IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 463 OF 2006

MUNICIPAL CORPORATION OF GREATER MUMBAI, Municipal Head Office Building, Mahapalika Marg, Fort, Mumbai-400 001. **...PETITIONER**

Versus

GAMMON INDIA LIMITED, a Company incorporated under the provisions of Companies Act 1 of 1956 having its office at Gammon House, Veer Sawarkar Marg, Prabhadevi, Mumbai-400 025. **...RESPONDENT**

WITH

ARBITRATION PETITION NO. 481 OF 2006

GAMMON INDIA LIMITED, a Public Limited Company, having its office at Gammon House, Veer Savarkar Marg, Prabhadevi, Mumbai-400 025. **...PETITIONER**

Versus

THE MUNICIPAL CORPORATION OF GREATER MUMBAI constituted under the Bombay Municipal Corporation Act, 1888 and haivng its office at Mahapalika Marg, Mumbai-400 001. **...RESPONDENT**

Mr. Yashodeep Deshmukh a/w Ms. Pooja Yadav i/b Ms. Komal Punjabi, *learned counsel for the Petitioner-BMC in*

ARBP/463/2006.

Mr. Amrut Joshi a/w Ms. Radhika Kulkarni & Mr. Aditya Mhatre i/b Mr. Akshay Zantye, *learned counsel for the Respondent in ARBP/463/2006.*

Mr. Amrut Joshi a/w Ms. Radhika Kulkarni & Mr. Aditya Mhatre i/b Mr. Akshay Zantye, *learned counsel for the Petitioner in ARBP/481/2006.*

Mr. Prakash G. Lad a/w Mr. Paras Pawar & Ms. Pooja Yadav i/b Ms. Komal Punjabi, *learned counsel for the Respondent-BMC in ARBP/481/2006.*

CORAM : ARUN R. PEDNEKER, J.

RESERVED ON : 27th AUGUST, 2026.
PRONOUNCED ON : 21st SEPTEMBER, 2026.

JUDGMENT **:**

1. Heard Mr. Yashodeep Deshmukh along with Ms. Pooja Yadav in Arbitration Petition No. 463 of 2006 and Mr. Prakash Lad along with Ms. Pooja Yadav in Arbitration Petition No. 481 of 2006, learned counsel appearing for the Municipal Corporation and Mr. Amrut Joshi along with Ms. Radhika Kulkarni, learned counsel appearing for Gammon India Limited in both the Arbitration Petitions.

2. By the present Arbitration Petition No. 481 of 2006, the Petitioner i.e. Gammon India Limited ("**GIL**"), the claimant

challenges the Arbitral Award dated 25th July, 2006 passed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**the Act**") for setting aside the Arbitral Award, so far as it relates to GIL's Claim Nos. 1, 5, 6 & 8, which is refused by the Arbitrator.

3. The Municipal Corporation in Arbitration Petition No. 463 of 2006 challenges the same Arbitral Award under Section 34 of the Act as regards grant of Claim Nos. 4 & 12.

4. The claimant's Claim Nos. 1, 5, 6 & 8 were dismissed by the Arbitrator. Learned counsel for GIL-claimant, did not press for Claim Nos. 2(a), 2(b), 7, 9, 10 & 11. The Arbitral Tribunal granted Claim Nos. 4 & 12 in favour of the claimant, directing the Municipal Corporation to pay a sum of Rs. 15,09,515/- to the claimant with interest @ 9% per annum with effect from 6th September, 1999 till realisation. The claims granted were in respect of costs incurred for bank guarantees i.e. Claim No. 4 and interest component on the same is Claim No. 12.

5. The facts giving rise to the Petitions, in brief, are that in January 1997, the Municipal Corporation invited offers/bids for the supply, erection and commissioning of 130 numbers of low speed floating aerators at Bhandup and Ghatkopar lagoons in Mumbai. The bids were opened in the year 1997. The bid of M/s. Hubert B. V. of Netherlands was the first lowest bidder, while the GIL was the second lowest bidder. The consultant had recommened the lowest

bid of M/s. Hubert B. V. However, the Municipal Corporation after scrutiny had accepted the claim of second lowest bidder i.e. GIL, by the acceptance letter dated 11th June, 1998. M/s. Hubert B. V.'s bid was less than 50% of the GIL's bid, however it was rejected and thus, M/s. Hubert B. V. filed a Writ Petition in this Court bearing no. 1558 of 1998. On 19th January, 1999, another consultant M/s. Woodward Clyde of Australia was appointed by this Court on the request made by the Municipal Corporation. The consultant found M/s. Hubert B. V.'s bid to be acceptable and as such, M/s. Hubert B. V. bid was accepted and GIL's contract came to an end. The same is recorded in the order dated 29th January, 1999 of this Court. Subsequently, by a formal letter dated 6th September, 1999, the contract with the claimant was terminated.

6. The formal contract was in existence from 11th June, 1998 to 6th September, 1999. On termination of the contract, GIL made various claims. The claimant-GIL by letter dated 15th September, 1999 informed the Municipal Corporation that they had suffered losses and that the claimant should be compensated by the Municipal Corporation. The Municipal Corporation returned the performance security and advance guarantee by letter dated 11th February, 2000. On 22nd February, 2000, the claimant-GIL served a notice upon the Municipal Corporation to settle their claims. The Municipal Corporation reputed the claims. Accordingly, the same were referred to the arbitration. The claims before the Arbitrator are as under :-

CLAIMS		REASONS
Claim 1 (Cost of tender)	Claim was found to be untenable	Clause 4 of GCC requires the bidder to bear all costs in respect of preparation and submission of bids irrespective of outcome of the bidding process. Even after termination is found to be wrongful, the contractor cannot claim the costs of biddings.
Claim 2(a)	Not considered	Not pressed by the Ld Adv for Claimants
Claim 2(b)	Not considered	Not pressed by the Ld Adv for Claimants
Claim 3	Not considered	Rejected
Claim 4 (Costs incurred for bank guarantees- Claim is in respect of performance security of Rs.2,70,10,018 and Rs. 1,32,43,700. Claim is at the rate of 1% and 1.5%. Total claim is Rs. 15,09,515.)	Claim allowed	Claims cannot be rejected for want of any receipt from the bank as no bank would issue bank guarantee without reasonably charging the party.
Claim 5 (salary of officers and staff, their travelling and conveyance expenses during the period of june 1998 to august 1998)	Claim rejected	Not the contention of the claimants that new staff was either required to be recruited to the head office or to the site office where the contract work was to be executed. Further the certificate of CA is of no assistance to the claimants in establishing the claim of salary of officers and staff working.
Claim 6 (fees payable to M/s. Smith and Loveless incorporated USA for the design of low speed floating aerators)	Claim rejected	Claim not considered because claimants made no payments to M/s Smith and Loveless, neither claimed reimbursement. Further no action has been initiated by M/s Smith and Loveless.
Claim 7	Not considered	Not pressed by the Ld Adv for Claimants
Claim 8 (reimbursement of loss of profit at 25% of the contract value)	Claim rejected	Claim at 25% is excessive. Claimant have not carried out any substantial part of the project after the letter of award. The Var chart was not submitted and drawings were yet to be submitted for approval. No evidence was adduced in support of claim for loss or profit.
Claim 9	Not considered	Not pressed by the Ld Adv for Claimants
Claim 10	Not considered	Not pressed by the Ld Adv for Claimants

Claim 11	Not considered	Not pressed by the Ld Adv for Claimants
Claim 12 (for interest)	Claim allowed	Claim allowed for the amount spent for bank guarantees at 9% p.a

7. After considering the material on record, the Arbitrator formulated the following points for determination and rendered findings on them accordingly :-

Sr. No.	POINTS	FINDINGS
1.	Do the claimants prove that there was an enforceable contract entered into with them by the Respondent for supply, erection and commissioning of low speed aerators at Bhandup and Ghatkopar Lagoons, a part of Sewerage Disposal Project of the Respondent-Corporation?	Yes
2.	If answer to Issue No. 1 is in the affirmative, do the claimants prove that the Respondent wrongfully terminated the contract and they are liable to pay damages and/or compensation to the claimants as claimed in this statement of claim appendix-I, Clauses 1, 2A, 2B to 12?	Yes
3.	Do the Respondent proves that the	No

	contract document containing all the detailed clauses (terms and conditions) not having been signed by or in behalf of the Respondent Commissioner, the contract did not come into existence and disputes between them to arbitration?	
4.	What is the effect if any of the order of the High Court appointing Sole Arbitrator with consent of parties?	No effect as consent was only for name of Arbitrator
5.	Whether the Arbitrator has jurisdiction to entertain the disputes between the parties relating to the aforesaid contract?	Yes
6.	Do the Respondent proves that even if it is found that a contract as claimed had been entered into between parties, in view of the order passed by the Bombay High Court in Writ Petition No. 1558 of 1998 dated 29th January 1999, the Respondent could never have performed their part of contract and were left with no alternatives than to rescind or terminate the said contract?	No as the order was invited one.
7.	Whether the order of Hon'ble High	Yes

	Court referred to above having not been challenged by the claimants, they are entitled to the various claims as detailed in statement of claims appendix A?	
8.	Whether the above referred order of the High Court entitles the Respondent to claim that they could not thereof in view of the order of the High Court?	No
9.	At what rate interest should be awarded, if any, in case the claimants succeed in providing their claims or part thereof and from what date it is to be awarded.	As per final order.
10.	Do the Respondent proves that in the facts and the circumstances of this case they are entitled to resort to the force majeure clause at 37.1 in the General Conditions of Contract?	No

8. The Arbitral Tribunal has held that the Municipal Corporation was responsible for granting the contract to the second lowest bidder, i.e. GIL and that the Municipal Corporation was at fault for taking the decision, but no malafides are attributed to the claimant-GIL. The Arbitral Tribunal observed that the Municipal

Corporation had offered to appoint other consultant before this Court in pending Writ Petition to assess the bids, as the action of granting the contract to the claimant was under challenge by M/s. Hubert B. V. Accordingly, another consultant was appointed, who gave its report in favour of M/s. Hubert B. V. and accordingly, the Municipal Corporation made a statement in this Court that the contract would be awarded to M/s. Hubert B. V. The Arbitrator did not find any fault with the claimant, but found fault with the Municipal Corporation in terminating the contract, as in the first instance, it had granted the contract to the claimant for the reason that the Municipal Corporation was under the impression that the lowest bidder would not possibly be able to execute the contract at such a low price. However, the Arbitrator has proceeded to further observe that after the orders of Court, the contract was impossible to be performed and thus, dis-allowed the claims of claimant, except cost of Bank Guarantee and interest on the same.

9. Considering the arguments of learned counsel and the material on record, this Court has examined challenge to each claim as under :-

a. The claimant-GIL has challenged the rejection of claims made at Nos. 1, 5, 6 & 8. As regards **Claim No. 1** is concerned, it relates to the Cost of Tender. The claimant-GIL has stated that once the bid is accepted, it becomes the cost incurred and since the contract is terminated on account of the fault of Municipal

Corporation, the Municipal Corporation is required to pay the amount of losses.

The same is not allowed by the Arbitrator by holding that the same is not arbitrable, since the contract itself contains Clause 4 GCC, which requires the bidder to bear all the costs in respect of preparation and submission of bids, irrespective of outcome of the bidding process. It is a part of business risk and even after termination is found to be wrongful, the contractor cannot claim the costs of bidding. The Arbitrator has interpreted the terms of contract and his interpretation of contract cannot be interfered with by this Court under Section 34 of the Act unless it is patently illegal. The Arbitrator has interpreted the clauses of the contract, that the cost of bidding has to be incurred by the bidder and no claim can be made in this regard. There is no patent illegality and hence cannot be interfered with.

b. The Arbitrator has rejected **Claim No. 5**, as it is in respect of the site establishment expenses made by calculating the salaries of officers and other staffs and their travelling and conveyance expenses during the period from June 1998 to August 1998. The Arbitrator has held that the staff was already employed by the claimant-GIL in other project and has rejected the claim. The finding of Arbitrator that the staff is employed at other establishment, cannot be re-assessed and thus cannot be interfered with.

c. As regards <u>**Claim No. 8**</u> is concerned, the Arbitrator has observed that the claimant has asked for 25% of the profit of contract work. The Arbitrator has held that the contract was in force for a very short period. After suspension and letter of termination, the claimant was at liberty to mobilize their resources for any other job. The claim of 25% is also excessive. The claimant has not carried out any substantial part of the project after the Letter of Award. Even the bar chart was not submitted and drawings were yet to be submitted for getting approved. In any case, no evidence is adduced in support of the claim for loss or profit. There was vast difference between the claimant's bid and the bid of M/s. Hubert B. V. The claims had overestimated the bid. A very high claim was put up by the claimant and that M/s. Hubert B. V. continued to successfully work without any complaints after the commissioning and accordingly, Claim No. 8 is rejected by the Arbitrator.

In such fact on instant case, it is observed by the Arbitral Tribunal that there was no wrong committed by the claimant. Thus the claimant cannot be held responsible for the lapses of the Municipal Corporation. The Municipal Corporation has accepted the bid of claimant, as it was under impression that the bid by M/s. Hubert B. V. could not have been performed by M/s. Hubert B. V., as it was too low and technically not viable and it was not possible to carry out the tender work at such a low rate. Thus, the tender was awarded to the claimant. In this fact situation, Claim No. 8 has been erroneously rejected by the Arbitrator.

Once the Arbitrator holds the Municipal Corporation liable/responsible for the grant of contract and the claimant has not influenced the decision in any unlawful manner, the claim made under the head 8 is justifiable. The extent of justifiability of the claim is not for consideration before me, but the entire claim cannot be rejected. The Arbitrator has held that the contract was in existence from 11th June, 1998 to 6th September, 1999.

The challenge to the Arbitral Award under Section 34 of the Act is prior to the 2015 amendment of the Arbitration and Conciliation Act, 1996. This Court's power to set aside the Arbitral Award on the grounds as available under Section 34 of the Act, are noted below in the judgment of ***Associate Builders v/s. Delhi Development Authority***[1]

The Hon'ble Supreme Court in the case of ***Associate Builders*** (*supra*) has observed in paragraphs 31, 33 and 42, which is noted below :-

> "*31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:*

[1] (2015)3 Supreme Court Cases 49.

(i) a finding is based on no evidence, or

(ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or

(iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.

33. It must clearly be understood that when a court is applying the "public policy" test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score. Once it is found that the arbitrators approach is not arbitrary or capricious, then he is the last word on facts. In P.R. Shah, Shares & Stock Brokers (P) Ltd. v. B.H.H. Securities (P) Ltd. 18, this Court held: (SCC pp. 601-02, para 21).

42. In the 1996 Act, this principle is substituted by the "patent illegality" principle which, in turn, contains three subheads:

42.1. (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

> *"28. Rules applicable to substance of dispute.-(1) Where the place of arbitration is situated in India-*

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;"

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

28. Rules applicable to substance of dispute.-(1)-(2)

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."

The Arbitrator in the instant Arbitral Award has held that the writ order for cancellation of the contract in favour of the claimant was in invitim by the Municipal Corporation and also that the Municipal Corporation was responsible for the grant of contract to the claimant. Once the findings are rendered to this effect, that the order in Writ Petition cancelling the contract was in invitim, it was logically not permissible for the Arbitrator to refuse the claim of loss of profits of the claimant. Having held the Municipal Corporation responsible for the grant of contract and no blame is found on the claimant, the Arbitrator ought to have granted the claim. How much of the claim can be granted is not for this Court to determine and would be based on various factors. However, the claim has to naturally follow and having not granted it, the Arbitrator has committed 'Patent Illegality'.

d. As regards **<u>Claim No. 6</u>** is concerned, it relates to the fees payable to the associates of claimant, M/s. Smith and Loveless incorporated, USA, for the design of low speed floating aerators. The fees were not paid to M/s. Smith and Loveless incorporated, USA, by the claimant and accordingly, such a claim was dismissed by the Arbitrator by seeing an error in the said claim. Again this cannot be interfered with, as the finding is that no payments were made to the associates.

Coming to the Arbitration Petition filed by the Municipal Corporation, the Arbitrator has allowed Claim Nos. 4 & 12.

e. As regards **<u>Claim No. 4</u>** is concerned, it is in respect of bank commission on the Bank Guarantees submitted by the claimant-GIL, i.e. the bank guarantee in respect of performance security of Rs.

2,70,10,018/- and another bank guarantee of Rs. 1,32,43,700/-. The claim is at the rate of 1% and 1.5%. The total claim is of Rs. 15,09,515/-, which is at the normal rate, at which the bank charges for issuance of the bank guarantee. The first bank guarantee is for 45 months and the second is for 30 months. Although there is no evidence adduced to show that 1% and 1.5% was paid to secure such bank guarantees, the Arbitrator has granted it, since it is the reasonable amount at which the bank would charge to give bank guarantee. This Court finds no error in the approach of Arbitrator, as those would be the normal charges and the Arbitrator has correctly having granted the same.

f. As regards **Claim No. 12** is concerned, it relates to the interest on the amount granted towards securing Bank Guarantee and it is granted at the rate of 9% per annum. Since it relates to Claim No. 4 and Claim No. 4 is not interfered with, Claim No. 12 also cannot be interfered with.

10. This Court can partially set aside an Arbitral Award, as in the judgment of the Hon'ble Supreme Court in the case of ***Gayatri Balasamy v/s. ISG Novasoft Technologies Limited***[2], it is observed in paragraphs 34 and 35 as under :-

> "*34. To this extent, the doctrine of omne majus continet in se minus-the greater power includes the lesser-applies squarely. The authority to set aside an arbitral award necessarily*

[2] (2025)7 Supreme Court Cases 1.

encompasses the power to set it aside in part, rather than in its entirety. This interpretation is practical and pragmatic. It would be incongruous to hold that power to set aside would only mean power to set aside the award in its entirety and not in part. A contrary interpretation would not only be inconsistent with the statutory framework but may also result in valid determinations being unnecessarily nullified.

35. However, we must add a caveat that not all awards can be severed or segregated into separate silos. Partial setting aside mav not befeasible when the "valid" and "invalid" portions are legally and practically inseparable. In simpler words, the "valid" and "invalid" portions must not be interdependent or intrinsically intertwined. If they are, the award cannot be set aside in part."

11. On the issue of 'each claim though arising out of a composite contract, can be decided separately', the reliance is placed on the judgment of Delhi High Court in the case of ***National Highways Authority of India v/s. Trichy Thanjavur Expressway Ltd.***[3] The relevant paragraphs are noted below :-

"*40. Undoubtedly, an award may comprise a decision rendered on multiple claims. Each claim though arising out of a composite contract or transaction may be founded on distinct facts and flowing from separate identifiable obligations. Just as claims may come to be preferred resting on a particular contractual right and corresponding obligation, the decision which an AT may render on a particular claim could also be based on a construction of a particular covenant and thus stand independently without drawing sustenance on a decision rendered in the context of another. If such claims be separate,*

[3] 2023 SCC OnLine Del 5183.

complete and self-contained in themselves, any decision rendered thereon would hypothetically be able to stand and survive irrespective of an invalidity which may taint a decision on others. As long as a claim is not subordinate, in the sense of being entwined or interdependent upon another, a decision rendered on the same by the AT would constitute an award in itself. While awards as conventionally drawn, arranged and prepared may represent an amalgam of decisions rendered by the AT on each claim, every part thereof is, in fact, a manifestation of the decision rendered by it on each claim that may be laid before it. The award rendered on each such claim rules on the entitlement of the claimant and the right asserted in that regard. One could, therefore, validly, subject of course to the facts of a particular case, be entitled to view and acknowledge them as binding decisions rendered by the AT on separate and distinct claims.

41. The Court notes in this regard that Mr. Mukhopadhaya, Mr. Rajshekhar Rao, learned senior counsels as well as Mr. Ashim Sood had urged that while an award as ultimately rendered may contain findings on numerous claims, the decision rendered in respect of each such claim is entitled to be viewed as an award in itself. This, according to learned counsels, clearly flows from the power of the AT to not just render a final award but also and in the course of arbitral proceedings render interim awards ***in respect of various claims. It was rightly pointed out by learned counsels that each such decision on a claim could stand independently and be final and binding in itself. Those findings or decisions in relation to various claims that stand placed before the AT may each constitute an award itself and the operative directions framed representing the disposition of all such claims. As was rightly contended by Mr. Mukhopadhaya, the declaration with respect to entitlement and the award of a money claim consequent thereto would be liable to be viewed as*** *independent Arbitral Awards. Mr. Sood had chosen to describe* *such a disposition of claims as being an "agglomeration" of awards. The Court accords its emphatic and wholehearted acceptance to the aforenoted submissions and comes to the conclusion that an award is thus liable to be viewed and understood accordingly. It thus comes to conclude that each such decision rendered by an AT could be validly viewed as the decision rendered on a particular claim and thus constituting an independent award in itself.*"

12. Thus, the Arbitration Petition filed by the Municipal Corporation bearing Arbitration Petition No. 463 of 2006 is dismissed and in Arbitration Petition No. 481 of 2006 filed by the claimant-GIL, Claim No. 8 of the Arbitral Award is set aside, as the Arbitrator by not allowing Claim No. 8, has committed the patent illegality. The claimant may pursue such remedies as may be available in law with regard to Claim No. 8.

[ARUN R. PEDNEKER, J.]

13. At this stage, the respective learned counsel appearing for Municipal Corporation seeks stay to the order passed today. However, the claimant has partially succeeded before the Arbitrator and also in the Petition under Section 34 of the Act as far as Arbitration Petition No. 463 of 2006 is concerned, as such the prayer for stay is dismissed. As regards Arbitration Petition No. 481 of 2006 also the same is also refused, as there is no immediate claim awarded to the claimant.

[ARUN R. PEDNEKER, J.]