RESERVED ON 16TH JULY 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

<u>COMMERCIAL APPEAL NO. 124 OF 2025</u>

<u>C/W</u>

<u>COMMERCIAL APPEAL NO. 116 OF 2025</u>

<u>IN COMAP No. 124/2025</u>

<u>BETWEEN:</u>

1. BANGALORE METRO RAIL
CORPORATION LIMITED
BMTC COMPLEX, 3RD FLOOR
K.H. ROAD, SHANTINAGAR
BENGALURU - 560 027
REPRESENTED BY ITS
MANAGING DIRECTOR

…APPELLANT

(BY SRI S. SRIRANGA, SENIOR ADVOCATE A/W
SMT. ASHWINI N. RAVINDRA, ADVOCATE FOR
SMT. SUMANA NAGANAND, ADVOCATE)

<u>AND:</u>

1. LARSEN AND TOUBRO
HAVING ITS REGIONAL OFFICE AT
NO.19, I AND II FLOOR
KUMARA KRUPA ROAD
BENGALURU - 560 001
REPRESENTED BY ITS
AUTHORIZED SIGNATORY

2. SRI R RAJAMANI
   FLAT NO. 3, 'RAMPRIYA'
   AE-172, 11^{TH} MAIN ROAD
   ANNANAGAR
   CHENNAI - 600 040

3. SRI L.V. SREERANGARAJU
   NO. 537, 'JYESHTA'
   3^{RD} MAIN
   HOSAKERREHALLI CROSS
   BANASHANKARI 3^{RD} STAGE
   BENGALURU - 560 085

4. CAPT. RAJA RAO. S
   HOUSE NO. 279, 1^{ST} B CROSS
   8^{TH} MAIN, 4^{TH} BLOCK
   3^{RD} STAGE
   BASAVESHWARANAGAR
   BENGALURU - 560 079

…RESPONDENTS

(BY SRI ANIRUDH KRISHNAN, ADVOCATE,
SRI RAMKISHORE KARANAM, ADVOCATE,
MS. GARIMA KIRTI, ADVOCATE FOR
SRI NISHCHAL DEV, ADVOCATE FOR C/R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 37 OF THE ARBITRAION & CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND ORDER DATED 13.12.2024 (DOCUMENT NO.1) PASSED BY THE LEARNED LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-88), IN COM.A.S. NO.222/2018 (COMMERICAL COURT), AND CONSEQUENTLY, SET ASIDE THE ARBITRAL AWARD DATED 04.08.2018 (DOCUMENT NO.2) & ETC.

IN COMAP NO. 116/2025

BETWEEN:

1. LARSEN AND TOUBRO LIMITED
   L&T HOUSE, BALLARD ESTATE
   NAROTTAR MARG
   MUMBAI - 400 001
   INDIA

...APPELLANT

(BY SRI ANIRUDH KRISHNAN, ADVOCATE,
SRI RAMKISHORE KARANAM, ADVOCATE,
MS. GARIMA KIRTI, ADVOCATE FOR
SRI NISHCHAL DEV, ADVOCATE)

AND:

1. BANGALORE METRO RAIL
   CORPORATION LIMITED
   III FLOOR
   BMTC COMPLEX K.H.
   SHANTINAGAR
   BANGALORE - 560 027

2. SRI R RAJAMANI
   FLAT NO. 3, 'RAMPRIYA'
   AE-172, 11TH MAIN ROAD
   ANNANAGAR
   CHENNAI - 600 040

3. SRI L.V. SREERANGARAJU
   NO. 537, 'JYESHTA'
   3RD MAIN
   HOSAKERREHALLI CROSS
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BENGALURU - 560 079

...RESPONDENTS

(BY SRI S. SRIRANGA, SENIOR ADVOCATE A/W
SMT. ASHWINI N. RAVINDRA, ADVOCATE FOR
SMT. SUMANA NAGANAND, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 37 OF THE ARBITRAION & CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 13.12.2024 (ANNEXURE-B) PASSED IN COM A.S. 221 OF 2018 BY THE LXXXVII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-88) AND CONSEQUENTLY, THE FINDINGS ON CLAIM NO. 3 IN IMPUGNED AWARD DATED 04.08.2018 (ANNEXURE-A) & ETC.

THESE COMMERCIAL APPEALS 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 MRS. JUSTICE K.S. HEMALEKHA

C.A.V. JUDGMENT

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

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INTRODUCTION

1. These cross-appeals, filed under Section 13(1A) of the Commercial Courts Act, 2015 [**the CC Act**], read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**the A&C Act**], arise from two separate orders, both dated 13.12.2024 [hereinafter collectively referred to as **the impugned orders**], passed by the learned LXXXVII Additional City Civil & Sessions Judge, Bengaluru (CCH-88) [**the Commercial Court**] in Com.A.S.No.221 of 2018 and Com.A.S.No.222 of 2018, respectively. In terms of the impugned orders, the learned Commercial Court dismissed the cross-petitions filed by the parties

under Section 34 of the A&C Act, assailing an arbitral award dated 04.08.2018 [**the impugned award**] rendered by an Arbitral Tribunal comprising three arbitrators [**the Arbitral Tribunal**]. The impugned award was rendered in the context of disputes that had arisen between the parties under the Contract Agreement dated 05.03.2010 [**the Contract**].

2. M/s Larsen and Toubro Limited [**L&T**], the claimant before the Arbitral Tribunal, has filed COMAP No.116 of 2025 assailing the impugned order passed in Com.A.S.No.221 of 2018, whereby the learned Commercial Court dismissed its petition under Section 34 of the A&C Act. Bangalore Metro Rail Corporation Limited [**BMRCL**], the respondent before the Arbitral Tribunal, has filed COMAP No.124 of 2025 assailing the impugned order passed in Com.A.S.No.222 of 2018, whereby its petition under Section 34 of the A&C Act was also dismissed.

3. The extent of the challenge in the two appeals is materially different. The challenge mounted by L&T, both before the learned Commercial Court and in this appeal (COMAP No.116 of 2025), is confined to the rejection of Claim (iii) — its claim for ₹103,30,00,000/- (Rupees One Hundred and Three Crores Thirty Lakhs only) towards time-related costs by way of damages—on the

ground that the quantification of the said claim was not established. L&T, accordingly, seeks the setting aside of the impugned order in Com. A.S.No.221 of 2018 and, consequently, of the findings on Claim (iii) alone, while sustaining the remainder of the impugned award.

4. The challenge mounted by BMRCL is to the impugned award in its entirety, including to the findings that the delays were attributable to it. BMRCL assails the award of the claims in favour of L&T and the rejection of its counter-claims and seeks the setting aside of the impugned award and the impugned order in Com.A.S.No.222 of 2018.

5. The appeals were, accordingly, heard together and are being disposed of by this common judgment.

6. Before considering the reliefs sought by the parties and the challenge in the present appeals, it is relevant to set out the factual context in which the controversy involved in the petitions under Section 34 of the A&C Act and the present appeals arises.

PREFATORY FACTS

7. BMRCL is a joint venture of the Government of India and the Government of Karnataka. It is entrusted with implementing the Bangalore Metro Rail Project. L&T is a construction company. Prior to the opening of the tenders, BMRCL furnished replies to the pre-bid queries of the tenderers.[1] BMRCL states that it clarified that the tender conditions would prevail, that in given cases only an extension of time may be granted, and that no monetary compensation would be granted for any delay in handing over land or in issuing Good for Construction [**GFC**] drawings.

8. By a Letter of Acceptance dated 17.12.2009 [**LOA**], BMRCL awarded L&T the work of constructing elevated structures (viaduct) of approximately 4.80 kilometres from Yeshwanthpur Station to Peenya Depot, together with three elevated stations — the Outer Ring Road [**ORR**], Peenya Industrial Area [**PIA**] and Peenya Village [**PV**] Stations — on Reach R3A of the said project, at a contract price of ₹303,29,55,778/- (Rupees Three Hundred and Three Crores Twenty Nine Lakhs Fifty Five Thousand Seven Hundred and Seventy Eight only). The Contract was executed on

[1] Letters dated 27.06.2009 and 29.06.2009 (Ex.R-1).

05.03.2010 for a period of twenty-four months from the date of the LOA, ending on 16.12.2011.

9. In terms of Annexure-B to the LOA, the entire site was to be handed over to L&T in stretches between 17.12.2009 and 16.04.2010. The Contract specified ten Key Dates [**KD**] for the viaduct and five for each station, the final Key Dates being KD-10 (viaduct) and KD-5 (stations), which are coterminous with the completion of the Works as a whole.

10. Admittedly, the Works were not completed within the original contract period. BMRCL granted four extensions of time [**EOT**]. The final status of the EOTs including the levy of penalty/liquidated damages [**LD**] and freezing of price variation [**PVC**], as tabulated in the impugned award, is reproduced below:

EOT Granted up to	**EOT-1**	**EOT-2**	**EOT-3**	**EOT-4**
Viaduct for KD-10	16.12.2012	15.01.2014	30.04.2014	10.07.2014 PVC frozen on 30.04.2014
ORR Station for KD-5	31.03.2013	31.10.2013	15.03.2014 with penalty & PVC frozen as on 31.10.2013	31.03.2015 with LD
PIA Station for KD-5	31.03.2013	31.12.2013	31.03.2014 PVC frozen as on 01.01.2014	31.03.2015 with LD
PV Station for KD-5	31.03.2013	31.12.2013	31.03.2014 PVC frozen as on 01.01.2014	31.03.2015 with LD

11. It is material to note that various stretches of the site were handed over beyond the schedule under Annexure-B to the LOA and, in several instances, beyond the original contract period itself. The last portion was handed over on 09.10.2013, and hindrance-free land for the eighteen pier locations of the loop line only was handed over on 04.01.2014, which is approximately twenty-five months after the end of the original contract period (Ex. C-59).

12. The commercial operation of the metro on Reach R3A commenced on 01.03.2014, though certain minor works were pending. The balance viaduct works were completed by 10.07.2014 and, by a letter dated 24.02.2015, L&T notified completion of all balance works in the stations and requested issuance of the Taking Over Certificate [**TOC**] (Ex. C-337). It is the case of BMRCL that submission of the 'As-Built' drawings, which was a pre-condition for issuance of the TOC, was made only in June-July 2015.

13. Meanwhile, disputes arose on account of variations, extended stay, amounts recovered/withheld as penalty/LD, and freezing of PVC. L&T issued a Notice of Dispute dated 31.12.2013 (Ex. C-61) crystallising its claims. Thereafter, the parties waived the

requirement of engaging in conciliation and proceeded to arbitration under the General Conditions of Contract [**GCC**].

THE ARBITRAL PROCEEDINGS AND THE IMPUGNED AWARD

14. The Arbitral Tribunal entered upon the reference on 06.06.2014. Eight issues were framed by the Arbitral Tribunal, which read as under:

"**ISSUE-1**:	Whether the Claimant proves that the Respondent failed in handing over of land for the work in stretches as per the provisions of the Contract under Annexure-B of LOA?
ISSUE-2:	Whether the works under the Contract be deemed to have been taken over by the Respondent with effect from 28th February 2014 and the defect liability period under the Contract shall therefore be reckoned from the said date?
ISSUE-3:	Whether the Claimant proves that the Respondent had caused delays in fulfilling its obligations under the Contract for timely execution of the work as per the Schedule and that these delays are attributable to the Respondent?
ISSUE-4:	Whether the Claimant proves his entitlement to various Claims from Claim-(i) to Claim-(ix) as set out in Para-107 of the Claim statement?
ISSUE-5:	Whether the Claimant proves that the Counter-Claims of the Respondent are not arbitrable under Sec. 16 of the Arbitration & Conciliation Act, 1996?
ISSUE-6:	Whether the Respondent proves his entitlement for the Counter- Claims as set out in Para-5 of his Statement of

Counter-Claim from Counter-Claim-1 to Counter-Claim-11?

ISSUE-7: Whether the parties are entitled to the interest for the pre-award & post-award periods and if so at what rates in respect of the claims for which they are entitled to?

ISSUE-8: What Award?"

15. L&T raised nine claims aggregating ₹124,97,88,241/- (Rupees One Hundred and Twenty Four Crores Ninety Seven Lakhs Eighty Eight Thousand Two Hundred and Forty One only), with interest at 18% per annum and costs, as tabulated in the impugned award:

Claim No.	Description	Amount (₹)
Claim-(i)	A Declaratory relief in favour of the Claimant holding that the entire R3A works shall be deemed to have been taken over by the Respondentwith effect from 28th February 2014 and the Defect Liability period under the Contract shall therefore be reckoned from the said date	
Claim-(ii)	Claimson account of change in measurement (i.e., reduction in quantity) of parapet construction and related costs incurred by the Claimant	3,98,48,764/-
Claim-(iii)	Claims for time related costs by way of damages due to extended stay for reasons attributable to the Respondent	103,30,00,000/-
Claim-(iv)	Claim on account of revised BOQ rates due to delay in land handing over beyond the original contractual completion date for 18 pier locations	9,27,17,850/-
Claim-(v)	Claims for reinforcement unpaid quantities	3,15,92,332/-

Claim-(vi)	Claims for refund of all amounts recovered/withheld as penalty	4,24,00,000/-
Claim-(vii)	Claims for refund of all amounts payable as Price Variation which have been reduced by way of freezing	11,71,683/-
Claim-(viii)	Reimbursement of all costs incurred by the Claimant in prosecuting the above claims	90,57,612/-
Claim-(ix)	Any other order	
	Total Amount in Rs.	124,97,88,241

16. BMRCL raised eleven counter-claims aggregating ₹162,83,47,410/- (Rupees One Hundred and Sixty Two Crores Eighty Three Lakhs Forty Seven Thousand Four Hundred and Ten only), with interest at 18% per annum:

Counter Claim No.	Counter-Claim Description	Principal Claim in Rs.
Counter Claim-1	Recovery of Expenses incurred towards completion of balance works like restoration of roads, drains etc. at Viaduct and Stations;	1,33,25,433/-
Counter Claim -2	Recovery of Loss of revenue due to delay in commissioning of the metro line for public operation	69,30,00,000/-
Counter Claim -3	Recovery of Expenditure due to extension of the services of the General Consultants for the extended period due to delay in completion of works;	5,75,48,613/-
Counter Claim -4	Recovery of Price variation paid during the extended period;	26,23,26,728/-
Counter Claim -5	Recovery of Re-handling charges paid towards I-girders/segments and extra rate forGSS method of launching;	67,51,120/-

Counter Claim -6	Recovery of Rental charges towards Batching plant;	72,53,280/-
Counter Claim -7	Recovery of Amount deposited by the Respondent to NHAI towards restoration of road, drains and other damages done by the Claimant during the course of construction activities;	1,37,48,332/-
Counter Claim -8	Recovery of rental charges towards shuttering and staging materials supplied by the Respondent;	2,34,92,460/-
Counter Claim -9	Recovery of additional expenditure towards raising the 66 KVA transmission line between Pier location P403-P405 and P407-P410;	75,38,990/-
Counter Claim -10	Recovery of Land Rental charges;	8,88,62,454/-
Counter Claim -11	Penalty and liquidated damages for not achieving Key Dates	45,45,00,000/-
	Total	162,83,47,410/-

17. Issues 1 and 3 — which together concern the attribution of the delays — were answered in the affirmative, in favour of L&T. Before the Arbitral Tribunal, BMRCL had contended that Clause 2.2 of the GCC contemplated only a progressive handing over of the site, and that the site had in fact been made available progressively in terms of the Contract. The Arbitral Tribunal did not accept this contention. It reasoned that Clause 2.2 could not be read in isolation from Annexure-B to the LOA, which prescribed specific dates for handing over each stretch of the site, ending on

16.04.2010. The Arbitral Tribunal concluded that progressive possession, in the scheme of the Contract, could therefore only mean possession delivered in accordance with those agreed dates, and could never have been intended to extend beyond the original contract period itself. The record revealed that the site had been delivered in bits and pieces well beyond that schedule. Coupled with the delays in the issuance of GFC drawings, variations and clearances, the Arbitral Tribunal concluded that the delays were attributable to BMRCL, and that no delay whatsoever could be attributed to L&T up to the completion of the entire work on 24.02.2015, which fell within the EOT-4 period.

18. On Issue 2, the Arbitral Tribunal held that the Contract admits of only one TOC. Consequently, there could be only one completion date for the whole of the Works. Since the viaduct, including the station reaches, was put to revenue service upon commencement of commercial operations, the works were deemed taken over under Clause 9.2 of the GCC with effect from 28.02.2014. The Arbitral Tribunal held that the entire Works stood completed on 24.02.2015 and that the defect liability period [**DLP**] would accordingly run from 25.02.2015.

19. It is in the backdrop of these findings that the Arbitral Tribunal proceeded, under Issue 4, to adjudicate the individual claims:

19.1 *Claims (i) and (ii)*: On Claim (i), a declaratory award was made in terms of the findings on Issue 2. On Claim (ii), the Arbitral Tribunal found that the BOQ quantity for the pre-cast crash barrier cum parapet — 17,736 running metres, as against an actual executed length of only 4,324.7 metres — was incorrect from the inception of the Contract, and that L&T, having priced the item on the footing of the larger quantity, had lost the overheads and profit embedded in the reduction. It accordingly awarded ₹96,43,811/-, computed at 20% of the cost of the quantity reduced beyond the permissible 25% variation.

19.2 *Claim (iii)*: This claim — the subject matter of COMAP No.116 of 2025 — was decided in two distinct stages. On entitlement, the Arbitral Tribunal, following its findings on Issues 1 and 3, held that the extension of the Contract beyond 16.12.2011 up to 31.03.2015 could not be burdened on L&T, and that the time-dependent costs of the extended stay were, in principle, "an entitlement to the Claimant". On quantification, however, the claim failed. The Arbitral Tribunal found that the claim of ₹103.30 crores rested wholly on a report of M/s American Appraisal India Pvt. Ltd. [**American Appraisal**] commissioned by L&T (Ex. C-98) — whose author was never examined. The Arbitral Tribunal observed that, by virtue of Section 19(1) of the A&C Act, it was not bound by the Evidence Act or the Code of Civil Procedure; nonetheless, the underlying principles required the author of the report to be made available for cross-examination by BMRCL, and that, in the absence thereof, Ex.C-98 could not be treated as proper evidence. CW-3, the Chartered Accountant examined by L&T, had, in his deposition, acknowledged that he played no role in preparation of the report (Ex. C-98). The Arbitral Tribunal further held that the application of any recognised formula for computing such losses did not arise, since the claim as pleaded rested wholly on Ex.C-98. The alternate quantification tendered by L&T during arguments fared no better. The Arbitral Tribunal held that it had no foundation in the pleadings, and the formula employed therein adopted the value of work done in the extended period, rather than the original contract value, as the 'Contract Sum'. The profit component was held irrational as the profit was not time-dependent and there was no diminution in the value of the Contract. The Arbitral Tribunal held that the overheads (claimed at 25%) and plant and machinery (claimed at 15%) components were included in the contracted rates and had already been recovered in the payments made for the work done during the extended period. Thus, notwithstanding the affirmation of L&T's entitlement in principle, Claim (iii) was rejected in its entirety for want of proof of quantification.

19.3 *Claims (iv) and (v)*: On Claim (iv), the Arbitral Tribunal held that the rates quoted by L&T in 2009 could not, in fairness or in contract, be applied to the work at the eighteen pier locations, for which hindrance-free land was delivered only in January

2014 and which was executed nearly twenty-five months beyond the original contract period. Accordingly, the Arbitral Tribunal awarded ₹9,27,17,850/- at revised rates. The Arbitral Tribunal allowed Claim (v) for reinforcement steel quantities that remained unpaid at ₹2,84,61,516/-.

19.4 *Claims (vi) to (viii)*: The refund claims were allowed on the reasoning that a party alleging delay cannot constitute itself the arbiter of that delay, and that, the delays having been found not attributable to L&T, the very foundation for the levy of penalty/LD and for the freezing of the price indices stood removed. The Arbitral Tribunal accordingly directed refund of ₹4,24,00,000/- recovered or withheld as penalty/LD, and awarded ₹11,71,683/- towards PVC reduced by freezing, holding the contractual clauses invoked in the EOT-4 letter to be unsustainable.[2] The claim for arbitration costs was rejected under Clause 17.12 of the GCC, under which each party bears its own costs.

[2]Clauses 8.4 and 8.5 of the GCC (extension of time for delays due to the contractor; liquidated damages), invoked in the EOT-4 letter.

20. On Issues 5 and 6, the Arbitral Tribunal held the counter-claims to be arbitrable, but rejected all of them save Counter-Claim 5, on the merits. Counter- Claim no.5 was partly allowed at ₹31,21,461/-.

21. On Issue 7, the Arbitral Tribunal declined pre-award interest in view of the express bar under Clause 17.11 of the GCC, and awarded post-award simple interest at 12% per annum on the sums due. In the net result, L&T was held entitled to ₹17,43,94,860/- (Rupees Seventeen Crores Forty Three Lakhs Ninety Four Thousand Eight Hundred and Sixty only) and BMRCL to ₹31,21,461/-, with the parties bearing their respective costs of the arbitration.

22. Aggrieved, both parties instituted petitions under Section 34 of the A&C Act. L&T's petition (Com.A.S.No.221 of 2018) was confined to the findings on the quantification of Claim (iii) at paragraphs 141 to 144 of the impugned award, which were impugned as being violative of the fundamental policy of Indian law and the most basic notions of justice, and as patently illegal. L&T invoked the doctrine of severability and sought the setting aside of the said findings alone. BMRCL's petition (Com.A.S.No.222 of

2018) sought the setting aside of the impugned award in its entirety on the grounds that it was vitiated by patent illegality; ignored vital evidence and the binding contractual provisions; and was opposed to the public policy of India. Both petitions were heard together by the learned Commercial Court.

23. By an order dated 09.12.2021, the operation of the impugned award was stayed subject to BMRCL depositing 60% of the awarded amount and furnishing a bank guarantee for the balance. On 21.04.2022, L&T was permitted to withdraw the deposited amount of ₹10,46,36,916/-.

24. By a Notification dated 24.06.2023, both petitions were transferred from the Court of the LXXXIII Additional City Civil and Sessions Judge (CCH-84) to the Court of the LXXXVII Additional City Civil and Sessions Judge (CCH-88), which, after hearing the parties, dismissed both petitions by the impugned orders dated 13.12.2024.

25. COMAP No.116 of 2025 and COMAP No.124 of 2025 were subsequently filed on 21.02.2025 and 25.02.2025 respectively.

THE IMPUGNED ORDERS

26. The learned Commercial Court dismissed both petitions by separate but materially similar orders. In Com.A.S.No.222 of 2018, the learned Commercial Court framed the question whether the impugned award "requires to be set aside" under Section 34 of the A&C Act. In Com.A.S.No.221 of 2018, it framed the question whether the impugned award "requires to be modified", and answered both questions in the negative.

27. The Learned Commercial Court referred to the decisions of the Supreme Court in **Associate Builders v. Delhi Development Authority**[3] and **Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India**[4] for setting out the grounds on which an arbitral award could be set aside under Section 34 of the A&C Act.

28. In Com.A.S.No.222 of 2018, the learned Commercial Court observed that the three arbitrators had been appointed from the panel of BMRCL itself and had discussed all the technical issues in detail, and concluded that the Arbitral Tribunal had not committed any patent illegality so as to set aside the impugned award.

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[3] (2015) 3 SCC 49
[4] (2019) 15 SCC 131

29. In Com.A.S.No.221 of 2018, it concluded as under:

> "On perusal of the observations made in the award along with the documents marked before the tribunal and the oral evidence, I am of the opinion that, the Arbitration Tribunal has not committed any patent illegality so as to modify the award. Further, Hon'ble Apex Court in many number of decisions held that, civil court cannot modify the award passed by the Arbitration Tribunal. **Accordingly, I answer point No.1 in the 'Negative'.**"

Beyond the aforesaid conclusion, the impugned order in Com.A.S.No.221 of 2018 records no separate finding on L&T's challenge to the impugned award, or on its plea of severability.

SUBMISSIONS IN BRIEF

30. Mr. Anirudh Krishnan learned Counsel appearing for L&T, advanced the following submission in support of its appeal, COMAP No.116/ 2025 and in opposition to BMRCL's appeal, COMAP No.124/2025.

31. He contended that the Arbitral Tribunal had erroneously rejected L&T's claim for damages for time-related costs incurred due to extended stay for reasons attributable to BMRCL. The Arbitral Tribunal rejected the claim on the *ex facie* erroneous premise that it was wholly premised on Ex C-98.

32. He pointed out that the Arbitral Tribunal had accepted that L&T was entitled to a claim for damages, as the reasons for the delay were attributable solely to BMRCL. However, it rejected the claim on the ground that it was based solely on an independent report (Ex.C-98) and the author of the said report was not examined. He submitted that the record was replete with materials which would substantiate the claim, but the same were ignored.

33. He also submitted that all documents were made available for inspection before the Arbitral Tribunal on 02.01.2017, but BMRCL had declined to inspect the same. He submitted that an adverse inference ought to have been drawn against BMRCL. He contended that ignoring the material evidence vitiated the impugned award on the ground of patent illegality. He also referred to the decision in the case of **Associate Builders**(*supra*) and **Ssangyong** (*supra*) in support of the said contention.

34. He further contended that the Arbitral Tribunal had held that delay is attributable solely to BMRCL. L&T was entitled to compensation, which would naturally flow from an established breach as held in **Maharashtra State Electricity Distribution**

Company Limited v. Datar Switchgear Limited.[5] He submitted that the law required only a reasonable estimate of loss. The difficulty in assessing the damages with precision could not be a ground for rejecting the claim for damages. He submitted that the courts and tribunals were bound to assess damages on the material available. He referred to the decisions in **State of Kerala v. K. Bhaskaran**[6] and **A.T. Brij Paul Singh v. State of Gujarat**[7].

35. He submitted that L&T had also presented an alternate quantification of damages based on the Hudson formula, which was approved by the Supreme Court in **McDermott International Inc. v. Burn Standard Co. Ltd.**[8] He contended that there was no basis for rejecting the said assessment of damages.

36. Lastly, he submitted that if this Court accepts the contention that the Arbitral Tribunal ignored the material placed on record for quantification of damages, the impugned award be set aside only to that extent. He submitted that the impugned award, to the extent of the findings that BMRCL was responsible for delay in execution of the Works and that L&T is entitled to the claim of damages, ought to be severed from the finding that L&T had not

[5] (2018) 3 SCC 133
[6] 1984 SCC OnLine Ker 198
[7] (1984) 4 SCC 59
[8] (2006) 11 SCC 181

substantiated its claim. He submitted that partial setting aside of an arbitral award was permissible. He referred to the decision in the case of **National Highways Authority of India (NHAI) v. M. Hakeem**[9] in support of the said contention.

37. Mr. S. Sriranga, learned Senior Counsel for BMRCL, advanced submissions on behalf of BMRCL. He focused his submissions on assailing the impugned award to the extent the Arbitral Tribunal had awarded claims No. (ii), Claim No.(iv) and Claim No. (v). He also assailed the arbitral award's finding that L&T was entitled to damages for prolongation of the works. He submitted that no such claim was maintainable in view of the express terms of the Contract.

38. He submitted that the impugned order in Com.A.S.No.222 of 2018 merely recapitulates the facts, contentions and findings of the Arbitral Tribunal and dismisses the petition without adjudicating any ground. He contended that the impugned order was contrary to the principle enunciated by a Division Bench of this Court in **Union of India v. Warsaw Engineers**[10].

[9] (2021) 9 SCC 1
[10] 2021 SCC OnLine Kar 15916

39. He contended that the Arbitral Tribunal ignored Clauses 2.2 and 8.3 of the GCC — under which the site was to be handed over progressively and any delay in handing over entitled the contractor only to the EOT and to no monetary claims whatsoever[11]. He also referred to the pre-bid clarifications dated 27.06.2009 and 29.06.2009, which, according to him, clarified the same. He submitted that the delays were addressed through the EOTs granted by the competent authority upon the recommendation of the Engineer/General Consultant, whose contractual discretion in matters of extensions and price variation could not have been supplanted by the Arbitral Tribunal.

40. In regard to Issue 2, he submitted that 'As-Built' drawings are a precondition to the TOC and the drawings were furnished in June-July 2015. Thus, the finding that the entire work stood completed on 24.02.2015 is contrary to the Contract and renders the Certificate of Completion of Works under Clause 2.4 of the Special Conditions of Contract [**SCC**] redundant.

[11] Clause 2.2 of the GCC: "…Contractors will be entitled to only reasonable extension of time and no monetary claims whatsoever shall be paid or entertained on this account."

41. He submitted that the award in respect of Claim (ii) travels beyond the terms of the Contract. He submitted that Clause 26 of the SCC permits revision of rates only where the variation for the group of items exceeds the 25% threshold, and the variation of the quantities in group E was within the said limit. In regard to Claim (iv), he submitted that the impugned award amounts to making a new contract. He contended that it confers a double benefit upon L&T as it had received the amounts due on account of price variation. With respect to Claim (v), he submitted that the same was allowed on the basis of Central Public Works Department [**CPWD**] specifications in disregard of the precedence of the Ministry of Road Transport and Highways [**MORTH**] specifications.

42. Insofar as L&T's appeal is concerned, he submitted that the quantum of damages must be proved and the Arbitral Tribunal's appreciation of Ex.C-98 and of the alternate quantification is a plausible view. He also contended that excision of paragraphs 141 to 144 while retaining the finding of entitlement would amount to a modification of the impugned award, which is impermissible in view of **M. Hakeem** (*supra*).

REASONS AND CONCLUSION

43. The controversy in these appeals is confined to the following four claims. BMRCL's challenge to the impugned award is in respect of the first three claims:

(1) Claim No. (ii), that is, the claim on account of change in measurement (reduction in the quantity) of parapet construction and related costs in respect of which the Arbitral Tribunal has awarded an amount of ₹96,43,811/-;

(2) Claim No. (iv), that is, the claim on account of revised BOQ rates due to delay in handing over the land beyond the original contractual completion date for 18 pier locations, which is allowed by the Arbitral Tribunal in the sum of ₹9,27,17,850/-;

(3) Claim No.(v), that is the claim for reinforcement unpaid quantities in respect of which the Arbitral Tribunal awarded an amount of ₹2,84,61,516/- as against the claim amount of ₹3,15,92,332/-; and

(4) L&T's challenge, in turn, is confined to the rejection of Claim (iii) – the claim of ₹1,03,30,00,000/- (Rupees One Hundred and Three Crores Thirty Lakhs only)

towards time-related costs by way of damages due to extended stay for reasons attributable to BMRCL.

BMRCL'S CHALLENGE TO THE IMPUGNED AWARD: CLAIMS (ii), (iv) AND (v)

1. RE: CLAIM (ii)[12] — VARIATION IN QUANTITY OF PARAPET WORKS

44. L&T had claimed an amount of ₹4,23,85,440/- (Rupees Four Crore Twenty Three Lakh Eighty Five Thousand Four Hundred and Forty only) on account of change in the measurement, that is reduction in the quantity of work (parapet construction). In addition to the amount of ₹4,23,85,440/-, L&T had also claimed *pre-litigation, pendente lite* and future interest at the rate of 18% per annum. The Bill of Quantities [**BOQ**] had specified the quantum of the item of work in question as 17,736 mtrs. However, the actual quantity executed was 4,325 mtrs. BMRCL, acting through its General Consultant [**GC-BMRCL**], instructed a variation in the parapet works by reducing the quantity. By a letter dated 09.12.2011 (Ex.C-63), L&T informed the GC-BMRCL of its revised rate working for the said item. The reduction in quantity, which out to about 75.62%, exceeded the threshold of 25%, and the value of

[12] Referred to as Claim No.1 in ANNEXURE-A to the Statement of Claim

the item exceeded 1% of the Contract Price. L&T claimed that, in view of the said reduction, the quoted rates required revision. L&T claimed that the cost of overhead and other resources covered under the price of the works had to be allocated over the reduced scope of works, and the item rate for the work had to be enhanced on that basis. In this regard, L&T referred to clauses 1.1.6.6 and 12.4 of the GCC as well as clause 26 of the SCC which read as under:

> **"1.1.6.6 "Variation"** means any alteration and/or modification to the Employer's Requirements, which is instructed by the Engineer or approved as a variation by the Engineer, in accordance with Clause 12.
>
> ** ** **
>
> **12.4** The Engineer shall, as soon as practicable after receipt of proposals under sub-clauses 12.2 and/ or 12.3, respond with approval, rejection or comments.
>
> After receipt of proposal, it will be the prerogative of the Employer, whether to instruct and proceed ahead with the variation or drop the proposal in part or full.
>
> In that case, no cost of preparing and submitting the proposal will be payable to the Contractor.
>
> If the Engineer instructs or approves a Variation, he shall proceed in accordance with Sub-Clause 3.5 to agree or determine adjustments to the Contract Price, Time for Completion and Payments as per SCC Clause No:24."

45. In addition, L&T also referred to Clause 27, which *inter alia* provided for deriving the rates for extra items at the rates provided in the BOQ.

46. BMRCL contested the said claim on several fronts. First, it contended that the reduction in the quantity of the construction of the parapet wall did not exceed the threshold of 25% as constituting a variation in terms of clause 26.1.1 of the SCC. It claimed that the clause contemplated variation to the extent of + or - 25% of a group of items and not an individual item. It claimed that the parapet wall is one of the items in section (E) of the Viaduct BOQ and the reduction in the quantity of parapet wall was less than 7% of the quantity of the said group of items covered under section (E). It claimed that Clause 27 of the SCC, which related to items not covered under the BOQ, was inapplicable.

47. The Arbitral Tribunal considered the relevant clauses and concluded that Clause 26 of the SCC would be applicable. The Arbitral Tribunal rejected the contention that the variation did not exceed 25% as the item of work in question was to be considered as a whole.

48. We consider it apposite to reproduce the following extract of the impugned award, which is dispositive of the question as to the applicable clauses and of BMRCL's contention that the variation did not exceed 25%:

> **"123.** In the light of our above observations the only clause relevant for consideration is Clause-26 of SCC as observed earlier. The amount of this Item-4 of the Contract for the quantity and the unit rates as specified in BOQ therein is Rs.6,48,07,344/-, The original Contract price as per LOA is Rs. 303,29,55,778/-. One percent of the original Contract price amounts to Rs.3,03,29,558/-. The quantity as specified in the Contract Is 17,736 Rmt while the actual quantity is 4324.7m. Therefore the reduction in the percentage of this Item with respect to the BOQ is about 75.62%. In view of this it is clear that the cost of this Item-4 is independently more than 1% of the original Contract price and the negative variation is about 75.62%, which is more than 25%. Therefore this Item of the Contract falls within the proviso under Clause-26.1.1(b)(i) since the variation of the individual item is more than 25% and the cost of the individual item is also more than 1% of the contract price.
>
> **124.** **** **** ****
>
> **125.** A conjoint reading of the clauses 26.1.1(a) & 26.1.1(b) suggests that under Clause-26.1.1(a) because of the provision that 'unless otherwise specifically provided for in the BOQ or elsewhere in the Contract the variation of ±25% shall be applicable to a section / group of items mentioned therein and not to individual Items. But Clause-26.1.1(b) specifies that when the variation in individual items **<u>or</u>** the group of items is more than 25% the rate for the excess quantity beyond 25% shall be negotiated between the Engineer and the Contractor and mutually agreed rates arrived at.

Clause-26.1.1(b) specifies that when there is variation beyond 25% on either side for an individual item / group of items the rate for the item in respect of quantity beyond 25% is only to be negotiated.

126. The definition of group of items under Clause-21 Pg.714 SCC (General), it is mentioned that "*Group of items mean all items covered in a sections of BOQ*". Thus the items which are covered in sections of the BOQ is defined as group of items. Thus apparently there is no difference between group of items or section of BOQ. It is seen from the BOQ that Sec.A is General which deals with surveying, barricading, providing photographs, videos, furnishing the site office, cutting the trees amongst the six items setout therein. Sec.B deals with Pile and open foundations which include bored piles and all associated works of the piles including concreting and reinforcement containing 9 Item., Sec. C deals with cast in situ concrete work for sub-structures containing 4 items which are the concrete items required for various substructures. Sec.D deals with cast in situ cement concrete work for superstructure has 2 items viz,, Concrete of M40 with 20mm aggregates and Concrete of M50 with 20mm aggregates. Sec.E deals with pre-cast concrete comprising of 5 items for concrete for pre-cast segments, concreting for pre-cast RCC cover slab, pre-cast crash barrier cum parapet and concreting for pre-cast, pre-tension/post-tensioned items and transporting the same, It is this Sec.E which is relevant for this Item-4 under Sec.E. Other Sections are: F deals with Steel, Reinforcement and pre- stressing steel; G deals with Structural Steel; H deals with Bearings; I deals with miscellaneous items and J deals with works under KPWD Schedule of Rates. This group of items is the same as section head. The Item-4 is an Individual item covered under Sec.E.

127. From an overall conspectus of the provisions under BOQ Sec.A to J, each sections has many individual items which are of similar nature and there are sections where the individual items are of heterogeneous nature. Each section is a group as per the Contract or vice versa. The parties have agreed under the BOQ for the groups / sections as has been set out in the BOQ. The only question that arises is based on Clause-26.1.1(a), as to whether the 25% variation shall not apply to individual Items. But Clause-26.1.1(b) specifies the provision for individual items, If the contention that Clause-26.1.1(a) prohibits individual items for considering the variation is upheld then it is also clear that by so upholding the provision for variation under Clause-26.1.1(b) specifically provided gets negated. Thus, it is clear that in so far as the applicability of variation clause for individual items is concerned there appears to be clear disharmony and contradiction between the two provisions under Clauses 26.1.1(a) and 26.1.1(b).

128. It is trite that a Contract should be interpreted in such a manner to make each of the contractual clauses effective and not to render any clause of the Contract Ineffective while interpreting the same. In view of this the Arbitral Tribunal finds that it would be just and appropriate to hold that the provisions under Clause-26.1.1(b) that "*In case the variation in individual items **<u>or</u>** the group of items, as stipulated above, is more than 25% on either side, the rate for the excess quantity beyond 25% shall be negotiated between the Engineer and the Contractor and mutually agreed rates arrived at" should be construed to mean clearly that the variation in* Individual items under the Contract within a section also is entitled for the applicability of this Clause. We may add that this variation is subject to satisfying the criteria specified in 26.1.1(b) for the Item and Item-4 as observed earlier satisfies this. Hence, the Arbitral Tribunal holds accordingly as there is no ambiguity in the matter.

129. In view of the above, the Arbitral Tribunal finds that the Item-4 which Is an individual item in Sec.E deserves to be considered for the variation in accordance with the provisions of the Contract. Further the Arbitral Tribunal also finds that the provision made under Sec.E for this Item-4 was 17,736 meter length of the Viaduct which includes the parapets on both sides. However, it an admitted fact that the total length of the Viaduct, excluding stations, is 4324.7m as the parapet length has to cover the Viaduct all along. Even otherwise contractually also the length of the Contracted reach of Viaduct is 4,800m. Therefore, the Arbitral Tribunal finds that the, quantity of this Item-4 as provided under the Contract appears to be incorrect. Be that as It may.

130. The Arbitral Tribunal finds that for the above reasons, the variation under Item-4 is not more than 25% as the actual quantity executed is only 75.62% of the contracted quantity. Thereby the quantity that was required to be executed is only 24.38% of the BOQ. The rejection of the Respondent / GC for the application of variation clause is that the quantity has not Increased beyond 25% of the BOQ. The Arbitral Tribunal finds that this contention of the Respondent is not sustainable in view of the specific provision of the Contract that the variation limit is plus / minus 25% of the BOQ. In the instant case the minus limit has gone upto 75%, hence the rate entailed a review which was not made by the Respondent on an unsustainable ground."

49. Having found that Clause 26 was applicable, a separate rate was required to be determined on account of variation in the quantity of the parapet wall. The Arbitral Tribunal proceeded to examine L&T's claim in this regard. L&T had claimed a rate of ₹15,492.93 per mtr. against the contract rate of ₹5,371.40 per mtr. by appropriating the costs of plant and machinery, DG set, consumables, labour for concrete, vibrator needles, crane hire

charges, transit mixer hire charges, etc. as required for constructing 17,736 mtrs. of length over 4600 mtrs. Thus, according to L&T, the costs of resources that would be required to execute work to the extent of 17,736 mtrs. of length of parapet wall were required to be paid for executing 4,325 mtrs. of length.

50. The Arbitral Tribunal did not accept that the entire consideration for constructing 17,736 mtrs. of concrete parapet wall would be payable for executing 4,325 mtrs. of parapet wall. However, the Arbitral Tribunal proceeded to enter an award by loading 20% of the value of the reduced quantity over and above the variation of 25%, on the value of 4,325 mtrs. of length of parapet wall. Thus, an additional amount of ₹2,229.78 was added to the contracted rate of ₹5,371.40 per mtr. The relevant extract of reasoning is discernible from the following extract of the impugned award:

> "**132.** The Claimant relied on the cost analysis at Annexure-A1, Pg.4429- 4430 Vol.III Book-4A, on a perusal of this annexure, the Arbitral Tribunal finds that the Claimant has determined the cost of executing 4,600m. of the Parapet for the Viaduct and has considered various Items such as plant and machinery, DG set, consumable, labour for concrete, vibrator needles, crane hire charges, transit mixer hire charges, etc., from Sl. No.1A to 11, 2A to 2J, 3A to 3J, 4, 5 & 6 as set out in the table. Based on the material cost, labour cost, equipment cost, the unit price each of the

description is determined and the total cost excluding escalation is arrived at Rs.6,70,93,788.17. Based on this total amount the cost of the parapet per Rmt of the Viaduct is determined as Rs. 15,492.93 by dividing the total cost by 4,600m. As the Claimant has received an amount of Rs.2,47,08,348/- towards this item, the Claimant is making the difference between the cost as determined in Pg.4430 and the amount receivable for 4,600m length of the Viaduct. Subsequently, as observed earlier by the AT, the Claimant has modified the claim by considering the actual length of the Viaduct as 4325m considering the same total cost at Pg.4430 but dividing this cost for the length of 4325m.

133. The Arbitral Tribunal finds that prima-facie because of the drastic reduction in the quantity of Item-4 Sec.E, the variation in cost is an entitlement as per provisions under the Contract as observed earlier. Further, it is the considered opinion of the Arbitral Tribunal that while the Claimant is entitled for compensation towards this claim particularly keeping in view that the Claimant has effectively lost the overheads and profit at 20% of the diminution of the value of contracted amount for this Item-4, Further, this is also considered opinion of the AT that this reduction is on account of intrinsic default in specifying a quantity of 17,736m as against the actual length of 4,325m for the Viaduct. It is also trite that the Claimant will factor all the Infrastructure necessary for executing this 17,736m of the parapet into the rate / percentage quoted for this Item-4 Sec.E against the Par Value rate. The Arbitral Tribunal also finds that the quoted rate for this Item-4 for 17,736m amounts to Rs. 6,70,93,788.17 excluding escalation, while the total cost as determined by the Claimant In (Pg.4430 is Rs.6,70,93,788.1. Thus it is seen that the contracted rate is Rs.5,371.40 while the rate claimed is Rs.15,492,93. Thus the total cost as per the Contract and as per actual has remained the same while this total cost is distributed over 25% of the length of the Item. The cost of materials, labour, hire charges, fuel charges would be reduced at the same time there is a reduction in the profit while the overheads would remain the same. Therefore, the AT finds that for the quantity reduced beyond 25% upto the actual quantity, it would be just and appropriate to award 20% of the cost of the reduced quantity on the following basis,

a)	Qty of Item-4 as per BOQ	17,736m
b)	Actual Qty executed	4,325m
c)	The difference in quantity **(a-b)**	13,411m
d)	25% of **(a)**	4,434m
e)	Deduct Qty **(c-d)**	8,977m
f)	The cost at quoted price for **(e)** (8,977m x Rs.5,371.40)	Rs.4,82,19,057.80
g)	20% of **(f)**	Rs.96,43,811.56
h)	The component of additional rate to the contracted rate	Rs.2,229.78

134. The parties cited several judgments in support of or in opposition to this claim. The Arbitral Tribunal finds that this is a very peculiar situation where the contracted quantity of the item has been reduced drastically not on account of site conditions but on account of a incorrect inclusion of the quantity in the Contract. Therefore, the AT is of the considered opinion that various citations referred to by the parties on this claim are not applicable on facts.

135. In the light of the above findings and observations, the Arbitral Tribunal awards an amount of **Rs.96,43,811/-** towards this Claim-(ii)."

51. In a sense, the Arbitral Tribunal has awarded the loss of profits on the unexecuted quantity in excess of 25% of the BOQ, which the Arbitral Tribunal assumed was 20% of the item rate. The same was apportioned over the executed quantity and the rate so computed was added to the contracted BOQ rate. L&T's claim was not for loss of profits on the unexecuted quantity over and above 25%. This claim was on account of variation in the rate of the BOQ items, which would be apposite given the reduction of quantities.

52. Since the Arbitral Tribunal had found that L&T was entitled to seek a fresh determination of rates of the BOQ items in question on account of variation in the quantity, the next step would be for L&T to establish this by analysis of rates for a reduced quantity. In other words, L&T was required to establish that if the quantity of item of work included in the contract was only 4,325 mtrs. of parapet wall, what would be the rate for that item of work. In certain circumstances, the contractor may quote lower rates based on the volume of work to be executed, considering economies of scale and the resources required for executing the work. If the quantities are reduced, the quoted rates may need to be varied to absorb the costs. It is not necessary that, in each case, a variation in quantity would necessitate a variation in rates. In some cases,

variation in quantities may result in a lower per-unit cost. Let us take a case, where a contractor has to hire an expensive machine to execute the work, as the volume of work cannot be executed within the time constraints manually. If the quantity of work is significantly reduced, the contractor may be able to execute it manually, which may be cheaper.

53. In the present case, the parties agreed that, within a band of +/- 25% variation in quantities, the quoted rates would hold good; however, if the variation exceeded that limit, new rates may have to be determined.

54. Clause 26 cannot be conflated with a clause of liquidated damages. The parties acknowledged that BOQ quantities would vary and the import of Clause 26 was to facilitate determining an appropriate rate if the variation exceeded the specified limit.

55. First, L&T was required to establish that the reduction in quantities would result in an increase in rates for the items. In other words, L&T had to establish that it would incur a higher per-unit cost to execute the item of work, which would translate into a variation in the rate for the executed work. It is apparent that L&T did not establish the same; it worked out the price of the entire

BOQ quantity and apportioned the same on the work actually executed. The premise being that it would be entitled to the price for the entire BOQ quantity notwithstanding the reduction in quantities. The Arbitral Tribunal rightly rejected the said claim, and the decision of the Arbitral Tribunal to do so cannot be faulted. However, the Arbitral Tribunal proceeded on a novel method of awarding loss of profit assumed at 20% on unexecuted quantity in excess of 25%. L&T's claim was not for damages on account of loss of profits. It was for determination of the appropriate unit rate for reduced quantities on the basis that the quoted rate was not feasible on account of variation of quantities.

56. This Court asked the learned Counsel appearing for L&T whether L&T had led any evidence or placed any material to establish the element of profit or the analysis of rates for executing the reduced quantum of work. However, it appears there was no material to establish the same.

57. The learned Counsel appearing for L&T contested BMRCL's challenge on the ground that it would require reappreciation of evidence, which was impermissible under Section 37 of the A&C Act. However, we find no merit in the said contention. The challenge to the impugned award is not based on a relook at the

evidence but on the decision-making process. The impugned award in respect of the claim in question is neither based on the claim as made nor based on any evidence. More importantly, it is outside the scope of the contractual provision under which the claim was made.

58. In view of the above, the award entered by the Arbitral Tribunal in respect of claim (ii) (referred to as claim No.1 in Annexure-A to the Statement of Claim) is liable to be set aside.

2. RE: CLAIM (v)[13] — UNPAID REINFORCEMENT QUANTITIES

59. L&T had claimed an amount of ₹2,84,61,560/- (Rupees Two Crore Eighty Four Lakh Sixty One Thousand Five Hundred and Sixty only) on account of reinforcement quantities along with escalation quantified at ₹31,30,772/-, and interest quantified at ₹78,19,102/- as on 15.08.2014. Thus, L&T had made a claim for an aggregate amount of ₹3,94,11,434/-. L&T claimed that it had sought unpaid reinforcement through various letters addressed to GC-BMRCL and determined the amount payable on account of reinforcement in terms of the Contract. It had relied on Clause 5.8 of the Technical Specifications of Viaduct which reads as under:

[13] Referred to as Claim No. 4 in the ANNEXURE-A to the Statement of Claims

> "Payment of reinforcement steel shall be made for the length of the reinforcement bars of different diameter as per approved bending schedule (to be prepared by the contractor on the basis of approved drawing) including authorized chairs/space bars, lap/butt welding wherever required as per Clause 5.4. However, if standard laps are provided, they will be measured separately for the length shown in the drawing or for measured length of bars. In case the actual reinforcement provided in any member is less than the quantity calculated based on drawings/bar bending schedule (with the approval of engineer), the same shall be adjusted for the purpose of payment.
>
> Payment shall not be made for butt welding and reinforcement bars used for lifting, hooks, handling, etc., as towards these is deemed to be included in the accepted rate of the item".

60. It claimed that the payments in respect of the following items remained to be paid:

(i) Segments
a. U-bars
b. B. Helicals
c. Bars for the profiling works of HDPE pipes
d. Bars for the 60mm dia lifting holes.

(ii) Piling
a. Guide rings/spacers

(iii) Pile cap
a. Chairs
b. Helicals

61. L&T referred to a letter dated 12.05.2012 (Ex.C-105) whereby the aforesaid claim was made. GC-BMRCL responded to the said letter by a letter dated 31.05.2012, calling upon L&T to furnish details of instances where payment in respect of U-bars, helicals, bars for the profiling works of HDPE pipes and bars for the 60mm dia lifting holes (segments) had been disallowed. Insofar as the claim for piling and pile cap is concerned, BMRCL had referred to Clause 5.5 of the Technical Specifications and rejected the claim on the ground that there was no provision for separate payment of the said items and that they were deemed to have been included in the accepted rate. L&T had contested the same and claimed that under sub-clause 5.8 of the Technical Specifications, payments for authorised space bars were payable.

62. On 03.08.2012, the GC-BMRCL, had sent a letter stating that payments for the items under the first segment (U Bars, Helicals) can be claimed if the work was executed as per the approved GFC and BBS[14]. In regard to the second item –piling guide rings/spacers and pile cap chairs – GC-BMRCL stated that, in terms of Clause 5.5 of the Technical Specification (Viaduct), the cost of chairs/spacers was deemed to be included in the rates;

[14] Good For Construction and Bar Bending Schedule

however, in terms of Clause 5.8, payment for reinforcement steel would be made for authorised chairs/spacer bars and lap/butt welding shown in the approved GFC. In respect of the third item, pile cap helicals, payment could be claimed if executed as per the approved GFC/BBS.

63. BMRCL contested L&T's claim, stating that the items were included in the BOQ rates. BMRCL also stated that the claim was made as per the CPWD specifications. However, the provisions of the MORTH Specifications would apply, and the same were produced as Annexure-R104.

64. The Arbitral Tribunal allowed the claim on the strength of BMRCL's letter dated 03.08.2012 (Ex. C-107). The contents of the said letter are set out below:

> "On receipt of the above cited letter under reference 2, your request for payment of the following items under steel reinforcement of the BOQ has been once again reviewed and following may be noted:-
>
> 1. Segments-
>   a. U-Bar
>   b. Helicals
>   c. Bars for the profiling works of HDPE pipes
>   d. Bars for the 60mm dia lifting holes
>
> Payment for these items can be claimed if they are done as per approved GFC/BBS.
>
> 2. (a) Piling-Guide rings/spacers -
>   (b) Pile Cap Chairs -

As per clause 5.5 of Technical Specification (Viaduct), MS chairs and spacer bars are to be used to ensure accurate positioning of reinforcement. These are not payable as it has been clearly stated in the above clause that the cost of the cover blocks and chairs/spacers shall be deemed to have been included in the rates.

However, as per Clause 5.8 of Technical specification (Viaduct), the payment of reinforcement steel shall be made for authorized chairs/spacer bars, lap/butt welding.

Authorized chairs/ spacer bars, lap/butt welding are the ones which are shown in the approved GFC. The same may be claimed in your bills wherever the payment for the same has not been made.

3. Pile Cap - Helicals -Payment for these items can be claimed if they are done as per approved GFC/BBS.

65. The Arbitral Tribunal referred to Ex.C-107 in the reasons and concluded that since the Engineer had accepted the claim, the said claim was required to be allowed. The relevant extract of the impugned award is set out below:

"**157.** In response to this the Claimant in its letter dated 02.03.2013 at Ex.C-108, Pg.5837 Vol.III Book 8, has further sought approvals for payments for items such as U bars, Chairs, Helicals as the same were declined in RA "Bill-32 despite receiving approvals of the Engineer in referring to Ex.C-107. Hence, the Arbitral Tribunal finds that what the Engineer approved in Ex.C-107 has not been paid by the Respondent as evidenced by the Ex. C-108.

xxx xxx xxx

160. In the light of the above observations and findings and in view of the fact that the Engineer, who is empowered under the Contract, has accepted for payment of these items in Ex.C-107 and even after

> such acceptance the payment has not been made; it is our considered opinion that this claim deserves to be allowed and accordingly it is allowed.
>
> **161.** Based on the above facts & circumstances, the Arbitral Tribunal awards an amount of **Rs.2,84,61,516/-** towards this, Claim-(v) and accordingly it is awarded."

66. A plain reading of Ex.C-107 indicates that the Engineer, in respect of the second item, accepted payment only for "Authorised chairs/space bar, lap/butt welding," as shown in the GFC. However, in respect of Piling- Guide rings, the Engineer had, in unambiguous terms, stated that the same were included in the rates. Although the impugned award is premised on the Engineer's letter (Ex.C-107) the Arbitral Tribunal has also allowed the claims in respect of Piling-Guide rings/spacers.

67. Apart from the above, there is also a dispute as to whether MORTH or CPWD's specifications were applicable. BMRCL has relied upon MORTH's specifications to contend that pile cap chairs and space bars were not measured separately and were included in the reinforcement rates. L&T had relied on CPWD specifications. Sub-Clause 6.3 of the Scope of Work (Employer's Requirements) expressly provided that, in case of discrepancy amongst standard codes of practice under the said clause, MORTH's specifications would have precedence over CPWD

specifications. However, the Arbitral Tribunal concluded that the SCC had higher priority and therefore, L&T's claim was sustainable. BMRCL questions the said reasoning. However, we note that the Arbitral Tribunal's decision is based on the communication of the GC-BMRCL (Ex.C-107) and, therefore, it is not necessary for this Court to examine the question of precedence between the MORTH and CPWD specifications.

68. However, since the amount awarded includes the amount of Piling- Guide rings/spacer, the same would be unsustainable.

3. RE: CLAIM (iv)[15] — REVISED RATES FOR THE 18 PIER LOCATIONS

69. L&T had claimed an amount of ₹9,80,19,410/- (Rupees Nine Crore Eighty Lakh Nineteen Thousand Four Hundred and Ten only) along with *pre-lite, pendente lite* and future interest at the rate of 18% per annum. The said claim relates to the delay in handing over stretches for piling work between P446 to P451 and PDR425 to PDR8. L&T claimed that the release of 18 pier locations was significantly delayed, and that the said sites were released after the contract period had ended. Thus, the rates quoted for execution of works at the said locations would no longer hold good. It claimed

[15] Referred to as Claim No. 3 in ANNEXURE-A to the Statement of Claim

that the major works were completed in December 2012. Till then, the 18 pier locations had not been released by BMRCL. Only 8 out of the 18 pier locations were released on 23.01.2013, and the remaining sites were handed over on 04.01.2014. L&T claimed that its quoted rates were based on the BOQ scope of works to be completed during the original duration of the Contract. However, in the case of 18 pier locations, additional mobilisation and demobilisation costs had to be incurred. It also claimed that the extended stay of resources (plant and machinery and manpower) and discontinuous work led to under-utilisation of the resources. In addition, the change in methodology in the schedule of work led to an increase in costs. Accordingly, it claimed the revised rates in its notice.

70. L&T's claim for revised rates was premised on a tabular statement (Ex.C-387). The said tabular statement set out the original BOQ rates and the fresh rates as claimed. One of the notations below the table read: “KPWD items will be taken up at KPWD 2011-12 schedule of rates + 20%".

71. BMRCL claims that it had already paid L&T's expenditure incurred towards rehandling charges of the segment and extra rates for launching schemes by using ground support systems

instead of a launching system. It had also given the benefit of providing a plant for production of concrete for the said location, besides providing land for high girders and stacking. It denied that, at any stage, it had agreed to a revision of the rates as claimed. BMRCL contended that the claim of ₹9,80,19,410/- was arbitrary and unreasonable. L&T claimed that it had derived the rates by way of analysis.

72. We consider it apposite to refer to the relevant extract of the impugned award which sets out the reasons for allowing the same:

> "**147.** The AT after hearing to the rival contentions of the parties finds that the delay in handing over land and removing the hindrances for the 18 piers locations has been dealt with by the AT under Issues 1 & 3. In the light of the findings of the Arbitral Tribunal on these issues the hindrance free land for the 18 pier locations last portion was handed over on 04.01.2014 with a delay of 25 months beyond, the end of original Contract period. Various contentions of the Respondent in denying this delay and the claim are not sustainable for the reason that the rates quoted in 2009 by the Claimant cannot be construed to be applicable for any length of period beyond the agreed end of Contract period as no Contractor can factor during 2009 what would happen in 2014. This small portion of the remaining work under the Contract, valued at Rs.9.57Cr as per the BOQ, in a Contract of Rs.303,29Cr, got extended for a period of 25 months beyond the Contract period only for the reason of delay in handing over of land. Further there is no dispute that the quantities involved are the same as in the scope of the original Contract starting from piling, casting of piles & pile cap, casting of the pier and pier cap, pre-casting of segments and erect the same in this small reach of 18 piers. It is in this context the Claimant had sought for omitting this portion and getting it executed through a

separate Contract essentially because this work did not come in the way of the commercial operation in the Viaduct and station reaches of the Contract. In this conspectus the Arbitral Tribunal finds that the Claimant is entitled for revised rate in respect of those works which are executed in the 18 pier locations as claimed under this Claim-(iv).

148. The Claimant referred to MANU/BC/5270/2006 between K.N. Sathyapalan (dead) Vs. State of Kerala, Para-20 of the Judgment is relevant which states as follows:

> *"20. Ordinarily, the parties would be bound by the terms agreed upon in the Contract, but in the event one of the parties to the Contract is unable to fulfil its obligations under the Contract which has direct bearing on the work to be executed by the other party, the Arbitrator is vested with the authority to compensate the second party for the extra costs incurred by him as a result of the failure of the first party to live up to its obligations. That is the distinguishing feature of the cases of this nature and M/s. M Alopi Parshad's çase (supra) and also Patel Engg's. case (supra). As was pointed out by Mr. Dave, the said principle was recognized by this Court in P.M. Paul's (supra), where a reference was made to a retired Judge of this Court to fix responsibility for the delay in construction of the building and the repercussions of such delay, based on the findings of the learned Judge, this Court gave its approval to the excess amount awarded by the arbitrator on account increase in price of materials and costs of labour and transport during the extended period of the Contract, even in the absence of any escalation clause. The said principle was reiterated by this Court in T.P. George's case (supra)."*

149. The ratio of Sathyapalan's case directly applies to the instant case. In view of this the Arbitral Tribunal

> finds, that the Claimant is entitled for revised rate in respect of the works executed only in respect of 18 pier locations. Having regard to the findings and observations of the AT in this matter, it is the considered opinion of the Arbitral Tribunal that it is just and appropriate to allow this claim and award an amount of Rs.9,27,17,850/- towards this Claim as per Pg.8517, Vol.IX. It is made clear that no escalation is payable on this as the rates were based on KPWD 2011-2012 Schedule of Rates plus 20%.
>
> **150**. In the light of the above, the Arbitral Tribunal awards an amount of Rs.9,27,17,850/- towards this Claim-(iv).

73. BMRCL had challenged the said award on several grounds. First, it claims that the award is contrary to the express terms of the agreement and refers to clauses 2.2 and 8.3 of the GCC, as well as clause 19.3 of the SCC, which is a price variation clause and sets out formulae for price variation during an extended period of completion.

Clauses 2.2 and 8.3 of the GCC are set out below:

> "2.2 Access to and Possession of the Site
>
> The Employer shall grant the Contractor right of access to, and possession of, the Site progressively for the completion of Works. Such possession may not be exclusive to the Contractor will draw/modify the schedule for completion of Works according to progressive possession/right of such sites.
>
> If the Contractor suffers delay from failure on the part of the Employer to grant right of access to, or possession of the Site, the Contractor shall give notice to the Engineer in a period of 28 days of such occurrence. After receipt of such notice the Engineer shall proceed to determine any extension of time to

which the Contractor is entitled and shall notify the Contractor accordingly.

For any such delay in handing over of site, Contractors will be entitled to only reasonable extension of time and no monetary claims whatsoever shall be paid or entertained on this account.

8.3 Failure or delay by the Employer or the Engineer, to hand over to the Contractor the Site necessary for execution of Works, or any part of the Works, or to give necessary notice to commence the Works, or to provide necessary Drawings or instructions or clarifications or to supply any material, plant or machinery, which under the Contract, is the responsibility of the Employer, shall in no way affect or vitiate the Contract or alter the character thereof, or entitle the Contractor to damages or compensation thereof but in any such case, the Engineer shall extend the time period for the completion of the Contract, as in his opinion is/are reasonable."

74. We also consider it apposite to refer to the opening paragraphs of the price variation clause – 19.3 of the SCC.

"**Price Variation during Extended Period of Completion**

The price adjustment as worked out above ie. either increase or decrease will be applicable up to the stipulated date. of completion of — the work including the extended period of completion where such extension has been granted under Sub-Clause 8.4.7 of GCC. However, where extension has been granted under Sub-Clause 8.4.3 of GCC, price adjustment will be due as follows: .

Incase the indices increase above the indices applicable to a bill made on the last date of original completion period or the extended period . under Sub-Clauses 8.4.tof GCC, the price adjustment for the period of extension under Sub-Clause 8.4.3 of GCC will be limited to the amount payable as per the indices applicable to a bill made on the last date of the original

> completion period or the extended period 'under SubClauses 8.4.4 of GCC as the case may be.
>
> In case the indices fall below the indices applicable to a bill made on the last date of the original or extended period of completion, then the lower indices will be adopted for Price Adjustment for the period of extension under Clause 8.4.3 of GCC."

75. In addition, BMRCL also contended that there is no evidence of the measure of damages as claimed. Ex.C-387 was merely an analysis based on the Karnataka Public Works Department [**KPWD**] Schedule of Rates, which were further increased by 20%, for which there was no explanation. Beyond recording that the rates were based on the KPWD 2011-12 Schedule of Rates plus 20%, the Arbitral Tribunal provided no reason for accepting the said rates.

76. We note that initially, it was contended by the learned Counsel for L&T that 20% of mark-up was added on account of profit. However, he subsequently stated that the 20% was added for escalation beyond 2012 for the purpose of truing up the schedule of rates for the next two years.

77. A plain reading of the impugned award indicates that the Arbitral Tribunal has not considered BMRCL's defence that the

escalation was not payable by virtue of clauses 2.2 and 8.3 of the GCC.

78. A plain reading of the statement of objections indicates that BMRCL had expressly taken the defence that the claim for revised rates was unsustainable.

79. The learned Senior Counsel also referred to a decision of the Co-ordinate Bench of this Court in **Larsen and Toubro Limited v. Bangalore Metro Rail Corporation Limited[16],** where the court had rejected L&T's contention that clauses 2.2 and 8.3 of the GCC are void. The court had observed that the Arbitral Tribunal can interpret the terms of the contract but at the same time, the Arbitral Tribunal was required to adjudicate the disputes in accordance with the terms of the contract. The court had also concluded that the award in that case was contrary to the specific terms of the contract. In the present case the Arbitral Tribunal has not considered the import of the said clauses. It is not necessary for this Court to examine whether the claims as made by L&T are required to be rejected on the basis of the said clauses or to foreclose any of rival contentions in this regard. However, suffice it to say, the Arbitral Tribunal has not examined the same; thus, it

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failed to adjudicate a vital facet of the dispute. On this ground alone, the impugned award in respect of Claim (iv) is liable to be set aside.

80. The question of whether it is permissible for the Arbitral Tribunal to award an amount by considering new rates for similar works without L&T explaining the damages suffered is also a contentious one. It is contended on behalf of L&T that the award of new rates would be fair compensation for the damages suffered by L&T. However, we do not find it necessary to examine the said aspect in these proceedings considering that the impugned award is liable to be set aside on the ground that the Arbitral Tribunal has not considered BMRCL's defence that the claim is contrary to the terms of the Contract.

L&T'S CHALLENGE: CLAIM (iii) — TIME-RELATED COSTS OF EXTENDED STAY

81. L&T's challenge to the impugned award is confined to the rejection of Claim (iii), that is, its claim for ₹103,30,00,000/- (Rupees One Hundred and Three Crores Thirty Lakhs only) along with interest at the rate of 18% per annum. L&T claimed that it faced delays, for which it was constrained to apply for extensions of time to complete the Contract. It stated that the delays related to

the construction of the viaduct and the stations, as informed to the GC-BMRCL from time to time, and on that basis extensions of time were granted. L&T claimed that it had suffered costs and damages due to the extended stay and was thus entitled to compensation.

82. It claimed that the delay was on various reasons including, (i) delay in handing over stretches; (ii) delay in release of GFC drawings on account of further variations; (iii) delay due to change in the contractual specification and clearance for working plots; (iv) delay due to hindrances in handing over stretches due to charted utilities; (v) delay due to frequent changes in alignment; (vi) delay due to cancellation of variations sought by BMRCL regarding CMTI isolation barrier and segment dowel work; (vii) delay due to various *force majeure* events such as lorry strikes, adverse rains and strikes by sand suppliers; (viii) delay due to infeasible design; (ix) delay due to increase in the scope of works/variation and more or less similar causes for delay in handing over work fronts for stations.

83. In support of its claim, L&T submitted a number of documents.

84. BMRCL contested the said claim on various grounds including that the claim was not maintainable in view of Clause 2.2 of the GCC. L&T, *inter alia*, produced an independent report by American Appraisal (Ex. C-98) to support quantification of its claim, which BMRCL contended was unreliable.

85. The Arbitral Tribunal had on the basis of the pleadings framed issues which included issue No.3: "whether the claimant proves that the respondent had caused delays in fulfilling its obligations under the contract for timely execution of the work as per the schedule and that these delays are attributable to the respondent?"

86. The impugned award contains an elaborate discussion on the said issue. The Arbitral Tribunal had examined the extensive evidence and material brought on record and answered the issue in the affirmative in favour of L&T against BMRCL. The Arbitral Tribunal concluded that the delay attributable to BMRCL in respect of handing over of land extended up to 04.01.2014 for the whole works and all other delays were concurrent with this delay.

87. In view of the above findings, the Arbitral Tribunal also found that L&T was entitled to costs under Claim (iii). Paragraph 140 of

the impugned award, which records this conclusion, is set out below:

> "140. In the above facts and circumstances, the Arbitral Tribunal finds the extension of the Contract beyond 16.12.2011 (i.e., the end of the original Contract period) up to 31.03.2015 cannot be burdened on the Claimant. Therefore, the Arbitral Tribunal is of the considered opinion that the time dependent costs under this Claim-(iii) is an entitlement to the Claimant."

88. Notwithstanding the aforesaid findings, the Arbitral Tribunal rejected the claim on the ground that L&T had failed to establish the quantum of damages. L&T assails the said finding having been rendered in disregard of the evidence of material produced by L&T. The Arbitral Tribunal observed that L&T produced a report (Ex. C-98) prepared by American Appraisal in support of its claim for a sum of ₹103.30 crores. The said claim comprises (i) extended costs for viaducts quantified at ₹55.60 crores and (ii) ₹47.70 crores for stations. The Arbitral Tribunal found that the author of the report (Ex. C-98) had not been examined. Further, the witnesses (CW1 or CW2) examined on behalf of L&T did not affirm the said report. CW3 is the Chartered Accountant. He had affirmed that he had verified the entries in Ex. C-98 on the basis of the ledger extract

and the relevant vouchers. The Arbitral Tribunal examined certain questions and answers posed with CW3 and, *inter alia,* found that the methodology adopted for establishing the quantification for the claim was based only on Ex. C-98. Although the Arbitral Tribunal held that L&T was entitled to suitable compensation during the extended period, it rejected the claim as it did not accept the manner in which the claim was pleaded and substantiated. The Arbitral Tribunal found that the claim was based on Ex. C-98 and, in its view, it was not just and appropriate to consider the said document as proper evidence for quantification of the claims. L&T also furnished an alternate quantification of its claim for prolongation cost based on a *pro rata* formula for calculating overheads during the extended period. L&T claimed overheads and the P&M component at 25% and 15%, respectively. The Arbitral Tribunal rejected the said computation on the ground that overheads and other components were included in the value of work done.

89. The learned Counsel for L&T focused the challenge to the said findings on the ground that L&T's quantification was not based on Ex. C-98 alone. He claimed that L&T also produced other material in support of its quantification of the claim. Learned

Counsel referred to Ex. C-61, a notice dated 31.12.2013, and pointed out that it includes details of the quantification of the claim. Next, he referred to Ex. C-60 and submitted that Ex. C-98 was only an external vetting of the said claim, which led to a further scaled-down estimate. He also contended that L&T's claim was not solely reliant on the report furnished by American Appraisal; it was also supported by testimonies and contemporary documents. In particular, he referred to Ex. C-385. He submitted that the additional costs were worked out only for the period of extended stay for the viaduct and station works. He also contended that only actual items executed during the extended stay period and only the resources that were necessary for executing these items were considered for the purpose of quantifying the claim. He submitted that the consumption norms are based on L&T's internal norms, as reflected in Ex. C-386, and that the actual mobilisation of resources is evidenced by monthly progress reports, as reflected in Exs. C-360 and C-382. He further submitted that L&T's books of account were audited, and the auditor's certificate (Ex. C-360) is also supported by CW3's testimony. In addition, he stated that Ex. C-366 was a summary of the audited ledger, which summarised the gist of separate invoices maintained by L&T in its normal course of business. These vouchers had been audited by the Chartered

Accountant who had furnished the certificate, which had been produced. He submitted that L&T had no issue in placing all invoices on record, however these ran into thousands of pages. Therefore, L&T had brought only copies of invoices for demonstration but had offered inspection of all the invoices during the course of the proceedings. He also argued that if the Arbitral Tribunal had any reservations as to the sample vouchers and invoices produced, it could have indicated so, and L&T would have produced the other documents.

90. As is clear from the above, L&T has essentially based its challenge to the rejection of its claim on the ground that materials, other than Ex. C98, supporting the said claim were referred to in the submissions before the Arbitral Tribunal but were ignored. L&T claims that the Arbitral Tribunal has ignored vital evidence.

91. The impugned award indicates that the Arbitral Tribunal also referred to the cross-examination of CW3. However, this was in the context of whether it supported the American Appraisal's report (Ex. C-98). Undisputedly, the Arbitral Tribunal proceeded on the basis that L&T's claim was based solely on Ex. C-98, as is evident from para 143 (i) and (vi), which read as follows:

> "143. From a conjoint reading of the reports in C-98, the deposition of CW-3 and the pleadings made in ASOC along with the objections of the Respondent on the quantification of this claim, the Arbitral Tribunal finds the following:
>
> i) It is clear from the ASOC that the Claim of the Claimant for the amount of Rs.103.30Cr is wholly based on C-98 which is the report of the American Appraisal India Pvt. Ltd., initiated by Claimant.
>
> ** ** **
>
> vi) The Arbitral Tribunal also finds that the methodology adopted for establishing the quantification for this Claim by the Claimant is only on the basis of C-98."

92. L&T had also produced Ex. C-366, which is a summary of the expenses under the Head, salaries and benefits; staff accommodation and conveyance; rentals and labour costs; water and power charges; security and housekeeping; and packing and forwarding charges. The monthly cost figures reflected in the said Exhibit were also supported by ledger abstracts. It also referred to the bill numbers. These documents run to over two hundred pages. CW3 had testified to the said documents.

93. In addition, L&T also exhibited document (Ex. C-385), which contains a detailed summary of the quantification of the claims and

the material. The same refers to Ex. C-98, however, the said quantifications were also supported by materials, other than Ex. C-98.

94. It is trite law that the Arbitral Tribunal is the final arbiter and final evaluator of the quality and the quantity of evidence. The court cannot re-appreciate or re-validate evidence and supplant its opinion in place of the Arbitral Tribunal in proceedings under Section 34 of the A&C Act. However, it is not disputed that if the Arbitral Tribunal has disregarded evidence or material which is relevant, the arbitral award would be liable to be set aside.

95. Sri Sriranga, the learned Senior Counsel appearing for BMRCL fairly did not contest that the Arbitral Tribunal had overlooked evidence and materials as referred to by the learned counsel appearing for L&T; he, however, submitted that the claim No.iii for additional costs on account of extension of the contract was not maintainable in view of Clauses 2.2 and 8.3 of the GCC. He submitted that the Arbitral Tribunal ignored the said clauses and held that L&T was entitled to compensation for costs incurred on account of prolongation of the contract. He submitted that such a claim was impermissible and expressly barred under clauses 2.2 and 8.3 of the GCC. He also submitted that the said issue was no

longer *res integra* in view of the decision of a Co-ordinate Bench of this Court in **Larsen and Toubro Limited** (*Supra*). He also assailed the impugned award on the ground that the Arbitral Tribunal had failed to consider the said contention.

96. The Arbitral Tribunal's conclusion that the Contract was delayed for reasons attributable to BMRCL warrants no interference in these proceedings. However, it is equally clear that the Arbitral Tribunal neither examined BMRCL's contention that a claim for compensation on this ground was not available in view of the contractual provisions, nor considered the other material on record which may support the quantification of the said claim.

COUNTER-CLAIMS

97. In so far as counterclaims are concerned, we find no grounds to interfere with the Arbitral Tribunal's conclusion, which is based on the factual finding that the delays are attributable to BMRCL. The learned Senior Counsel appearing for BMRCL did not seriously contest the rejection of the counterclaim.

CONCLUSION AND ORDER

98. In view of the above, the impugned award is set aside to the following extent: (i) insofar as it awards amounts in favour of L&T in respect of Claims (ii), (iv) and (v); and (ii) insofar as it holds that L&T is entitled to compensation for time-related costs during the prolongation of the Contract under Claim (iii) and rejects the said claim for want of proof of quantum.

99. This judgment will not preclude the parties from agitating Claims (iii), (iv) and (v) afresh, if so advised.

100. The appeals are partly allowed in the aforesaid terms. The pending application stands disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KPS