RESERVED ON 1ST SEPTEMBER 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

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

COMMERCIAL APPEAL NO. 342 OF 2025

BETWEEN:

1. M/S BSR INFRATECH INDIA LTD
NO.851, D BLOCK
15TH CROSS, SAHAKARNAGAR
BENGALURU - 560 092
REPRESENTED BY ITS DIRECTOR
J. JAGAPATHY CHOUDARY

...APPELLANT

(BY SRI ZULFIKIR KUMAR SHAFI, ADVOCATE)

AND:

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

2. SRI K.N. KESHAVANARAYAN
FORMER JUDGE
HIGH COURT OF KARNATAKA
ARBITRATION AND CONCILIATION
CENTRE - BENGALURU
(DOMESTIC & INTERNATIONAL)
III FLOOR, EAST WING

"KHANIJA BHAVAN"
RACE COURSE ROAD
BENGALURU - 560 001

...RESPONDENTS

(BY SRI KIRAN V. RON, AAG A/W
SMT. NILOUFER AKBAR, AGA FOR R-1)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF COMMERCIAL COURT ACT, 2015, READ WITH SECTION 37 OF THE ARBITRATION AND CONCILIATION ACT, 1996 PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 25.03.2025 IN COM.A.P.NO.98/2024 PASSED BY THE HON'BLE LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (COMMERCIAL COURT) (CCH-84) AT BENGALURU & 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, M/s BSR Infratech India Ltd. [**BSR**], has filed the present appeal under Section 13(1A) of the Commercial Courts Act, 2015 [**CC Act**] read with Section 37 of the Arbitration and Conciliation Act, 1996 [**A&C Act**], impugning a judgment dated 25.03.2025 [**impugned judgment**] passed by the learned LXXXIII Additional City Civil and Sessions Judge, Commercial Court,

Bengaluru (CCH-84) [Commercial Court] in Com.A.P.No.98/2024. BSR had filed the said petition under Section 34 of the A&C Act assailing an arbitral award dated 10.11.2023 [**impugned award**] rendered by the learned Sole Arbitrator [**Arbitral Tribunal**] in A.C.No.107/2021. The learned Commercial Court found no ground to interfere with the impugned award and accordingly passed the impugned judgment dismissing the petition.

2. BSR was the claimant before the Arbitral Tribunal and respondent No.1, the State Project Director, Rashtriya Madhyamika Shikshana Abhiyana [**the SPD**], was the respondent. In terms of the impugned award, the Arbitral Tribunal partly allowed BSR's claims and directed the SPD to pay a total sum of ₹2,83,23,688/- (Rupees two crores eighty-three lakhs twenty-three thousand six hundred and eighty-eight only) together with future interest at 9% per annum, comprising ₹1,80,78,950/- towards unproductive overhead charges (Claim No.7(a)) and ₹1,02,44,738/- towards loss of expected profit (Claim No.8); and ₹2,00,000/- towards costs (Claim No.12).

3. The present appeal is one of a batch of four appeals – COMAP Nos.316/2025, 340/2025, 341/2025 and 342/2025 filed by BSR against the respective judgments of the Commercial Court

(Com.A.P.No.96/2024, Com.A.P.No.95/2024, Com.A.P.No.97/2024 and Com.A.P.No.98/2024) – dismissing its petitions under Section 34 of the A&C Act assailing separate arbitral awards rendered by the Arbitral Tribunal, constituted of the same Sole Arbitrator, in respect of the contracts for separate packages awarded to BSR. The impugned award herein, is also the subject matter of COMAP No.485/2024, one of a batch of five appeals (COMAP Nos.484/2024 to 488/2024) filed by the SPD.

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 SPD and took up 2,024 civil works under 77 packages between 2009 and 2015. The said civil works involved construction of new school buildings, Adarsha Vidyalayas [**model schools**] and girls' hostels, and strengthening and up-gradation of existing schools at an aggregate cost of ₹1,645.70 crores. The scheme has since been integrated with Samagra Shikshana Karnataka in 2018-2019.

5. On 24.09.2012, tenders were invited on a package basis through the e-procurement portal in respect of works spread over thirty districts of the State, for a total of 52 packages. BSR emerged the successful bidder in respect of five packages. The present dispute pertains to Package A-19 – Construction of Adarsha Vidyalayas at K.R. Nagar, Mysore, H.D. Kote, Nanjangud, Hunsur and T. Narasipura, and Girls' Hostel at K.R. Nagar Block, of Mysore District [**the subject package**] – comprising six Adarsha Vidyalayas and one Girls' Hostel spread over seven work sites. After BSR was declared as the successful bidder, the parties entered into negotiations, pursuant to which BSR agreed to a contract price of ₹30,74,26,000/- (₹3074.26 lakhs).

6. By Letter of Acceptance dated 18.03.2013 (Ex.C2), the SPD accepted BSR's offer for the said contract price in respect of the subject package and called upon BSR to furnish the requisite security deposit.

7. The parties executed a Construction Agreement [**the Agreement**] dated 15.05.2013 (Ex.C3) for execution of the works under Package A-19. Clause 4 of the agreement stipulates that the letter of acceptance, the contract data, the General Conditions of

Contract and the Special Conditions of Contract, among other documents, formed an integral part of the agreement.

8. The notice to proceed with the work was issued on 17.05.2013 (Ex.C4) and the stipulated period of completion was twenty months therefrom, which expired on 16.01.2015. During execution, additional quantities and EIRL items were required to be executed. Upon approval of the competent authority, the parties entered into a Supplementary Agreement dated 24.03.2017 for the additional work and cost, and the revised contract value was determined at ₹3460.09 lakhs as against the original contract price of ₹3074.26 lakhs.

9. There was delay in execution of the works and they were not completed within the stipulated period. BSR attributed the delay, *inter alia*, to (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; and (v) scarcity of materials and labour on account of the scattered nature of the work sites. BSR claims that it submitted price escalation bills in terms of Clause 39 of the Conditions of Contract; none of the said bills were paid. The SPD, on the other hand, contended that no price adjustment clause was applicable to the Agreement in respect of the subject works.

10. 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, 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.

11. The said Government Order was impugned by three 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, a 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, observing that whether the price adjustment clause was incorporated with approval or inserted unauthorisedly is a disputed question of fact, and relegated the petitioners to arbitration. The intra-court appeals were disposed of by a Division Bench of this

Court observing that the parties would be governed by the terms of the contract entered into by them in respect of the various packages awarded by the State.

12. By its letter dated 11.03.2019 (Ex.C40), BSR set out the causes of delay and its claims and sought favourable consideration thereof, and sought to invoke the dispute resolution mechanism under Clause 23 of the Conditions of Contract read with Clause 4 of the Special Conditions of Contract; and by legal notice dated 08.05.2019 (Ex.C41), it invoked the arbitration agreement, attributing breach of contract to the SPD.

13. The SPD responded by reply dated 11.06.2019 (Ex.C42), contending, *inter alia*, that the reference to arbitration was premature in view of the pendency of the intra-court writ appeals.

14. BSR filed an application under Section 11 of the A&C Act, being C.M.P.No.263/2019, 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.

15. By Government Order dated 30.09.2020 (Ex.R2), the GoK adopted the recommendations of a Technical Advisory Committee

and directed, among other things, that (i) extension of time and the resultant penalty be ascertained in respect of each work site individually, instead of the package as a whole; (ii) the administration be held responsible for delay caused on account of reasons beyond the control of the contractor; and (iii) price adjustment be allowed in respect of the 25 packages whose tender conditions contained the price adjustment clause. By an order dated 13.01.2021 (Ex.R3), extension of time was granted to BSR without penalty.

ARBITRAL PROCEEDINGS

16. BSR filed its Statement of Claims before the Arbitral Tribunal claiming an amount of ₹80,03,19,726/- (Rupees eighty crores three lakhs nineteen thousand seven hundred and twenty-six only) under thirteen heads, together with interest at 24% per annum from the date of the claim petition till payment, and costs. The summary of claims as set out in the Statement of Claims is reproduced below:

SUMMARY OF CLAIMS

Claims	Particulars	Claim Amount (Amt. in ₹)
Claim No.1	Payment of Price Adjustment/Escalation Bill	4,53,24,186
Claim No.2	Payment of equitable enhanced	2,91,75,505

Claims	Particulars	Claim Amount (Amt. in ₹)
Claim No.3 **Claim No.4**	rates executed beyond tender completion period.	
	Payment of equitable enhanced rates executed beyond Tender Completion Period for extra Items.	
	Payment of equitable enhanced rates executed beyond Tender Completion Period for quantities of 125%	
Claim No.5	Refund of Excess Royalty Charges	19,81,068
Claim No.6	Payment towards idle men, machinery and establishment during original tender period.	7,47,95,600
Claim No.7(a)	Payment of unproductive overhead charges.	2,32,55,404
Claim No.7(b)	Payment of additional overhead charges.	56,37,903
Claim No.8	Payment towards loss of expected profit on the balance work as on original tender completion date.	2,32,55,404
Claim No.9(a)	Loss of expected profit due to non-receipt of profit by tender completion period.	11,62,77,020
Claim No.9(b)	Loss of expected profit due to non-receipt of profit by actual completion period.	2,73,72,950
Claim No.10	Payment towards additional Bank Guarantee charges beyond original agreement period.	5,98,370

Claims	Particulars	Claim Amount (Amt. in ₹)
Claim No.11	Payment towards interest on claim amount calculated upto 31.12.2020 at the rate of 24%.	45,08,47,944
Claim No.12	Payment of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) towards Cost of Litigation.	12,00,000
	TOTAL	**80,03,19,726**

17. It was BSR'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. BSR claimed that the SPD did not hand over the sites within the stipulated period despite various requests. Thus, BSR was effectively prevented from completing the contract within time, and the execution of the works was prolonged. BSR alleged that the SPD also withheld amounts due to BSR, which compelled BSR to seek reference of disputes to arbitration.

18. The SPD contended that no price adjustment clause was applicable to the Agreement in respect of the subject works, and that, in any event, the notice inviting tender required the price variation clause to be treated as deleted, such that the SPD was not bound by it. The SPD further contended that the delay, if any,

had been suitably compensated by extension of time granted without imposition of penalty, and that the claims, aggregating ₹80,03,19,726/-, were fictitious, unsubstantiated and beyond the scope of arbitration.

19. 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 38.4 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 10 of SOC?
>
> 6. Whether the Claimant is entitled for payment towards past interest on the amounts claimed up

to 31-12-2020 at 24% PA as claimed under claim No.11 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?"

20. The Arbitral Tribunal, after examining the evidence and materials placed on record, found that the non-completion of the contract within the stipulated period was, in substantial part, for reasons attributable to the SPD, while also finding that BSR was partly responsible in certain respects. The Arbitral Tribunal further rejected the SPD's contention that non-compliance with Clause 38.4 of the Conditions of Contract rendered the claims not tenable. However, on a consideration of the material placed on record, the Arbitral Tribunal did not find merit in BSR's claim for price adjustment and rejected the same in its entirety.

21. The Arbitral Tribunal partly allowed Claim Nos. 7(a), 8 and 12, and awarded future interest, but rejected the remaining claims, being Claim Nos.1 to 6, 7(b), 9(a), 9(b), 10 and 11, in their entirety.

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

"AWARD

The claims of Claimant as put forth in Statement of Claim are allowed in part as under:

(1) Claim Nos.7(a) is allowed in part in a sum of Rs.1,80,78,950/- only as against claim of Rs.2,32,55,404/-;

(2) Claim No.8 is allowed in part in a sum of Rs.1,02,44,738/- only as against the claim of Rs.2,32,55,404/-;

(3) Respondent is directed to pay to Claimant a total sum of Rs.2,83,23,688/- as per Sl.No.(1) and (2) above together with future interest at the rate of 9% per annum from the date of this Award till the date of payment;

(4) Claim No.12 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;

(5) Claim Nos.1 to 6, 7(b), 9(a), 9(b), 10 and 11 are rejected in their entirety;

(6) 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."

23. The impugned award was assailed by the appellant before the learned Commercial Court in Com.A.P.No.98/2025 under

Section 34 of the A&C Act. The learned Commercial Court, by the impugned judgment dated 25.03.2025, found no infirmity warranting interference with the impugned award and dismissed the petition, giving rise to the present appeal.

REASONS AND CONCLUSIONS

24. We may note, at the outset, that BSR had confined its challenge to the impugned award to the denial of its claim for the price adjustment escalation. The learned Arbitral Tribunal rejected the said claim on the ground that BSR failed to place evidence to establish the amounts claimed. The learned Commercial Court found no grounds to interfere with the learned Arbitral Tribunal's decision to reject the claim for want of necessary evidence.

25. The learned counsel for BSR earnestly contended that the SPD did not dispute the quantum of the claim; thus, BSR had no occasion to establish the said measure. He contended that the principal dispute in Claim No. 1 was essentially confined to whether the price adjustment clause was a part of the contract between the parties or was specifically excluded. It was the SPD's case that the tender document expressly mentioned that the price adjustment

clause would not be applicable and, therefore, any claim under the said clause was not maintainable.

26. While addressing the question, it would be relevant to refer to the averments made by BSR in its statement of claims. BSR claimed that, at the stage of negotiations, it had brought to the SPD's attention that the sites were located in remote villages and were scattered. Thus, the cost of transporting material, mobilising labourers, and other establishment charges would be substantially higher than the cost of the works if they were carried out at a single location. BSR claimed that notwithstanding the same, it had offered discounted rates during the negotiations after factoring in the provision relating to price escalation and economies of scale, which would enable BSR to perform its work within the negotiated amount. It averred that there was delay in execution of the works on several grounds including, (a) delay in supply of agreement copies and signing of conditions of contract; (b) delay in handing over of site; (c) delay in performance of pooja; (d) delay in supply of drawings; (e) non-availability of water and power sources; (f) scarcity of sand; (g) increase in quantities; (h) delay in payment; (i) delay in approval of work slips/EIRL; (j) increase in cost of material

due to shortage; (k) posting of technical staff (l) loss of working season; and (m) extension of BGs.

27. BSR claimed that all the impediments stated above were beyond its control and several of the impediments were caused by acts of omission and commission on the part of the SPD, for which BSR was entitled to be compensated. In the aforesaid background, BSR claimed entitlement to the claims listed in paragraph 28 of the Statement of Claims. The said paragraph is set out below:

> "28. In the light of the narrative above and read with the provisions of the contract, the undersigned Contractor is entitled to legitimate claims which are as herein below:
>
> Claim No.1: Payment of Price Adjustment/ Escalation Bill
>
> Claim No.2: Payment of equitable enhanced rates executed beyond tender completion period.
>
> 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: Refund of Excess Royalty Charges.
>
> Claim No.6: Payment towards idle men, machinery and establishment during original tender period.
>
> Claim No.7: Payment for unproductive/ additional overhead charges beyond original tender period.

Claim No.7 (a): Payment of unproductive overhead charges.

Claim No.7 (b): Payment of additional overhead charges.

Claim No.8: Payment towards loss of expected profit on the balance work as on original tender completion date.

Claim No.9: Payment of loss of expected profit due to delay of the Department.

Claim No.9(a): Loss of expected profit due to non-receipt of profit by tender completion period.

Claim No.9 (b): Loss of expected profit due to non-receipt of profit by actual completion period.

Claim No.10: Payment towards additional Bank Guarantee charges beyond original agreement period

Claim No.11: Payment towards interest on claim amount calculated upto 31.12.2020 at the rate of 24%.

Claim No.12: Payment of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) towards Cost of Litigation.

SUMMARY OF CLAIMS

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<tr><td>Payment of equitable enhanced rates executed</td></tr>
</table>

	beyond Tender Completion Period for extra Items.	
	Payment of equitable enhanced rates executed beyond Tender Completion period for quantities of 125%	
Claim No.5	Refund of Excess Royalty Charges	19,81,068
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Claim No.8	Payment towards loss of expected profit on the balance work as on original tender completion date.	2,32,55,404
Claim No.9(a)	Loss of expected profit due to non-receipt of profit by tender completion period.	11,62,77,020
Claim No.9(b)	Loss of expected profit due to non-receipt of profit by actual completion period.	2,73,72,950
Claim No.10	Payment towards additional Bank Guarantee charges beyond original agreement period	5,98,370
Claim No.11	Payment towards interest on claim amount calculated upto 31.12.2020 at the rate of 24%.	45,08,47,944

Claim No.12	Payment of Rs. 12,00,000/- (Rupees Twelve Lakhs Only) towards Cost of Litigation.	12,00,000
TOTAL		**80,03,19,726**

28. Apart from the aforesaid paragraph, the Statement of Claims contained no averment as to how the Claim No.1 for a sum of ₹4,53,24,186/- was worked out.

29. We may, at this stage, refer to Clause 40 of the conditions, which is set out below:

> "40. Price Adjustment:
>
> 40.1 Contract price shall be adjusted for increase or decrease in rates and prices of labour, materials, fuels and lubricants in accordance with the following principles and procedures and as per formulae given in the Contract Data.
>
> (a)The price Adjustment shall apply for the work done from the date of commencement up to the end of original period of completion or extensions granted by the Employer and shall not apply to work carried out beyond the stipulated period of completion for reasons attributable to the Contractor;
>
> (b) Price Adjustment shall be admissible from the date of opening of tenders (original or extended).
>
> (c) The price adjustment shall be determined during each quarter from the formulae given in Contract Data.

> (d) Following expressions and meanings are assigned to the work done during the quarter.
>
> R = Total value of work done during the quarter. It will exclude value for works executed under variations for which price adjustment (if any) will be worked out separately based on the terms mutually agreed.
>
> 40.2 To the extent that full compensation for any rise or fall in costs to the contractor is not covered by the provisions of this or other Clauses in the Contract, the unit rates included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs."

30. As is evident from the above, in terms of Clause 40.1 (c), the price adjustment is required to be determined on the basis of the formulae as set out in the 'Contract Data' (which is one of the documents forming part of the contract). Separate formulae are provided for adjustment for the labour component, adjustment for the cement component, adjustment for the steel component, adjustment for the fuel and lubricant component, adjustment for plant and machinery space components and adjustment for other materials.

31. Concededly, BSR had not provided any details of the variables used to apply the formulae.

32. The SPD had filed its statement of objections before the Arbitral Tribunal traversing the averments made in the Statement of Claims. In relation to the relevant averments in the claim statement, the SPD denied them as "false, baseless, frivolous, imaginary and self-serving statements". The SPD claimed that the price adjustment clause was not a part of the contract and denied the claim in its entirety. Thus, BSR was required to establish not only its entitlement to the claim under the price adjustment clause, but also the measure of such claim.

33. The Arbitral Tribunal found that the Contract Data, which was placed under Section 5 of the tender documents (Ex. R1) that were published in the e-portal, contained a specific notation that read as under:

> "**NOTE**: The Price Adjustment/variation clause Sl.No.40 may be treated as the Price deleted. Hence, Adjustment/Variation is not applicable to this Tender. The Contractors/Bidders are requested to study the tender in detail and quote their rates".

34. On the basis that the price adjustment clause at Sl.No.40 may be treated as deleted, the SPD contended that the price adjustment clause was deleted and did not form part of the

contract. However, the executed documents did not contain the aforesaid notation. The parties had entered into negotiations, and the amounts tendered were reduced pursuant to negotiations. The Arbitral Tribunal accepted BSR's claim that the specific notation that deleted the price adjustment clause was removed from the executed contracts pursuant to the said negotiations. The Arbitral Tribunal thus held that the price adjustment clause was a part of the contract between the parties.

35. Although the Arbitral Tribunal found that the price adjustment clause was part of the contract, it rejected BSR's claim because BSR failed to establish that the amounts claimed were due. The Arbitral Tribunal noted that the price adjustment for increases and decreases in rates and prices is permitted for components such as labour and materials such as cement, steel, fuel and lubricants, and plant and machinery spares. The amount of escalation had to be established on the basis of the formulae stipulated in the Contract Data for each component. However, BSR did not produce any material to establish the quantum of the amount claimed.

36. We consider it apposite to refer to the following extract from the impugned award:

"93. However, Claimant has not produced either a calculation sheet indicating all the relevant factors for deriving the amounts payable for each of the permitted components supported by required documents or produced any documentary evidence to substantiate the total claim of Rs.4,53,24,186/- towards price adjustment. Claimant has also not placed any evidence to show as to how he has arrived at the figure of Rs.4,53,24,186/- towards price adjustment claim.

94. In any of the letters originating from Claimant addressed to Respondent, copies of which are produced in this proceeding, no reference has been made about the submission of the bills for payment towards Price Adjustment. Even in the two representations said to have been submitted to the Hon'ble Minister of State for Primary Education, Government of Karnataka, copies of which are produced at Ex. C27 dated 8.8.2017 and Ex.C30 dated 17.10.2017, except stating that the provision of Price Variation Clause exists in the contract and accordingly they have submitted the price escalation bills for respective works and the payment of the same has not been released till date, details of the bills stated to have been submitted with regard to price escalation, have not been stated therein. Even in Ex.C40, which is stated to be the claim letter from Claimant, though reference has been made to Clause 39 of the contract which provides for Price Adjustment and that the Department was not coming forward to release payment in that regard for which they had regularly submitted bills, the details as to the date of such bills and the amounts claimed have not been furnished in the said letter. Similarly, in the notice at Ex.C41, those details are not forthcoming though the payment Price of Adjustment/Escalation Bill has been put forth under Claim No.1. Even in the spreadsheet produced at Ex.C43, except mentioning the amounts due towards Price Escalation bill in respect of each of the 6 locations, no further details have been shown."

37. As noted above, there were no averments in the statement of claims as to the basis on which the amount claimed had been computed. However, during the course of the arbitral proceedings, BSR introduced a note reflecting the amount of ₹3,23,58,072/- under Claim No.1. Subsequently, the statement furnished along with written submissions reflected the total claim of ₹2,30,01,018/-. The Arbitral Tribunal noted these inconsistencies and the lack of material, and concluded that BSR had failed to establish its claim. The relevant extract of the impugned award is set out below:

> "95. It is also pertinent to note though in Ex.C43, the total amount said to be due under Claim No.1 is shown as Rs.3,23,58,072/-, in SOC under Claim No.1, an amount of Rs.4,53,24,186/- has been claimed. In addition to the above, in the statement furnished along with written arguments, in respect of Claim No.1, Rs.2,30,01,018/- has been shown as due and payable. Thus, there is no consistency with regard to the quantum of amount stated to be due towards Price Adjustment bill. There is no explanation as to how the amount of Rs.4,53,24,186/- put forth under Claim No.1 in SOC and Rs. 3,23,58,072/- shown in Ex.C43, came to be reduced to Rs. 2,30,01,018/- in the statement produced along with written arguments. It is not the case of Claimant that at any time during the pendency of this proceeding, Respondent made part payment towards the Price Adjustment bill. Therefore, it is not clear as to the amount said to be due and payable to Claimant towards Price Adjustment. Claimant has not

> produced copies of bills stated to have been submitted by him seeking payment towards Price Adjustment. No document is produced in proof of various parameters as set out in Price Adjustment
>
> formulae under Contract Data in relation to various components for which Price Adjustment is permitted.
>
> 96. Thus, Claimant has utterly failed to establish the factum that there was Price Escalation in relation to the permitted components during the execution of the works up to the date of stipulated completion period or during the extended period. Claimant has also failed to establish the amount stated to be due and payable with regard to Price Adjustment. In the absence of any evidence, it is not possible for this Tribunal to hold that the Claimant is entitled for payment of any sum towards Price Adjustment/Escalation Bill. In the considered opinion of this Tribunal, Claimant is not entitled for payment of any amount under Claim No.1 and therefore, it is liable to be rejected in its entirety and accordingly it is rejected.
>
> 96. In the light of the above, Claim No.1 is rejected in its entirety."

38. The learned counsel appearing for BSR contended that the variation in the amount as shown in Ex. C43 and the statement filed along with the written arguments can be explained. However, he could not counter the finding that the Statement of Claims did not reflect how the claimed amount was computed. Undeniably, the onus to establish the amount claimed rested on BSR. It was not

only required to establish the basis for its entitlement to price variation, but also the measure of such variation.

39. In the present case, BSR clearly failed to establish the measure of the amount claimed. As noted above, the Statement of Claims also lacks necessary averments in this regard.

40. In view of the above, we find no ground to interfere with the impugned award insofar as the denial of BSR's Claim No.1 is concerned. The learned Commercial Court rightly rejected BSR's application to set aside the impugned award to that extent.

41. The appeal is unmerited and accordingly, dismissed.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

AHB