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**IN THE COURT OF LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU (CCH-84)**

**Present: Sri S. Sudindranath, LL.M., M.B.L.,
LXXXIII ADDL. CITY CIVIL & SESSIONS JUDGE
BENGALURU.**

COM.O.S.No.3329/2016

Dated on this 11th day of August 2025

Plaintiff/s

M/S SPML INFRA LIMITED
(Formerly Messrs Subhash Projects and
Marketing Limited)
Having its Registered Office at No.F-27-2,
Okhla Industrial Area, Phase-II,
New Delhi 110 020
And Branch Office
at No.8/2, Ulsoor Road,
Bangalore 42
Rep. by its Authorized Representative
Sri J.R. Manjunatha Swamy
General Manager (BD & Projects)

***(Sri. Harish Narasappa, Learned
Senior Counsel for Sri L M
Chidanandayya, Advocate)***

// versus //

Defendant/s

1. KARNATAKA NEERAVARI NIGAM
LIMITED
Coffee Board Building,
Ambedkar Veedhi,
Bangalore 01.
Rep. by its Managing Director.

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2. THE MANAGING DIRECTOR
Karnataka Neeravarii Nigam Limited
Coffee Board Building,
Ambedkar Veedhi
Bangalore 01.

3. THE CHIEF ENGINEER
Karnataka Neeravarii Nigam Limited
Upper Tunga Project Zone
Shimoga 577 202.

4. THE EXECUTIVE ENGINEER
Karnataka Neeravarii Nigam Limited
Upper Tunga Project Division
B.H.Road
Shimoga 577 201.

5. THE ASSITANT EXECUTIVE ENGINEER
Karnataka Neeravari Nigam Limited
Upper Tunga Project Division,
B.H.Road,
Shimoga 577 201.

**(D1, D2, D4 - By Sri M R C Ravi,
Advocate)**
**(D3 & D5 - By Sri Prashanth.B.R.
Advocate)**

Date of Institution of suit	:	27-04-2016		
Nature of the suit	:	Recovery of money		
Date of commencement of recording of the evidence	:	05-07-2022		
Date on which the Judgment was pronounced.	:	11-08-2025		
Total duration	:	Year/s	Month/s	Day/s
		09	03	15

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JUDGMENT.

This is a suit filed by the plaintiff company against defendant No. 1 to 5 for recovery of amount towards price adjustment bill of Rs. 3,16,83,290 along with interest component of Rs. 1,70,13,493 along with future interest.

2. The plaint averments in brief are that, the plaintiff company is in the business of undertaking infrastructural works. The defendant No. 1 is a company wholly owned by the Government of Karnataka. The defendant No. 2 to 5 are the officials of the defendant No. 1 company. The defendants called for tender for a lift irrigation project in Ubrani- Amruthapura on turnkey basis on 7-4-2005. The plaintiff submitted its bid and was awarded the work. In this regard, the parties entered into agreement dated 17-9-2005 and the defendants issued a work order on the same date. The project had to be completed within 24 months and thereafter the plaintiff had to provide operation and maintenance of the project for a further period of 2 years. Therefore, since the work order was issued on 17-9-2005, as per the contract, the work had to be completed within 2 years on 17-9-2007. However, the work was completed only

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on 30-11-2011 with delay of 1536 days and the plaintiff attributes the delay to the defendants on the ground that there was delay in handing over of the work site, delay due to obstruction by the Forest Department, delay in obtaining permission from PWD, delay in obtaining permission from Railway Department, delay in acquisition of private land, delay due to non-processing of RA Bills resulting in financial crunch to the contractor, delay due to unprecedented rain, delay due to failure to provide power supply for the project. It is pleaded that, recognizing that the delay is attributable to the employer, the defendants had granted extension of time without levying any penalty or liquidated damages successively on 29-9-2007, 06-10-2008, 5-2-2009, 20-7-2009 and 18-8-2011. Ultimately, the defendants also issued the work done certificate, recognizing that the work was completed on 30-11-2011. The plaintiff also successfully completed the period of operation and maintenance on 30-11-2013. Clause 44 of the contract between the parties provided for price adjustment for work done beyond the initial period of 12 months. Since the plaintiffs had carried on the work well beyond the period of 12 months, and since

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the time had been extended by the defendants, the plaintiffs claimed to be entitled to price adjustment for work done beyond the period of 12 months. Hence, the plaintiff submitted the price adjustment bill dated 25-5-2012 to the defendants, claiming sum of Rs. 3,16,83,290. The executive engineer rejected the price adjustment bill by letter dated 20-12-2012 on the ground that price adjustment claims are acceptable only before issuance of completion certificate and before final bill payment. As per the terms of the contract, the dispute was referred to his superior, i.e. the chief engineer - defendant No. 3. Defendant No. 3, by his order dated 20-4-2013, rejected the price adjustment bill on the ground that clause 44 is not applicable, since it specifically provides that price adjustment is only applicable to contracts where stipulated period of work is more than 2 years, whereas in this case the contract period was only 2 years. In terms of the contract, the plaintiff approached the managing director, namely defendant No. 2, in appeal. The defendant No. 2 rejected the appeal by orders dated 22-1-2014, also holding that the price adjustment clause is not applicable to the contract, since

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price adjustment is only applicable to contracts having contractual period of more than 24 months. Hence, for recovery of the price adjustment bill of Rs. 3,16,83,290, together with interest component of Rs. 1,70,13,493 and future interest, the present suit is filed by the plaintiff.

3. On the issuance of suit summons, the defendant No. 1 to 5 have entered appearance through counsel and filed detailed written statement. In the written statement, the defendants admit awarding the work to the plaintiff. However, the defendants contend that as per the contract between the parties, and particularly clause 44, price adjustment is only applicable where stipulated period of completion of the work is more than 2 years. And it is contended that since in the case on hand stipulated period is 2 years, price adjustment clause is inapplicable. Further, in the written statement, it is denied that delay in completion of the work is attributable to the defendants, and instead it is contended that the delay was due to the defaults on the part of the plaintiff itself. It is further contended that defendants have cleared the final bill, which has been accepted by the plaintiff without any protest. And

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such being the case, after receiving the final bill, the plaintiff is debarred from raising price adjustment bill. Another contention raised is that the chief engineer granted extension of time on five occasions with the condition that plaintiff should not claim any extra rate and amount for the extended period. Having accepted the extension subject to the above condition, the plaintiff is disentitled from seeking price adjustment. Another contention raised is that any request for price escalation has to be submitted before completion of the work and issuance of completion certificate and having received the final bill amount of Rs. 1,23,13,508 under cheque dated 5-4-2012, the request for price adjustment cannot be accepted. Another contention raised is that suit is barred by limitation. With these pleadings, the defendants prayed for dismissal of the suit.

4. On the basis of the above pleadings, the following issues are framed;

(1) Whether the plaintiff is entitled for Rs. 3,16,83,290 payable by the defendants towards the price adjustment bill dated 25-5-2012?

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- (2) Whether the plaintiff is entitled for the interest at 14% per annum on Rs. 3,16,83,290 from 25-5-2012 till 25-3-2016 amounting to Rs. 1,70,13,493?**
- (3) Whether the plaintiff is entitled to future interest at 14% per annum on Rs. 3,16,83,290 from the date of the suit?**
- (4) Whether the suit is barred by limitation?**
- (5) What decree or order?**

5. In the trial, representative of the plaintiff was initially examined as PW1 but later on, since it was submitted that PW1 has left the services of the plaintiff company, his chief examination was discarded on 25-7-2024 and instead another representative was examined as PW2. On behalf of the plaintiff, Ex. P1 to P8 was marked in the chief examination of PW1. Thereafter, on the basis of the statement of admission and denial of the defendants, on 23-3-2023, Ex. P9 to P40 were marked by consent. PW2 got

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marked Ex. P41 and has also identified the earlier documents marked as Ex. P1 to P40.

6. On behalf of the defendants, the executive engineer, namely defendant No. 4, is examined as DW1 and got marked Ex. D1 to D16. In his cross-examination, Ex. P42 is marked by confronting to him.

7. Therefore, in this case, on behalf of the plaintiff, there is oral evidence of PW2 and documentary evidence in the form of Ex. P1 to P42. And on behalf of the defendants, there is oral evidence of DW1 and documentary evidence in the form of Ex. D1 to D16.

8. After closure of evidence of both sides, I have heard the arguments of Sri. Harish Narasappa, Learned Senior Counsel for the Plaintiff and also heard the arguments of Learned Counsel for Defendants. In addition, counsel for defendants has filed written arguments and I have perused the same.

9. My answers to the issues are as follows;

Issue No. 1 : In the Affirmative

Issue No. 2 & 3 : As per finding

Issue No. 4 : In the negative

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Issue No. 5 : As per final order, for the following;

REASONS

Issue No. 4:-

10. This issue is considered at the very outset, since, in case, this issue is answered against the plaintiff, there would be no need to consider the other issues on the merits of the suit.

11. In so far as limitation is concerned, it is to be noted that essentially this is a suit filed by the plaintiff for recovery of Price Adjustment Bill dated 25/5/2012. Admittedly, the work was completed by the plaintiff on 30/11/2011. Be it noted that, there is no dispute with regard to the date of completion of the project by the plaintiff since at paragraph 15 of the written statement, the defendants have admitted that completion of the project work was on 30/11/2011 and thereafter plaintiff has undertaken operation and maintenance of the project for a period of two years.

12. Within three years, from date of completion of the work, the price adjustment bill is raised on 25/5/2012 itself. As per the contract between the parties at Clause 29

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regarding "*Settlement Of Disputes And Time Limit For Decision*", if there is any dispute, the dispute shall in the first place be referred to Chief Engineer. Thereafter, the contractor may file appeal before the managing director. The price adjustment bill was initially rejected by the executive engineer on 20-12-2012 as per Ex. D14. In terms of the contract, the dispute was referred to the Chief Engineer. And the Chief Engineer rejected the Price Adjustment Bill on 20-04-2013 as per Ex. D 15. Thereafter, in terms of the contract, the contractor / plaintiff filed appeal before the Managing Director who dismissed the appeal on 22/01/2014 as per Ex. D 16.

13. Therefore, the cause of action for filing the suit accrued to the plaintiff only after the Price Adjustment Bill was finally rejected by the hierarchy of officials of defendants, on 22/1/2014, when the Managing Director dismissed the appeal. Within three years from 22/1/2014, the present suit is filed on 27/4/2016.

14. Therefore, it is to be noted that although the Plaintiff completed the project work on 30/11/2011 and raised the Price Adjustment Bill soon thereafter on 25/5/2012, the

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Price Adjustment Bill / dispute, had to be considered by the hierarchy of officials of defendants as per the terms of the contract and the final decision thereon, was taken only when the Managing Director of Defendant No. 1 rejected the price adjustment bill on 22/1/2014 and within 3 years from the said date, the present suit is filed and **therefore, I hold that suit is filed within the period of limitation and accordingly, I answer Issue No. 4.**

Issue No. 1 to 3:-

15. These issues deal with the merits of the suit as to whether the plaintiff is entitled to the amount of the price adjustment bill of Rs. 3,16,83,290 along with interest component thereon of Rs. 1,70,13,493 and future interest thereon. And hence, these issues are considered together to avoid repetition of facts.

16. The case of the plaintiff in brief is that, the plaintiff company is in the business of undertaking infrastructural works. The defendant No. 1 is a company wholly owned by the Government of Karnataka. The defendant No. 2 to 5 are the officials of the defendant No. 1 company. The defendants called for tender for a lift irrigation project in

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Ubrani- Amruthapura on turnkey basis on 7-4-2005. The plaintiff submitted its bid and was awarded the work. In this regard, the parties entered into agreement dated 17-9-2005 and the defendants issued a work order on the same date. The project had to be completed within 24 months and thereafter the plaintiff had to provide operation and maintenance of the project for a further period of 2 years. Therefore, since the work order was issued on 17-9-2005, as per the contract, the work had to be completed within 2 years on 17-9-2007. However, the work was completed only on 30-11-2011 with delay of 1536 days and the plaintiff attributes the delay to the defendants on the ground that there was delay in handing over of the work site, delay due to obstruction by the Forest Department, delay in obtaining permission from PWD, delay in obtaining permission from Railway Department, delay in acquisition of private land, delay due to non-processing of RA Bills resulting in financial crunch to the contractor, delay due to unprecedented rain, delay due to failure to provide power supply for the project. It is pleaded that, recognizing that the delay is attributable to the employer, the defendants had granted extension of

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time without levying any penalty or liquidated damages successively on 29-9-2007, 06-10-2008, 5-2-2009, 20-7-2009 and 18-8-2011. Ultimately, the defendants also issued the work done certificate, recognizing that the work was completed on 30-11-2011. The plaintiff also successfully completed the period of operation and maintenance on 30-11-2013. Clause 44 of the contract between the parties provided for price adjustment for work done beyond the initial period of 12 months. Since the plaintiffs had carried on the work well beyond the period of 12 months, and since the time had been extended by the defendants, the plaintiffs claimed to be entitled to price adjustment for work done beyond the period of 12 months. Hence, the plaintiff submitted the price adjustment bill dated 25-5-2012 to the defendants, claiming sum of Rs. 3,16,83,290. The executive engineer rejected the price adjustment bill by letter dated 20-12-2012 on the ground that price adjustment claims are acceptable only before issuance of completion certificate and before final bill payment. As per the terms of the contract, the dispute was referred to his superior, i.e. the chief engineer - defendant No. 3. Defendant No. 3, by his

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order dated 20-4-2013, rejected the price adjustment bill on the ground that clause 44 is not applicable, since it specifically provides that price adjustment is only applicable to contracts where stipulated period of work is more than 2 years, whereas in this case the contract period was only 2 years. In terms of the contract, the plaintiff approached the managing director, namely defendant No. 2, in appeal. The defendant No. 2 rejected the appeal by orders dated 22-1-2014, also holding that the price adjustment clause is not applicable to the contract, since price adjustment is only applicable to contracts having contractual period of more than 24 months. Hence, for recovery of the price adjustment bill of Rs. 3,16,83,290, together with interest component of Rs. 1,70,13,493 and future interest, the present suit is filed by the plaintiff.

17. In support of its case, as already noted supra, initially a representative of plaintiff was examined as PW1, but later on, at the stage of his cross-examination, plaintiff filed application to substitute the authorized representative on the ground that PW1 has left the services of the plaintiff company, which was allowed and accordingly the chief

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examination of PW1 was discarded, and instead of PW1, another authorized representative has been examined by the plaintiff as PW2. PW2 has identified Ex. P1 to P40, which were earlier marked, and also got marked one additional document as Ex. P41. Further, on behalf of the plaintiff, in the cross-examination of DW1, one document is marked by confronting to DW1 as Ex. P42.

18. Ex. P1 is the board resolution of plaintiff company authorizing PW1 to represent the plaintiff in the present suit. Ex. P2 is letter dated 15-1-2009 issued by the plaintiff to defendants stating about the delay in obtaining work permission from railway department. Ex. P3 is letter issued by the plaintiff to defendants dated 25-4-2008 complaining about delay in clearance of RA Bill No. 16. Ex. P4 is another letter issued by the plaintiff to defendants dated 5-1-2009 again complaining of delay in clearing of the bills. Ex. P5 is letter dated 27-11-2009 issued by the plaintiff to defendants regarding clearing bills pending for certification and payment. Ex. P6 is letter dated 29-8-2011 issued by the plaintiff to defendants requesting for quality report and completion report to process the RA Bill No. 25 which is the

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pre-final bill. Ex. P7 is another letter issued by the plaintiff to defendants dated 24-7-2006 bringing to notice that due to heavy rain in catchment areas it is not possible to do further works on the river bed. Ex. P8 is letter issued by plaintiff to defendants (*which is dated 24-3-2012 but according to the plaintiff it is a typographical error*) and under the said letter plaintiff has acknowledged bill payment on 31-3-2012 but stated that the said amount is received under protest subject to raising of price escalation bill. This letter will be discussed in detail while considering the rival contentions.

19. Ex. P9 to P40 are marked by consent on 23-3-2023 in view of these documents not being disputed in the statement of admission and denial of documents.

20. Ex. P9 is the agreement dated 17-9-2005 under which the work was entrusted to the plaintiff. Ex. P10 is the work order of even date. Ex. P11 is the minutes of meeting dated 16-8-2007 and this is produced to show that the land for construction of jack well cum pump house was handed over belatedly and under the said minutes of meeting the compensation was handed over to the landowner and only

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thereafter the land was handed over to the plaintiff for the purpose of carrying out the work. Ex. P12 is the proceedings of the Government of Karnataka dated 10-1-2007 and this document is produced to show that only under the said government order the Government of Karnataka sanctioned diversion of 22.46 hectares of forest land for execution of the project work and hence to show that the forest land was diverted belatedly, this document is produced. Ex. P13 is the minutes of meeting dated 18-6-2008 to show that even on said date there were objections and obstructions by the Forest Department for laying the pipeline. Ex. P14 is the minutes of the project review meeting dated 1-12-2008 during which issue of non-availability of encumbrance-free land has been discussed. Ex. P15 is the letter of South Western Railways dated 16-12-2008 according sanction for carrying out the project in the railway land but subject to railway supervision. Ex. P16 is letter issued by defendants to the Assistant Divisional Engineer stating that construction of jacking pit and thrust block is completed and also informing about other developments.

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21. Ex. P17 is a letter dated 25-01-2009, issued by the Deputy Commissioner, Shivamogga District to the Revenue Department, requesting to approve compensation to be given to the landowners. And the purpose of producing the said letter is to show that, even as on that date, the acquisition was not completed. Ex. P18 is a letter issued by the Special Land Acquisition Officer dated 17-03-2009, approving the compensation.

22. Ex. P19 is an important document. It is a letter dated 29-08-2011 issued by AEE of Defendant No. 1 to AEE, Quality Control, stating that a representation has been received from the plaintiff that in spite of completion of the work, the 25th RA and pre-final bill has not been cleared.

23. Ex. P20 is approval issued by the Chief Electrical Inspectorate, Government of Karnataka to commission the project and it is dated 08-09-2009. Ex. P21 is a document to show the dry run made by the plaintiff in respect of the project by using diesel generator for want of 33 kV power supply. Ex. P22 is the work done certificate issued by Executive Engineer stating that plaintiff has completed the work satisfactorily.

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24. Ex. P23 to P32 are the documents under which the time for completion of the project was extended from time to time up to 30-11-2011 without imposing any penalty but subject to the condition that no extra rates and claims shall be entertained on account of extension of work.

25. Ex. P33 is again the work done certificate, which is already marked as Ex. P. 22. Ex. P34 is the general conditions of the contract. Ex. P35 is letter issued by the plaintiff to defendants dated 25-05-2012 enclosing the price adjustment bill for Rs. 3,16,83,290. Ex. P36 is the government order dated 26-11-2004 directing that in supersession of all standing rules and instructions in all government contracts entered into after the date of the said government order, price adjustment clause shall be included in all works contracts whose estimated cost put to tender is Rs. 100 lakhs or more and the period of completion is 12 months or more and the price adjustment clause and formulae for adjustment shall be as per annexure 1 of the said government order. Ex. P37 is the letter of the Executive Engineer dated 20-12-2012 rejecting the price adjustment bill. Ex. P38 is the letter of the Chief

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Engineer dated 20-04-2013 rejecting the price adjustment bill. Ex. P39 is the order of the MD of defendant No. 1 dismissing the appeal. Ex. P40 are the conditions of contract.

26. Ex. P41 which is marked through PW2 is the board resolution of authorization in favor of PW2.

27. Ex. P42 which is got marked by confronting to DW1 are the documents maintained by defendant No. 1 in respect of clearance of RA bill No. 1 to 25.

28. Per contra, the defense raised by the defendants is that, as per the contract between the parties, and particularly clause 44, price adjustment is only applicable where stipulated period of completion of the work is more than 2 years. And it is contended that since in the case on hand stipulated period is 2 years, price adjustment clause is inapplicable. Further, in the written statement, it is denied that delay in completion of the work is attributable to the defendants, and instead it is contended that the delay was due to the defaults on the part of the plaintiff itself. It is further contended that defendants have cleared the final bill, which has been accepted by the plaintiff without any

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protest. And such being the case, after receiving the final bill, the plaintiff is debarred from raising price adjustment bill. Another contention raised is that the chief engineer granted extension of time on five occasions with the condition that plaintiff should not claim any extra rate and amount for the extended period. Having accepted the extension subject to the above condition, the plaintiff is disentitled from seeking price adjustment. Another contention raised is that any request for price escalation has to be submitted before completion of the work and issuance of completion certificate and having received the final bill amount of Rs. 1,23,13,508 under cheque dated 5-4-2012, the request for price adjustment cannot be accepted. With these pleadings, the defendants have prayed for dismissal of the suit.

29. In support of their case, the Defendants have examined the Executive Engineer as DW1 and got marked Ex. D1 to D16.

30. Ex. D1 is the tender document and it also contains the original agreement between the parties. Ex. D2 is statement regarding RA bill-wise payment issued to the plaintiff. Ex.

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D3 is letter of defendants to the plaintiff dated 8-12-2005 to expedite the work. Ex. D4 is another letter issued by the defendants to the plaintiff stating the reason for delay in recommending the bills for payment. Ex. D4 is letter issued by the defendants to the plaintiff dated 4-8-2006 stating that the delay in recommending the bills for payment is that the official of plaintiff himself is not available for discussion. Ex. D5 is letter issued to the plaintiff dated 17-10-2006 stating that PWD land is clear and available for doing the work. Ex. D6 to D8 are the letters of the Chief Engineer addressed to the Executive Engineer of defendant No. 1 extending the time for completion of the project but subject to the condition that as a result of extension, the plaintiff will not be entitled to any extra rates and claims. Ex. D9 is the same letter which is already marked as Ex. P16. Ex. D10 and D11 are again letters addressed by the Chief Engineer to the Executive Engineer extending the time for completion of the work subject to the same condition as noted above that extension will not entitle plaintiff to claim extra rates or extra claims. Ex. D12 is letter issued by defendant No. 1 to the plaintiff dated 2-11-2012 to rectify the defects during

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the maintenance period. Ex. D13 is also a letter issued by the defendants to the plaintiff to rectify the defects. Ex. D14 is the order of the Executive Engineer rejecting the price adjustment bill. Ex. D15 is the order of the Chief Engineer rejecting the price adjustment bill. Ex. D16 is the letter enclosing the orders of the Managing Director dismissing the appeal of the plaintiff.

31. Having considered the rival contentions, at the outset, it is to be noted that, in this case, there is no dispute that the work of Ubrani Amrutapura Multipurpose Lift Irrigation System on turnkey basis was entrusted by the defendant No. 1 to the plaintiff and the work order in this regard dated 17-9-2005 is marked by consent at Ex. P10. There is further no dispute between the parties that the project had to be completed within two years from the date of the work order, that is, on or before 17-9-2007 since the contract period was for 24 months. There is further no dispute between the parties that in fact the project was completed with delay on 30-11-2011. In this regard, as already noted supra at paragraph 15 of written statement, it is admitted that the work was completed on 30-11-2011.

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After completion of the work, there was two years maintenance period during which it was the responsibility of the plaintiff to maintain the project and there is no dispute that the plaintiff has successfully completed the maintenance period of two years. This is also admitted in paragraph 15 of written statement of defendants wherein it is admitted that plaintiff has undertaken the operation and maintenance of the project work for two years after completing the project on 30-11-2011.

32. There is further no dispute that after completion of the original contract period of two years, the time was extended successively by the defendant No. 1 without imposing any penalty and the only condition imposed was that extension of time will not entitle the plaintiff / contractor to claim extra rates or to make extra claims. This is the undisputed position since both sides have produced the extension orders. The plaintiff has produced the extension orders at Ex. P23 to P32 and defendant has produced the extension orders at Ex. D6 to D8 and D10 and D11 and on perusal of all these extension orders it is clear that the time for completion was extended up to 30-11-2011 which is

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admittedly the date on which the work was successfully completed and the extension is given without imposing any penalty. Of course, in all these extension orders specifically condition is imposed that due to extension of time the plaintiff will not be entitled to extra rates or extra claims.

33. Further, there is no dispute that the project was successfully completed which is forthcoming from the work completion certificate issued by defendant No. 1 which is marked as Ex. P33 in which it is stated that the project was completed and commissioned on 30-11-2011 in a satisfactory manner and plaintiff has also successfully completed two years operation and maintenance on 30-11-2013 and handed over the project scheme on 13-12-2013.

34. There is further no dispute that the plaintiff has received the amount under RA Bill No. 1 to 25. This is forthcoming from the letter at Ex. P8 wherein plaintiff has acknowledged the receipt of the bill payment in respect of RA Bill No. 25 dated 12-8-2011 on 31-3-2012.

35. The only dispute between the parties is as to whether plaintiff is entitled to the price adjustment bill which is

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submitted as per Ex. P35 dated 25-5-2012 for a sum of Rs. 3,16,83,290.

36. The **only dispute between the parties** is whether the plaintiff is entitled to claim price adjustment bill of Rs. 3,16,83,290.

37. The **first ground** on which the defendants dispute and deny the price adjustment bill is because under clause 44 of the general conditions of contract, price adjustment is applicable only where the original contract period is above 24 months, whereas admittedly in this case, the original contract period is not above 24 months but only 24 months. Therefore, it is contended that when the contract between the parties does not provide for price adjustment to contracts of the nature involved in the present suit, the plaintiff cannot claim the price adjustment bill.

38. Before considering this contention, it is appropriate to extract clause 44 of the general conditions of contract which is available at running page 177 of Ex. P-34 and is as follows;

“Change in costs - price adjustments.

Clause 44. This clause is applicable only to contracts where

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(i) The stipulated period of completion of the works is more than 2 years and the tendered cost of the work exceeds

a) Rs. 50 lakhs in the case of communication and building works and

b) Rs. 100 lakhs in the case of irrigation work.

(a) The amount payable to the contractor and valued at the rates specified in Schedule B attached to the contract shall be increased or decreased in accordance with the rise or fall in the index cost of labour, materials, fuel, lubricants, electricity and other inputs to the works, by an amount as determined by the formula as prescribed in this clause. The price adjustments, however, subject to the following conditions:-

(i) Price adjustments shall not be applicable on the value of work carried out during the initial 12 months of the contract period.

(ii) Price adjustments shall not be applicable to additional, altered or substituted items of work or extra quantities executed by the contractor in respect of which rates computed on the basis of schedule of rates or market rates etc. prevailing at the time of execution of such items quantities are payable in terms of clause 13 of the conditions of contract.

(iii) Price adjustments shall apply only for work carried out within the stipulated time including time extension granted by the executive engineer and shall not apply to the work carried out beyond the stipulated time for reasons attributable to the contractor.

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(iv) Price adjustments shall be applicable on the value of work done during each quarter period of the year.

(v) Cost of materials supplied by the government at fixed rates as prescribed in schedule A to the contract shall be excluded from the scope of price adjustment.

(vi) To the extent that full compensation for any rise or fall in cost of the contractor is not covered by the provisions of this or other clauses in the contract, the unit rates and prices included in the contract shall be deemed to include amounts to cover the contingency of such other rise or fall in costs."

(Emphasis Supplied)

39. On plain reading of the above clause 44 of the general conditions of contract, it is clear that price adjustment is applicable only where the period for completion of the work is more than 2 years. And the value of the work in the case of irrigation work is more than Rs. 100 lakhs. In the case on hand, there is no dispute that second condition is fulfilled since the present work relates to irrigation works and as per the averment made at paragraph 6 of written statement, the value of the contract was Rs. 27.80 crores. However, admittedly the first condition of clause 44 is not complied in this case because the period for completion or the original

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contract period was exactly 24 months and not more than 2 years as contemplated under clause 44.

40. In this regard, one contention raised in the plaintiff is that although the original contract period was 24 months, admittedly time has been extended for completion of the work and the work was done from 17-9-2005 up to 30-11-2011 i.e. for a period of more than 2 years and therefore the period for completion of the work referred to in clause 44 should be considered to be the entire period taken for completion of the work and if so considered, the present case has taken more than 2 years for completion and therefore clause 44 is applicable.

41. This contention has to be rejected because clause 44 uses the words “stipulated period of completion of the work is more than 2 years”. Therefore, stipulated period refers to the original contract period and not any time extensions that may be given. Hence, in the present case, since admittedly the stipulated period for completion or the original contract period was exactly 2 years and not more than 2 years, it is clear that clause 44 of the contract, on its plain language, is inapplicable.

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42. However, the alternative argument of the plaintiff deserves acceptance. The alternative argument of the plaintiff is that as per Ex. P-36, the Government of Karnataka has issued an order dated 26-11-2004 stating as follows;

"In supersession of all standing rules and instructions in respect of price adjustment clause in tender documents, the following instructions are issued for compliance.

*(a) **A price adjustment clause shall be included in all works contracts** whose estimated cost put to tender is Rs. 100 lakhs or more and **the period of completion is 12 months or more.** The price adjustment clause and the formulae for adjustment shall be as per Annexure 1."*

(Emphasis Supplied)

43. Therefore, it is the contention of the plaintiff that in view of the above Government order which is dated 26-11-2004, it is clear that in all tenders for works contract after 26-11-2004, price adjustment clause has to be included for all works contract whose value is more than Rs. 100 lakhs and period of completion is 12 months or more. Admittedly, the contract which is the subject matter of the present case satisfies both the conditions since the original contract

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period was 24 months and hence the period of completion is more than 12 months and as already noted supra, the value of the contract as admitted in the written statement is Rs. 27.80 crores and therefore the value of the contract is more than Rs. 100 lakhs. Therefore, it is contended by the plaintiff that since the tender in the present case was called on 7-4-2005 which is subsequent to the above government order dated 26-11-2004, the price adjustment clause, as per the Government Order, should be deemed to have been included in the present contract between the parties.

44. As against this, the contention of the defendants is that the defendant is not a statutory company and therefore does not constitute state. And therefore it is the private law of contracts which is applicable and when the plaintiff has entered into the contract with its eyes wide open and has not raised objection at any point of time during the whole period of the work for a period of nearly 6 years from 17-9-2005 to 30-11-2011, at this point of time, the plaintiff cannot raise grievance that clause 44 does not encapsulate the correct price adjustment clause between the parties.

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45. In support of this contention, counsel for defendants has relied upon the following rulings.

46. Rajasthan State Mines and Minerals v. Eastern Engineering Enterprises, reported in 1999 (3) Arb. LR 350 (SC); State of Tripura v. Savitri State Supplies, reported in 2007 (3) Arb. LR 519 (Division Bench of Gauhati High Court), MSTC Ltd v. Jain Traders, reported in 2011 (4) Arb. LR 219 (Delhi High Court.) All these rulings are relied upon for proposition of law that arbitrator is required to act within the parameters of the agreement. On the basis of this proposition of law, it was argued that same principle also applies to civil courts, and civil courts cannot grant relief beyond the terms of the contract between the parties. For a similar proposition of law, reliance is placed upon Pawan Hans Helicopter Ltd v. Associated Construction, 2007 (3) Arb. LR 254, (Division Bench of Bombay High Court,) to contend that the court cannot grant escalation charges contrary to the terms of the contract.

47. Further, reliance is placed upon Grasim Industries Ltd v. Agarwal Steel, reported in 2009 (4) Arb. LR 225 (SC), that where agreement is signed by the contractor, after fully

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understanding the terms and conditions thereof, the contractor is bound by the terms, and cannot claim any relief contrary to the terms of the agreement. For a similar proposition, reliance is placed upon *State of Karnataka v. Stellar Construction*, reported in 2003 (1) Arb. LR R 40, (Division Bench of Karnataka High Court), that parties are bound by the terms of the contract, and no benefit can be given contrary to the terms of the contract. Reliance is then placed upon *Phulchand Exports v. Patriot*, reported in 2011 (4) Arb. LR 108 (SC), that in a contract where both parties are having equal bargaining power, the party should be bound by the agreement. Reliance is placed upon *Cauvery Coffee Traders v. Horner Resources*, reported in 2011 (4) Arb. LR 1 (SC), for the proposition that where a party is silent while it is his duty to speak, he is precluded from subsequently asserting contrary rights. On this basis, it is argued for defendants that the plaintiff, all along having kept quiet about Clause 44, cannot turn around at this point of time and contend that it is not Clause 44 which governs price adjustment, but the government order dated 26-11-2004, and he is estopped from doing so. Reliance is placed

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upon Mohanlal Harbanslal Bhayana v. Union of India, reported in 2012 (2) Arb. LR 91, (Division Bench of Delhi High Court), for proposition that a claim for any relief has to be adjudicated within the four corners of the contractual provision. Reliance is then placed upon Radhakrishna Films v. Jyothi Film Distributaries, reported in 2012 (1) Arb. LR 16, (Bombay High Court), that where relief cannot be granted in terms of the contract, no relief can be granted on sympathetic consideration or on assumptions and presumptions. Next, reliance is placed upon State of Goa vs Praveen Enterprises reported in (2012) 12 SCC 581 for the proposition of law that arbitrator cannot travel beyond the terms of reference. This ruling is not applicable to the facts of the present case because this is an original suit and not arbitral proceedings.

48. Relying upon the above rulings, it is the argument of learned counsel for defendants that, the plaintiff and defendant having equal bargaining powers have entered into the contract with their eyes wide open and during the entire term of the work, the plaintiff has never raised any objection about any error in clause 44 or about applicability

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of the price adjustment clause as per the government order dated 26.11.2004. Therefore, at this point of time, the plaintiff cannot contend that it is not the price adjustment clause as per clause 44 of the general conditions of contract, but the price adjustment clause as per the government order dated 26.11.2004 which is applicable. It is further argued that, since, as per clause 44 of the contract, price adjustment clause admittedly does not apply to the present case, the plaintiff is not entitled to any price adjustment bill by traveling outside the contractual provisions.

49. However, it is not possible to accept this argument of learned counsel for defendants because **there is a direct judgment of the Hon'ble High Court of Karnataka on the said point which is binding on this court.** In this regard, counsel for plaintiff has relied upon the judgment of Hon'ble High Court of Karnataka in WP 5525 of 2010 connected with WP 11616 of 2008 dated 21.07.2011. In the said case, from the facts noted at paragraph 3, it is clear that in the contract, in the said case, there was identical clause 44 as in the present case. Even in the said case,

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clause 44 of the contract provided for price adjustment only when the stipulated period of completion of the work was more than 2 years. Having noted the said fact, Hon'ble High Court in the same paragraph has noted that the only issue which arises is with regard to applicability or otherwise of the price adjustment clause to contracts of less than 2 years in view of government order dated 26.11.2004. In the said judgment, Hon'ble High Court has laid down the law at **paragraph 14 and 15** as follows;

*“Therefore, in a circumstance where the government order in question was existing as on the date of issuing of the tender notification in the instant case and although the second respondent has not made provision for the same, by incorporating the same in the standard tender terms, **the benefit of the government order would have to be granted to the petitioner and if the same is given, the applicability of price adjustment clause in clause 44 of the standard tender document would have to be read as available to contracts of which period of completion of the work is 12 months or more.** Therefore, the case of the petitioner would have to be considered by the respondents keeping in view the government order dated 26.11.2004, providing for applicability of price adjustment clause for the contract regarding which completion is 12 months or more. To said extent, I am of the*

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view that communication addressed by the respondents declining to accept the contention of petitioner is not sustainable and are set aside.

Hence, a declaration is issued that clause 44 of the standard tender document between the petitioner and the second respondent, in so far as the transaction in question relating to the tender called on 12.09.2006 shall allow the price adjustment clause. In that context, if the petitioner has any grievance with regard to ultimate settlement of his bills relating to the contract completed, the petitioner is reserved the liberty to raise the dispute before Grievance Redressal Mechanism for Settlement of Disputes under clause 29 and while considering the grievance put forth by the petitioner, the authority empowered to consider the grievance will read the existing clause 44 of the tender document in conjunction with what is contained in the government order dated 26.11.2004."

(Emphasis Supplied)

50. Therefore, Hon'ble High Court, in a case in which the defendant No. 1 herein was respondent No. 2, has specifically held that the benefit of the government order providing for price adjustment for contracts of 12 months or more has to be given to any contractor whose tender was called subsequent to the government order. In the present

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case, admittedly, the tender was called on 7.04.2005 which is subsequent to the government order dated 26.11.2004. It is crucial to note that the said judgment of Hon'ble High Court was confirmed by the Division Bench of Hon'ble High Court of Karnataka in the judgment dated 16.07.2012 in Writ Appeal No. 15503 of 2011. It was submitted at the bar by both sides that SLP filed against the judgment in writ appeal has been dismissed.

51. Therefore, in the judgment of Hon'ble High Court of Karnataka to which defendant No. 1 was a party, the Hon'ble High Court has clearly laid down the law that the benefit of price adjustment to contracts of 12 months or more as provided under the government order dated 26.11.2004 has to be given to any contractor where the tender was called subsequent to the said government order, although the contract between the parties may provide for price adjustment only where the contract period is more than 2 years.

52. When there is a direct judgment of Hon'ble High Court of Karnataka on the point, it is not possible to consider the above contentions of defendants, as the said

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judgment is binding on this court and accordingly I hold that, in view of the said judgment of Hon'ble High Court of Karnataka, it has to be held that, the benefit of government order dated 26.11.2004 has to be given to the Plaintiff herein and consequently, Clause 44 of the contract has to be read as providing for price adjustment where the stipulated period of contract is more than 12 months. Therefore, the first contention of the defendants to refuse the price adjustment bill on the ground that price adjustment under clause 44 will not apply to the present contract has to be rejected.

53. The **second contention** raised by the defendants is that one of the specific conditions laid down while granting extension of time was that due to extension of time the contractor cannot claim any extra rates or extra benefits.

54. In this regard, there is no doubt that in all the orders of the Chief Engineer extending the time for completion of the work, a condition is specifically imposed as follows;

"ಗುತ್ತಿಗೆದಾರರು ಗುತ್ತಿಗೆ ಅವಧಿ ವಿಸ್ತರಣೆಯಿಂದ ಯಾವುದೇ ಹೆಚ್ಚಿನ
ದರಗಳಿಗೆ ಹಾಗೂ ಕ್ಲೇಮ್ ಗಳಿಗೆ ಅರ್ಹರಿರುವುದಿಲ್ಲ."

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55. In this regard, the counsel for defendants highlighted that in the cross-examination of Pw2, at paragraph 3, he has admitted the suggestion that extension was given subject to condition that there can be no additional claim or compensation. Per contra, the counsel for plaintiff argued that in the cross-examination of Dw1 at paragraph 10, he has admitted that the condition in the time extension letters will only apply to any claims beyond the contract provisions. On this basis, the counsel for plaintiff argued that the condition imposed is only that the contractor cannot make any claims beyond the contract provisions. By such a unilateral condition, the employer cannot deny price adjustment which is specifically provided under the contract.

56. Having considered the rival contentions in this regard, it is to be noted that, on plain reading of the condition subject to which time extension was granted and which is extracted supra, it is clear that the condition imposed was only to the effect that by extension of time, the contractor cannot claim extra rates or make any extra claims. Therefore, it is clear that the said condition only refers to

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any claims over and above the benefits conferred by the contract. In other words, the condition prohibits claims such as loss of profit, loss of opportunities, overhead costs, etc. But such a condition cannot nullify the specific contractual provision providing for price adjustment. In this regard, learned counsel for plaintiff has relied upon the ruling of the Hon'ble Apex Court in **Suresh Kumar Wadhwa v. State of MP reported in (2017) 16 SCC 757**, wherein the law is laid down at paragraph 26 and 27 as follows;

*"Equally well-settled principle of law relating to contract is that a party to the contract can insist for performance of only those terms conditions which are part of the contract. **Likewise, a party to the contract has no right to unilaterally "alter" the terms and conditions of the contract** nor they have a right to "add" any additional terms conditions in the contract unless both parties agree to add / alter any such terms /conditions in the contract.*

Similarly, it is also a settled law that if any party adds any additional terms / conditions in the contract without the consent of the other contracting party, then such addition is not binding on the other party. Similarly, a party which adds any such term condition has no right to insist on the other party to comply with such additional terms conditions and nor does such party have a right to cancel the contract

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on the ground that the other party has failed to comply with such additional terms and conditions."

(Emphasis Supplied)

57. In this regard, it is to be noted that as per the price adjustment clause at clause 44 of the contract, price adjustment also applies to work carried out in the time extension granted by the defendants. In the case on hand, admittedly the defendants have granted extension of time and in all the extensions granted, it is specifically stated that extension is given without imposing any penalty ("ದಂಡರಹಿತವಾಗಿ").

58. Therefore, it is clear that, on one hand, clause 44 of the contract specifically provides for price adjustment during time extension granted by the defendants. And in the case on hand, all the time extensions have been given without imposing any penalty. Such being the case, by imposing a unilateral condition in the extension orders, the defendants cannot deny the benefit of the price adjustment clause which is contained in the contract between the parties. Therefore, the above condition in the time

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extension orders has to be read as a bar to the contractor to claim any rates or claims or benefits over and above what is provided in the contract, such as loss of profit, loss of overheads, loss of opportunity, etc. And the said condition cannot be read as a bar or prohibition to the contractor to claim the price adjustment which is specifically granted to the contractor under clause 44 of the contract. Hence, this contention of the defendants to deny price adjustment bill also cannot be accepted.

59. The **third contention** raised by the defendants is that under Clause 44, price adjustment is not applicable where the work is carried out beyond the stipulated time *for reasons attributable to the contractor*. It is contended that, in this case, the delay was due to fault on the part of the plaintiff itself and therefore, plaintiff cannot take advantage of its own wrong and claim price adjustment for work done beyond the stipulated period due to its own default.

60. In this regard, it is to be noted that, the plaintiff has produced sufficient documentary evidence in the form of correspondence, minutes of proceedings and government

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orders to show that the delay was attributable to the defendants themselves.

61. The said documents are at Ex. P2, Ex. P11 to P.15, P17 and P18. It is crucial to note that Ex. P11 to 18 are all undisputed documents since they are marked by consent on the basis that defendants have not disputed the said documents in their Statement of Admission and Denial of Documents.

62. Ex. P2 is letter dated 15-1-2009 issued by the plaintiff to defendants stating about the delay in obtaining work permission from railway department. Ex. P11 is the minutes of meeting dated 16-8-2007 and this is produced to show that the land for construction of jack well cum pump house was handed over belatedly and under the said minutes of meeting the compensation was handed over to the landowner and only thereafter the land was handed over to the plaintiff for the purpose of carrying out the work. In said minutes of meeting, under serial No. 2, the land acquisition problems in respect of three villages is discussed and it is stated that, now, the acquisition problems have been solved and therefore there is no embargo for proceeding with the

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work. This minutes of meeting is dated 16-08-2007 which is nearly two years after issuance of the work order (on 17-09-2005) and therefore it is clear that for a period of nearly two years from the date of issue of the work order, problems of land acquisition persisted which delayed the work and this is not attributable to the contractor in any manner.

63. Ex. P12 is the proceedings of the Government of Karnataka dated 10-1-2007 and this document is produced to show that only under the said government order the Government of Karnataka sanctioned diversion of 22.46 hectares of forest land for execution of the project work. This government order is dated nearly one and a half years after the issuance of the work order and this shows that, some of the land required for the project was forest land which was diverted for the project only under the said government order and therefore, for nearly one and a half years after issuance of the work order, a portion of the land was not available for carrying out the work and this delay is also not attributable to the contractor in any manner.

64. Ex. P13 is the minutes of meeting dated 18-6-2008 to show that even on said date there were objections and

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obstructions by the Forest Department for laying the pipeline. The perusal of this document discloses that, at internal page 4 of this document, it is observed that proposal for release of 25 acres of forest land which is necessary for the project is still pending in the office of Deputy Conservator of Forests, Bhadravati. This document discloses that nearly three years from the date of work order, some portion of the forest land that was necessary for the project had not been released.

65. Ex. P14 is the minutes of the project review meeting dated 1-12-2008 during which, representative of the contractor has raised the issue that forest land required for the project has not yet been handed over.

66. Ex. P15 is the letter of South Western Railways dated 16-12-2008 according sanction for carrying out the project in the railway land but subject to railway supervision. This document shows that nearly 3 years after the issuance of the work order, permission was given for carrying out the work on the railway land and this document also shows that, the work site was provided to the contractor

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belatedly, which resulted in delay of the work for which the contractor cannot be held responsible.

67. Ex. P17 is a letter dated 25-01-2009, issued by the Deputy Commissioner, Shivamogga District to the Revenue Department, requesting to approve compensation to be given to the landowners. Ex. P18 is a letter issued by the Special Land Acquisition Officer dated 17-03-2009, approving the compensation. These documents show that as late as in the year 2009, the compensation was still being approved for acquisition of land which was required for the project and therefore it shows that acquisition was not complete and consequently the entire land required for the project was handed over belatedly to the contractor which has resulted in delay in the work, for which the contractor cannot be held responsible.

68. In the cross-examination of PW1, a contention is sought to be raised by the defendants that, it was the responsibility of the contractor to either acquire the land or enter into private arrangements with the landowners for doing the work on the land and also the responsibility of the contractor to obtain sanctions from the various departments

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and the contractor cannot blame the defendants, for the delay in the same.

69. This contention cannot be accepted because from the above documents produced by the plaintiff which are discussed supra, it is clear that, the land required for the project was ultimately acquired by the government. Therefore, when the land is required to be acquired, the Plaintiff which is a private contractor cannot be expected to acquire the land and it is for the defendants to ensure that, the entire work site is provided to the plaintiff to complete the project. Insofar as the diversion of forest land and the railway land is concerned, even conceding that, it was the responsibility of the contractor to coordinate for obtaining diversion of the said lands, if there is any delay in diverting the forest land and railway land for the purpose of the project, the contractor cannot be held responsible and therefore, by no stretch of imagination such delays can be said to form part of the exception to clause 44 which provides that, price adjustment will not be applicable where the work is carried out beyond the stipulated time *for reasons attributable to the contractor*. Therefore, it is clear

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that the Plaintiff has produced sufficient documentary evidence to show that the project was delayed for reasons which cannot be attributed to the contractor.

70. As against the above documents, counsel for defendants has relied upon Ex. D3. Under Ex. D3, it is only stated that on 5-12-2005, the chief engineer on inspection was not happy with the progress. And it is stated that in case progress is not shown within 7 days, penalty will be imposed as per the conditions of the contract. *Admittedly, at no point of time any penalty was imposed on the plaintiff.* Therefore, on the basis of a stray letter at Ex. D3, it cannot be said that the huge delay in completion of the project was due to the default on the part of the plaintiff, particularly when plaintiff has produced the above documentary evidence to attribute the delay to the defendants.

71. Although in Ex. D4, defendants have complained that project manager is not available to discuss various points, the stress in Ex. D4 is in respect of clearing the pending bills. And there is no specific material available in Ex. D4 to attribute the delay in completion of the project to the plaintiff. Ex. D5 is a letter dated 17-10-2006 addressed by

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the defendants to the plaintiff. In fact, the said letter goes against the defendants because it mentions that PWD land clearance was given on 6-10-2006. Whereas, the work order was issued on 17-09-2005. Therefore, this document shows that the work site was made available nearly after one year from the date of the work order. And this substantiates the plaintiff's case that the delay is due to the default on the part of the defendants. Ex. D6 to D8 are the orders regarding time extension under which admittedly time was extended without imposing any penalty. And therefore, they will not help the defendants' case to show that delay was attributable to the plaintiff. Ex. D9 is a letter written to the Asst. Divisional engineer and it is also not relevant to consider the question as to whose default resulted in the delay in completion of the work. Ex. D10 and D11 are also time extension orders without imposing penalty and therefore, they will also not help the defendants' case in this regard. Ex. D12 and D13 are issued on 2-11-2012 after the work was completed on 30-11-2011. And therefore, they will not in any manner help the defendants to prove that delay was due to default on the part of the plaintiff. Ex. D. 14 to

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D.16 are the orders of the hierarchy of officials of defendants rejecting the price adjustment bill and therefore these documents will also not help the defendants to prove the delay in project completion was due to the default on the part of the plaintiff. **Therefore, on overall appreciation of the evidence on record, I am of the view that the plaintiffs have proved that the delay in completion of the project is attributable to the defendants.** And therefore, the contention raised by the defendants that, the price adjustment bill is hit by clause 44 which bars price adjustment where delay is attributed to the plaintiff cannot be accepted.

72. The **fourth contention** raised by the defendants is that price adjustment cannot be raised after final bill and issuance of completion certificate and when the plaintiff has accepted the final bill amount in full and final settlement without protest. In this regard, in the order of the MD of the defendant No. 1 which is marked as Ex. D16, specific reference is made to a letter dated 24-3-2012 issued by the plaintiff and it is the observation of the MD that, in the said letter, the plaintiff has acknowledged receipt of bill payment

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on 31-3-2012 and the said letter is obviously a concocted document since in a letter dated 24-3-2012 the plaintiff could not have acknowledged payment on 31-3-2012 which is subsequent to the said letter. The said letter dated 24-3-2012 is marked in the present suit at Ex. P-8. The learned senior counsel for plaintiff pointed out that, there is a seal of defendant No. 1 for having received the said letter on 30-4-2012. Therefore, the learned senior counsel for plaintiff is justified in contending that, the date to the said letter as 24-3-2012 is obviously a typographical error, since, the said letter was received by the defendant No. 1 on 30-4-2012. On this ground, the plaintiff is justified in contending that, since, the said letter was received by defendant No. 1 only on 30-4-2012, there is nothing wrong in the plaintiff acknowledging the payment on 31-3-2012 in the said letter.

73. However, in my view, this letter is not very much relevant in considering the present contention because this letter is dated after the receipt of the amount towards the running bill No. 25. *What is important is whether the running bill No. 25 was considered by both parties as the final bill and the amount was received in respect of the said*

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bill in full and final settlement which precludes the plaintiff from raising any further claims.

74. The contention of the defendants that RA bill No. 25 was the final bill which finally settled all amounts payable in respect of the project cannot be accepted because there is a letter issued by the Assistant Executive Engineer of defendant No. 1 dated 29-8-2011 which is marked as Ex. P-19 in which the RA bill No. 25 is referred to as the part bill and pre-final bill. In the said letter, the Assistant Executive Engineer of defendant No. 1 has written to the Assistant Executive Engineer Quality Control as follows;

"ತತ್ಸಂಬಂಧ 25 ನೇ ಭಾಗಶಃ ಬಿಲ್ಲನ್ನು ಮತ್ತೂ ಪ್ರಿ - ಫೈನಲ್ ಬಿಲ್ಲನ್ನು ಸಲ್ಲಿಸಿದ್ದು, ಸದರಿ ಕಾಮಗಾರಿಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ತಾವುಗಳು ಸ್ಥಳ ಪರಿಶೀಲನೆ ಮಾಡಿ ಗುಣ ನಿಯಂತ್ರಣ ಫಲಿತಾಂಶ ವರದಿಯನ್ನು ನೀಡಬೇಕಾಗಿ ಕೋರಲಾಗಿದೆ."

75. Therefore, it is clear that, in the said letter, the Asst. Executive Engineer of defendant No. 1 has himself referred to RA bill No. 25 as part bill and pre-final bill. Admittedly, as per Ex. P-42, it is only RA bill No. 1 to 25 which has been cleared by the defendants. This is also forthcoming from Ex. D-2 which is the statement of RA bill wise payments made

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by the defendants which shows that it is only RA bill No. 1 to 25 which has been cleared by the defendants. In Ex. D-2, RA bill No. 25 is referred to as the 25th and final bill but at undisputed point of time, as per the letter at Ex. P-19 which was written before clearance of RA bill No. 25, RA bill No. 25 is referred to as part bill and pre-final bill. *Therefore, it does not lie in the mouth of the defendants to now contend that RA bill No. 25 was the final bill* and the contention of the Defendants that, having received the payment in respect thereof, the plaintiff is precluded from raising price adjustment bill, cannot be accepted. Since, as per the letter of defendants themselves at Ex. P-19, RA bill No. 25 is referred to as part bill and pre-final bill, it means that the final bill of the plaintiff has not been settled. **Therefore, there was no embargo for the plaintiff to raise the price adjustment bill on 25-5-2012 as per Ex. P-35.**

76. In so far as the contention that, at the time of receiving the payment for RA bill No. 25, plaintiff acknowledged that the said payment is in full and final settlement is concerned, as already noted in the letter at Ex. P-8, plaintiff has contended that the amount of RA bill

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No. 25 was received under protest. No document has been produced by the defendants to show that the amount of RA bill No. 25 was received by the authorized person of the plaintiff in full and final settlement. Therefore, this contention also cannot be accepted.

77. The **last contention** raised by the defendants to deny the price adjustment bill is that, the plaintiff has not produced all the data and material to substantiate the calculations in the price adjustment bill and to show that the plaintiff is entitled to price adjustment of Rs. 3,16,83,290 as claimed.

78. In this regard, counsel for defendants has relied upon the following rulings. Oil and Natural Gas Corporation v. Oil Country Tubular Ltd. reported in 2011 (4) Arb LR 139 of Bombay High Court, wherein it is held that, the burden is always on the party who claims compensation to prove actual loss. Next, reliance is placed upon New India Insurance Company Ltd. v. Pyarelal Textile Ltd. reported in 2013 (2) Arb LR 476 of Bombay High Court for the proposition that, award of damages is always subject to proof and cannot be on assumptions and presumptions.

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Next, reliance is placed upon Hurrayson Enterprises v. Government of N.C.T. Delhi in F.A.O. (O.S.) (Comm). 325 of 2019 for the proposition of law that no relief can be granted without evidence. For the same proposition of law, reliance is placed upon Anheuser Busch Inbev India Ltd. Mumbai v. Scarpe Marketing reported in I.L.R. 2022 Karnataka 544 for proposition that no claim can be allowed without evidence in respect thereof.

79. However, in this regard, it is to be noted that, in the orders of the Executive Engineer, Chief Engineer and Managing Director of defendant No. 1, rejecting the price adjustment bill marked as Ex. D14 to D16, the calculations based on which the price adjustment bill was raised for sum of Rs. 3,16,83,290 or the data in respect thereof, has not been disputed. Even in the present suit, the defendants have not contended that the calculation is incorrect. If the calculation of the data in respect of the price adjustment bill was incorrect, then it was for defendants to specifically dispute the same and to come out with their own calculation. In other words, if according to the defendants the price adjustment is not Rs. 3,16,83,290 as claimed but

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is some other amount, it was for the defendants to come out and state what according to the defendants is the correct price adjustment amount as per the data and formula applicable. Having not done so and not having specifically disputed the calculations or the data at any point of time, it is not open for the defendants to deny the price adjustment bill on this ground and therefore, this ground also cannot be accepted.

80. Therefore, none of the grounds raised by the defendants to deny the price adjustment bill is acceptable. As already noted, the main plank of argument of the defendants throughout was that price adjustment is not applicable to the present contract because under clause 44, price adjustment is provided only for contract of more than 24 months. For the reasons already noted supra, this contention has to be rejected in view of the direct ruling of Hon'ble High Court of Karnataka on this point, holding that, the benefit of price adjustment for contract period of 12 months or more as provided under the government order dated 26-11-2004 has to be read into clause 44. The plaintiff has submitted a detailed price adjustment bill as

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per Ex. P-35 dated 25-05-2012 along with the detailed calculations and data and thereby calculated the total amount of price adjustment as Rs. 3,16,83,290 which is forthcoming at running page 217 of Ex. P-35. At no point of time, the defendants have denied the data on the basis of which the said calculation has been made or denied the said calculation or come out with their own calculations.

Therefore, the said price adjustment bill deserves acceptance. Hence, for all the reasons noted supra, I hold that plaintiffs are entitled to recover the principal sum of Rs. 3,16,83,290 towards the price adjustment bill.

81. The next question is as to rate of interest and from what date the plaintiff is entitled to interest on the amount of the price adjustment bill. The plaintiff is seeking interest at the rate of 14% per annum from 25-05-2012 up to date of this suit and future interest at same rate. It is to be noted that 25-05-2012 is the date of submission of the price adjustment bill and from that date, plaintiff is claiming interest.

82. With regard to interest, counsel for defendants has relied upon ruling of Hon'ble Apex Court in the case of

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State of Rajasthan v. Ferro Concrete Construction (P) Ltd., (2009) 12 SCC 1 : (2009) 4 SCC (Civ) 604 : 2009 SCC OnLine SC 868 at page 23, wherein it is held as follows;

65. *The position regarding award of interest after the Interest Act, 1978 came into force, can be stated thus:*

(a) *Where a provision has been made in any contract, for interest on any debt or damages, **interest shall be paid in accordance with such contract.***

(b) *Where payment of interest on any debt or damages is expressly barred by the contract, no interest shall be awarded.*

(c) *Where there is no express bar in the contract and where there is also no provision for payment of interest then the principles of Section 3 of the Interest Act will apply in regard to the pre-suit or pre-reference period and consequently interest will be payable:*

(i) *where the proceedings relate to a debt (ascertained sum) payable by virtue of a written instrument at a certain time, then **from the date when the debt is payable to the date of institution of the proceedings;***

(ii) *where the proceedings is for recovery of damages or for recovery of a debt which is not payable at a certain time, **then from the date***

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mentioned in a written notice given by the person making a claim to the person liable for the claim that interest will be claimed, to date of institution of proceedings.

(d) Payment of interest pendente lite (date of institution of proceedings to date of decree) and future interest (from the date of decree to date of payment) shall not be governed by the provisions of the Interest Act, 1978 but by the provisions of Section 34 of the Code of Civil Procedure, 1908 or the provisions of the law governing arbitration as the case may be.

(Emphasis Supplied)

83. Therefore, from the above law, it is clear that, under the Interest Act, pre-suit interest can be granted from the date on which the payment became due. In the case on hand, admittedly, the price adjustment bill was submitted only on 25-05-2012. The contract does not provide for payment of interest for delay in clearing of the bill. Reasonable time had to be granted for the officials of defendant No. 1 to consider the price adjustment bill. The contract under Clause 29 itself provides for reference of the disputes to hierarchy of officials of defendant No. 1 and accordingly, the Executive Engineer has rejected the price adjustment bill on 20-12-2012 as per Ex. D-14. And when

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the dispute was referred to the Chief Engineer, the Chief Engineer has also rejected the price adjustment bill on 20-04-2013 as per Ex. D-15. And finally, the Managing Director of defendant No. 1 dismissed the appeal on 22-01-2014 as per Ex. D-16. The plaintiff was well aware that the plaintiff can approach the court only after the price adjustment bill was considered by the hierarchy of officials of defendant No. 1 and only after the passing of the orders of MD in appeal, the present suit is filed. Therefore, I am of the view that, the price adjustment bill became payable from the date on which the decision was taken by the Managing Director and therefore, I hold that, plaintiff is entitled to interest from 22-01-2014, which is the date of the order of the Managing Director at Ex. D-16.

84. Insofar as rate of interest is concerned, plaintiff is claiming interest at 14% per annum. But considering that, the defendants rejected the price adjustment bill on the basis of clause 44 of the contract and relief is being granted to the Plaintiff on the basis of the judgement of the Hon'ble High Court of Karnataka holding that the benefit of the Government Order dated 26-11-2004 should be read into

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Clause 44, it cannot be said that the rejection of the price adjustment bill by the defendants was with malafide intention. Therefore, I am of the view that interest at 14% per annum is excessive and the defendants being a government company, I am of the view that proper rate of interest to be granted is 6% per annum.

85. Accordingly, I hold that, plaintiff is entitled to recover the principal sum of Rs. 3,16,83,290 along with interest at 6% per annum from 22-01-2014 till date of realization.

86. At this stage it is to be noted that, the defendant No. 1 is a company and the law is settled that a company has a distinct legal identity from its officers and therefore, since the contract is between the plaintiff and defendant No. 1, liability can be imposed only on defendant No. 1 to pay the above amount and not on its officers, viz. defendant No. 2 to 5. **Accordingly, I answer issue No. 1 to 3.**

Issue No. 5:-

87. Having answered issue No. 1 to 4 as above, I proceed to pass the following :-

ORDER.

The suit is partly decreed, with cost.

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It is held that the plaintiff is entitled to recover sum of Rs. 3,16,83,290/= along with interest at rate of 6% per annum from 22/01/2014, till date of realization, only from Defendant No. 1.

Office to draw decree accordingly.

Office to issue soft copy of this judgment to both sides, by email, if furnished.

[Dictated using MacWhisper Pro 10.8.1, transcript revised, corrected, signed and then pronounced by me in open court on this the **11th day of August, 2025**]

**(S. Sudindranath)
LXXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE,
COMMERCIAL COURT, BENGALURU**

ANNEXURE

1. List of witnesses examined on behalf of Plaintiff/s:

PW1 : Sri Amitava Basu

PW2 : Sri O. Vishveswaraiah

2. List of witnesses examined on behalf of Defendant/s:

DW1 : Sri Krishna Prasad H G

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3. List of documents marked on behalf of Plaintiff/s:

- Ex.P1 : Minutes of meeting.
- Ex.P2 : Office copy of Letter dated 15.01.2009.
- Ex.P3 : Office copy of Letter dated 25.04.2008.
- Ex.P4 : Copy of Letter dated 05.01.2009.
- Ex.P5 : Copy of Letter dated 27.11.2009.
- Ex.P6 : Copy of Letter dated 29.08.2011.
- Ex.P7 : Copy of Letter dated 24.07.2006.
- Ex.P8 : Copy of Letter dated 24.03.2012.
- Ex.P9 : Copy of Agreement dated 17.09.2005
- Ex.P10 : Copy of work order dated 17.09.2005
- Ex.P11 : Copy of minutes of meeting dated 16.08.2007
- Ex.P12 : Copy of Government order dated 10.01.2007
- Ex.P13 : Copy of proceedings of the project review meeting dated 18.06.2008.
- Ex.P14 : Copy of proceedings of the project review meeting dated 01.12.2008.
- Ex.P15 : Copy of the letter dated 16.12.2008.
- Ex.P16 : Copy of the letter dated 21.02.2009.
- Ex.P17 : Copy of the letter dated 25.01.2009.
- Ex.P18 : Copy of the letter dated 17.03.2009.
- Ex.P19 : Copy of the letter dated 29.08.2011

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Ex.P20 : Copy of the official memorandum dated 08.09.2009.

Ex.P21 : Copy of the letter dated 17.11.2009.

Ex.P22 : Copy of the work done certificate dated 12.03.2012.

Ex.P23 : Copy of the reports & recommendation for 1st extension of time issued by D4 & D5

Ex.P24 : Copy of the reports & recommendation for 2nd extension of time issued by D4 & D5

Ex.P25 : Copy of the reports & recommendation for 3rd extension of time issued by D4 & D5

Ex.P26 : Copy of the reports & recommendation for 4th extension of time issued by D4 & D5

Ex.P27 : Copy of the reports & recommendation for 5th extension of time issued by D4 & D5

Ex.P28 : Copy of letter granting time for Extension 1 for the project work dated 29.09.2007

Ex.P29 : Copy of letter granting time for Extension 2 for the project work dated 06.10.2008

Ex.P30 : Copy of letter granting time for Extension 3 for the project work dated 05.02.2009.

Ex.P31 : Copy of letter granting time for Extension 4 for the project work dated 20.07.2009.

Ex.P32 : Copy of letter granting time for Extension 5 for the

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project work dated 18.08.2011.

Ex.P33 : Copy of the application certificate dated 13.12.2013

Ex.P34 : Copy of the Sec.4 of the General condition of contract.

Ex.P35 : Copy of the PA bill dated 25.05.2012

Ex.P36 : Copy of the Government order dated 26.11.2024.

Ex.P37 : Copy of the letter dated 20.12.2012 issued by defendant No.3

Ex.P38 : Copy of the order dated 20.04.2013 issued by defendant No.3.

Ex.P39 : Copy of the order dated 22.01.2014 issued by defendant No.2.

Ex.P40 : Copy of the agreement Section-3 conditions of contract and Section 4-GCC.

Ex.P41 : Attested copy of resolution of Board of Director Authorizing PW2.

Ex.P42 : RA bills produced by defendant along with memo dated 29.03.2025.

4. List of documents marked on behalf of Defendant/s:

Ex.D1 Tender document along with original agreement with plaintiff.

Ex.D2 RA bill wise statement.

Ex.D3 Letter dated 08.12.2005.

Ex.D4 Letter dated 04.08.2006.

Ex.D5 Letter dated 17.10.2006.

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- Ex.D6 Letter dated 29.09.2007.
- Ex.D7 Letter dated 06.10.2008.
- Ex.D8 Letter dated 05.02.2009.
- Ex.D9 Letter dated 21.02.2009.
- Ex.D10 Letter dated 27.07.2009.
- Ex.D11 Letter dated 18.08.2009.
- Ex.D12 Letter dated 02.11.2012.
- Ex.D13 Letter dated 02.11.2012.
- Ex.D14 Letter dated 20.12.2012.
- Ex.D15 Letter dated 20.04.2013.
- Ex.D16 Letter dated 22.01.2014.

(S. Sudindranath)

LXXXIII ACC & SJ,
(COMMERCIAL COURT), BENGALURU