RESERVED ON 21ST JULY 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH 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. 53 OF 2025

BETWEEN:

1. STATE PROJECT DIRECTOR
RASHTRIYA MADHYAMIKA
SHIKSHA ABHIYAN
NEW PUBLIC ANNEX BUILDING
N.T. ROAD, K.R. ROAD, BENGALURU - 560 001

...APPELLANT

(BY SRI KIRAN VASANTH RON, ADDITIONAL ADVOCATE GENERAL A/W SRI K.S. HARISH, GOVERNMENT ADVOCATE)

AND:

1. M/S KMV PROJECTS
REGIONAL OFFICE SITUATED
AT NO. 302, 3RD FLOOR, EAST PARK ROAD
KUMAR PARK (E)
BENGALURU - 560 020
REP. BY ITS VICE PRESIDENT AND
AUTHORISED SIGNATORY
SRI D. TARANATH DASARI

2. SRI JUSTICE K.N. KESHAVANARAYANA
SOLE ARBITRATOR
ARBITRATION AND CONCILIATION CENTRE
BENGALURU (DOMESTIC AND INTERNATIONAL)
KANIJA BHAVANA
RACE COURSE ROAD
BENGALURU - 560 001

...RESPONDENTS

(BY SRI ZULFIKIR SHAFI, ADVOCATE FOR C/R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 READ WITH SECTION 37(1) (c) OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE JUDGMENT DATED 30.11.2024, PASSED IN COM A.P.NO.42/2024 ON THE FILE OF THE HON'BLE LXXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AT BANGALORE AND CONSEQUENTLY AND ETC.

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

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

C.A.V. JUDGMENT

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

1. The appellant, the State Project Director, Rashtriya Madhyamika Shikshana Abhiyana, has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning a judgment dated 30.11.2024 [**impugned order**] passed by the learned LXXXVI Additional City Civil and Sessions Judge, Commercial Court, Bengaluru (CCH-87) [**Commercial Court**] in Com.A.P.No.42/2024. The appellant had filed the said petition under Section 34 of the A&C Act seeking setting aside of an arbitral award dated 10.11.2023 [**impugned award**] rendered by the learned Sole Arbitrator [**Arbitral Tribunal**].

The learned Commercial Court found no ground to interfere with the impugned award and accordingly passed the impugned order dismissing the petition.

2. Respondent No.1, M/s KMV Projects [**KMV**], was the claimant before the Arbitral Tribunal and the appellant was the respondent. In terms of the impugned award, the Arbitral Tribunal partly allowed KMV's claims and directed the appellant to pay a total sum of ₹1,38,88,276/- (Rupees one crore thirty-eight lakhs eighty-eight thousand two hundred and seventy-six only), comprising ₹80,10,251/- towards price adjustment (Claim No.1) together with past and current interest of ₹43,85,620/-; ₹9,52,598/- towards unproductive overhead charges, Claim No.6(a); and ₹5,39,806/- towards loss of expected profit (Claim No.7); with future interest at 9% per annum on ₹95,02,655/- from the date of the award till payment; and ₹2,00,000/- towards costs (Claim No.11).

3. The present appeal is one of a batch of nine appeals, (COMAP Nos.53/2025 to 61/2025), filed by the appellant against orders passed by the learned Commercial Court dismissing the appellant's petitions under Section 34 of the A&C Act, (Com.A.P.Nos.39/2024 to 47/2024) assailing separate Arbitral Awards rendered by the Arbitral Tribunal constituted of Sole

Arbitrator in respect of the contract of nine packages awarded to M/s. KMV. The arbitral awards rendered are substantially in similar terms and the issues involved in the said nine appeals are also materially similar.

PREFATORY FACTS

4. Rashtriya Madhyamika Shikshana Abhiyana [**RMSA**] is a centrally sponsored scheme launched in the year 2009-10 by the Ministry of Human Resource Development, Government of India, for enhancing access to, and the quality of, secondary education. The Government of Karnataka [**GoK**] implemented the scheme through the appellant and took up 2,024 civil works under 77 packages between 2009-10 and 2013-14. The said civil works involved construction of new school buildings, Adarsha Vidyalayas [**model schools**] and girls' hostels, and strengthening and upgradation of existing schools at an aggregate cost of ₹1,645.70 crores. The scheme has since been integrated with Samagra Shikshana Karnataka (2018-19).

5. On 24.09.2012, tenders were invited on a package basis through the e-procurement portal in respect of works spread over several districts of the State. KMV emerged the successful bidder

in respect of nine packages comprising 406 scattered work sites. The present dispute pertains to Package A-22 — Construction of Girls' Hostels in Yadgir Block, Sedam Block, Shahapur Block and Surpur Block of Yadgir District [**the subject package**]. After KMV was declared as the lowest bidder (L1), the parties have entered into negotiations, and pursuant to said negotiations, KMV reduced its quoted rates.

6. By its letter dated 13.02.2013 (Ex.C2), which bears an acknowledgement of service at the appellant's office, KMV offered a revised price of ₹8,80,59,842/-, being 19.55% above the updated estimate. It is material to note that KMV concluded the said letter by stating that it was "ready to execute the above project considering the inclusion of 'Price Adjustment Clause' at the said price. Thereafter, by Letter of Acceptance dated 18.03.2013 (Ex.C3), the appellant accepted the revised offer for a contract price of ₹880.60 lakhs.

7. The parties executed a Construction Agreement [the Agreement] dated 15.05.2013 (Ex.C4). Clause 4 of the Agreement stipulates that the Letter of Acceptance, the Contract Data, the Conditions of Contract, and the Special Conditions of Contract, among other documents, formed an integral part of the Agreement.

8. Notice to proceed with the work was issued on 17.05.2013 (Ex.C5) and the stipulated period of completion was twenty months therefrom which expired on 16.02.2015. During execution, additional quantities and EIRL[1] items were required to be executed. Upon approval of the competent authority, the parties entered into a Supplementary Agreement dated 17.03.2017 which forms part of Ex. C4 towards additional items.

9. Clause 4(i) of the Supplementary Agreement stipulates that all conditions of the original agreement (the Agreement) are applicable "except for the price adjustment clause, for which a decision will be taken after the completion of enquiry ordered by the Government".

10. There was delay in execution of the works it was not completed within the stipulated period. During the period between 2013 and 2019, KMV addressed several letters to the appellant, *inter alia*, alleging (i) delay in handing over sites; (ii) delay in supply of drawings; (iii) delay in approval of work slips and EIRL items; (iv) delay in release of payments; (v) non availability of water and power; and (vi) scarcity of sand. KMV invoked Clause 39 of the Conditions of Agreement and raised the price adjustment. None of the said bills were paid.

[1] Extra Items Rate List: unbudgeted items

11. In the meantime, under Government Order No. ED 49 MCD 2016 dated 16.11.2016, the GoK, while granting administrative approval to a revised project cost of ₹1,717.24 crores excluding price adjustment, the GoK directed (i) an audit by the Karnataka Institute of Public Auditors [**KIPA**] into the causes of and responsibility for the delay; and (ii) an enquiry into the issue of price adjustment by a committee headed by an officer of the rank of Additional Chief Secretary. The committee reported that the price adjustment clause incorporated in the tender documents for the RMSA civil works of 2009-10 and 2010-11 was not duly approved and was not binding on the GoK. By a communication dated 17.07.2018, the State Project Director informed the contractors that price adjustment would not be paid and that extension of time would be considered only upon giving up their contractual claims in that behalf.

12. The said Government Order and communication were impugned by three other contractors namely, M/s Jampana Constructions Pvt. Ltd., M/s NCC Ltd., and M/s KBR Infratech Pvt. Ltd. in W.P. Nos.38613/2018, 35594/2018 and 34990/2018 respectively. By orders dated 25.02.2019 (Ex.R2), the learned Single Judge of this Court quashed the Government Order dated

16.11.2016 and restrained the State from acting upon KIPA's reports and suggestions. The court observed that whether Clause 39 was incorporated with approval or inserted unauthorisedly is a disputed question of fact, and relegated the petitioners to arbitration. The intra-court appeals – W.A. Nos.958/2019, 996/2019 and 1031/2019 by the contractors, and W.A. No.2791/2019 by the State – were disposed of by the Division Bench of this Court on 20.10.2020, observing that "the parties would be governed by the terms of the contract entered into by them in respect of various packages awarded by the State".

13. By its letter dated 12.03.2019 (Ex.C71), KMV set out the causes of delay and its claims; and by legal notice dated 08.05.2019 (Ex.C72), it invoked the arbitration agreement under Clause 24 of the Conditions of Contract read with Clause 4 of the Special Conditions of Contract.

14. The appellant responded by letter dated 11.06.2019 (Ex.C73), stating that in view of the pendency of the writ appeals, the reference to arbitration was premature.

15. KMV filed an application under Section 11(6)(a) of the A&C Act (C.M.P.No.253/2019) seeking appointment of an Arbitrator.

This Court allowed the same by an order dated 05.11.2020 and appointed a Sole Arbitrator to adjudicate the disputes between the parties.

16. In the meanwhile, by Government Order No. EP 89 YYK 2020 dated 30.09.2020 (Ex.R1), the GoK, adopted the recommendations of the Technical Advisory Committee in supersession of the KIPA report, ordered that (i) for computing extension of time and penalty, each work site in a package be treated as a separate unit; (ii) the administration be held responsible for delays occasioned by causes beyond the contractor's control; and (iii) price adjustment be allowed in respect of the 25 packages whose tender conditions contained the price adjustment clause. Admittedly, the sums due to KMV were released only thereafter and were received in full before 29.03.2021. By an order dated 13.01.2021, extension of time was granted to KMV without levy of penalty.

ARBITRAL PROCEEDINGS

17. KMV filed its statement of claims before the Arbitral Tribunal claiming an amount of ₹11,86,17,292/- (Rupees eleven crores eighty-six lakhs seventeen thousand two hundred and ninety-two)

under eleven heads. The summary of claims as set out in the statement of claims is reproduced below.

Claims	Particulars	Claim amount (Amt. in Rs.)
Claim No.1	Payment of Price Adjustment/Escalation Bill	82,86,685
Claim No.2	Payment of equitable enhanced rates executed beyond tender completion period	34,85,818
Claim No.3	Payment of equitable enhanced rates executed beyond Tender Completion Period for extra Items	
Claim No.4	Payment of equitable enhanced rates executed beyond Tender Completion Period for quantities more than 125%	
Claim No.5	Payment towards idle labour charges	2,14,97,732
Claim No.6(a)	Payment of unproductive overhead charges	9,52,598
Claim No.6(b)	Payment of additional overhead charges	16,17,549
Claim No.7	Payment towards loss of expected profit on the balance work as on original tender completion date	9,52,598
Claim No.8(a)	Loss of expected profit due to non-receipt of profit by tender completion period	47,62,990
Claim No.8(b)	Loss of expected profit due to non-receipt of profit by actual completion period	56,88,553
Claim No.9	Payment towards interest on claim amount calculated up to 31.12.2020 at the rate of 24%	5,68,16,774
Claim No.10	Payment towards additional Bank Guarantee charges beyond original agreement period	3,38,508
Claim No.11	Payment of Rs.12,00,000/- (Rupees Twelve Lakhs only) towards Cost of Litigation	12,00,000
Total		**11,86,17,292**

18. It was the KMV's case that after it was declared a successful bidder, it had reduced its rates by factoring in the price escalation clause and the economies of scale. KMV claimed that the appellant did not hand over the sites within the stipulated period despite various requests. Thus, KMV was effectively prevented from completing the contract within time, and the execution of the works was prolonged. KMV alleged that the appellant also withheld amounts due to KMV, which compelled KMV to seek reference of disputes to arbitration.

19. The respondent contended that the price variation clause (clause 39) of the conditions of contract was not applicable as the notice inviting tenders uploaded expressly provided that the said clause be read as deleted. It is contended that this clause was unauthorisedly included in the Agreement. Thus, the appellant was not bound by the said price variation clause.

20. On the basis of the pleadings between the parties, the Arbitral Tribunal framed the following issues.

> "1. Whether Claimant proves that non completion of the works under the contract within the stipulated period was for the reasons solely attributable to Respondent, resulting in breach of contract by Respondent, as such, the delay in completion of the works was solely attributable to Respondent?

2. Whether for the reasons set out in SOC which were beyond the control of Claimant, he was prevented from completing the entire scope of work within the scheduled contract period?

3. Whether Respondent proves that the delay in completion of the works under the contract within the original period stipulated under the contract was solely attributable to Claimant?

4. Whether Respondent proves that as the requirements of Clause 37.3 of Conditions of Contract have not been complied with by Claimant, none of the claims put-forth in SOC is tenable?

5. Whether the Claimant is entitled for payment of amounts claimed under various heads as put-forth under claim Nos.1 to 8 of SOC?

6. Whether the Claimant is entitled for payment towards past interest on the amounts claimed up to 31-12-2021 at 24% PA as claimed under claim No.9 of SOC?

7. Whether Claimant is entitled for current and future interest at 24%PA on the amount claimed?

8. Whether Claimant is entitled for cost of this arbitral proceeding?

9. To what order and award the parties are entitled to?"

21. The Arbitral Tribunal, after examining the evidence and materials placed on record, found that non-completion of the contract within the stipulated period was for the reasons attributable to the appellant. The Arbitral Tribunal also partly found

that some of the actions had prevented KMV from completing the contract.

22. The Arbitral Tribunal partly allowed claim No. 1 together with past and current interest, allowed claim No. 6(a) in full, and partly allowed claim No. 7. The Arbitral Tribunal also awarded future interest and costs but rejected the remaining claims.

23. The dispositive part of the impugned award is set out below:

> "The claims of Claimant as put forth in Statement of Claim are allowed in part as under:
> (1) Claim No.1 is allowed in part in a sum of Rs.80,10,251/- only as against the claim of Rs.82,86,665/- together with Rs.43,85,620/- towards past and current interest calculated up to 10.11.2023, totalling to Rs.1,23,95,872/-;
> (2) Claim Nos.6(a) is allowed in its entirety in a sum of Rs.9,52,598/-;
> (3) Claim No.7 is allowed in part in a sum of Rs.5,39,806/- only as against the claim of Rs.9,52,598/-;
> (4) Respondent is directed to pay to Claimant a total sum of Rs.1,38,88,276/- as per Sl.No.(1) to (3) above together with future interest at the rate of 9% per annum from the date of this Award till the date of payment on Rs.95,02,655/-;
> (5) Claim No.11 is allowed in part in a sum of Rs.2,00,000/- only as against claim of Rs.12,00,000/-. Respondent is directed to pay to Claimant, this amount within a period of 3 months from the date of this award failing which the said amount shall carry interest at the rate of 9% per annum from the date of award till the date of payment;
> (6) Claim Nos.2 to 5, 6(b), 8(a), 8(b), 9 and 10 are rejected in their entirety;

> (7) Claimant shall pay requisite stamp duty on this award payable as per Karnataka Stamp Act,
> With the pronouncement and publication of Award, this Arbitral Proceeding stand terminated as per Section 32(1) of the Act."

24. As noted at the outset, the present appeal is part of a batch of nine appeals (COMAP Nos.53/2025 to 61/2025) which have been filed against the orders passed by the learned Commercial Court in respective petitions (COM.AP.Nos.39/2024 to 47/2024) filed under Section 34 of the A&C Act for setting aside the arbitral awards. These awards are rendered in respect of similar contracts awarded to KMV for execution of works under nine separate packages. All contracts were similarly worded and KMV had raised similar claims. The amounts claimed under various heads of claims are different, but the basis on which the claims were raised is identical. The arbitral award rendered in respect of the claims are also similarly worded. The arbitral award, including the impugned award, are substantially similar in material aspects. Some of the material findings on which the award was premised are also similarly worded.

25. This court has examined the appellant's challenge to a similar arbitral award in COMAP No.54/2025, which is considered as the lead matter. The same is disposed of by a separate order.

This court held in view of the Arbitral Tribunals' findings, that there are no averments and evidence which would support the amount awarded against the i) claims for payment of price adjustment/escalation (claim No.1); ii) payment of unproductive overhead charges (claim No.6(a)); and iii) towards loss of expected profits on the balance work (claim No.7), the arbitral award would be unsustainable. Accordingly, the award to the extent that it had rendered awards against the said claims has been set aside. Consequently, the interest awarded in respect to the said sum and costs (claim No.11) are also set aside.

26. For the reasons as set out in the order passed in COMAP No.54/2025, the impugned award to the extent of the amounts as awarded against claim Nos.1, 6(a) and 7 is set aside. Consequently, the impugned award to the extent of interest awarded on the said amount as well as costs is also set aside.

27. The present appeal is allowed in the aforesaid terms.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

KPS