IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION (L) NO. 28857 OF 2025
IN
COMMERCIAL ARBITRATION PETITION (L) NO.28855 OF 2025

Mumbai Metro Rail Corporation Limited ...Applicant/ Petitioner

Versus

L&T-STEC JV Mumbai ...Respondent

Mr. Birendra Saraf, Advocate General, Senior Advocate, *a/w Simil Purohit, Ameya Gokhale, Kriti Kalyani, Siddhant Marathe, Ansh Kumar, i/b Shardul Mangaldas, for the Applicant/Petitioner.*

Mr. Vikram Nankani, Senior Advocate, *a/w Indrnil Deshmukh, Saloni Kapadia, Karan Ghandhi, i/b Cyril Amarchand Mangaldas, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : OCTOBER 10, 2025

Oral Judgment:

Context and Factual Background:

1. Interim Application (L) No.28857 of 2025 is an Application seeking a stay on the execution of an arbitral award dated June 16, 2025 ("***Impugned Order***") pending the hearing and final disposal of Commercial Arbitration Petition (L) No.28855 of 2025, which is an

application under Section 34 of the Act.

2. The Petitioner, Mumbai Metro Rail Corporation Limited ("***Corporation***") is essentially pressing for an unconditional stay without any requirement to make any deposit of any component of the amounts awarded, on the premise that the award is *ex facie* perverse and has made such obvious blunders that no reasonable arbitral tribunal could have taken the approach adopted by the Learned Arbitral Tribunal.

3. The contract in question entailed design and construction of specific stations and tunnels in the Mumbai Metro Rail Project. The price quoted and agreed upon was a firm and composite lumpsum price. The bid for the contract had been made by the Respondent, L&T-STEC JV Mumbai ("***Contractor***") in May 2015 before the introduction of Goods and Services Tax (***"GST"***). The parties had agreed on a Change in Law provision in Clause 13.7 to be used for effecting adjustments for the impact of introduction of GST – the rationalization of indirect taxes in the GST had led to fiscal benefits and exemptions that had been available in other indirect taxes before GST getting subsumed into the GST regime. This is the *first* head of the dispute between the parties.

4. Whether a certain standard directed by the Corporation for adoption by the Contractor constituted "additional work", necessitating compensation for the Respondent, is the *second* head of dispute between the parties. The standard of 'one strut failure' in place of temporary earth retaining structures as plainly contracted, and whether that necessitates compensation for the Respondent has been considered.

Impugned Award:

5. The Impugned Award is a majority award (passed by the Presiding Arbitrator and the Learned Arbitrator nominated by the Contractor) awarding a sum of Rs.~250.82 crores to the Contractor, of which, Rs. ~21.26 crores is attributable to cost variation on account of additional work said to be carried out outside the scope of the project, while Rs. ~229.56 cores is attributable to the claim towards reimbursement for the impact of GST introduction for the period between July 1, 2017 and September 30, 2022.

6. The Learned Arbitrator nominated by the Corporation has dissented from the majority. The Dissenting Arbitrator has held that on the additional works, the Contractor would owe a refund of Rs. ~27.09

Lakhs to the Corporation. On the GST front, the Dissenting Arbitrator has not denied the claim on the reimbursement for GST, but has sought a pro-rata weighted adjustment to the amount or Rs. ~229.56 crores awarded by the majority by giving weightage to the two disputed percentage components of the tax impact on the contract price (10.3% as claimed by the Contractor and 6.78% as claimed by the Corporation). Depicting the working of such adjustment, the Dissenting Arbitrator has ruled that the impact of GST should be Rs. ~134.42 crores, about Rs. ~95 crores lower than what was granted by the majority. In the same breath, the Dissenting Arbitrator also concludes that a reputed chartered accountant firm must make an assessment to compensate the Contractor for introduction of GST in terms of the Change in Law provisions in the contract.

Contentions of the Parties:

7. Dr. Saraf, Learned Advocate General for the State of Maharashtra would contend that the foundational perversity in the approach of the Learned Arbitral Tribunal lies in the Learned Arbitral Tribunal finding it unnecessary to call for components of the contract price to examine the precise component of tax in the price quoted by the

Contractor. He would submit that it was vital to investigate and ascertain the precise impact of introduction of the GST regime on the contract price, which was impossible knowing the other ingredients and components of the price. It is contended that it is entirely arbitrary to provide any compensation for impact of GST introduction, without such data breaking down the components of the price bid of the Contractor.

8. Dr. Saraf would also point to various components of the Impugned Award and submit that there was no itemized analysis of each sub-segment of specific notifications and exemptions that had been available earlier, with no means of analysing what precise effect the introduction of GST would have. He would point to the exemptions considered by the Learned Arbitral Tribunal to indicate that there was nothing to show that such exemptions had been relied upon and factored in while bidding by the Contractor, thereby rendering the findings in this regard arbitrary.

9. Likewise, Dr. Saraf would contend, exemption that had been available for work on construction of monorail and metro projects, that were removed in the GST regime, has been applied even to elements unconnected to construction such as housekeeping and refurbishment

of certain components of contract. The upshot of this submission is that without an itemized analysis of sub-elements, it would not be possible to examine whether the removal of the exemption indeed had a material impact on the contract price.

10. Dr. Saraf would also point to the agreed base date of April 4, 2015 for the assessment of impact of change in service tax on royalty. He would submit that the Finance Bill introduced in Parliament in February 2015 had been passed on April 30, 2015. Therefore, when the contractor made a bid on May 15, 2015, the Contractor was well aware of the implications of the Finance Bill. Yet, the Learned Arbitral Tribunal has factored in the element of Presidential Assent for the Finance Bill having been given only on May 14, 2015 (two days after the bid was made by the Contractor). The upshot of the submission is that the Impugned Award is contrary to commercial common sense, since no bidder would shut his eyes to impact of tax changes in legislation already passed by Parliament (the Finance Bill being a money bill), solely on the premise that Presidential Assent was awaited.

11. As regards, compensation of additional work done, the Learned Advocate General would submit that originally it was envisaged

that a process of "anchoring" would be used when tunnelling for the metro, to ensure that there is no collapse of structures including heritage structures in the vicinity of the tunnelling. In the course of the operation of the contract it had been decided to use the standard of a "one strut failure". The dispute in this regard is about whether setting up a one strut failure structure in the course of tunnelling constitutes additional work. For purposes of making such a claim, the Contractor was required to show how much additional steel had become necessary and no evidence has been provided in this regard.

12. Most damagingly, the Learned AG would claim that the Corporation's witness statement had been shut out. This witness was the Engineer-in-Charge of the project. It is contended that the witness has been disqualified by the Learned Arbitral Tribunal. The witness was asked whether he is an expert with experience on the subject, and he responded in the affirmative. This purportedly led to the Learned Arbitral Tribunal taking a view that the evidence of this witness could not be considered since he could not be regarded as an independent expert witness but as a fact witness who was not on the pay roll of the Corporation but had a specific role to play in the project. At the same time, Dr. Saraf would contend, the Learned Arbitral Tribunal selectively

chose to rely upon certain elements of the cross-examination of the same witness but otherwise ignored the evidence in his examination in chief.

13. Mr. Vikram Nankani, Learned Senior Advocate on behalf the Contractor who would submit that none of the contentions on behalf of the Corporation is tenable inasmuch as it is not open to the Corporation to expect a "vivisection" of the contract price, which was a lumpsum contract price, with the bidders competing on the margins they sought to earn. The impact of GST is a narrow point and had been examined in two rounds – once by the Engineer-in-Charge who chose to appoint a chartered accountant, and then by the Dispute Adjudication Board ("***DAB***") set up under the contract.

14. The methodology for assessing the GST impact, Mr. Nankani would submit, had already been thrashed out, and the dispute was about the computation of amount, applying the agreed methodology. Mr. Nankani would contend that it was the Corporation's case that the tax component of the contract price had been 10.03% while it is the Contractor's case that the tax component had been 6.65%. The DAB had arrived at 6.78%. All three had converged on the same methodology

with the assessment of impact varying among them.

15. Mr. Nankani would also submit that all the members of the Learned Arbitral Tribunal were engineers and technically qualified to deal with contracts of this nature. There were other contracts for other metro projects that the Contractor had brought to bear, and the Learned Arbitral Tribunal has well understood the parameters of the issues involved.

16. Addressing the issue of how the Corporation's witness had been handled, Mr. Nankani would submit that the witness was not shut out at all. The Learned Arbitral Tribunal only took a view that the factual inputs from the witness would be considered but his claim of having expert knowledge and the probative value of his expert extrapolations from the facts were handled with scepticism. This is a perfectly logical and fair approach, he would submit, to treat with a higher degree of scepticism, the evidence that had been led by a partisan witness, claiming to be an expert, with the Learned Arbitral Tribunal not treating his expertise as relevant for the determination. The legal implications of law language used by engineers, Mr. Nankani would submit, must not be analysed through the same prism as how language

used by judges and lawyers should be analysed.

17. According to Mr. Nankani, the Learned Arbitral Tribunal comprising technically qualified people would carry greater weight in relation to the assessment of compensation for additional work. According to Mr. Nankani, the Impugned Award is based on empirical analysis for the material on record and merely because the Learned Arbitral Tribunal used a phrase "preponderance of probability" it would not follow that its assessment of damages and costs is speculative without an appropriate adjudication.

Analysis and Findings:

18. At the threshold it is clarified that all observations by me here are solely in aid of deciding whether a case for an unconditional stay has been made out and nothing else.

GST Issue:

19. Having heard Learned Senior Advocates for the parties, and having examined the record with their assistance, some broad facets of

the matter are noteworthy. The contract was for building a few stations in the metro rail project and the related tunnelling. The bidding took place before the introduction of the GST regime. The parties indeed have consensus that the impact of rationalization of GST, the framework of the GST and its implications would lead to an impact on the contract price and the consequential adjustments. The parties conducted themselves in line with the GST regime for the residual period of the contract after its introduction. Some of the benefits that were earlier available to the Contractor were subsumed in the wider indirect tax reform that the GST constituted. In terms of economic costs, the dispute really is what is the manner in which these rationalized benefits have to be split between the parties.

20. It is seen that the parties indeed engaged in minute detail on the specific heads of differences on the GST impact. Ekbote Deshmukh & Co, a chartered accountant firm engaged by the Engineer-in-Charge who also deposed as the Corporation's witness, came up with an assessment on August 27, 2022 that the tax component of the contract price was 10.03%. The Contractor was of the view that the tax component had been 6.65%.

21. The difference of opinion among the parties centred around the change in taxation treatment under seven heads, accounting for 99% of the differences between the parties. These were: service tax on labour; octroi on fuel and locally procured materials; service tax on royalty; excise on safety materials; special additional duty on capital goods; MVAT implications for overhead allocations; MVAT on sub-contracting items and consequential octroi. Whether these heads were subsumed under the GST regime, and if so, how and in what quantum they were subsumed, fell for consideration.

22. The DAB heard the parties at length on the differences between the two assessments, and concluded in its report dated December 14, 2023, with detailed reasons, that the component of taxes in the contract price was 6.78%. This was not acceptable to the Corporation, which led to the arbitration. Indeed, the Learned Arbitral Tribunal had the power to re-open and examine the evidence considered by the DAB and equally, the DAB's report had been agreed by the parties to constitute evidence for the Learned Arbitral Tribunal. The following extracts from the arbitration agreement are noteworthy:

> ***The arbitrator(s) shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the***

> ***Engineer, and any decision of the DAB, relevant to the dispute. Nothing shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator(s) on any matter whatsoever relevant to the dispute.***
>
> ***Neither Party shall be limited in the proceedings before the arbitrator(s) to the evidence or arguments previously put before the DAB*** *to obtain its decision, or to the reasons for dissatisfaction given in its notice of dissatisfaction.* ***Any decision of the DAB shall be admissible in evidence in the arbitration.***
>
> ***[Emphasis Supplied]***

23. Therefore, the scope of review by the Learned Arbitral Tribunal was wide and expansive and the DAB's report too formed an integral part of the evidence. Yet, it cannot be forgotten that the parties may have finely and sharply debatable differences on nuances of how to interpret tax circulars and see if any component really had an impact on the contract price. Fiscal statute by its nature could lead to multiple interpretations. However, one cannot lose sight of the fact that these fine multiple competing interpretations are meant for consideration in the final hearing. The nature of the issues raised on behalf of the Corporation, in my opinion, fall in this category. They do not scream themselves aloud calling for an *ex facie* finding of abject perversity warranting an unconditional stay. To interfere by way of an unconditional stay, it would be necessary to establish such perversity

that the findings cannot at all be countenanced. The Impugned Award is more or less in line with the DAB's report, and provides its own reasons for such conclusions.

24. One cannot lose sight of the fact that the Impugned Award is in the nature of a money decree. Therefore, the scope of review has to be one of examining whether the Impugned Award is of a nature that no reasonable person could have ever come to the conclusions that it drew, and whether it was so perverse that in the final hearing, there is a high degree of prospect that the Impugned Award would be set aside.

25. Indeed, the framing of the challenge to the Impugned Award has been fashioned with this standard in mind, but having examined the Chartered Accountant's report, the DAB's report and the Impugned Award, it cannot be said that the assessment of GST impact would be perverse and that too of a degree warranting an unconditional stay.

One Strut Failure – Additional Works:

26. Likewise, with the issue of whether the one strut failure standard was to be treated as additional work; or whether the quality of

steel used for it was deliberately of a higher quality just to benefit from its resale value after its temporary use (this was contended by the Corporation in the arbitration), would at best present issues of appreciation of evidence. Even in the final hearing of this Petition, the Learned Arbitral Tribunal would have to be treated as the master of the evidence and the best judge of the quality and quantity of evidence. That the Dissenting Arbitrator made a case for refund of monies may be his informed view, but the view of the majority constitutes the arbitral award. At a *prima facie* stage, the view is not so perverse as to warrant an unconditional stay.

Charge of Witness being Shut Out:

27. I have also examined if there was an abject process failure such as the alleged shutting out of the evidence of the Corporation's witness. What is apparent is that the Engineer-in-Charge was presented as the Corporation's witness. The Learned Arbitral Tribunal found that significant components of the evidence led by him delved deep into opinions and matters of expertise. It is apparent that the witness was not shut out by the Learned Arbitral Tribunal. The witness was examined and cross-examined. In the Impugned Award, when

examining the evidence, the Learned Arbitral Tribunal has stated that it was discounting his claims to expertise in his opinions since he could not be treated as an independent expert.

28. The Engineer-in-Charge is the first check and balance in the relationship between the parties to a construction contract. His decision was up for review before the DAB. That decision and the Engineer-in-Charge's decision collided before the Learned Arbitral Tribunal. The very same person being presented as the Corporation's witness, it is not inappropriate for the Learned Arbitral Tribunal to have stated that it would discount the claims to expertise in his opinions, since he was not an independent expert.

29. The Learned Arbitral Tribunal held that significant portions of the evidence led by the Engineer-in-Charge contained opinions rather than facts. The Learned Arbitral Tribunal has stated that it would not shut him out at all and has indeed taken into account the facts deposed by him but has asserted that it would not lean on the interpretations and extrapolations drawn by him.

30. In fact, it is seen that this discussion became necessary in the

Impugned Award, because it was the Contractor that moved an application to strike off the evidence of the Engineer-in-Charge as a witness. The Learned Arbitral Tribunal rejected this application. The Learned Arbitral Tribunal analysed the evidence to return a finding that the witness had gone way beyond deposing to facts and had argued extrapolations in his deposition, which the Learned Arbitral Tribunal indicated it discount in its probative value. The language in which such an observation is framed by the Learned Arbitral Tribunal comprising all engineers and non-lawyers need not be as finessed in legal terms as law language used by judges and lawyers, but the plain meaning of what the Learned Arbitral Tribunal has sought to convey is that they are not shutting out the witness at all and they were only being circumspect when considering his probative assertions.

31. Now, even this can be up for adjudication in the course of the final hearing, but at this stage, considering that the Learned Arbitral Tribunal had actually rejected the Contractor's application to disallow the witness and had explained in its words how it would consider the evidence of this witness, a case is not made out for holding that there has been a breakdown of natural justice pointing to perversity of a magnitude that necessitates an unconditional stay on the Impugned

Award.

Conclusions and Directions:

32. The multiple arguments about how to truly interpret individual notifications and circulars can be considered in the final hearing. At this stage, the interpretations adopted by the Learned Arbitral Tribunal are not alien, even to the Corporation – they are in line with much of what the DAB ruled. The Corporation may disagree with the DAB and indeed with the Learned Arbitral Tribunal, but that would not mean that the Impugned Award would automatically become perverse.

33. That apart, even the Dissenting Award that was strongly relied upon by the Corporation has not taken such an extreme stand as taken by the Corporation in these proceedings. In fact, the Dissenting Award provides for an award under the GST head at Rs. ~134 crores in place of the Impugned Award granting Rs. ~229 crores. It is another matter that the Dissenting Award, in the same breath, recommends appointing yet another chartered accountant, little realising that such an approach would be an abdication of the arbitral role – the parties had

already been through the process of having a chartered accountant examine facts, as also through the process of the DAB. It was now for the Learned Arbitral Tribunal to rule, which the majority of the arbitrators have done.

34. When parties proceed to arbitration and that too after a detailed pre-arbitral process being contracted, there has to be a higher credibility and credence given to the arbitral award. The contentions sought to be raised on both counts (tax impact and additional work) fall in the realm of purporting to raise finely nuanced points that are best made in the final hearing. They do not constitute grounds to infer perversity based on any reasonable review on the face of the record, to warrant an unconditional stay. Taking a holistic view of the matter and the relative strengths of the *prima facie* case canvassed by each side, I am not satisfied that a case for an unconditional stay is made out.

35. In a nutshell, assuming all that is being said on behalf of the Corporation is taken to be arguable, they present matters to be considered at the final hearing. The contentions do not lend themselves to serious interference into a reasoned outcome in the arbitral proceedings.

36. Nothing contained in this order is a final adjudication of merits canvassed by the parties, but clearly, no case is made out such that the Impugned Award is tainted by such perversity that it brooks no deposit for stay on its execution. It is not facially untenable and is not undermined by patent illegalities – the closest the Corporation came to approaching this standard was with the contention about the witness being shut out, but that is not a convincing manner of reading the approach of the Learned Arbitral Tribunal to the witness.

37. In these circumstances, it is directed that subject to the amount awarded, along with interest as awarded till date, being deposited with the Registry of this Court within a period of eight weeks from today, execution proceedings shall remain stayed.

38. Should such deposit be made, the Contractor shall be entitled to withdraw the amount deposited along with accruals thereon by providing a full unconditional bank guarantee for the amount sought to be withdrawn, in accordance with the applicable rules of this Court.

39. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]