

Si=The all India average wholesale price index for steel (steel rods) for the quarter under consideration as published by the Office of Economic Advisor, Ministry of Commerce and Industry, New Delhi

Ps=Percentage of steel component of the work.

Note: For the application of this clause, index of steel rods has been chosen to represent steel group.

Adjustment of Bitumen Component:

(iv) Price adjustment for increase or decrease in the cost of bitumen shall be paid in accordance with the following formula:

VB=0.85 X PB/100 X R X (Bi-Bo)/BO., Where

VB = Increase or decrease in the cost of work during the quarter under consideration due to changes in the rate for bitumen.

BO = The official retail price of bitumen at the .....depot at..... on the day 30 days prior to the date of opening of Bids.

Bi = The official retail price of bitumen at the..... depot, at .....for the 15th day of the middle calendar month of the quarter under consideration.

PB = Percentage of bitumen component of the work.

Adjustment of Fuel and Lubricant component:

(v) Price adjustment for increase or decrease in cost of Fuel and Lubricants shall be paid in accordance with the following formula:

VF=0.85 X PF/100 X R X (Fi-Fo)/ Fo, Where,

VF = Increase or decrease in the cost of work during the quarter under consideration due to changes in the rates for Fuel and Lubricants.

Fo = The official retail price of High Speed Diesel (HSD) at the IOC/HPCL/BPCL at..... on the day 30 days prior to the date of opening of Bids.

Fi=The official retail price of HSD at the IOC/HPCL/BPCL at .....for the 15th day of the

middle calendar month of the quarter under consideration

PF = Percentage of Fuel and Lubricant component of the work.

Note: For the application of this Clause the price of HSD has been chosen to represent Fuel and Lubricant Group

Adjustment for Construction Machinery Component:

(vi) Price adjustment for increase or decrease in the cost of Construction Machinery procured by the contractor shall be paid in accordance with the following formula:

VF =0.85 X PCM /100 X R X (Pi-Po)/Po, Where

VF=Increase or decrease in the cost of work during the quarter under consideration due to changes in the rates for Construction Machinery.

PO=The all India average wholesale price index for Construction Machinery for the quarter preceding the date of opening of bids, as published by the Office of the Economic Advisor, Delhi Ministry of Commerce and Industry, Government of India, New Delhi

Pi=The all India average wholesale price index for Construction Machinery for the quarter under consideration as published by the Office of the Economic Advisor, Ministry of Commerce and Industry, Government of India, New Delhi

Note: For the application of this Clause index of Construction Machinery has been chosen to represent the Construction Machinery Group.

Adjustment for Other materials.:

(vii) Price adjustment for increase or decrease in the cost of other materials other than cement, steel, bitumen and Fuel and Lubricants, procured by the contractor shall be paid in accordance with following formula:

VM=0.85 X PM/100 X R X (Mi-Mo)/Mo, Where

VM = Increase or decrease in the cost of work during the quarter under consideration due to

changes in the rates for local materials other than cement, steel, bitumen and Fuel and Lubricants.

MO=The all India average wholesale price index for all commodities for the quarter preceding the date of opening of bids, as published by the Office of the Economic Advisor, Ministry of Commerce and Industry, Government of India, New Delhi

Mi=The all India average wholesale price index for all commodities for the quarter under consideration as published by the Office of the Economic Advisor, Ministry of Commerce and Industry, Government of India, New Delhi

PM=Percentage of other material component (Other than cement, steel, bitumen and Fuel and Lubricants) of the work.

The following percentages will govern the price adjustment for the entire contract:

1. Labour- PL	28%
2. Cement -PC	4%
3. Steel -Ps	5%
4. Bitumen -PB	13%
5. Fuel and Lubricants- PF-	5%
6. Construction Machinery-PCM	20%
7. Other materials - PM	25%
TOTAL	100%

The liquidated damages for the whole of the works are

For Milestone 1: Rs 18945/- per day
For Milestone 2: Rs 18945/- per day
For Milestone 3: Rs 25200/- per day

The maximum amount of liquidated damages for the whole of the works is 10% (ten percent) of final contract price

The amounts of the advance payment are:

Name of Advance	Amount (Rs.)	Conditions to be fulfilled
1. Mobilization	5% of the Contract price	On submission of un-conditional Bank Guarantee,

		(to be drawn before end of 20% of Contract period)

(The advance payment will be paid to the Contractor no later than 30 days after fulfillment of the above conditions).

Repayment of advance payment for mobilization:

The advance loan shall be repaid with percentage deductions from the interim payments certified by the Engineer under the Contract. Deductions shall commence in the next Interim Payment Certificate following that in which the total of all such payments to the Contractor has reached not less than 15 percent of the Contract Price or 3 months from the date of payment of first installment of advance, whichever period concludes earlier, and shall be made at the rate of 7.5% percent of the amounts of all Interim Payment Certificates until such time as the loan has been repaid, always provided that the loan shall be completely repaid prior to the expiry of the original time for completion pursuant to Clauses 17 and 26.

The date by which "as-built" drawings in 2 sets are required is within 30 days of issue of certificate of completion of Whole or Section of the Work as the case may be.

The date by which Operating and Maintenance Manuals are required is within 30 days of issue of certificate of completion of Whole or Section of the Work as the case may be.

The amount to be withheld for failing to supply "as built" drawings or supply of Operation and Maintenance Manuals by the date required is 0.5 %of the contract value

The following events shall also be fundamental breach of the contract:

1. The contractor has contravened Sub-clause 71 and Clause 9 of CC. The percentage to apply to the value of the work not completed representing the Employer's additional cost for completing the Works shall be 30 percent."

21. The learned Commercial Court had noted that there was a conflict between Clause 40 and Clause 40.1 of the GCC. Whereas, Clause 40.1, expressly provided that if the contract price would be adjusted for increase or decrease in the rates and prices of labour, materials, fuels and lubricants, Clause 40 referred to Government Orders dated 26.11.2004 and 21.11.2008 in parenthesis.

22. The relevant extract of the Government Order dated 21.11.2008 is set out in the impugned order, is reproduced below:

> "In the circumstances explained in the preamble, in modification of the Government Order dated 26-11-2004, it is directed that the following price adjustment methods are applicable hereafter.
>
> a) For all works costing more than Rs. 50 lakhs, if the period of execution is more than 12 months, the price adjustment will be calculated as prescribed in Annexure to G.O. No. FD-59 Pro-Cell 2004 dated 26-11-2004.
>
> b) If the period of execution is more than 6 months but less than or **equal to 12 months**, for work costing more than Rs. 50 lakhs, **star rates in respect of specified material, (cement, steel and bitumen) only** shall be payable to the contractor based on the All India Average Wholesale Price Index for the said materials. The star rates adjustment shall be as per the increase or decrease in the index as applicable to the said materials between the last date for receiving bids and the date of execution as per the approved program of work submitted by the contractor at the time of execution of agreement which shall mandatorily be part of the agreement. (Emphasis Supplied)"

23. The learned Commercial Court had held that in terms of the said government order dated 21.11.2008, star rates were applicable in respect to material (cement, steel and bitumen) only. However, the respondent's case was that the contract, as required, should be considered to be more than 12 months, as the period of execution would also take into account the extension. Reference to Clause 40.1(a) clearly indicates that extensions granted are required to be considered along with the initial terms of the contract. Admittedly, in terms of Clause 40.1, the contract price is required to be adjusted for an increase or decrease in rates and prices for labour, materials, fuels and lubricants. Even if the Government Order dated 21.11.2008 is held to be applicable but the appellant's contention that it was entitled to extension time is accepted, the appellant would be entitled to price adjustment for labour, materials, fuels and lubricants, and its claim could not be confined to material alone. The appellant’s claim that it was entitled to an extension is based on its assertion that the delay was attributable to the respondent. This contention has been accepted by the Arbitral Tribunal.

24. The formulae referred to in Clause 40.1 clearly provided price adjustment for material, labour, fuel and plant and machinery.

25. In our view, it is clear from the above that the question of whether the appellant's claim was sustainable under the terms of the contract could at best be a contentious issue. If this issue was raised, the Arbitral Tribunal would be required to adjudicate the same. However, as noted above, the respondent, despite the opportunity, did not contest the claim before the Arbitral Tribunal. It is clearly not open for the respondent to insist on fresh adjudication of contentious question before the learned Commercial Court, unless the Court finds that the award is *ex-facie*, vitiated by patent illegality, the award cannot be set aside on that ground. The illegality must be apparent on the face of the award and must go to the root of the dispute. The jurisdiction of the learned Commercial Court is confined to examining whether the arbitral award is required to be set aside on the grounds as set out in Section 34 of the A&C Act.

26. It is difficult to accept that the impugned award is, ex facie, contrary to the terms of the Agreement. As noted above, the question at the very least would require interpreting the terms of the Agreement. Concededly, the appellant’s claim is sustainable under clause 40.1 of the GCC. The question as to whether there was a conflict between Clause 40 and 40.1 of the GCC and the

interpretative exercise required for addressing the same, excludes it from the scope of Section 34 of the A&C Act. We are unable to accept that the impugned award is vitiated by patent illegality on its face or is in conflict with the public policy of India.

27. Before concluding, we may also note that the learned Commercial Court had referred to the appellant's letter, which indicated that it had also claimed price variation in respect of plant and machinery, which is not covered under Clause 40.1 of the COC. However, the formulae referred to in clause 40.1 also provide for variation on account of the plant and machinery component. In our view, this at best would be a contentious issue. It may have warranted examination before the Arbitral Tribunal if any such dispute had been raised. It is not disputed that no such objection had been raised in respect to the price variation bill raised by the respondent at the material time.

28. The learned counsel appearing for the respondent also stated that there was no contemporaneous communication by the respondent raising the said issue.

29. As noted above, the application filed under Section 34 of the A&C Act also does not mention any such ground. We are unable to

accept that any interference with the impugned award is warranted under Section 34 of the A&C Act.

30. The appeal is accordingly allowed, and the impugned order is set aside.

31. Parties are left to bear their own costs.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(C.M. POONACHA)
JUDGE

KPS