HC-KAR
NC: 2026:KHC:42929-DB
COMAP No. 139 of 2025
CNR: KAHC010152972025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

COMMERCIAL APPEAL NO. 139 OF 2025

BETWEEN:

1. M/S BURMA AUTOMOTIVES PVT. LTD.
   A PRIVATE LIMITED COMPANY
   HAVING ITS REGISTERED OFFICE AT
   NO.19, SHREE SHABARI RESIDENCY
   H. SIDDAIAH ROAD
   OPP. URVASHI THEATRE
   BENGALURU - 560 002
   REPRESENTED BY ITS DIRECTOR
   SRI RAJEN K BHATHA

…APPELLANT

(BY SRI RAJADITHYA SADASIVAN, ADVOCATE)

AND:

1. THE COMMISSIONER
   HUBLI DHARWAD MUNICIPAL CORPORATION
   SIR SIDDAPPA KAMBALI ROAD
   HUBLI - 580 024

2. SRI H.G. RAMESH
   ARBITRATOR, ARBITRATION & CONCILIATION CENTRE
   BENGALURU

…RESPONDENTS

(BY SRI VEERESH RACHAPPA BUDIHAL, ADVOCATE FOR R-1)

THIS COMMERCIAL APPEAL IS FIELD UNDER SECTION 13 (1-A) OF COMMERCIAL COURT ACT, 2015 READWITH SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE JUDGMENT DATED 25.11.2024, PASSED BY THE HON'BLE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, AT BENGALURU (COMMERCIAL COURT - CCH-84) IN COM.A.P. NO.63/2024 AND CONSEQUENTLY SET ASIDE THE ARBITRAL AWARD IN AC NO.271/2022 DATED 05.01.2024 PASSED BY THE 2ND RESPONDENT & ETC.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

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

1. For the reasons stated in the affidavit accompanying the application, I.A.1/2025, the same is allowed and the delay of 28 days in filing the appeal is condoned.

2. 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 25.11.2024 [**impugned order**] passed by the LXXXIII Additional City Civil and Sessions Judge, Commercial Court, Bengaluru [**Commercial Court**] in Com.A.P.No.63/2024.

3. The appellant had filed the said petition under Section 34 of the A&C Act seeking to set aside an arbitral award dated 05.01.2024 [**impugned award**] passed by the learned Sole Arbitrator [**Arbitral Tribunal**] in A.C.No.271/2022. The impugned award was rendered in the context of disputes referred by the Micro and Small Enterprises Facilitation Council, Bengaluru [**the Council**], under Section 18(3) of the Micro, Small and Medium Enterprises Development Act, 2006 [**MSMED Act**], by its order dated 26.05.2022.

4. The subject disputes between the parties had arisen in connection with the supply of 140 number of tipper vehicles [**tippers**]. Respondent No.1, Hubli-Dharwad Municipal Corporation [**the Municipal Corporation**], had issued a Short Term Tender Notification inviting bids for 'Supply of 3.3 cum, 1.25 ton pay load capacity twin compartments (BS-IV) auto tipper for Hubli-South'. The notification indicated that the tender documents would be available on the e-procurement site from 11.12.2017. The last date for submission of the tender was 12.01.2018 before 16:00 hours, and the technical bids would be opened on 15.01.2018 at 11:30

hours onwards. The financial bids would be opened on 17.01.2018 at 11:30 hours onwards.

5. The appellant participated in the bidding process and was declared the successful bidder. Thereafter, the appellant supplied 140 tippers. 61 tippers against the first tender, 61 tippers against the other tender and 18 tippers against the third tender. These supplies were made during the period from 12.03.2018 to 09.03.2019. The appellant claims that the tippers were manufactured with SS202 sheets (stainless steel sheets) to avoid rusting and decay and were inspected prior to their delivery to the Municipal Corporation. The appellant claims that the tippers were also subjected to third-party inspection by Sanmitra Technological Corporation, Badami.

6. The appellant issued tax invoices totalling ₹11,17,83,135 (Rupees Eleven Crores Seventeen Lakhs Eighty Three Thousand One Hundred and Thirty Five only) for the supply of the said vehicles. The Municipal Corporation released part of the payments but withheld an amount of ₹5,85,18,240.40/- (Rupees Five Crores Eighty Five Lakhs Eighteen Thousand Two Hundred Forty and

Forty Paise only). The appellant claims that while it was pursuing the Municipal Corporation for the release of the balance amount, the Municipal Corporation sent a notice dated 10.09.2019, alleging that the tippers supplied by the appellant were flawed and seeking their re-fabrication. The Municipal Corporation also warned that failure to do so would result in the appellant being blacklisted.

7. The appellant claims that the auto tippers were fabricated in accordance with the technical specifications and the industrial standards for optimal efficiency. The appellant also raised invoices for certain additional work, which also remained unpaid. Since there was a delay in payments, the appellant raised a dispute before the Council. The Municipal Corporation did not join the said proceedings and by an order dated 26.05.2022, the Council referred the disputes to the Arbitration and Conciliation Center, Bengaluru (Domestic and International).

8. The Arbitral Tribunal comprising a sole Arbitrator was constituted, and the arbitration was conducted under the aegis of the Arbitration and Conciliation Centre, Bengaluru (Domestic and International).

9. Before the Arbitral Tribunal, the appellant raised the following claims:

Sl.No	Particulars	Amount (Rs.)
1.	Principal Amount (including speakers & Amplifiers and GPS costs	27,34,826.46
2.	Re-Fabrication Expenses	20,24,480.00 |
3.	Interest Amount (till 31.08.2022)	3,19,32,298.00
4.	Visiting costs (4 times a month for three years)	17,28,000.00
5.	Damages for Breach of Contract	1,26,82,962.16
6.	Legal Costs	18,00,000.00
	Total	**5,29,02,566.62**

10. The Municipal Corporation contested the claims. It claimed that the appellant had not used stainless steel sheets to fabricate the compartments as per the technical specifications. This resulted in rusting and rotting of the tippers, and they became non-functional. The Municipal Corporation alleged that the appellant had breached the terms of the contract and therefore was not entitled to the payment as claimed. The appellant had refabricated some compartments to rectify defects caused by the use of non-compliant material. Thus, it was not entitled to re-fabrication expenses. The Municipal Corporation also denied any liability to pay for extra items such as speakers, amplifiers, and GPS systems, as claimed by the appellant. Additionally, the Municipal Corporation contended that there was a delay in the supply of

tippers, as the same was not within the period of 30 days as stipulated in the work orders.

11. On the basis of rival claims, the Arbitral Tribunal framed the following issues for determination:

> 1. Whether the claimant-company proves respondent-Municipal Corporation is liable in law to pay that the Rs.27,34,826.46 (Rupees Twenty seven lakhs thirty four thousand eight hundred and twenty six-forty six paisa only) to the claimant towards supply of auto tippers, costs of fitting speakers, amplifiers and GPS Systems?
>
> 2. Whether the claimant-company proves respondent-Municipal Corporation is liable in law to pay that the Rs.20,24,480/- (Rupees twenty lakhs twenty four thousand four hundred and eighty only) to the claimant towards the cost of re-fabrication of the auto tippers?
>
> 3. Whether the claimant-company proves that the respondent-Municipal Corporation is liable in law to pay Rs.3, 19,32,298/- (Rupees three crores nineteen lakhs thirty two thousand two hundred and ninety eight only) to the claimant towards interest?
>
> 4. Whether the claimant-company proves that the respondent-Municipal Corporation is liable in law to pay Rs. 17,28,000/- (Rupees seventeen lakhs twenty eight thousand only) to the claimant towards visiting costs?
>
> 5. Whether the claimant-company proves that the respondent-Municipal Corporation has committed breach of the contract/s, and hence, is liable in law to pay damages of Rs. 1,26,82,962.16 (Rupees one crore twenty six

lakhs eighty two thousand nine hundred and sixty two-sixteen paisa only) to the claimant?

6. Whether the claimant-company proves that respondent- Municipal Corporation is liable in law to pay Rs. 18,00,000/- (Rupees eighteen lakhs only) to the claimant towards legal costs?

7. Whether the claimant-company proves that respondent- Municipal Corporation is in breach of the tender documents by failing to pay the principal amount to the claimant within a period of 60 days, as stipulated under Section III Clause 15.3 of the Tender Documents?

8. Whether the claimant-company proves that payment of insurance amount and RTO Charges after the invocation of arbitration, constitute breach of Section IV Clause 11 of the Tender Documents?

9. Whether the that the claimant-company proves respondent-Municipal Corporation is in breach of Section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 (the Act) by failing to release the payments within a period of 45 days?

10. Whether the claimant-company proves that it is entitled to receive the interest on the principal amount in accordance with Sections 16 and 17 of the Act?

11. Whether the respondent-Municipal Corporation proves that the claimant-company has committed breach of the contract/s in supplying the auto tippers, and the auto tippers supplied did not comply with the specifications stipulated in the contract/s necessitating their re-fabrication by the claimant-company?

12. Whether the respondent-Municipal Corporation proves that all the claims made by the claimant-

company are unsustainable in law, and hence, the claim petition is liable to be dismissed with compensatory costs?

Additional Issue:

Whether the provisions of the Limitation Act, 1963, applies to the claim petition, and if yes, whether the claimant proves that the claims made in the claim petition are made within the period of limitation, computed as per the provisions of the Limitation Act, 1963 r/w Section 43(1) & (2) of the Arbitration and Conciliation Act, 1996?

12. After evaluation of the evidence, the Arbitral Tribunal concluded that the appellant had supplied 140 tippers by consolidating all three work orders dated 23.02.2018. It also found that only sixteen tippers were delivered within the period of 30 days from 23.02.2018 and the remaining 124 auto tippers were delivered beyond that period up to 09.03.2019. Further, only 140 tippers were delivered till 09.03.2019, and the remaining one tipper was not delivered at all. Prior to that date, the Municipal Corporation had already paid ₹5,32,64,898/- against the purchase price of ₹10,80,73,709/-. The Arbitral Tribunal concluded that the remaining amount of ₹5,48,08,611/- would become due on 09.03.2019, that is, when the last delivery was made, if the supplies were as per specifications.

13. It was also found that during the period commencing from 30.06.2018 and ending on 13.06.2022, the entire amount of ₹10,80,73,709/- was paid. Further, an amount of ₹11,78,701/- for registration charges (RTO) and insurance amount for the 140 auto tippers was paid on 07.10.2022.

14. The Arbitral Tribunal noted that the technical specifications required the compartments to be fabricated from 'SS 202 of 2mm thickness, all-round stiffeners RHS 80x40x2mm thickness'. However, the compartments were rusted and required re-fabrication. In light of this finding, the Arbitral Tribunal held that the appellant could not make any claim for fabrication expenses which arose from its own wrongful acts.

15. It is apparent from the plain reading of the impugned award that the Arbitral Tribunal accepted the Municipal Corporation's claim that the materials used by the appellant for fabricating the compartments were not in conformity with the technical specifications. The Arbitral Tribunal also termed the said act as a fraudulent act. It also noted that one of the compartments had been fabricated from MS iron sheet and therefore, the auto trippers

suffered from a fundamental defect and were unfit for collection of garbage due to their rusting. The Arbitral Tribunal also referred to Exhibit-R3, a photograph of a rusted compartment of one of the tippers, and noted that it showed the extent of rusting and how it rendered the tipper unfit for garbage collection.

16. In view of the finding that the appellant had committed a fraud by delivering auto tippers which were not in conformity with the necessary specifications, the Arbitral Tribunal concluded that the supply of tippers could be considered as complete only on 31.07.2021, that is, after the appellant had re-fabricated the compartments in conformity with the specified stainless steel material. In view of the above, the Arbitral Tribunal held that the liability to pay any interest for delayed payment would arise only with effect from 31.07.2021, that is, after the defects had been rectified. The Municipal Corporation had paid an amount of ₹3,01,06,251/- after 31.07.2021. The same was paid in three tranches: ₹2,00,00,000/- on 15.11.2021, ₹25,00,000/- on 16.03.2022 and ₹76,06,251/- on 13.06.2022. The Arbitral Tribunal calculated the interest payable for such delayed payment at

₹18,30,990/-. The tabular statement setting out the said calculation as set out in the impugned award is reproduced below:

Interest payable from 01.08.2021 to 15.11.2021 on Rs. 3,01,06,251.00	Rs. 11,32,699
Interest payable from 16.11.2021 to 16.03.2022 on Rs. 1,01,06,251.00	Rs. 4,40,092
Interest payable from 17.03.2022 to 13.06.2022 on Rs. 76,06,251.00	Rs. 2,58,199
Total	**Rs.18,30,990**

17. The Arbitral Tribunal also found that there was no justification for withholding the amount of ₹11,78,701/-, which was paid for registration and insurance charges, for a period of four years. The Arbitral Tribunal then computed the interest payable at ₹11,75,00/-. Accordingly, the Arbitral Tribunal awarded an amount of ₹30,05,990/- and directed that the said amount be paid along with interest at the rate of 12% per annum from the date of the claim petition (from 12.12.2022) till the date of payment. In addition, the Arbitral Tribunal also awarded costs at ₹5,00,000/- to be paid within the period of three months from the date of the award.

18. The appellant challenges the impugned award on several fronts. First, it claims that the tippers were supplied in conformity with the technical specifications and therefore, the appellant would be entitled to re-fabrication expenses. Second, the interest as

awarded is significantly less than as payable under the MSMED Act. The appellant claims that interest is payable from the date of supply under the contract and not from 31.07.2021, as held by the Arbitral Tribunal. Third, it states that the interest awarded indicates that the rate of interest is around 13% p.a. which is not in conformity with the MSMED Act.

19. The learned Commercial Court did not accept these contentions and held that no interference with the impugned award was warranted on the grounds set out in Section 34 of the A&C Act.

20. In the present case, the appellant seeks to challenge the impugned award on the ground that it is vitiated by patent illegality. However, we are unable to accept that the finding of the Arbitral Tribunal to the effect that the supplies made by the appellant were not in conformity with the technical specifications, can be interfered with in this proceedings. The said finding was rendered after appreciation of evidence and material on record and it is well settled that the scope of examination under Section 34 of the A&C Act does not permit the court to supplant its opinion over that of the arbitral tribunal by re-appreciating and re-evaluating the evidence.

The Arbitral Tribunal is the final adjudicator of questions of fact. In the present case, the Arbitral Tribunal has evaluated the material record and had concluded that the tippers supplied were not in conformity with the technical specifications. The said finding is supported by material on record and thus cannot be interfered with.

21. The learned counsel for the appellant contended that the objections were raised after the appellant had demanded the payment and were therefore an afterthought. He further contended that ignoring this fact would amount to disregarding vital evidence and would warrant interference under Section 34 of the A&C Act. He referred to the Supreme Court's decision in **Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd.**[1] in support of this contention.

22. We find no merit in the said contention. It is apparent from the plain reading of the impugned award that the Arbitral Tribunal's findings are based on material on record, including the photograph (Exhibit-R3) of a rusted compartment of an auto tipper.

[1] (2024) 6 SCC 357

23. In the aforesaid view, the decision of the Arbitral Tribunal to hold that the interest would become due on the outstanding payments as on 31.07.2021, being the date on which the rectification work was completed, cannot be held to be perverse or to have the effect of vitiating the impugned award. Thus, the interest on delayed payment has to be computed with effect from that date.

24. The next question to be examined is the quantum of interest. The Arbitral Tribunal accepted that interest under the MSMED Act is to be computed at the rate equivalent to three times the bank rate in force, compounded on monthly rests. Paragraph 30 of the impugned award is set out below:

> "30. In the above tables, compound interest is calculated with monthly rests by taking 3 times the bank rates in force during the period of delay. Accordingly, the total interest payable to the Claimant as per the MSMED Act, 2006 on the amount that was due is **Rs.30,05,990/-**. Issue Nos.3 and 7 to 10 stand answered in the above terms."

25. There is no cavil that the interest is required to be computed at the rate of equivalent to three times the bank rate compounded on monthly rests. However, the calculation as set out in the impugned award neither indicates the bank rate which was

applicable during the said period nor the rate at which interest is calculated. It is not disputed that interest of ₹18,30,990/- as calculated would be commensurate with 13% p.a. However, the bank rates during the said period ranged from around 5.65% to 6.75%. Therefore, the interest for the pre-award period would need to be calculated at 16.95% p.a to about 20.25% p.a, compounded monthly, in conformity with the MSMED Act.

26. Section 16 and 17 of the MSMED Act are relevant and are reproduced below:

> "**16. Date from which and rate at which interest is payable**. - Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.
>
> **17. Recovery of amount due.** - For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16."

27. Although the Arbitral Tribunal proceeded on the basis that the interest would be calculated on the said basis, the interest

awarded is not in conformity with the aforesaid provisions. Thus, the impugned award, insofar as the quantum of interest is concerned, is set aside with liberty to the appellant to approach the Arbitration and Conciliation Centre (Domestic and International), Bengaluru, to re-agitate the question regarding the pre-award interest from 31.07.2021.

28. The present appeal is accordingly disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KPS,
List No.: 2 Sl No.: 14