
(2026) 02 MAD CK 1774

In the Madras High Court

Case No : Arbitration Original Petition (Com.Div.) No. 101 Of 2022

M/S.Simplex Infrastructures Ltd

APPELLANT

Vs

Purvankara Projects Ltd

RESPONDENT

Date of Decision : 23-02-2026

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 2(1)(b), 7A, 7C, 20A(1), 20C(1),
20(3)(A), 20(3)(C), 28(1)(a), 28, 28(3), 33A, 33C, 34
Income Tax Act, 1961 — Section 80IB

Citation : (2026) 02 MAD CK 1774

Hon'ble Judges : N.Anand Venkatesh, J

Bench : Single Bench

Advocate : Thriyambak J.Kannan, Joshua Samuel

Final Decision : Dismissed

Judgement

N.Anand Venkatesh, J

1. This petition has been filed by the petitioner assailing the award passed by the Arbitral Tribunal dated 04.8.2018, as amended on 10.8.2018 and 10.9.2018, under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act).

2. Heard both.

3. The genesis of this case and the rough weather it faced even before the above petition was numbered have been succinctly captured in the order passed on 24.2.2022 and it reads as hereunder:

"Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] was presented in this Court on 14.02.2022 under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity] assailing an 'arbitral award dated 04.08.2018' [hereinafter 'impugned award' for the sake of convenience and clarity] made by a 'three member Arbitral Tribunal' ['AT']. To be noted, three member AT is constituted by one former Judge

of Hon'ble Supreme Court of India and two former Judges of Hon'ble High Courts of Karnataka, Madras/Andhra Pradesh. Hon'ble former Judge of Supreme Court of India is presiding arbitrator. This Court is informed that there was a change of the member of AT post nomination but it is not necessary to set out those details in this proceedings owing to the scope and gamut of the case on hand. It is further to be noted that the impugned award is a unanimous award. It is further to be noted that there are two corrections to impugned award under Section 33 of A and C Act one dated 10.08.2018 and other dated 10.09.2018.

2. There is a sole claimant company and lone respondent company before AT. From hereon, for convenience, lone claimant before AT i.e., claimant company shall be referred to 'Puravankara' and lone respondent i.e., lone respondent company before AT shall be referred to as 'Simplex'.

3. Simplex has presented the captioned Arb OP in this Court.

4. Puravankara floated a tender dated 10.01.2006 for pile foundation qua a residential project which is construction of a superstructure which is to go by the name Purva Grand Bay, Marine Drive, Cochin. Simplex responded to this tender vide a quotation dated 18.01.2006 and clause 11 in Technical Notes on RCC driven precast segmental piles reads as follows:

'11. ARBITRATION:

Any dispute arising out of this contract shall be referred to Arbitration as per Provisions of 'Arbitration and Conciliation Act, 1996' and the venue of Arbitration shall be Chennai'.

5. Puravankara in and by communication dated 06.02.2006 bearing reference No.0729/ CH&C/P.GBAY/05-06/ENG-EIC which is in the nature of a work order accepted the afore-mentioned quotation.

6. Therefore, arbitration agreement between Puravankara and Simplex is now effectively the aforementioned clause 11 in the quotation and it is therefore necessarily an arbitration agreement by incorporation in the tender.

7. In other words to put it differently, the aforementioned clause 11 in the quotation of Simplex serves as arbitration agreement between the parties i.e., Puravankara and Simplex being Arbitration Agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act is learned counsel's say. To be noted, Mr.Thriyambak J.Kannan learned counsel of M/s.Kaitan & Co (Law Firm) for Simplex who has presented Arb OP is before this Court.

8. Aforementioned tender dated 10.01.2006 floated by Puravankara, quotation given by Simplex dated 18.01.2006 and acceptance of the same by Puravankara on 06.02.2006 (work order) shall be collectively referred to as 'said contract' for the sake of convenience and clarity.

9. Suffice to say (for now) that said contract ran into rough weather resulting in arbitration agreement between the parties being triggered. Aforementioned AT

was constituted and first sitting of aforementioned AT was in Bangalore on 05.07.2010 wherein one Hon'ble member (Justice T.N.C.Rangarajan former Judge of Madras and Andhra Pradesh High Court) was not present, he had sent an electronic mail authorizing the other two arbitrators to finalise the procedural matters including the arbitrator's fee. In this 05.07.2010 proceedings, in paragraph No.9(h) it was recorded as follows:

'9.....

a.

b.

c.

d.

e.

f.

g.

h. The Venue, as agreed by the parties and their counsel, will be at Bangalore at the same location. The travel expenses and stay of Justice T.N.C.Rangarajan shall be met by the parties to the arbitration.'

10. Thereafter, arbitration proceeded before AT and AT made the impugned award. It will suffice to say (at this stage) that all other sittings of AT were also in Bangalore (State of Karnataka) and the impugned award was made in Bangalore (State of Karnataka). To be noted, claims of Puravankara were partly allowed qua impugned award. This Court is informed that with the knowledge of Simplex, Puravankara has not preferred or presented a separate Section 34 petition against the disallowed portions of its claim. However, as already alluded to supra, Simplex has presented the captioned Section 34 petition in this Court.

11. Prior to the presentation of captioned 34 OP in this Court, Simplex had approached the Civil Court in Bangalore by way of a petition (referred to as plaint) dated 10.12.2018 which met with objections (from Puravankara) dated 22.07.2019 regarding jurisdiction resulting in an order dated 07.01.2022 made by a learned single Judge being LXXXVIII Additional City Civil and Sessions Judge (Exclusive Commercial Court) Bengaluru City. In and by this order dated 07.01.2022, learned Judge inter alia sustained the objections regarding the jurisdiction and returned the papers for presentation before appropriate Court in accordance with law.

12. In the light of/pursuant to the aforementioned trajectory, captioned Arb OP has been presented in this Court is learned counsel's say.

13. At this prima facie stage, learned counsel for Simplex made submissions regarding maintainability and broad but not exhaustive summation of the same

is as follows:

(a) Union of India Vs. Hardy Exploration & Production (India) Inc., reported in 2018 (7) SCC 374 is not relevant any more;

(b) Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others, order made on 19.04.2017 reported in (2017) 7 SCC 678, Brahmani River Pellets Limited Vs. Kamachi Industries Limited order made on 25.07.2019 reported in (2020) 5 SCC 462 and BGS SGS Soma JV Vs. NHPC Limited order dated 10.12.2019 reported in (2020) 4 SCC 234 are relevant.

(c) Paragraph No.45 of BGS SGS Soma principle is of relevance.

14. As already alluded to supra, the aforementioned is a broad summation of the submissions and it is not exhaustive. Suffice to say at this stage that the crux and gravamen of the submission is the term 'place' occurring in Sub-Section (1) of Section 20 of A and C Act is 'Seat' and the same term 'place' occurring in Sub-Section (3) of Section 20 of A and C Act is 'Venue' going by paragraph No.45 of BGS SGS Soma case law. Predicated on this principle, learned counsel submits that in the case on hand, in the light of factual matrix and the trajectory the matter has taken thus far (captured supra) Seat is Chennai and Venue was Bangalore. Seat decides the jurisdiction (supervisory Court), in other words, curial law follows Seat and therefore, Simplex is entitled to move this Court by presenting captioned Arb OP in this Court more so in the light of the order made by LXXXVIII Additional City Civil and Sessions Judge (Exclusive Commercial Court) Bangalore being order dated 07.1.2022 as the same has been made after full contest between the Simplex and Puravankara.

15. Depending on the stand the respondent may take, an interesting legal tussle may ensue but I do not want to enter into the realm of surmises and conjectures at this stage. I do not want to try and foretell either but it will suffice to direct Registry to process the captioned Arb OP making it clear that Seat, Venue, Curial Law, Jurisdiction i.e., Supervisory Court issues are left open for the respondent to raise if so advised and if the respondent chooses to do so. In other words, if the respondent chooses to raise this issue, same will be considered uninfluenced by this proceedings which are made for the limited purpose of deciding maintainability at this stage.

16. Registry to process, assign a number to the captioned Arb OP and list the same in the Admission Board in accordance with 'The Madras High Court (Arbitration) Rules, 2020' [hereinafter 'MHC Arbitration Rules' for the sake of convenience and clarity], if otherwise in order."

4. After a long travel in time, this petition ultimately reached the stage of final hearing and when it came up for hearing on 10.12.2025, the learned counsel on either side addressed on the preliminary objections raised regarding the jurisdiction of maintaining the above petition filed under Section 34 of the Act. This Court suggested that the matter has been prevaricating for some time only

on the issue of maintainability and that if this Court once again happened to go into this issue, both the sides would not be able to see the light of the day on the merits of the case. Hence, both sides consented for arguing the matter on merits, pursuant to which, the following order came to be passed in this regard on 10.12.2025:

"Learned counsel appearing on either side addressed on the preliminary objections raised on the jurisdiction of maintaining the present petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

2. Considering the fact that the matter has been pending for a long time, it will be more appropriate if this Court hears both sides on merits and takes a consummate decision.

Post this petition for final hearing on 21.01.2026 at 02.15 p.m. In the mean time, learned counsel appearing on either side shall share notes of submissions."

5. Pursuant to the above order, both sides addressed arguments on merits and this Court carefully considered the same.

6. The facts leading to filing of this petition are as follows:

(i) The respondent, on 10.1.2006, floated a tender for pile foundation for construction of multi storeyed residential apartments namely Purva Grand Bay at Marine Drive, Kochi. The petitioner responded to the said tender vide letter dated 18.1.2006. The tender envisaged the use of RCC Bored Cast-In-Situ Piles, which were also known as DMC Piles. While responding to the said tender, the petitioner gave a counter offer to install RCC driven precast segmental piles instead of the DMC piles. The petitioner also submitted necessary materials regarding the same and went ahead in complying with the formalities of entering into an agreement, payment of earnest money deposit (EMD), etc.

(ii) The respondent requested the petitioner to submit their loading detail drawing and design data in order to evaluate mathematical computation based on soil investigation report. The petitioner undertook to install additional piles in the event of the load test demonstrating inadequate pile capacity. Ultimately, the contract valued at Rs.6,12,13,035/- was awarded to the petitioner through letter dated 02.2.2006. The work order containing the specific terms and conditions was issued on 06.2.2006.

(iii) After various communications between the parties, the respondent informed the petitioner that the soil investigation report supplied along with the tender would hold good for the pre-cast driven piles and Clause 9 of the other conditions in the work order stood deleted. In furtherance of the work order, the petitioner completed the piling work to the satisfaction of the respondent. According to the petitioner, the pre-cast driven piles installed by the petitioner passed all the load tests conducted under the supervision of the respondent and its consultants and thereby the petitioner established the load bearing capacity and stability of the said piles. The completion certificate dated 11.11.2006 was also issued and

thereby the petitioner claimed to have been discharged from the contract.

(iv) Subsequently, on 14.12.2006, the respondent came up with an allegation that certain piles were tilted/out of plumb. In turn, the petitioner, by letter dated 15.12.2006, required the respondent to clarify as to whether any machine/mechanical excavation work had been carried out in the site and specifically advised against any such excavation, given the nature of the soil. The petitioner reiterated that machine excavation carried out at the site without proper precautionary measures was improper and requested the respondent to excavate manually for any further construction activity.

(v) A meeting was held between the parties on 09.1.2007, in which, it was agreed that all future excavation undertaken would be carried out manually after sufficiently shoring the entire site.

(vi) On 15.2.2007, the respondent floated a fresh tender for installation of 228 Bored Cast-In-Situ Piles as additional work at the site. The petitioner also participated in that and made their offer dated 26.2.2007. At that point of time, on 02.3.2007, the respondent alleged that the pre-cast piles installed based on the petitioner's design and technology were a failure and called upon the petitioner to rectify the alleged defect within 7 days using the Bored Cast-In-Situ Piles and complete the piling foundation within 40 days and that in case of any failure to carry out the rectification work, it was informed that the work would be awarded to another contractor.

(vii) The petitioner denied the said allegation through communication dated 09.3.2007 and called upon the respondent to release the balance payment of Rs.1,24,90,800/- towards installation of the piles and another sum of Rs.15,30,670/- towards reimbursement of VAT. But, the respondent, by letter dated 07.4.2007, informed the petitioner that the two experts appointed by the respondent had recommended the installation of additional Bored Cast-in-Situ Piles to rectify the defect. The petitioner was also informed that the contract would be awarded to another contractor as the petitioner had not carried out the rectification work as specified by the respondent.

(viii) The petitioner issued a notice dated 20.4.2007 to the respondent by pointing out to the negligence in commencing the excavation without observing the basic precautionary measure of shoring and called upon the respondent to make the balance payments to the tune of Rs.1,40,21,470/- together with interest, failing which, the petitioner would refer the dispute to arbitration. The dispute ultimately went before the Arbitral Tribunal consisting of three Members.

(ix) Before the Arbitral Tribunal, the respondent filed the claim statement and sought for the following reliefs:

“(a) Pass an award directing the respondent to pay the claimant a sum of Rs.14,21,96,189.66 (Rupees Fourteen Crores Twenty One Lakhs Ninety Six Thousand One Hundred and Eighty Nine and Paise Sixty Six) along with interest

at the rate of 18% per annum towards cost of the rectification of the piling and supporting works and other civil works carried out by it;

(b) Pass an award directing the respondent to pay the claimant a sum of Rs.10,00,00,000/- (Rupees Ten Crores) along with interest at the rate of 18% per annum being the amounts payable by the claimant to the proposed purchasers as damages for the delay in completion of their respective flats in the project;

(c) Pass an award directing the respondent to pay the claimant sum of Rs.23,00,00,000/- (Rupees Twenty Three Crores) along with interest at the rate of 18% per annum being the amounts towards losses due to escalation in price of materials, such as, steel, cement, fittings, fixtures and site consumables and other overheads and salaries;

(d) Pass an award directing the respondent to pay the claimant sum of Rs.10,00,00,000/- (Rupees Ten Crores) along with interest at the rate of 18% per annum towards loss of reputation suffered by the claimant;

(e) Pass an award directing the respondent to pay the claimant sum of Rs.26,00,00,000/- (Rupees Twenty Six Crores) along with interest at the rate of 18% per annum towards the losses, which the claimant is on the verge of losing under Section 80 IB of the Income Tax Act;

(f) Pass an award directing the respondent to pay the claimant a sum of Rs.7,24,20,777/- (Rupees Seven Crores Twenty Four Lakhs Twenty Thousand Seven Hundred and Seventy Seven) along with interest at the rate of 18% per annum being the amount being paid to Kunnel Engineers towards escalation in rates for civil works; And

(g) Pass an award directing the respondent to refund the sum of Rs.4,60,11,940/- (Rupees Four Crores Sixty Lakhs Eleven Thousand Nine Hundred and Forty) being the amount paid by the claimant to the respondent towards the defective works carried out by the respondent under the work order dated 06.2.2006 along with 18% interest per annum from the date of payment till the date of refund."

(x) Before the Arbitral Tribunal, the petitioner filed a statement of defence and made counter claims resisting the relief sought for by the respondent/claimant. The petitioner raised preliminary objections on the ground of limitation. Apart from that, the petitioner also resisted the claims made by the respondent/claimant on merits. The counter claims made by the petitioner are as follows:

"(a) a sum of Rs.1,24,90,800/- (Rupees one crore twenty four lakhs ninety thousand eight hundred only) towards the value of the work executed by the respondent;

(b) a sum of Rs.15,30,670/- (Rupees fifteen lakhs thirty thousand six hundred seventy only) towards the Kerala Value Added Tax that is due and payable by the claimant,

(c) interest at 18% per annum on the aforesaid sums set out in Paragraphs (a) and (b) above from 30.10.2006 and 27.11.2006 respectively till 30.4.2011 amounting to Rs.1,01,20,628/- and Rs.12,19,086/- respectively;

(d) interest at the rate of 18% per annum on the said sum set out in paragraphs (a) and (b) above from 01.5.2011 till the date of payment;

(e) costs of these proceedings."

(xi) Based on the pleadings, the Arbitral Tribunal framed the following issues:

"(1) Whether the claim of the claimant or the counter claim of the respondent barred by limitation?

(2) Whether the piles driven by the respondent were defective and unsustainable for the claimant's project due to defective design and technique adopted in laying the pile foundation as alleged by claimant?

(3) If so, whether the piles got tilted and became out of plumb only on account of mechanical excavation by the claimant without having shoring and other precautionary measures in place and to what extent the number of piles that were hilted at the time completion of work on 30.8.2006?

(4) Whether the respondent committed breach of the assurances and guarantee given by them and whether they were liable to carry out rectification as per tender dated 15.2.2007 as pleaded by claimant and whether the claimant is entitled to any claim in respect of the damages for the defective design or execution of work from the respondent, if so what are the damages that the claimant is entitled to claim from the respondent and whether the respondent stood guarantee for any of the piles or for its tilting and if so when and how much?

(5) Whether the tender dated 15.2.2007 was not for rectification but for additional work as pleaded by respondent?

(6) Whether the claimant has instructed the respondent to carry out any rectification prior to the issuance of the tender dated 15.2.2007 for installation of additional piles?

(7) Whether the claimant has proved that the installation of additional piles was required and necessary only on account of breach of contract by the respondent?

(8) Whether the claimant is entitled to Rs.14,21,96,189.66 ?? any other sum from the respondent towards cost of rectification of the piling and supporting works and other civil work carried out by claimant?

(9) Whether the claimant is entitled to claim from the respondent the damages payable to the proposed purchasers for the delay in completion of the respective flats?

(10) Whether the respondent is liable to pay to claimant Rs.10 crores or any

other sum payable by the claimant to proposed purchasers?

(11) Whether the claimant is entitled to get from respondent Rs.23 crores towards loss due to escalation in price of materials, overheads and salaries?

(12) Whether the claimant is entitled to Rs.10 crores towards loss of reputation from the respondent?

(13) Whether the claimant is entitled to recover the amounts paid by the claimant to the respondent under work order dated 06.2.2006?

(14) Whether the claimant is entitled to a sum of Rs.26 crores, which the claimant may lose under Section 801B of the Income Tax Act?

(15) Whether the respondent is liable to pay Rs.7,24,20,777/-, being the amount paid by claimant to M/s.Kunal Engineers towards escalation in rates of civil works?

(16) Whether the respondent is liable to refund Rs.4,60,11,940/- paid to them by claimant?

(17) Whether the claimant is liable to pay to respondent Rs.1,24,90,800/- towards the value of the works executed by them?

(18) Whether the claimant is liable to pay Rs.15,30,670/- to the respondent towards Kerala VAT (Value Added Tax)?

(19) Whether the respondent is entitled to claim the reliefs sought in the counter claim?

(20) Whether the claimant or respondent entitled to any interest on the amounts, if any, due to them and if so, from what date and at what rate? and

(21) What costs and award?"

(xii) On the side of the respondent/claimant, C.W.1 to C.W.5 were examined and Ex.C.1 to Ex.C.114-B were marked. The petitioner did not let in any oral evidence, but only relied upon documentary evidence namely documents R.1 to R.76.

(xiii) The Arbitral Tribunal, on considering the facts and circumstances of the case and on appreciation of evidence, passed the following award:

"(i) The claim is partly allowed and the respondent is directed to pay to the claimant the cost of rectification of the piling with interest upto the date of award amounting to Rs.8,36,48,877/-(Rupees Eight Crores Thirty Six Lakhs Forty Eight Thousand Eight Hundred and Seventy Seven only) (i.e., Rs.4,80,00,000/- + Rs.3,56,48,877/-);

(ii) The claimant shall be entitled to future interest @ 9% on the said amount from the date of the award till the date of payment or expiry of three months, whichever is earlier. After three months, the claimant shall be entitled to interest

@ 12% p.a. on the amount awarded;

(iii) The counter claims made by the respondent are rejected; and

(iv) The Parties shall bear their respective costs.”

(xiv) The above award dated 04.8.2018 was corrected on two occasions namely on 10.8.2018 and 10.9.2018. Challenging the same, the petitioner is before this Court.

7. The main issues that were urged on the side of the petitioner are as follows:

(a) The petitioner was discharged from the liabilities arising out of the work order dated 06.2.2006 upon issuance of the completion certificate and thereafter, the respondent/claimant failed to undertake the basic precautionary measures before carrying out the excavation work and for those consequences, the petitioner was sought to be made liable. This basic issue was not properly considered by the Arbitral Tribunal and in spite of the issuance of the completion certificate, the Arbitral Tribunal proceeded to impose a liability on the petitioner to install the additional piles, which did not arise under the contract between the parties;

(b) In spite of the petitioner having furnished all the relevant literature to support the pile design and its capacity, the Arbitral Tribunal failed to take the same into consideration and ultimately, the petitioner was burdened with cost for rectification/installation of additional piles by attributing 40% contributory negligence on the part of the respondent/claimant.

(c) The Arbitral Tribunal disregarded the inconsistencies contained in the soil investigation report compiled by the consultants and went wrong in relying upon a different formula instead of using the dynamic formula, which was more reliable than the static formula due to ambiguity in the soil investigation report.

(d) The scope of work of the petitioner was limited to the design and installation of precast piles and the petitioner was only provided details to test the vertical load of the piles. The bill of quantities (BoQ) issued by the respondent/claimant did not require the lateral load test to be conducted and such an issue was raised for the first time before the Arbitral Tribunal.

(e) The Arbitral Tribunal further placed reliance upon the expert opinion, which was based on the imprecise soil investigation report provided by the respondent/claimant. The petitioner adopted a factor of safety-2 as per the international empirical dynamic formula whereas the Arbitral Tribunal adopted a factor of safety-2.5 in accordance with the static formula, when, in fact, the piling was based on the dynamic formula.

(f) The respondent/claimant sought for the additional piling work to be done and alleged breach of the contract much later when they reported tilting of certain piles. According to the petitioner, such tilting was due to mechanical excavation carried out by the respondent/ claimant without taking proper precautions.

8. In so far as the first issue regarding limitation was concerned, the Arbitral Tribunal rendered a finding that both the claims as well as the counter claims were not barred by limitation. The counsel appearing on either side did not have any serious complaints on this finding rendered by the Arbitral Tribunal.

9. The Arbitral Tribunal dealt with issue Nos.2 to 7 together since they were interconnected. The sum and substance of these issues was as to whether the piles driven by the petitioner were defective due to defective design and technique adopted in laying the pile foundation; whether the same was the cause for the piles getting tilted or the same took place due to mechanical excavation without taking precautionary measures; whether the petitioner would be liable to carry out the rectification in respect of the damages suffered for the defective design or execution of work; whether the subsequent tender dated 15.2.2007 was not for the rectification, but only for the additional work; and whether the petitioner committed breach of the assurances and guarantee given by them and hence, was liable to install the DMC piles as a remedial measure.

10. The Arbitral Tribunal, after considering the relevant clauses in the contract and the various communications between the parties, came to the conclusion that the respondent/claimant had accepted the petitioner's system of piling and that the respondent/claimant was not an expert in the system of piling and was depending on the design/ scheme given by the petitioner. The Arbitral Tribunal found that the respondent/claimant had furnished the soil test report, but in Ex.C.3, had required the petitioner to study the soil report and understand the soil strata.

11. The respondent/claimant took a very specific stand that the formula for piling was decided by the petitioner, that it was based on the literature given by the petitioner, that in the tender, what was prescribed was the RCC Bored Cast In-Situ Piles (DMC Piles), that however, the petitioner made the counter offer stating that instead of the DMC piles, the RCC driven precast segmental piles would be technically far superior, more expeditious and economical and further gave a guarantee for safe bearing capacity of the piles proposed by them and that the petitioner also gave an undertaking to carry out all remedial measures including installation of additional piles, if required, at no extra cost.

12. This is evident from Ex.C.3 – the communication dated 18.1.2006. In the tender, what were prescribed were the DMC piles having the length of approximately 55 M below the ground level. Towards the same, the petitioner assured that the Precast Driven RCC Segmental Piling would be installed to the depths of 60 M, 70 M and 80 M. They also specifically stated that the technology proposed by them was best suited for the sub-soil conditions available at the proposed site.

13. The Arbitral Tribunal also took into consideration the document R.27, which was the letter written by the consultant of the respondent/claimant stating that the piles were terminating at 42 – 43 M. At this stage, the respondent/claimant

decided to take the opinion of one Mr.B.R.Srinivasa Murthy, retired Professor of Civil Engineering, Indian Institute of Science ((IIS), Bengaluru. Further, a meeting was held between the parties and representatives on 24.1.2006, in which, it was decided that the petitioner would furnish the dynamic analysis report along with boring details to the Structural Consultant and based on the same, the expert would provide recommendations regarding the depth, to which, the piles were to be driven.

14. It is not clear as to whether the petitioner complied with this requirement and furnished the dynamic analysis report along with the boring details.

15. The said Professor namely Mr.B.R.Srinivasa Murthy submitted a preliminary technical report (Ex.C.18) and by providing details, suggested a re-look on all aspects of designs and driving before proceeding further. At this juncture, Ex.C.19 assumes significance. This provides a minutes of the meeting dated 20.5.2006 where, based on the on-site observations, the following preliminary report was given by the said Mr.B.R.Srinivasa Murthy:

"In the design a factor of safety 2 adopted by Simplex, was not acceptable based on any of the formulas.

2. The No of total blows considered in the design for capacity of piles is not correct, since the blows were all observed to be between 600 to 700 mm, except when checking final set.

3. The group efficiency of the piles was not known due to staggering depths of piles.

4. The pile at 32 meters may yield over time due to presence of decayed wood at that level. The friction component in Simplex formula will be less than 10% at 32 meters.

5. The effect of buckling at 32 meters due to poor soil up to 22 meters.

6. The verticality of the driven Pile is not ensured."

16. After discussions, the following conclusion was arrived at:

"Conclusion:

Simplex to produce data on the design aspect regarding capacity of piles by 24 or 25th May, 2006. after which it would be decided whether to continue the present pile driving system with additional piles or adopt the bored cast-in situ system The 3rd Piling rig working on the SW side of site can be continued till such time that the variation in depth is within 10%. The driving of other 2 rigs will continue."

17. The Arbitral Tribunal considered the above facts along with Ex.C.20 and Ex.C.21 and rendered a finding that it was obligatory on the part of the petitioner to have made further soil investigation and if necessary, to undertake the design. The Arbitral Tribunal also found that the petitioner did not take any such efforts.

18. Even though the learned counsel for the petitioner submitted that there was no obligation on the part of the petitioner to conduct any further soil test, Ex.C.3 – the tender notification specifically provided under Clause 9 that the contractor should ensure identification of the soil for bearing the pile. Further, even though the respondent/claimant had given the soil report, the tender notification specified that the contractor must study the soil strata and ensure the load bearing capacity.

19. In the light of the above findings, the Arbitral Tribunal concluded that the petitioner failed to make a proper study of the soil strata and for the deficiency arisen therefrom, the blame could not be thrown on the respondent/claimant. The Arbitral Tribunal thereafter went into the issue of design since the petitioner had agreed to undertake the work in accordance with IS-2911. The relevant Sections in the IS Code were taken into consideration and the Arbitral Tribunal rendered a finding that the pile shaft should withstand not only the vertical load, but also the lateral load.

20. The petitioner contended that as per the contract, only the vertical load had to be taken into consideration.

21. But, the Arbitral Tribunal found that the parties were required to work in compliance with the IS Code, which provided the design of the pile to withstand the vertical load and the lateral load. However, the petitioner failed to have the design disregarding the lateral load.

22. In so far as the design was concerned, the Arbitral Tribunal took into consideration the document - R.36, which happened to be the minutes of the meeting held on 11.7.2006 between the representatives of the respective parties, structural consultants and the architect for the project. In this meeting, the report of the said Mr.B.R.Srinivasa Murthy was also reviewed. A resolution was recorded under the document - R.36 and the Arbitral Tribunal rendered a factual finding that the respondent/claimant agreed to proceed with the piling work as suggested and clarified by Mr.Shankar Guha, who represented the petitioner along with one Mr.Bala Narayanan. Ultimately, the completion certificate dated 11.11.2006 was issued by the respondent/ claimant (R.59).

23. The petitioner strongly relied upon this completion certificate and took a stand that no fault was found on the part of the petitioner and that therefore, no defects in the work could be pointed out thereafter in order to claim damages against the petitioner.

24. While dealing with this issue, the Arbitral Tribunal relied upon certain judgments, which rendered a finding that the completion certificate, by itself, could not be construed to absolve the contractor from the responsibility for adequacy of the design prepared by them and would not absolve them from the liability in respect of the work done.

25. In the case in hand, on the date when the completion certificate was given,

no apparent defect was identified regarding the safe bearing capacity of the piles. However, the actual status itself evolved/revealed when the excavation work began. This was warranted since there was tilting of the piles at the project site and the expert report showed that such tilting of piles had taken place since the design and build of segmental precast driven piles of the petitioner did not meet the requirement.

26. The finding rendered by the Arbitral Tribunal from paragraphs 10.34 to 10.53 of the award are based on appreciation of evidence. The Arbitral Tribunal ultimately concluded that such tilting of piles was on account of possible deficiency in the design as well as the methodology of installation adopted and that it could not be attributed to the mechanical excavation.

27. This finding rendered by the Arbitral Tribunal is certainly a possible view after considering the various expert reports. Just because the petitioner wanted to deal with these reports in a different manner and to come to a different conclusion, such exercise cannot be done by this Court while exercising its jurisdiction under Section 34 of the Act. The Court is not expected to go into every nitty-gritty and to pick holes and it will suffice that on an overall reading of the reasoning given by the Arbitral Tribunal, the Court is satisfied that it is a possible view.

28. The next issue pertains to the subsequent tender dated 15.2.2007 that was floated by the respondent/claimant for providing RCC Bored Cast-In-Situ piles boring through soil strata.

29. This tender was necessitated for carrying out the additional piling work as per the scope prescribed in the tender (Ex.C.30). Surprisingly, the petitioner participated in this tender and gave the estimate. If really the petitioner was sure about the design and the mode of execution of the work carried out by them and in spite of it, the respondent was proceeding further to call for a new tender on the alleged deficiency caused in the earlier work undertaken and for doing additional piling work, to counter the same, the petitioner must have objected for the same and must have insisted for their claims at this point of time. Instead, the petitioner participated in the tender, which once again provided for the DMC piles. This would only mean that the petitioner was not once again reiterating and confirming that the counter offer made by them to install the RCC driven precast segmental piles was the most effective method to be adopted.

30. While dealing with the above issue, the Arbitral Tribunal considered the stand taken by the petitioner to the effect that a fresh tender was invited for the additional work and that the respondent/ claimant did not undertake any rectification work. The Arbitral Tribunal, on appreciation of evidence, came to the conclusion that such tender had to be floated by the respondent/claimant only to undertake the rectification work. To arrive at this finding, the Arbitral Tribunal placed specific reliance upon the document - R.68, which recorded the minutes of the meeting held on 09.1.2007 and a specific reliance was placed on S.No.1.7,

which provided as follows:

Sl. No

Particulars

Action by

1.7

It was suggested by all present to introduce new bored cast-in-situ piles of larger diameter at suitable locations in the pile groups whose piles are shifted/moved abnormally. Sterling suggested to provide a raft which shall be designed to take care of minor eccentricities as well as to act as a horizontal rigid diaphragm

All

31. The ultimate finding that has been rendered in paragraph 10.59 of the award was to the effect that the precast piles driven by the petitioner had tilted/shifted on account of deficiency in the design and the method of installation and that the piles did not get tilted or become out of plumb only on account of mechanical excavation by the respondent/claimant without shoring and other precautionary measures in place. The Arbitral Tribunal also rendered a finding at paragraph 10.62 that after the issuance of the completion certificate, even though the petitioner was not called upon to carry out the rectification work, the same did not absolve the petitioner of their liability under the agreement between the parties.

32. At the risk of repetition, this Court holds that such a finding rendered by the Arbitral Tribunal is based on appreciation of evidence and the Court, exercising its jurisdiction under Section 34 of the Act, cannot tinker with such finding unless it is perverse and suffers from patent illegality. No such deficiency is found in the award passed by the Arbitral Tribunal warranting its interference.

33. The next issue pertains to the claim made by the respondent to the tune of Rs.14.21 Crores (approximately).

34. The Arbitral Tribunal, on considering the evidence, came to the conclusion that the respondent/claimant, after getting Ex.C.18 – the preliminary report from the said Mr.B.R.Srinivasa Murthy, ought to have re-looked into the matter. But, they proceeded further on the assurance given by the petitioner to continue with the work. Ultimately, after completion of the piling work, during excavation, the defect was detected. Therefore, the Arbitral Tribunal found that if the respondent/claimant acted with clarity after receiving the preliminary report – Ex.C.18, they could have averted the loss and could have completed the project more effectively within a reasonable time. Hence, the Arbitral Tribunal attributed contributory negligence against the respondent/claimant and accordingly, deducted 40% of the total cost incurred by the respondent/claimant. Thus, towards the rectification work, out of a total claim of Rs.8 Crores, only a sum of

Rs.4.80 Crores was awarded.

35. The learned counsel for the petitioner submitted that the above finding made it clear that the Arbitral Tribunal was creating a via media, which was not in accordance with Section 28(1)(a) and Section 28(3) of the Act. To substantiate this submission, the learned counsel for the petitioner relied upon the judgment of the learned Single Judge of the Delhi High Court in NHAJ Vs. Prakash-Atlanta JV [reported in 2015 SCC Online Delhi 11178] and the judgment of the Division Bench of the Delhi High Court in Prakash Atlanta JV Vs. NHAJ [reported in 2016 SCC OnLine Del 1648].

36. The above judgments relied upon by the learned counsel for the petitioner dealt with a case that the Arbitral Tribunal was attempting a panchayati solution by creating a via media. It was held that such a decision could be taken only if both the parties consented for the same and that in its absence, it would be held in violation of Section 28 of the Act.

37. In the case in hand, such a panchayati solution was not attempted by the Arbitral Tribunal. The Arbitral Tribunal fairly came to the conclusion that only if the respondent/claimant had acted upon the report submitted by the said Mr.B.R.Srinivasa Murthy (Ex.C.18), major loss could have been averted. But, the respondent/claimant proceeded further with the design and the methodology adopted by the petitioner, which ultimately ended in deficiency in the design and in the method of installation. Therefore, the Arbitral Tribunal wanted to attribute contributory negligence on the part of the respondent/ claimant.

38. This is certainly a possible view and this Court does not find any perversity or patent illegality to interfere with the same. This view taken by the Arbitral Tribunal does not fall foul of Sections 28(1)(a) and 28(3) of the Act.

39. Except for the above relief, all the other reliefs sought for by the respondent/claimant were rejected by the Arbitral Tribunal.

40. In so far as the counter claims made by the petitioner were concerned, the Arbitral Tribunal has assigned sufficient reasons for rejecting the same and they do not warrant the interference of this Court.

41. Even the interest that was awarded by the Arbitral Tribunal is very reasonable and does not warrant the interference of this Court.

42. In the result, this Court does not find any ground to interfere with the award passed by the Arbitral Tribunal in exercise of its jurisdiction under Section 34 of the Act.

43. Accordingly, the above original petition stands dismissed. There shall be a direction to the petitioner to pay a sum of Rs.2,50,000/- (Rupees two lakhs and fifty thousand only) to the respondent towards costs.