

RESERVED ON 16TH APRIL 2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 383 OF 2025



BETWEEN:

1. NATIONAL CENTRE FOR BIOLOGICAL SCIENCES
TATA INSTITUTE OF FUNDAMENTAL RESEARCH
BELLARY ROAD
BANGALORE - 560 065
REP BY ITS DIRECTOR

...APPELLANT

(BY SRI ARVIND K. KAMATH, ASGI ALONG WITH
SRI A.K. VASANTHA, ADVOCATE)

AND:

1. M/S URC CONSTRUCTIONS PRIVATE LIMITED
NO.810, 1ST CROSS, 7TH MAIN
H.A.L 2ND STAGE
INDIRANAGAR
BANGALORE - 560 038
REP. BY AUTHORIZED SIGNATORY
SHRI V. GANESAN
2. HON'BLE JUSTICE PRADEEP D. WAINGANKAR
(FORMER JUDGE, HIGH COURT OF KARNATAKA)
THE HON'BLE SOLE ARBITRATOR
THE ARBITRATION AND CONCILIATION CENTRE
(DOMESTIC AND INTERNATIONAL)
KANIJA BHAVAN, RACECOURSE ROAD
BANGALORE - 560 001

... RESPONDENTS

(SRI T. SURYANARAYANA, SENIOR ADVOCATE
ALONG WITH SRI PRATIK PANY, ADVOCATE AND
SRI ABHILASH RAJU, ADVOCATE FOR C/R-1;
V/O DATED 24-11-2025, NOTICE TO R-2 IS DISPENSED WITH)



THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1-A) OF COMMERCIAL COURTS ACT 2015 PRAYING TO SET ASIDE THE JUDGMENT DATED 28.04.2025 PASSED IN COM.AP. NO.186/2024 IN THE COURT OF LXXXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT (CCH-84) AT BANGALORE BY CONFIRMING THE ARBITRAL AWARD DATED 31.08.2024 PASSED BY THE LEARNED SOLE ARBITRATOR IN AC NO.401/2022 & 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 MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

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

1. The National Centre for Biological Sciences [**NCBS**] has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [**A&C Act**] impugning an order dated 28.04.2025 [**impugned order**] passed by the learned LXXXIII Additional City Civil and Sessions Judge, Commercial Court at Bengaluru [**Commercial Court**] in Com. A.P No.186/2024. NCBS had filed the said petition under Section 34 of the A&C Act seeking the setting aside of the arbitral award dated 31.08.2024 [**impugned award**] passed by an arbitral tribunal comprising Respondent No.2 as the sole arbitrator [**Arbitral Tribunal**].

2. The Arbitral Tribunal partly allowed the claims of respondent No.1 [**URC**], which was a claimant before it. The Arbitral Tribunal awarded a sum of ₹3,52,50,404/- (Rupees Three Crore Fifty Two Lakh Fifty Thousand Four Hundred and Four only) along with interest at the rate of 9% per annum in favour of URC in addition to a sum of ₹5,00,000/- as costs of the arbitral proceedings. The Arbitral Tribunal also partly allowed the counter-claims of NCBS to the extent of ₹18,21,310/- (Rupees Eighteen Lakh Twenty One Thousand Three Hundred and Ten only) along with interest at the rate of 9% per annum.

3. By the impugned order, the learned Commercial Court rejected the NCBS's petition for setting aside the impugned award. Aggrieved by the same, the NCBS has preferred the present appeal.

4. The impugned award was rendered in the context of the disputes that had arisen between the parties in connection with their Agreement dated 19.06.2017 [**the Agreement**].

5. Mr. Arvind K. Kamath, learned Additional Solicitor General of India, who appeared for NCBS, confined the present appeal to setting aside of the impugned award to the extent of a sum of

₹1,47,34,311/- which is the difference in the value of the non-tendered items [**NT items**] executed by URC. According to NCBS, the value of the said work (excluding GST – Goods and Services Tax) was ₹8,18,57,285/- and not ₹9,65,91,596/-, as claimed by URC and as awarded under the impugned award. The difference between the two figures is on account of the Goods and Services Tax [**GST**] component in the said value. Whilst NCBS contends that the amount of ₹9,65,91,596/-, includes 18% GST, URC disputes the same.

THE CONTEXT

6. NCBS carries out research in the field of basic sciences, mathematics including biological sciences, molecules, cells, tissues, organisms and eco-systems. The Institute for Stem Cell Biology and Regenerative Medicine (hereinafter referred to as '**InStem**') is another Institute established by the Department of Biotechnology, Government of India, for carrying out research in stem cell and regenerative medicine including cancer, neural diseases, cardiomyopathy, etc.

7. For the purpose of construction of buildings for laboratories and associated facilities for InStem, comprising Balance Civil, PH, Firefighting, Electrical, AC and External Development works, NCBS

floated an Item Rate Tender and Contract Works Notification dated 22.02.2017 [hereinafter referred to as '**NIT**'].

8. URC participated in the bidding process conducted pursuant to the NIT and emerged as the successful bidder (L1). Consequently, NCBS issued a Work Order dated 01.06.2017 to URC, for the contract price of ₹43,57,00,753/- (Rupees Forty Three Crore Fifty Seven Lakh Seven Hundred and Fifty Three only). A formal agreement was entered into between the parties on 19.06.2017.

9. The tender documents and the Agreement explicitly stipulated that the estimated cost of work and the quoted rates were inclusive of all applicable taxes, including Works Contract Tax [**WCT**] at 4% and Labour Cess at 1%, which were to be recovered from the bills. Clause 15 of Section 3 and Clause 37 of Section V of the tender documents stated that all taxes, except service tax, would be payable by the contractor, and that any service tax paid would be reimbursed by NCBS upon proof of payment. Clause 38 also provided for reimbursement of any further tax or levy imposed by a statute after the last date for receipt of tenders.

10. In terms of Clause 2 of the Work Order, URC was required to complete all works within 10 months from the 15th day of the date of issuance of the Work Order, that is, by 15.04.2018. URC completed the works, albeit after some delay. The completion certificate issued indicates that URC completed the works on 20.03.2019, that is, approximately 11 months beyond the stipulated period. According to NCBS, even as on 27.04.2019, certain works remained unattended and incomplete, including: (i)rectification of white patches in PU flooring in the animal holding area; (ii)damage to fire curtains on the 2nd and 3rd floor service levels; (iii)commissioning of AC works in the ClIFF area; and (iv) other pending snag points. The actual completion cost of the project, excluding extra/substituted/deviated items, was ₹32,06,63,371/-. In addition to the original scope, URC executed various non-tendered, extra, substituted, and deviated works¹, the value of which was accounted for at ₹9,65,91,596/-.

11. On account of the aforementioned delay in completion, the Engineer-in-Charge levied a penalty of ₹1,00,000/- (Rupees One Lakh only) on URC for the period from 15.11.2018 to 20.03.2019. URC sought reconsideration of the said levy, but the request was

¹ NT Items

declined by a letter dated 29.04.2019. Additionally, NCBS claimed that URC failed to submit daily progress reports as required under Clause 5 of the General Conditions of Contract, and that it had put URC on notice that it would recover ₹5,000/- per day for each day's delay in submitting the said reports. NCBS further claimed that two fire curtains installed by URC on the 3rd floor and two installed on the 2nd and 3rd service floors were not working due to the burning of the motors. The replacement cost of the curtains was ₹17,21,310/-, which was directed to be withheld and recovered from the final bill of URC.

THE GST DISPUTE

12. Immediately following the execution of the Agreement, the Government of India rolled out the unified tax regime effective from 01.07.2017. The GST subsumed pre-existing indirect taxes, including Central Sales Tax, Excise Duty, and VAT.

13. In February 2018, URC formally addressed a communication to NCBS stating that in terms of the statutory transitions under Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and its corresponding State notification, the works contract execution attracted a flat GST rate of 18% (9% CGST and 9% SGST).

Accordingly, URC demanded full statutory reimbursement of the 18% GST component on all invoices.

14. NCBS claimed that the concessional rate of 12% GST was applicable under the amending Notification No.24/2017-Central Tax (Rate) dated 21.09.2017, as it is a fully aided research entity under the administrative control of the Department of Atomic Energy and is engaged in non-commercial research activities. NCBS also disputed the calculation of the reimbursement claim on the ground that the contract price was inclusive of taxes and that the components of indirect taxes subsumed under the GST regime were required to be deducted from the contract price before applying the applicable GST rate to prevent double taxation and unjust enrichment.

15. To resolve the specific deadlock over the tax rate classification, URC approached the Authority for Advance Ruling [AAR], Karnataka, constituted under Section 96 of the Karnataka Goods and Services Tax Act, 2017. The AAR passed an order dated 23.09.2019, holding that NCBS did not qualify as a "government entity" or "governmental authority" as defined in the Rate Notification. Thus, the concessional rate of 12% was inapplicable, and the standard rate of 18% GST applied.

ARBITRAL PROCEEDINGS AND THE IMPUGNED AWARD

16. Despite the AAR ruling, disputes between the parties persisted. URC issued a notice dated 25.08.2020 under Section 21 of the A&C Act, invoking the arbitration clause. Thereafter, URC filed a petition² under Section 11 of the A&C Act seeking the appointment of an arbitrator. This court allowed the said petition by an order dated 30.06.2022, and the Arbitral Tribunal was constituted by appointing a sole arbitrator.

17. URC claimed that the implementation of the GST regime with effect from 01.07.2017 necessitated an upward revision of payments to account for the statutory tax burden of 18%. Their primary claim involved the recovery of a differential GST sum of ₹2,40,73,564/-, along with pre-reference interest amounting to ₹2,29,40,107/-. URC also claimed *pendente lite* and future interest at 18% per annum.

18. URC argued that their quoted tender rates did not include WCT (4%) and Labour Cess (1%) because they were registered as regular dealers under the VAT regime and had not opted for any composite tax scheme. URC's turnover also exceeded the specified amount. URC claimed that the GST computed at 18% of

² CMP No.159 of 2021

the contract value was an additional statutory liability triggered by the change in the law.

19. NCBS filed its Statement of Defence and Counter Claim. NCBS argued that the contract price was composite and inclusive of all pre-GST statutory levies, including WCT and Labour Cess. They contended that URC's failure to isolate and deduct these subsumed taxes from the contract baseline resulted in an inflated GST demand. NCBS asserted that the actual amount paid to URC had already exceeded the legally adjusted contract liability, as they had already paid ₹39,86,71,646/- to URC, whereas the net payable amount after permissible deductions was only ₹38,56,34,443/-. Additionally, NCBS sought damages for project delays and defective works, claiming that the fire curtains were nonfunctional and that remedial flooring works were required. Thus, NCBS sought recovery of the excess payment of ₹1,30,37,202/-, along with interest of ₹29,04,336/- and costs of ₹30,00,000/-.

20. The Arbitral Tribunal framed the following issues for determination:

“1. Whether the claimant proves that the rate of GST leviable on the invoices raised by it for the work carried out by the claimant under the agreement dated 19.06.2017 is at the rate of 18% and not at the concessional rate of 12%?”

2. Whether the claimant is entitled to Rs.2,10,12,266 towards the differential GST amount due under the tax invoices raised for the work done and whether the same has been paid by the respondent?
 3. Whether the claimant proves that Works Contract Tax (WCT) is' included in the Value Added Tax (VAT) component of the claimant's bid submission and is not over and above the Value Added Tax?
 4. Whether the claimant proves that it is entitled to an _ interest on sum of Rs.2,10,12,266 towards pre reference and pendent lite interest at the rate of 18% per annum?
 5. Whether the claimant is entitled to post award interest on the award amount at the rate of 12% per annum?
 6. Whether 'the respondent proves that it is entitled to recover a sum of Rs. 2,32,95,126 from the claimant towards various recoveries as indicated in para 24 of the statement of defence?
 7. Whether the respondent proves that the respondent has paid an excess amount of Rs.1,30,37,202 'to the claimant which the respondent is entitled to recover from the claimant together with interest at the rate of 18% per annum?
 8. Whether the claimant is entitled to arbitration and legal costs?
 9. Whether the respondent is entitled to the claim of Rs. 30 lakhs towards cost a including other legal and arbitration expenses?
 10. What award or order?"
21. The Arbitral Tribunal answered the first issue by referring to the AAR's order dated 23.09.2019 and accepted that GST at the

rate of 18% was applicable to NCBS in respect of the present works contract.

22. The impugned award sets out a tabular statement detailing the differences between the parties' calculations. The said statement indicated that the difference in the amounts was on four counts:

- (i) Rs.1,47,34,311 on account of the value of NT Items exclusive of GST. Whilst URC claimed that the value was Rs.9,65,91,596, NCBS claimed that it was Rs.8,18,57,285/-;
- (ii) Rs.63,370/- on account of the difference in the calculation of the amount of VAT and Excise Duty included in the contract price. Whilst URC claimed that taxes of the aggregate amount of Rs.3,33,98,702 were included in the contract price, NCBS computed the said amount at Rs.3,34,62,071;
- (iii) Rs.1,19,26,211/- on account of WCT³. URC claimed that it was not liable to pay WCT; therefore, the WCT was not included in the contract price. NCBS claimed that WCT at the rate of 4% was included in the contract price and was liable to be reduced from the contract value to determine the base value of the contract exclusive of taxes; and
- (iv) Rs.18,21,310/-, which NCBS claimed was liable to be recovered from URC on account of a penalty of an amount

³ Works Contract Tax

of Rs.1,00,000/- and Rs.17,21,310/- on account of the value of fire curtains, which were not supplied.

23. In regard to Issues No. 2 and 3, the Arbitral Tribunal noted that there was no dispute that the value of work after rebate of 3.3% was ₹31,00,81,480/-.

24. The Arbitral Tribunal accepted URC's claim that the value of NT items was ₹9,65,91,596/-, exclusive of GST, relying upon the undisputed final bill signed by URC and certified by the engineers of NCBS. The said bill reflected the value of NT items as ₹9,65,91,596/- "full and final" without any separate addition of GST, in contrast to the tendered items where GST of 6% (interim) was separately added.

25. The Arbitral Tribunal accepted that value of VAT/ED included in the contract value was ₹3,33,98,702/- as claimed by URC as against ₹3,34,62,071/- as computed by NCBS. The Arbitral Tribunal held that the difference of ₹63,370/- was not significant.

26. On the question of reduction of WCT from the contact value, the Arbitral Tribunal held that since URC is a regular VAT assessee with annual turnover exceeding ₹50 lakhs, it was not assessable to WCT at 4%, and therefore, deducting both VAT and WCT from the

contract price would amount to double taxation. Accordingly rejected NCBS contention that ₹1,19,26,211/- was required to be deducted from the contract value to determine the value exclusive of taxes.

27. On this basis, the Arbitrator accepted the taxable base for GST at 18% as ₹37,32,74,374/-, resulting in a GST liability of ₹6,71,89,387/-, and a total amount payable to URC of ₹44,04,63,762/-. After deducting agreed recoveries of ₹2,14,73,817/- towards income tax surcharge, labour cess, TDS, mobilization advance recovery, electricity charges, etc., the net amount payable came to ₹41,89,89,945/-. Deducting the total amount already paid of ₹39,86,71,646/-, the Arbitrator arrived at the balance principal amount payable to URC as approximately ₹2,03,18,299/-.

28. While answering Issue No.4 on pre-reference interest, the Arbitrator calculated pre-reference interest at ₹1,02,29,430/-, making the total sum as on the date of reference at ₹3,05,47,729/-. In determining Issue No.5, the Arbitral Tribunal computed *pendente lite* interest at 9% as ₹47,02,675/-. Thus, the Arbitral Tribunal awarded an amount of ₹3,52,50,404/- along with post-award

interest at 9% per annum from the date of the impugned award till the date of payment.

29. The Arbitral Tribunal also allowed the counter-claims to the extent of ₹18,21,310/- comprising the penalty of ₹1,00,000/- imposed for the period of delayed completion, and ₹17,21,310/- towards the defective fire curtains, with interest at 9% per annum from the date of the impugned award till the date of payment.

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

i. The claim petition filed by the Claimant is partly allowed with cost.

ii. The Claimant is entitled to recover from the Respondent a sum of Rs.3,52,50,404/- (Rupees Three Crores Fifty Two Lakhs Fifty Thousand Four Hundred and Four Only) together with interest at 9% per annum from the date of award till the date of payment.

iii. The counter-claim filed by the Respondent is partly allowed. iv. The Respondent is entitled to recover a sum of Rs.18,21,310/- (Rupees Eighteen Lakh Twenty One Thousand Three Hundred and Ten Only) from the Claimant together with interest at 9% per annum from the date of award till the date of payment.

v. The Claimant is entitled to Rs.5,00,000/- (Rupees Five Lakhs Only) towards the cost of this arbitration proceedings including Advocate fee from the respondent.

vi. There shall be a lien on this Arbitral Award for any unpaid costs and Arbitrator's Fee not having been deposited, if any, by any of the parties as contemplated under Rule 28 (6) of the Arbitration and Conciliation Centre Rules, 2012 framed by Arbitration & Conciliation Centre Bengaluru (Domestic & International).

vii. The Claimant is liable to pay stamp duty on this Award as per the provisions contained in Karnataka Stamp Act.”

IMPUGNED ORDER

31. NCBS preferred a petition under Section 34 of the A&C Act seeking the setting aside of the impugned award. NCBS assailed the award essentially on three fronts. First, it claimed that the final value of the NT items was inclusive of GST at 18%, and that the Arbitral Tribunal had erred in concluding otherwise. Second, it was contended that WCT was a levy that existed prior to the introduction of the GST regime, and 4% GST is deemed to have been included in the price quoted by URC. Thus, the said amount is required to be reduced from the amount payable. And, third the Arbitral Tribunal had erred in awarding the interest as there is no clause in the Agreement contemplating payment of interest.

32. The learned Commercial Court did not accept that the impugned award warranted any interference on the grounds as urged by NCBS. The learned Commercial Court found that the final bill specifically mentioned GST at the rate of 6% in respect of the Bill of Quantities [**BOQ**] items, which was granted towards interim relief. The Commercial Court noted that, since there is a

dispute as to whether GST was payable at 12% or 18%, NCBS had agreed to pay 6% GST as interim relief. However, the Final Bill did not include the GST component in respect of NT items and, therefore, the value of NT items did not include any component of GST. Paragraph 46 of the impugned order is set out below:

“However, the contention of the employer is that the said sum stated in the final bill is inclusive of GST of 18%, and if the 18% GST is deducted therefrom, it comes to Rs.8,18,57,285, which is the value of the non-tendered items as claimed by the employer. If this final bill is closely perused, it is noted that at row H, which is above the non-tendered items, GST of 6% is added (towards interim relief of GST because at that time, employer was still contending that, GST is 12% and not 18% and the difference of 6% GST was given as interim relief). But the GST component is not added for non-tendered items. **Therefore, the only conclusion to be drawn is that the sum of Rs.9,65,91,596, which is given as the total of the non-tendered items, is exclusive of GST, to which 18% GST has not been added.**”

33. The learned Commercial Court also rejected the contention that WCT was required to be reduced from the contract price as URC was not assessable to such taxes and thus, the same was not included in the contract price. The learned Commercial Court also found no merit in the contention that the award of interest at the rate 9% per annum was unsustainable.

34. In view of the above, the learned Commercial Court passed the impugned order dismissing NCBS's petition to set aside the impugned award.

SUBMISSIONS

35. Mr. Kamath, learned Additional Solicitor General appearing for NCBS, has confined the present appeal to assailing the impugned award insofar as it accepted URC's claim that the value of NT items excluding GST, is ₹9,65,91,596/-. The learned ASG had also filed additional written submissions expressly stating that NCBS confines its contention to "the sole issue of whether non-tendered works valued at ₹9.65 crores is inclusive of 18% GST or not". Thus, the controversy is narrowed down to the inclusion of a sum of ₹1,47,34,311/-, which is mentioned at serial No.5 of the tabular statement set out in the impugned award and as reproduced herein before. In the aforesaid view, it is not necessary for this Court to examine any other dispute which was the subject matter of arbitration before the Arbitral Tribunal.

36. The learned ASG contended that during the execution of the work, additional non-tendered works were carried out and running bills were raised. He referred to a tabular statement set out as Annexure R5. The statement contained a statement of the value of

RA bills. He contended that the said submission clearly indicated that the total of RA bills in respect of NT items aggregated to ₹9,65,91,596/-. He also referred to RA bill Nos. 6, 8, 9, 10, and 14 and pointed out that the values of the said bills conformed to those mentioned in Annexure-R5. He also pointed out that the said bills included CGST at 9% and KGST at 9%. Thus, the said value included total GST of 18%. He submitted that the aforesaid documents clinched the issue whether GST was included in the figure ₹9,65,91,596/- which reflected the aggregate value of NT works. He contended that the said documents had been ignored by the Arbitral Tribunal. Thus, vitiating the impugned award by patent illegality.

37. Mr T.Suryanarayana, learned Senior Counsel appearing for URC, countered the aforesaid submissions. He submitted that one of the principal disputes regarding the liability to pay GST stems from the controversy whether GST was leviable on the supply at the rate of 12% or 18%. It was NCBS's contention that it was a government organisation and, therefore, GST at the concessional rate of 12% was payable on the supply. He submitted that the issue was concluded by the AAR's ruling. He submitted that in view of the said disputes, NCBS had certified the work done at the pre-

GST rates agreed in respect of the BOQ items and with 12% GST in respect of NT items. However, subsequently, NCBS agreed to pay the additional 6% GST on BOQ items as an interim relief. However, that, too, was withheld at the time of the final settlement. He contended that the said interim relief was only in respect of BOQ items and not NT items. He submitted that NT items were always certified at the rate of 12% GST, which was admitted by NCBS's witness (RW1) in his cross-examination. He referred to the following extract from the transcript of the cross-examination:

"The contents of RA bill Ex.R7(p) are all true and correct. The amount of Rs.9,65,91,596/- shown in column No.2 upto date amount refers to extra/ substitute/ deviated items. The said amount includes GST component also at 12%. It is false to suggest that the GST at 12% is not included in the amount of Rs.9,65,91,596/-."

38. He submitted that the said statement clearly evidenced that ₹9,65,91,596/- includes only 12% GST and URC's claim is only in respect of the differential amount of 6% GST. He also referred to paragraph 17 of the impugned award which reads as under:

"17. Coming to item No.9 regarding the payment of GST @ 18%, as per Claimant, the Respondent is liable to pay Rs.6,71,89,387/- whereas according to the Respondent it is liable to pay Rs.6,23,79,087/-. The Claimant has explained as to how it has arrived at that figure in the comparative statement. According to the Claimant, they paid Rs.2,68,55,573/- towards GST implication over and above the value of original contract executed. In addition to that they cleared

additional GST implications in respect of additional non-tendered item work amounting to Rs.69,36,113/-. Thus, the Claimant paid a sum of Rs.6,71,89,387/- (Rs.3,33,98,702 + 2,68,54,573 + 69,36,113) towards 18% GST. The Respondent failed to establish that it is liable to reimburse an amount of Rs.6,23,79,087/- and not Rs.6,71,89,387/-. After deducting VAT and ED amount of Rs.3,33,98,702/- and adding GST amount of Rs.6,71,89,387/-. The total amount payable to the Claimant comes to Rs.44,04,63,762/- and not Rs.40,89,29,570/- as calculated by the Respondent."

39. He contented that the total GST at the rate of 18% as paid by URC was quantified at ₹6,71,89,387/-, which comprised of three components, – ₹3,33,98,702/- (being the tax component embedded in the values both BOQ and NT items as certified by NCBS), ₹2,68,54,573/- (being the additional GST implication over and above the tax component embedded in the certified value of BOQ items); and ₹69,36,113/- (being the additional GST implication over and above the tax components embedded in the certified value of NT items). He submitted that URC had claimed and was awarded only ₹69,36,113/- as reimbursement for additional GST and not 18% on the sum of ₹9,65,91,596/- as contented by NCBS.

40. Insofar as NCBS's reliance on the tax invoices is concerned, he submitted that in a few initial invoices raised, the value of NT items and the tax thereon were shown separately. In all other

remaining invoices, the value of BOQ and NT items was aggregated, and the tax thereon was computed. He contended that initially, URC had raised tax invoices with 18% GST. However, NCBS failed to pay the invoiced amount with 18% GST. URC, on NCBS's instructions, substituted the invoices with 12% GST and issued credit notes. After the AAR had ruled that NCBS was liable to pay GST at the rate of 18%, URC filed revised returns, which he submitted would be evident from the GST returns he filed. He contended that, since the dispute involved a question of fact, the decision of the Arbitral Tribunal must be accepted as final. He submitted that this Court cannot, in the proceedings under Section 37 of the A&C Act, reappraise the evidence and review the arbitral award.

41. He referred to the decision in the case of **Bombay Slum Redevelopment Corporation Private Limited v Samir Narain Bhojwani**⁴ and, on the strength of the said decision, contended that the power to remand should be exercised only in exceptional cases and not as a matter of routine. He also referred to the recent decision of the Supreme Court in **Punjab State Civil Supplies Corporation Limited and Another vs. Sanman Rice Mills and**

⁴ (2024) 7 SCC 218

Others⁵ and contended that the scope of intervention in arbitral matters was prohibited, if not absolutely barred. He contended that the appellate court could not re-adjudicate the dispute on merits.

REASONS AND CONCLUSIONS

42. As noted above, the controversy in the present case is in a narrow compass. There is no cavil over the proposition that the scope of interference in an arbitral award is confined only to the grounds as set out in Section 34 of the A&C Act. This Court, while considering an appeal from an order dismissing an application under Section 34 of the A&C Act to set aside an arbitral award, cannot reappraise the evidence and adjudicate the disputes as a first appellate court. The examination under Section 34 or 37 of the A&C Act is confined to determining whether the impugned award is liable to be set aside on the grounds as set out in Section 34 of the A&C Act. In the present case, NCBS has impugned the award on the ground of patent illegality.

43. NCBS's contention that the impugned award is vitiated by patently illegality is premised on the basis that the Arbitral Tribunal had ignored vital evidence.

⁵ 2024 SCC OnLine SC 2632

44. In **Delhi Airport Metro Express (P) Ltd. vs. DMRC**⁶, the Supreme Court had observed as under:

“29. ...The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality.”

45. In **Ssangyong Engineering and Construction Co. Ltd. vs. National Highways Authority of India (NHAI)**⁷, the Supreme Court had also observed as under:

“41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of *Associate Builders* [*Associate Builders v. DDA*, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under “public policy of India”, would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse.”

46. In this view, the only issue to be examined is whether the Arbitral Tribunal has ignored material or evidence that is vital for adjudicating the subject disputes.

⁶ (2022) 1 SCC 131

⁷ (2019) 15 SCC 131

47. Before proceeding further, it would be relevant to refer to the Arbitral Tribunal's reasoning for accepting the URC's contention that the amount ₹9,65,91,596/- of NT items excluded GST at the rate of 18% per annum. Paragraph 13 of the impugned award, which sets out the Arbitral Tribunal's reasoning for accepting the URC's claim is set out below:

"13. As per the procedure prescribed the Claimant submitted the final bill for payment to the Engineer in-charge which is marked as Ex.R7(p) which is relied upon by the Respondent. Its contents have been admitted as true and correct by RW-1. If we look at the bill produced at Ex.R7 (p) it is evident that the same has been scrutinised and verified by the Engineer (Electrical) NCBS, EIC (E & HAVC), NCBS, EIC (Civil), NCBS, Tech Assistant (Civil) who have signed the bill for having verified the same. The amount shown therein under various heads has been verified by them and upon verification, they certified the amount for non-tendered item work as Rs.9,65,91,596/- exclusive of GST at 18%. The amount of Rs.8,18,57,285/- shown by the Respondent is not based on any evidence. It is contrary to the amount shown and certified in Ex.R7(p). As such, an amount of Rs.40,66,73076/- show item No.6 of the comparative statement has been calculated correctly."

48. As apparent from the above, the only evidence noted by the Arbitral Tribunal was the 21st and final bill. A copy of the said bill has been produced before this court. The said bill contains a tabular statement setting out various works and their final value. The figures are written in red ink against printed figures, which the

parties agree were the amounts as settled. At serial No.(I), the figure in red ink has been scored out, and a figure in ₹4,13,55,937/25 is written in blue ink. At the bottom of the table, the words 'measurement and bill accepted in full and final' are handwritten in blue ink, and the figure of ₹9,65,91,596/- is noted against the said statement. The said words and figures appear to be in the same handwriting and ink as those used in the signatures appended on behalf of URC.

49. Both parties had relied on the above-mentioned statement as recorded in the 21st and final bill. Whilst it is contended by NCBS that the words 'full and final' left no scope for URC to demand any further sum on account of GST, which was already included. On the other hand, URC contended that the said figure did not include the incremental value of GST.

50. However, as noted above, it is not contended on behalf of URC that the price of NT items does not include a GST component; on the contrary, it is contended that their value includes GST at 12%, not 18%. The contract price (which is the agreed price for BOQ items) was inclusive of taxes as they were leviable at the material time. There is no dispute that with the rollout of the GST regime, NCBS was liable to reimburse URC for the GST imposed

on the supply. The contract price was required to be adjusted for the tax element that was leviable prior to the GST tax coming into force with effect from 01.07.2017. Thus, the taxes payable by URC were required to be reduced from the contract price arrived at the base value (contract price less the element of tax) and GST was payable on the said amount. NCBS was liable to pay the incremental amount, being the difference between the quantum of tax included in the contract price and GST payable on the supply. However, as far as NT items are concerned, it is not disputed that no such exercise is required to be conducted, as the same were not included in the BOQ items and, consequently, in the contract price. Thus, NCBS was liable to pay for NT items and the applicable GST.

51. The question of whether the applicable GST rate was the concessional rate of 12% or 18% did not survive in view of the AAR's ruling. Concededly, NCBS is liable to pay GST at the rate of 18%. Thus, the Arbitral Tribunal was required to address the issue of whether the figure ₹9,65,91,596/- included GST at the rate of 18%.

52. The 21st and final bill⁸ referred to by the Arbitral Tribunal does not expressly indicate whether it was inclusive of GST or whether the value excluded GST at the rate of 18%. If at all, the words that the value is "full and final" would support the NCBS's contention that the figure was a rounded and final figure. However, the Arbitral Tribunal's interpretation of the said bill may not be amenable to review in proceedings under Section 34 of the A&C Act. However, there was other material on record that is relevant for addressing the dispute, which was not considered by the Arbitral Tribunal.

53. NCBS has referred to a statement (Annexure-R5). The said statement sets out the break-up of the amount of ₹9,65,91,596/-.

The said tabular statement is set out below:

Sl. No		BILL SUBMITTED VALUE	CERTIFIED EXECUTED VALUE AS PER ORIGINAL CONTRACT	CERTIFIED EXECUTED VALUE AS PER ORIGINAL CONTRACT AFTER REBATE	CERTIFIED EXTRA /DEVIATED/ SUBSTITUTE VALUE	4% WCT	VALUE AFTER WCT/VAT/ED FROM ORIGINAL CONTRACT	GST @ 18% ON COLUMN 10	BASIC VALUE OF EXTRA /DEVIATED / SUBSTITUTE ITEMS	GST @ 18% ON EXTRA/DEVIATED /SUBSTITUTED ITEMS
1	2	3	4	6	7	9	10	11	12	13
M.Adv	A									
M.Adv	B									
S.Adv	C									
RAB-04	D	9,023,385	9,040,269	8,741,941		336,228	8,405,712.58	1,513,028		

⁸ Marked as R7

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RAB-05	E	8,930,068	8,944,378	8,649,214		332,662	8,316,551.61	1,496,979		
RAB-06	F	19,130,428	18,466,123	17,856,741	664,305	686,798	17,169,943.24	3,090,590	562,970.34	101,335
RAB-07	G	10,691,448	10,690,060	10,337,288		397,588	9,939,700.18	1,789,146		
RAB-08	H	22,474,124	18,516,127	17,905,095	4,005,441	688,658	17,216,437.15	3,098,959	3,394,441.53	610,999
RAB-09	I	10,138,869	9,442,824	9,131,210	695,221	351,200	8,780,010.45	1,580,402	589,170.34	106,051
RAB-10	J	10,752,987	10,573,113	10,224,200	89,196	393,238	9,830,961.86	1,769,573	75,589.83	13,606
RAB-11	L	4,435,850	4,435,850	4,289,467		164,980	4,124,487.05	742,408		
RAB-12	M	16,402,611	15,088,420	14,590,502	1,269,248	561,173	14,029,328.85	2,525,279	1,075,633.90	193,614
RAB-13	N									
RAB-14	O	43,848,622	26,580,637	25,703,476	16,681,648	988,595	24,714,880.55	4,448,678	14,136,989.83	2,544,658
RAB-15	P	32,673,594	31,926,903	30,873,315	733,038	1,187,435	29,685,879.81	5,343,458	621,218.64	111,819
RAB-16	Q	41,398,682	34,777,519	33,629,861	6,621,200	1,293,456	32,336,404.68	5,820,553	5,611,186.44	1,010,014
RAB-17	R	40,525,815	33,980,110	32,858,766	6,545,588	1,263,799	31,594,967.06	5,687,094	5,547,108.47	998,480
RAB-18	S									
RAB-19	T	70,972,537	57,087,193	55,203,316	13,885,760	2,123,204	53,080,111.53	9,554,420	11,767,593.22	2,118,167
REMOVAL OF ITEMS FROM ORIGINAL CONTRACT AND SHIFTED TO EXTRA ITEMS			-23,586,267	-22,807,920	23,586,267	-877,228	-21,930,691.73	-3,947,525	19,988,361.86	3,597,905
RAB-FINAL	U	84,022,838	54,700,113	52,895,009	21,814,684	2,034,423	50,860,586.04	9,154,905	18,487,020.12	3,327,664
VAT/ED PORTION AS PER M/S.URC							-33,462,071	-6,023,173		
TOTAL RA BILLS		425,421,858	320,663,371	310,081,480	96,591,596	11,926,209	264,693,200	47,644,776	81,857,285	14,734,311

54. There is no dispute as to the value of the bills submitted by URC. The tabular statement sets out the value of the Bills and the NT items included in them. The sum total of the value of the NT

items included in the Bills adds up to ₹9,65,91,596/-. It is pointed out that RA bill Nos.6, 8, 9, 10 and 14 are on record, which are the invoices which separately refer to the value of NT items. These invoices clearly indicate that the bills raised include 18% GST. Illustratively, RA bill No.6 includes certified value of NT items valued at ₹6,64,305/-. URC's invoice for the same, which is on record, indicates a taxable amount of ₹5,62,970/-, Central GST at ₹50,667/- and State GST at ₹50,667/- and the aggregate value, inclusive of GST, is ₹6,64,304/-. There is no dispute that the invoices on record were issued by URC. Thus, undeniably, at least some of the values of NT items as mentioned in the tabular statement include GST at the rate of 18%.

55. However, the Arbitral Tribunal had rejected the NCBS's contention that the value of NT items was inclusive of 18% GST on the ground that it had failed to establish the same. It is contended on behalf of URC that some of the initial bills had included the value of extra items, inclusive of GST at the rate of 18%. However, subsequent bills did not include the value of GST.

56. URC has also filed memo dated 03.03.2026 setting out the tabular statement which included reference to the invoices and a total value of GST at 18%. The value of the said items is reflected

as ₹10,35,32,563/-. Thus, according to the said statement, a part of GST was not included in the aggregate amount of ₹9,65,91,596/-.

57. We may now refer to the tabular statement as set out in the impugned order, which indicates the difference in the computation of the amount payable by NCBS on account of GST. The said statement is set out below:

STATEMENT SHOWING ACTUAL GST PAYABLE AND DIFFERENCE BETWEEN URC VS NCBS				
Sl. No.	Description	As per M/s URC	NCBS Calculations as per Ex-R-8	Difference
1	Value of bill submitted	42,54,21,858	42,54,21,858	
2	Value of original contract executed	32,06,63,371	32,06,63,371	
3	Rebate 3.3% of original contract value	1,05,81,891	1,05,81,891	
4	Value of work after rebate	31,00,81,480	31,00,81,480	
5	Value of Non Tendered (NT) items	9,65,91,596	8,18,57,285	(1,47,34,311)
6	Total Executed Value including	40,66,73,076	39,19,38,764	

	NTI items			
7	VAT & ED Amount	3,33,98,702	3,34,62,071	(63,370)
8	Less WCT 4%	-	1,19,26,211	(1,19,26,211)
9	Basic Value excluding GST Value	37,32,74,374	34,65,50,483	
10	GST Amount (18%)	6,71,89,387	6,23,79,087	
A	Total Amount Payable as per CPWD format after deducting VAT/ED and adding 18% GST	44,04,63,762	40,89,29,570	
	Less Statutory Deductions			
	Income Tax TDS			
	Surcharge on Income Tax TDS	94,65,297	94,65,297	
	Labour Cess	45,25,426	45,25,426	
	TDS under GST	30,52,168	30,52,168	
	Recovery towards Mobilization advance interest – work			
	Recovery towards Mobilization advance interest – plant and	40,32,169	40,32,169	

	machineries			
	Electricity Charges Recover	3,98,757	3,98,757	
	Penalty		1,00,000	
	Misc. Recoveries towards Non supply of curtains		17,21,310	(18,21,310.00)
B	Total	2,14,73,817	2,32,95,127	(18,21,310.00)
C	NET amount payable (A-B)	41,89,89,945	38,56,34,443	
D	Cumulative amount paid till 12.08.2022	39,86,71,646	39,86,71,646	
E	Balance Amount Payable (C-D)	2,03,18,299	-1,30,37,203	

58. It is apparent from the above that URC's calculation is based on the premise that the sum of ₹9,65,91,596/- at Serial No.5 in the above table includes no element of GST and is therefore, included in the amount of ₹40,66,73,076/- (at serial No.6) being the total value of the works executed including NT items and in the amount of ₹37,32,74,374/- (at Serial No.9) being the value of works exclusive of GST. The GST payable is computed at ₹6,71,89,387/-. The said amount is computed at 18% of the basic value of

₹37,32,74,374/- which includes the value of NT items of ₹9,65,91,596/-. This would amount to calculating GST on the value of NT items, which undisputedly include an element of GST.

59. As noted above, according to NCBS the said figure includes element of GST of ₹1,47,34,311/-. The learned ASG has been unable to clearly establish the same. However, it is clearly established that at least four bills (RA Bill Nos.6, 8, 9 and 10⁹) included bills for NT items, and the value of those items includes GST aggregating ₹8,31,520/-¹⁰.

60. The GST on bills for NT items are also reflected in the tabular statement filed on behalf of URC by a memo dated 26.02.2026.

61. It is not necessary for this Court to examine the record to ascertain as to the exact amount of GST that may have been included in the figure of ₹9,65,91,596/-. As that is the question that is required to be addressed by the Arbitral Tribunal. Suffice it to state that there is evidence on record, including RA bills and certain extracts provided by the parties, which clearly establish that the

⁹ ₹1,01,334/- in RA Bill No.6, ₹6,11,018/- in RA Bill No.8, ₹1,06,050/- in RA Bill No.9 & ₹13,118/- in RA Bill No.6,

¹⁰ CGST of ₹4,15,760/- & SGST of ₹4,15,760/-

said amount of ₹9,65,91,596/- includes an element of GST. Therefore, computing GST at 18% on the said amount is *ex facie* erroneous.

62. We also note that there is some material on record which would support the contention that the amount of ₹9,65,91,596/- did not include GST to the full extent of 18%. The said material includes certain communications which indicate that NCBS was not clearing bills with 18% GST but had accepted that GST was payable at 12%. This fact is also admitted in the cross-examination of RW1, which was referred to by the learned counsel for URC. However, we find that the Arbitral Tribunal has not considered any material or evidence on record but, has accepted URC's contention that the amount of ₹9,65,91,596/- did not include GST only by referring to the 21st and final bill and that NCBS has failed to establish that the said value includes GST.

63. In view of the above, the impugned award, to the extent that it proceeds on the basis that the value of NT items exclusive of GST is ₹9,65,91,596/-, is set aside. The said conclusion ignores that the said amount is an aggregate of the amount included in the invoices and bills, and at least some of those invoices, which are on record, expressly include 18% GST. Failure to consider such

relevant and vital evidence renders the impugned award vulnerable on the grounds of patent illegality.

64. As a consequence of the partial setting aside of the impugned award, the amount of GST and interest as awarded would be required to be recomputed.

65. Having stated the above, it is also necessary to observe that NCBS's contention that ₹9,65,91,596/- includes GST of ₹1,47,34,311/- is also not established. It would be open for the URC to re-agitate its claim for the differential value of ₹1,47,34,311/- and other consequential amounts afresh if so advised.

66. The appeal is disposed of in the aforesaid terms.

67. The pending interlocutory application also stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**