HC-KAR

NC: 2026:KHC:43136-DB
COMAP No. 623 of 2025

CNR: KAHC010763322025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH 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. 623 OF 2025

BETWEEN:

1. UNION OF INDIA
REPRESENTED BY
DEPUTY CHIEF ENGINEER
THROUGH SRI MANJUNATH G.C.
SENIOR SECTION ENGINEER (LAND)
BENGALURU DIVISION
SOUTH WESTERN RAILWAY
BENGALURU - 560 001

...APPELLANT

(BY SRI K. ARVIND KAMATH, ASG A/W
SMT. ANUPAMA HEGDE, ADVOCATE)

AND:

1. M/S SRI MARUTHI BUILDERS
REPRESENTED BY ITS MANAGING DIRECTOR
SRI K. SHYAMA RAJU
CIVIL, PWS & RAILWAY CONTRACTOR
NO. 22/4, RACE COURSE ROAD
GANDHI NAGAR
BANGALORE - 560 009

2. ARBITRAL TRIBUNAL
COMPRISING OF SOLE ARBITRATOR

SRI MAHESH KUMAR GUPTA
RETD. MEMBER ENGINEERING
RAILWAY BOARD
FLAT NO. B2/12, 12TH FLOOR
VANASHREE - CHS, PLOT 1 AND 2
SECTOR - 58 A, NERUL
NAVI MUMBAI - 400 706

...RESPONDENTS

(BY SRI KRISHNA MURTHY, ADVOCATE FOR C/R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF COMMERCIAL COURTS ACT, PRAYING TO SET ASIDE THE ORDER DATED 04.06.2025, PASSED BY THE LEARNED LXXXV (CCH-86) ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN COM.AP.NO.172/2024 THEREBY DISMISSING THE ARBITRATION PETITION FILED BY THE APPELLANT HEREIN & ETC.

THIS APPEAL, COMING ON FOR ORDERS, 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. The appellant [**Railways**] has filed the above captioned appeal under Section 37 of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning the order dated 04.06.2025 [**impugned order**] passed by the learned LXXXV (CCH-86) Additional City Civil

and Sessions Judge, Bengaluru, [**Commercial Court**] in Com.AP.No.172/2024. The said petition was filed under Section 34 of the A&C Act seeking setting aside of the arbitral award dated 30.06.2024 [**impugned award**] passed by the Arbitral Tribunal comprising a sole arbitrator [**the Arbitral Tribunal**].

2. The present appeal has been filed after a delay of 104 days and is accompanied by an application seeking condonation of delay. The only explanation provided in the affidavit accompanying the said application indicates that the delay was occasioned by time taken at various bureaucratic stages. It is stated that after the impugned order was passed, the department had on 12.06.2025 sent a letter to the Law Officer seeking legal opinion, which was received on 19.06.2025. However, thereafter, for almost a month, nothing further happened except discussions with higher authorities. On 14.07.2025, approval was sought from the headquarters. Thereafter, for more than one and a half months, nothing further happened. The approval was received on 03.09.2025. By that time, the time limit for filing the present appeal had expired on 03.08.2025. However, even after 03.09.2025, no immediate steps were taken. After a month, on 03.10.2025, a letter

was sent to the Additional Legal Advisor, Ministry of Law and Justice, to nominate a Central Government Counsel to file a commercial appeal. The Government Counsel was nominated more than a month thereafter, on 10.10.2025. However, the nominated advocate could not accept the assignment due to ill health, and he sent a letter dated 06.11.2025 for re-nomination. Thereafter, another counsel was nominated on 07.11.2025, and the present appeal was filed on 20.11.2025. The application seeking condonation of delay was filed later on 22.01.2026.

3. Given the legislative intent to provide a shorter period of 60 days for filing an appeal under Section 13(1A) of the Commercial Courts Act, 2015 in matters involving commercial disputes, an inordinate delay of 104 days due to such bureaucratic delays cannot be condoned. It would be debilitating to the legislative intent if a delay of more than a month at several bureaucratic stages can be accepted as sufficient cause preventing filing of the appeal. In view of the above, the application seeking condonation of delay is liable to be rejected.

4. Having stated above, we have also examined the present appeal on merits for the sake of completeness.

5. The impugned award was rendered in the context of the dispute that had arisen in the following factual context.

6. On 21.08.1992, the Railways entered into an agreement with the respondent No.1 [**the Claimant**] for manufacture and supply of 2,50,000 concrete sleepers, including the transport to the Railway Station/siding and loading into Railway wagons and onto lorries. Clause 26 of the said agreement provides that adequate land, subject to a minimum of 3 acres, was required for setting up a factory and stacking of sleepers near the siding and may be licensed out by the Railways to the claimant. A fixed license fee of ₹25,000/- per acre per year was agreed. Pursuant to the said agreement, the Railways provided the claimant with land measuring 3.92 acres to set up the sleeper manufacturing and related facilities.

7. There is controversy as to whether the contracts for supply of sleepers were entered into with the Claimant on a back-to-back basis. According to the Claimant and as recorded in the impugned

award, the contracts for supply of sleepers were continuously awarded to the Claimant from time to time. According to the Railways, there were certain gaps between different contracts. However, the Claimant continued to be in possession of the licensed land.

8. On 23.05.1996, the Railways placed another order for 5,00,000 sleepers. This was followed by another agreement entered into on 21.11.2000, whereby the Railways agreed to purchase, and the Claimant agreed to supply 2,42,000 sleepers.

9. In the meantime, the Railways issued a Master Circular[1], *inter alia,* stipulating that the license fee at 6% of the market value of land would be collected on licensed lands.

10. On 26.05.2003, yet another agreement was entered into between the parties, whereby the Claimant agreed to supply 1,14,000 concrete sleepers at the rate of ₹706.40/- per sleeper. Whilst the agreements entered into between the parties prior to 2003 are not on record, the said agreement has been placed on record. It provided that 50% of the said quantity would be supplied

[1]Railway board circular letter No.83/W2/LN/18/87, dated 29.08.1995.

on or before 26.10.2004 and the balance 50% would be supplied on or before 31.10.2005. The said agreement also provided for licensing of the railway land. Clause 24 of the said agreement is relevant and reads as under:

> "**24. Licensing of Railway Land:**
>
> 24.1. Licensing of Railway land required either for setting up a factory or stacking of sleepers near to the siding to the extent available and surplus to Railway's requirement will be dealt with under normal Railways Rules prevalent from time to time.
>
> 24.2. The land so licensed out to the contractor shall remain in his possession during the currency/ extended currency of the contract. The contractor will not have the right to subject, assign or mortgage the land licensed to him."

11. Meanwhile, on 10.02.2005, the Railway Board issued another Master Circular[2] providing a methodology for fixing license fee. The said circular also provided for a methodology for fixing the land value.

12. On 11.03.2005, the Railways issued a demand notice seeking to recover an amount of ₹1,14,25,476/- (One Crore Fourteen Lakhs Twenty Five Thousand Four Hundred and Seventy Six Only) towards arrears of licence fee from June 1999 to March

[2]Policy Circular (Master Circular) letter No:2005/LML/18/8.

2005 on account of revision of the license fees. The Claimant disputed the said demand.

13. The said disputes were referred to arbitration. The sole arbitrator was appointed on 28.08.2009. The said proceedings culminated in an arbitral award dated 20.04.2011, whereby the learned arbitrator determined the license fee on the basis that the value of the subject land as ₹2,00,000/- per acre as on 01.01.1985. The dispositive part of the said award reads as under:

> "The Claimant shall be liable to pay the license fee as under:-
>
> (1) The license fee for the period between 01.12.2001 to 31.03.2002 i.e. four months shall be fixed taking license fee as ₹60654/- per acre per year. Hence for four months period the license fee will be **₹20218** per acre. The market value for this purpose has been taken as 2.0 lakh per acre as on 01.04.1985 and the same is increased by 10% per year to arrive the market value as on 01.04.2001, which works out to 1010894/-).
>
> (ii) For the period 01.04.2002 to 31.03.2003, the license value per acre/per year is ₹66719/- (market value has been taken as ₹11,11,983/- per acre).
>
> (iii) For the period 01.04.2003 to 31.03.2004, the license fee is ₹73391/- per acre per year (market value is taken as ₹12,23,182/- per acre i.e 10% increase over previous year's market value).
>
> (iv) For the period from 01.04.2004 to 31.03.2005, the license fee is ₹74,231/- per acre per year (market value is taken as ₹12,37,182/- per acre i.e. 7% increase over previous year's market value).

(iv) For the period from 01.04.2005 to 31.03.2006, the license fee payable is ₹75155/- per acre per year (market value is taken as ₹12,52,582/- per acre i.e. 7% increase over previous year's market value).

As the supply in the four contracts, in which the disputes arisen, was to be completed by 30.04.2006, the respondent is at liberty to fix the land license fee beyond this period, as the same is not covered in the terms of reference.

5.2 Claims No.2: Direct the respondents to adopt a reasonable basis for calculating the market value of the land having regard to the price offered by them for the mono block concrete sleepers.

Award: Already covered in the award for claim No.1.

5.3 Claim No.3: Direct the Respondents not to enforce any of the demand made by them.

Award: The Claimant shall be deemed to pay the license fee for the period in question i.e. upto 30.04.2006, as per the award made for Claim No.1 above.

5.4 Claim No.4: Direct the Respondents to pay a sum of 2.50 lakh towards the cost of this arbitration proceeding.

Not admitted, as detailed not furnished by the Claimant, hence Award is NIL.

5.5 Claim No.5: To decide the extent of land available with the Claimant.

As the Claimant has failed to produce any document/proof for having returned the land to the tune of 1.20 acre to the Respondent, the extant of land available with the Claimant is considered as 3.92 acre only and the respondent is liable to collect license fee for the actual area of land in possession of the Claimant.

5.6 Claim No.6: To pass such other orders as may be appropriated in the circumstances of the case.

Not coming under the purview of terms of reference, hence no order.

6.0 ARBITRATION CHARGES:

An amount of 22000/- (₹11000/- each by respondent & Claimant) was deposited. The entire amount of ₹22000/, so deposited by the Respondent & Claimant has been adjusted against Arbitrator's fees, Secretarial expenses & stationery expenses."

14. During the aforesaid arbitration proceedings, on 30.07.2010, the parties entered into another agreement for the supply of 3,00,000 sleepers. Thereafter, on 13.01.2019, the parties entered into yet another agreement for the supply of 1,91,526 sleepers.

15. On 09.10.2020, the Railways issued a bill demanding ₹5,38,12,410/- (Rupees Five Crores Thirty Eight Lakhs Twelve Thousand Four Hundred and Ten Only) as the license fee for the period 2011 to 2021. Thereafter, on 05.12.2022, the Railways revised the said bill to a sum of ₹69,26,44,514/- for the period from 01.04.2006 to 31.03.2023.

16. By a communication dated 06.07.2023, the Railways referred the following disputes for adjudication to the Arbitral Tribunal:

Sl. No.	Description of Claims	Claims (in Rs).
01.	Determine the land license fee to be paid from the period commences from 01.04.2006 to 31.03.2023 in terms of the policy	Not Quantified

	circular (Master Circular) issued by Railway Board vide letter No.2005/LML/18/8 dated 10.02.2005	
Railway Counter Claims		
01.	The land license fee to be paid M/s Sri Maruthi Builders from the period commences from 01.04.2006 to 31.03.2023 communicated vide demand notice No. B/W.277/ M/s.Maruthi Builders/YPR dated 05.12.2022 by DRM (Works)/SBC in terms of policy circular (Master Circular) issued by Railway Board vide letter No.2005/LML/18/8 dated 10.02.2005.	69,26,44,514.00 (Rs. Sixty-Nine Crore Twenty-Six Lakh Forty-Four Thousand and Five hundred Fourteen Only)
	Total Amount	69,26,44,514.00 + Not Quantified

17. The arbitral proceedings culminated in the impugned award. The Arbitral Tribunal referred to the earlier arbitral award dated 20.04.2011, and accepted the market value of licensed land as ₹2,00,000/- per acre as on 01.01.1985. On the aforesaid basis, the Arbitral Tribunal determined the license fee at ₹93,64,800.28 for the period from 01.04.2006 to 31.03.2023. In the meantime, the claimant had already paid an amount of ₹96,76,243/-. Therefore, the Arbitral Tribunal directed that the said amount be deducted from the license fee as determined and the remaining be paid

along with applicable statutory taxes. The counterclaims raised were rejected.

18. Aggrieved by the impugned award, the Railways preferred a petition under Section 34 of the A&C Act to set aside the impugned award (COMAP.No.172/2024). It was contended before the learned Commercial Court that the impugned award was liable to be set aside under Section 34(2)(a)(iv) of the A&C Act as the Arbitral Tribunal had gone beyond the terms of the reference. The learned Commercial Court examined the terms of reference and noted that it required the Arbitral Tribunal to determine the land license fee [**LLF**] for the period from 01.04.2006 to 31.03.2023 in terms of the Master Circular dated 10.02.2005. Therefore, the impugned award was within the terms of the reference. In so far as the merits of the disputes are concerned, the Commercial Court found that the same was beyond the scope of Section 34 of the A&C Act and, following the decisions of the Supreme Court in the case of **Associate Builders v. DDA**[3] **and Ssangyong Engineering and**

[3] (2015) 3 SCC 49

Construction Company Limited v. NHAI[4], rejected the said petition.

19. The learned Additional Solicitor General [**ASG**] contended that the impugned award is vitiated by patent illegality as it proceeds on the basis that the earlier arbitral award dated 20.04.2011 between the parties constituted a binding precedent and the disputes were *res judicata*. He submitted that the Arbitral Tribunal failed to note that the earlier award expressly recorded that the Railways had the liberty to fix the LLF beyond 30.04.2006 and the same was not covered under the terms of reference. He submitted that the Arbitral Tribunal was required to determine the LLF afresh for the period after 31.03.2006 uninfluenced by the arbitral award dated 20.04.2011. He earnestly contended that the failure to do so vitiated the impugned award.

20. As the learned ASG rightly pointed out, the terms of reference expressly required the Arbitral Tribunal to determine the LLF for the period from 01.04.2006 to 31.03.2023 in terms of the Master Circular dated 10.02.2005. This prompts us to examine the said circular, the relevant extract of which is set out below:

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[4] (2019) 15 SCC 131

"3. **RATES OF LICENSE FEES:**

3.1 Licence fee of plots will continue be fixed as a percentage of the land value, determined as per the procedure detailed in Para-5 below. The percentage applicable w.e.f 01.04.2004 to various types of plots will be as under:

Item No.	Type of plots	Annual license fee as a percentage of land value.
(a)	Railway related activities such as City Booking offices out agencies, etc.	6%
(b)	Ordinary commercial Plots - without structures	6%
(c)	Ordinary Commercial Plots - with temporary structures for stacking / storing (i) Covered area (ii) Open area	(i) 7 ½% (ii) 6%
(d)	Steel yards / Coal Dumps. Bulk Oil Installations etc.	7 ½%
(e)	Land used to lay private sidings	6%
(f)	Shops/Retail Depots etc.	10%

…….

5.0 Fixing of land value

5.1 A market value would however, be required to be taken to serve as a base value for working out rental fee payable. This shall be fixed on the basis of the land value of the surrounding area as on 01.01.1985, as determined from the Revenue Authorities and / or from the following:

a) Evaluation of Town Planning Department;
b) Actual as per PWD and CPWD transactions;
c) Actual transactions, as per documents, filed the office of the Sub Registrar.
d) Value of land as assessed by professional evaluators of the State and Central Govt.

5.2 The land value as worked out shall be increased every year on the 1st of April, starting from 01.04.1986 at the rate 10% over the previous year's land value to arrive at the land value for the following year based on which the annual license fee shall fixed. From 01.04.2004 onwards, the land value shall be Increased at the rate of 7% every year over the previous year's value.

5.3 However, for fresh cases of licensing of plots for any purpose(s) as defined in Para 3.1 (a) to (e) above, the license fee shall be fixed after obtaining the current value of land. In very rare cases where it is not possible to obtain the current cost (reason for which should be brought on record), the updated cost based on 01.01.1985 land price should be adopted.

** ** ** **

7.0 Revision of license fee

7.1 As the notional land value will increase by 7% over the previous year's land value as mentioned in Para 5.2 above, the license fee will automatically go up by 7% over the previous year's the license fee will automatically go up by 7% over the previous year's fee from the first of April every year. Suitable provisions, with the schedule of payment due, may be incorporated in the agreement.

7.2 The termination/renewal date of the agreement should always be the end of financial year so that there is no confusion and a better watch Is kept on renewals."

21. It is apparent from the above that the Arbitral Tribunal was required to determine the land value as on 01.01.1985 and determine the annual licence fee at the rate of 6% of that value. In this context, the Arbitral Tribunal referred to the earlier award, which had determined the land value as on 01.01.1985 at ₹2,00,000/- per acre, based on the value ascertainable from the registered deed and the value fixed by the revenue authorities. There is no dispute that the arbitral award dated 20.04.2011, which fixed the licence fee for the subject land for the period from 01.12.2001 to 31.03.2006, was based on the market value of the subject land as on 01.01.1985, as determined on the basis of various documents, including the sale deed (Document No.2289 on the file of the Sub-Registrar, Bengaluru North Taluk for Survey No.67). A plain reading of the said arbitral award also indicates that the licence fee was fixed bearing in mind the Master Circular. Indisputably, the Railways accepted the arbitral award dated 20.04.2011 and did not challenge it. Thus, on the basis of the said award, the Arbitral Tribunal accepted that the value of the subject land as on 01.01.1985 was ₹2,00,000/- per acre. The said view is

neither perverse nor unreasonable. It cannot be considered as vitiating the impugned award on the ground of patent illegality.

22. We may note that there is no serious dispute as to the value of land as on 01.01.1985. The learned ASG submitted that, under clause 5.3 of the Master Circular, the license fee had to be fixed after obtaining the subject land's current value. He submitted that the Arbitral Tribunal had ignored the agreements between the parties, which expressly provided that the land licensed to the claimant would be for the extended currency of the contract.

23. Therefore, the claimant's license for the land would also end with the expiry of the term of the contract for supply of concrete sleepers. He argued that in this view, each successive period of the contract was required to be considered as a fresh case. Consequently, in terms of clause 5.3 of the Master Circular, the Arbitral Tribunal was required to determine the license fee for the successive periods as fresh cases, taking the current value of land, and it is only in rare cases that the current value was required to be updated based on the land price as on 01.01.1985.

24. We have read the statement of objections filed before the Arbitral Tribunal. It was not the case of the Railways that it granted a fresh license with each successive agreement, and there was a break in the license after the term of each agreement to supply sleepers ended. Concededly, the parties did not execute a written license. However, it is conceded that the land was provided on a license basis way back in the year 1992. Undisputedly, the claimant has been in continuous possession of the subject land as a licensee, and it is not the Railway's case that the term of the claimant's license over the subject land has expired. The learned ASG also fairly stated that the claimant has been granted permission to use the subject land since 1992.

25. The Arbitral Tribunal has recorded the submissions advanced on behalf of the Railways in the impugned award. It is also apparent from the same that it was never the contention of the Railways that there was any break in the licence or that the claimant had continued to occupy the subject land without a licence at any point in time. Thus, the LLF payable by the claimant could not be considered as determination of LLF in a fresh case as referred to under clause 5.3 of the Master Circular dated

10.02.2005. Plainly, the impugned award cannot be faulted on the said ground.

26. We do not find that the Arbitral Tribunal's view is perverse or vitiates the impugned award by patent illegality. This Court is not required to re-adjudicate the dispute and supplant its opinion in place of that of the Arbitral Tribunal. An arbitral award cannot be interfered with unless any of the grounds set out under Section 34 of the A&C Act are established. In the present case, none of the grounds on which an arbitral award can be interfered with under Section 34 of the A&C Act is made out.

27. In view of the above, the application - I.A.No.2/2026 is rejected. Consequently, the present appeal is dismissed on merits.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

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List No.: 1 Sl No.: 1