

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.01.2018

DELIVERED ON: 06.08.2018

CORAM:

THE HONOURABLE MS.JUSTICE INDIRA BANERJEE, CHIEF JUSTICE
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

O.S.A.No.155 of 2014
and M.P.No.1 of 2014

M/s. Karan Ores & Specials,
Represented by Mr.Karnan Sehgal,
Proprietor,
B-10, G.T.Karnal Road,
Industrial Area,
New Delhi 110 033 ... Appellant

Vs.

- 1) M/s. Endeka Ceramic India Pvt., ltd.,
23/57, 41st Cross East End,
"C" Main Road,
9th Block, Jayanagar,
Bangalore,
And works at Plot No.74 & 75,
SIPCOT Electronics Complex,
Phase II, Kumudepalli Post,
Hosur, Tamil Nadu,
Represented by its Managing Director,
Mrs.Asha Sampath.
- 2) Mr.K.Raviraja Pandian,
Sole Arbitrator,
No.4/358, 9th Cross Street,
Kapaleswarar Nagar South,
Neelankarai, Chennai 600 041. ... Respondents

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of the original Side Rules read with Clause 15 of the Letter Patent Act against the order of the learned Single Judge dated 10.09.2013 passed by this Court in O.P.No.26 of 2012, dismissing the application filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the

arbitration award dated 11.10.2011, passed by the second respondent against the appellant, for a sum of Rs.1,33,92,891.69/- together with interest at 10% per annum from 18.04.2009 till the date of the award and 12% per annum from the date of award till payment.

For Appellant : Mr.M.K.Kabir SC
for Mr.M.L.Ganesh

For R1 : M/s.B.Poongkhulai

JUDGMENT

ABDUL QUDDHOSE, J.

The instant Appeal has been filed by the Appellant under Clause 15 of the Letters Patent read with Section 37 of the Arbitration and Conciliation Act, 1996 against the order of the learned Single Judge dated 10.09.2013 passed in O.P.No.26 of 2012, dismissing the Application filed by the Appellant under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Arbitration Award dated 11.10.2011, passed by the second respondent against the Appellant, for a sum of Rs.1,33,92,891.69 together with interest at 10% per annum from 18.04.2009 till the date of the award and 12% per annum from the date of award till payment.

I. Points for consideration:

The points for consideration in the instant Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 is :-

(a) Whether the Arbitrator had jurisdiction to entertain the claim of the first respondent at Chennai, since the situs of the arbitration was fixed under the Distributor Agreement at Bangalore. सत्यमेव जयते

(b) Whether any Arbitration dispute can be raised in respect of transactions after 31.03.2008 being the date of expiry of the Distributor Agreement.

(c) Whether the claim is admissible when the claim statement, before the Arbitrator was not signed and verified by a person duly authorised by the company.

(d) Whether the grounds for challenge to the Arbitration Award come within the scope of Section 34 of the Arbitration and Conciliation Act, 1996.

(e) Whether the learned Single Judge erred in dismissing the application under Section 34 of the Arbitration and Conciliation Act, 1996.

I. II. Findings of the learned Single Judge:

The Learned Single Judge while considering the application under Section 34 of the Arbitration and Conciliation Act, 1996 has rejected the objections raised by the Appellant by giving the following reasons:-

(i) Insofar as the question of jurisdiction is concerned, even though under clause 10.3 of the Distributor Agreement, the situs of Arbitration proceedings was stipulated as Bangalore, the Appellant having suffered an order from this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996 in O.P.No.574 of 2009 for appointment of an Arbitrator and the same having been allowed by an order dated 19.03.2010 passed by the learned Chief Justice of this Court appointing the second respondent as the Arbitrator, only this Court will have the jurisdiction. The order under Section 11(6) of the Act, appointing the second respondent as Arbitrator was passed, after due service of notice on the Appellant and the Appellant having entered appearance in O.P.No.574 of 2009, did not file any counter affidavit raising any question of jurisdiction. The learned Single Judge, rejected the contention that Chennai cannot be a situs of the Arbitration irrespective of the stipulation contained in the distribution agreement, since the Appellant has not challenged the appointment of Arbitrator by this Court and has also not challenged the maintainability of the Application under Section 11 of the Arbitration and Conciliation Act, 1996 filed by the first respondent which order has become final.

(ii) Insofar as the second ground of challenge, that the Distributor Agreement period expired on 31.03.2008 and therefore, no dispute arising out of subsequent transactions can be adjudicated by the Arbitrator, the learned Single Judge rejected the said contention by observing that, even though it is true the Distributor Agreement was to be in force only upto 31.03.2008, the fact that there were supplies made even thereafter and that, there were also payments made thereafter are borne out by records. In other words, the Distributor Agreement was reduced into writing on 16.04.2007 and continued to be operating between the parties without a formal renewal for a subsequent period. In such circumstances, the disputes that the parties had, could be traceable and referable only to the first Agreement dated 16.04.2007. The learned Single Judge, therefore rejected the second contention also.

(iii) Insofar as the third objection raised by the Appellant that, the claim statement filed by the first respondent was not

signed and verified by a person duly authorised for making the entire claim, the learned Single Judge rejected the objections by giving the following reasons:

(a) The provisions of the Code of Civil Procedure could not be applied to Arbitration proceedings;

(b) Even in proceedings governed by Code of Civil Procedure, it is always possible for a Company to ratify the action of a person, who is admittedly Secretary or Director or Principal Officer of the Corporation, in terms of Order XXIX Rule 1 of the Civil Procedure Code.

The Learned Single Judge has given a clear finding that the person who signed and verified the proceedings and who did not produce his Authority at the time of presentation of the claim petition is not a ground to hold that he had no Authority to initiate the Arbitration and file the claim statement. Since the Corporation has to be represented in any proceeding only through bonafide officers named in Order XXIX, CPC, the action taken by him could always be ratified by the Board of Directors. The learned Single Judge followed the decision of this Court in Mr.K.Santhanam vs Ms.S.Kavitha reported in (2011) 1 Law Weekly and held that even post-facto ratifications of the Authority was possible. After considering each and every ground raised by the Appellant under Section 34 of the Arbitration and Conciliation Act 1996, the learned Single Judge did not find any merit in the grounds raised by the Appellant for challenging the Arbitral Award dated 11.10.2011 passed by the second respondent and accordingly, dismissed the Application under Section 34 of the Arbitration and Conciliation Act 1996.

Aggrieved by the order of the learned Single Judge, the instant appeal has been filed by the Appellant under Section 37 of the Arbitration and Conciliation Act 1996.

II

III. Submission of the learned counsels:

Mr.M.K.Kabir, the learned Senior counsel for the Appellant made the following submissions:-

S (a) The first respondent as claimant, filed the claim petition before the Arbitral Tribunal against the Appellant, for a sum of Rs.1,33,92,891.69/- together with interest at 24% per annum from the date of expiry of the credit period under each invoice, till the date of realisation and for issuance of 'C' forms or in the alternative pay a sum of Rs.25,46,098/- together with interest and costs.

(b) The Appellant and the first respondent entered into a Distributor Agreement on 16.04.2007 at Bangalore, wherein the Appellant was appointed as the Authorised Distributor for the products of the first respondent prescribed in schedule III of the Agreement in the states of Delhi, Uttar Pradesh, Haryana, Rajasthan and Punjab.

(c) The Agreement was initially valid from 16.04.2007 to 31.03.2008, but it was further extended till 30.04.2008.

(d) Even after April 2008, the Appellant continued to place purchase orders for supply of goods which was accepted by the first respondent at Hosur, Tamil Nadu. The terms of such supplies effected after the month of April 2008, were governed by the general conditions of sale. Several consignments of goods were sold and delivered under various invoices and the value of goods sold between April 2008 to November 2008 is Rs.1,33,92,891.69/-.

(e) As the amounts were not paid and 'C' forms were not filed, the first respondent issued a legal notice and the Appellant also agreed to deposit the title deeds of the property at Gurgaon to settle the outstanding dues. The first respondent also issued a letter dated 17.03.2009 calling upon the Appellant to comply with the obligations by providing security.

(f) As the demand was not complied with, a legal notice was issued on 18.04.2009 for payment of the outstanding amount. The Appellant by a reply dated 6.05.2009 refused to pay the amount contending that the goods sold were defective and of inferior quality.

(g) The first respondent issued a notice dated 25.06.2009 for referring the dispute to Arbitration. The same was rejected by the Appellant by his reply dated 08.07.2009.

(h) The first respondent instituted O.P.No.574 of 2004 for appointment of Arbitrator under Section 11(6) of the Arbitration and Conciliation Act 1996. This Court by an order dated 19.03.2010, appointed the second respondent, former Judge of this Court, as the Arbitrator to decide the dispute. The first respondent filed a claim petition before the Arbitrator seeking an award for the outstanding amount together with other reliefs. The Appellant in his reply contended that the learned Arbitrator lacks jurisdiction to try and entertain the claim petition because the Agreement dated 16.04.2007 was executed outside the jurisdiction of Tamil Nadu and the person who has signed the claim petition is not Authorised by the Board and hence, the claim is not maintainable.

(i) It was also contended that in the absence of any written agreement between the parties for referring the dispute to Arbitration, the Appellant did not agree to refer the dispute to Arbitration. The Appellant also disputed its liability, since the goods supplied by the first respondent were defective and despite the request made by the Appellant to take back the goods, the first respondent neither took back the goods nor replaced the same.

(j) The invoice is not signed by both the parties and any condition contained therein cannot be termed as an Arbitration Agreement as contemplated under Section 7 of the Arbitration and Conciliation Act 1996. Therefore, this Court lacks inherent jurisdiction to decide the appointment of an Arbitrator under Section 11(6) of the Act. The learned Single Judge despite holding that under Clause 10.3 of the Distributor Agreement, the situs of the arbitration is stipulated as Bangalore, has erroneously held that the first respondent having suffered an order under Section 11(6) of the Act, the provisions of Section 42 of the Act would apply.

k) The seat of Arbitration is at Bangalore and is conferred under the Agreement between the parties, because the registered office of the first respondent is situated at Bangalore. The products sold were in the territories of Delhi, Uttar Pradesh, Haryana, Rajasthan and Punjab. The goods were delivered at Delhi and payments were made through the banks in Delhi. Merely, because the factory is situated in Hosur, it cannot confer jurisdiction to the Courts in Chennai. Section 42 of the Arbitration and Conciliation Act 1996, cannot cure the defects and hence, the very appointment of Arbitrator is non est in law as this Court lacks jurisdiction to appoint an Arbitrator.

l) The learned Senior Counsel for the Appellant submits that the Appellant has satisfied the requirements under Section 34 of the Arbitration and Conciliation Act 1996 and therefore, the Arbitration Award has to be set aside.

m) The learned Senior Counsel for the Appellant relied upon the following Authorities in order to substantiate his argument that printed conditions on the invoice do not constitute an Agreement and hence the Arbitration clause is not binding on the Appellant.

(i) 2000 (1) RAJ 320 (Bom) (M/s.Divya Shivilaks Impx vs. Shanthilal Jamnadas Textiles (P) Ltd).

(ii) 2007 (3) Arb LR 402 (Del) (M/s.Tripack Limited and Others vs. Ramkishore Nagar Mal).

(iii) 2015 (4) LW 417 (M/s.NSK India Sales Company Private Limited vs. Proactive Universal Trading Company Private Limited.

The learned Senior Counsel also relied upon the latest decision, the Hon'ble Supreme Court in the case of Indus Mobile Distribution Private Ltd. vs. Datawind Innovations Private Ltd. and others reported in 2017 (4) CTC 213 (SC) in support of his argument that the Courts where "seat" is mentioned will have the exclusive jurisdiction for the purpose of regulating the arbitration proceedings.

Per Contra, Ms.B.Poongkhulai, learned counsel for the first respondent made the following submissions:

a) The learned Arbitrator in the Award dated 11.10.2011 has held that the Arbitral Tribunal was constituted by the Hon'ble Chief Justice under Section 11(6) of the Arbitration and Conciliation Act, 1996 and therefore, in the light of the judgment reported in (2005) 8 SCC 618 (in the case of SPB & Co., Vs Patel Engineering Limited and another), the issue of jurisdiction cannot be agitated before the Arbitral Tribunal.

b) The proceedings before the Arbitral Tribunal is not governed by the provisions of the Code of Civil Procedure and the Evidence Act. Though the claim petition was instituted without a formal authorisation from the Board, it can be ratified subsequently. Post ratification will cure the defect and thus, the Arbitral Tribunal has rightly rejected the contention of the Appellant about the maintainability of the Arbitration claim.

c) Though the Arbitrator noted the submissions of the Appellant that the Agreement was executed at Bangalore, he accepted the plea that transactions subsequent to the expiry of the Agreement was governed by the terms and conditions of sale contained in the invoice and held the claim to be maintainable since the situs of the Arbitration under the terms and conditions of the sale is Hosur in Tamil Nadu. The supplies effected by the first respondent between April 2008 to November 2008 were governed by the General Conditions of sales, incorporated in the invoices raised by the respondents. Clauses 8 & 9 of the General Conditions of Sales are reproduced below:-

"8. ARBITRATION:

Any dispute or difference between the Company and the Supplier / Contractor of any kind whatsoever arising at any kind whatsoever arising at any time to at any stage whatsoever in connected with or incidental to this Order Acceptance including any dispute of difference regarding interpretation of terms and conditions or any clause thereof shall be settled friendly consultation between and the Company and Supplier Contractor. In case no agreement can be reached through consultation they shall be referred o an

arbitration under the provisions of the Indian Arbitration Act, 1940 as amended and the venue of such arbitration shall be Hosur Only.

9. JURISDICTION:

In case of any dispute or difference arising out this Order Acceptance, referred to in these invoice and not begin settled in arbitration proceedings, the same shall refer to a Court of law having Hosur jurisdiction only."

Since the venue of the Arbitration as well as the jurisdiction of this Court arising out of the said arbitration is Hosur, Tamil Nadu, this Court has got jurisdiction to entertain the Application filed by the first respondent under Section 11(6) of the Arbitration and Conciliation Act 1996, for appointment of an Arbitrator. The general conditions of sale are also subject to Hosur jurisdiction, as per the terms and conditions contained in the overleaf of the respective invoices.

IV. Discussion:

a) The claim of Rs.1,33,92,891.69/- towards the non-payment of the value of the debt is based on invoices raised by the first respondent. By a letter dated 22.07.2009, the Appellant agreed to deposit tittle deeds of the property in Gurgaon as security for the outstanding dues, thereby admitting his debt.

b) Since dispute has arisen, the first respondent through its counsel issued a notice dated 25.06.2009 to the Appellant invoking Arbitration, which was rejected by the Appellants reply dated 08.07.2009. The first respondent, subsequently, approached this Court seeking appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act 1996. The Appellant though having entered appearance did not file any counter or make or raise any objection before the Hon'ble Chief Justice and the Hon'ble Chief Justice after perusing the Arbitration clause in the invoice raised by the first respondent, passed an order dated 19.03.2010, in the presence of the Appellant's counsel appointed the second respondent, a former Judge of this Court as the learned Arbitrator. The Arbitral Tribunal after pursuing the pleadings, evidence and documents submitted by both the parties, passed a reasoned and speaking award in favour of the first respondent on 11.10.2011.

c) Despite the Appellant having raised no dispute or objection to the appointment of the second respondent as Arbitrator before the Hon'ble Chief Justice of this Court in O.P.No.574 of 2004, raised a dispute on the venue of the Arbitration and the order of appointment of the Arbitrator before the Arbitral Tribunal. The cause of action arose at Hosur and hence, the Hon'ble Chief Justice of Madras High Court, under Section 11(6) of the Arbitration and Conciliation Act 1996, did

have the jurisdiction to appoint the Arbitrator. The contention of exclusive jurisdiction at Bangalore cannot be raised by the first respondent, since in the counter statement filed by the first respondent before the Arbitral Tribunal, the first respondent has submitted that the Courts at Delhi would alone have the exclusive jurisdiction to entertain the dispute. The Appellant is approbating and reprobating by taking inconsistent plea on the jurisdiction of the Courts. The written Agreement between the parties namely the invoices raised by the first respondent which contain the Arbitration clause, were accepted without demur by the Appellant.

d)The Appellant has also not disputed the invoices or the debt either before the Arbitral Tribunal or before the learned Single Judge. The Hon'ble Supreme Court in Govind Rubber Limited Vs Louis Dreyfus Commodities Asia Private Limited reported in (2015) 13 SCC 477 held as follows:-

"If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties are established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties. Therefore, signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7 (5) of the Act."

Applying the said proposition, the terms and conditions including the arbitration clause contained in the invoices are binding on the Appellant.

e)The commercial document having an Arbitration clause has to be interpreted in such a manner as to give effect to the Agreement rather than to invalidate it. On the principle of construction of commercial Agreement, Scrutton on Charter Parties (17th Edn., Sweet & Maxwell, London, 1964) explained that a commercial Agreement has to be construed according to the sense and meaning as collected in the first place from the terms used and understood in the plain, ordinary and popular sense. (See Article 6 at page 16 - paragraph 17 of the above cited judgment).

f)The invoices which contain all the details including the complete terms and conditions governing the commercial transaction would constitute the Agreement between the parties. The decision in Indus Mobile Distribution Pvt., Limited Vs Datawind Innovation Pvt., Limited and others reported in 2017 7 SCC 678 relied upon by the Appellant will not apply for the

facts of the instant case. The Appellant has also not taken a plea before the Arbitral Tribunal or before the learned Single Judge that the Arbitration clause contained in the Distributor Agreement vesting Bangalore Courts with exclusive jurisdiction is applicable. Instead the Appellant has taken a plea before the arbitration that the Courts at Delhi would have exclusive jurisdiction. The Appellant, therefore, is estopped from now raising a plea before this Court in an appeal under Section 37 of the Arbitration and Conciliation Act 1996, that the Courts at Bangalore will have the exclusive jurisdiction. The Appellant having acquiesced and submitted to the jurisdiction of this Court by filing an application under Section 34 of the Arbitration and Conciliation Act 1996, cannot now contend that Bangalore Courts alone have got the exclusive jurisdiction. If the Appellant places reliance on the decision of the Indus Mobile Distribution Pvt., Limited Vs Datawind Innovation Pvt Limited and others reported in 2017 7 SCC 678 cited supra, the Appellant should have filed the Application under Section 34 of the Arbitration and Conciliation Act 1996, only before the Bangalore Courts and not before this Court. The Appellant has been inconsistent in his pleadings and has approbated and reprobated both before the Arbitration as well as before this Court.

g) The pleadings of the Appellant before the Arbitral Tribunal that the Courts at Delhi alone will have the exclusive jurisdiction will also not aid the Appellant in contending that the Bangalore Courts alone have got the exclusive jurisdiction. The Appellant by his own choice and volition has filed the petition to challenge the Award before this Court. The Arbitral Tribunal has decided the Tribunal's competency in exercising its powers under Section 16 of the Arbitration and Conciliation Act 1996 and held that since major part of cause of action has arisen in Hosur and the invoices stipulate Hosur as the venue of the Arbitration and the Arbitral Tribunal was validly constituted by orders of this Court under section 11(6) of the Arbitration and Conciliation Act, 1996, the Arbitral Tribunal is empowered to adjudicate the dispute. The reasons recorded by the learned Single Judge in his order dated 10.09.2013 may have been rendered incorrect by the subsequent decisions of the Hon'ble Supreme Court including State of West Bengal and others Vs Associated contractors 2015 1 SCC 32, with respect to non-applicability of Section 42 of Arbitration and Conciliation Act 1996 to the petition under section 11 of the said Act. However, the ratiocination by the learned Arbitrator with respect to the invoices raised by the first respondent being a contract governing the parties and containing valid Arbitration clause and therefore, the arbitration proceedings have been conducted in Hosur, especially when the cause of action having arisen at Hosur and on each issue there being no cross-examination, the award rendered by the learned Arbitrator does not warrant interference.

h)The Arbitral Tribunal as well as the learned Single Judge have rightly held that:-

(i) The provisions of the Civil Procedure Code would not apply to the Arbitration proceedings.

(ii) Even in the proceedings governed by the Civil Procedure Code, it is always possible for a Company to ratify the action of a person who is admittedly the Secretary or Director or Principal of a Corporation, in terms of Order XXIX Rule 1 of the Code. The Arbitration Award is not in conflict with public policy of India or against the basic notions of morality and justice. It does not warrant interference of the Court under Section 34 of the Arbitration and Conciliation Act 1996 and therefore, the learned Single Judge has rightly dismissed the said application.

i)The scope of interference to an Arbitration award is very limited. Unless and until the applicant satisfies the requirements of Section 34 of the Act, the Arbitration Award cannot be set aside by this Court.

j)The scope of interference under Section 34 of the Arbitration and Conciliation Act 1996, to an Arbitral Award is covered by the decisions of Hon'ble Supreme Court in

(i) Oil & Natural Gas Corporation Ltd., vs Saw Pipes Limited reported in (2003) 5 SCC 705, wherein it was held that the Court can set aside an award, if -

1) it is contrary to:-

- (a) fundamental policy of Indian law; (or)
- (b) Interest of India; (or)
- (c) Justice and morality.

2) it is patently illegal

3) it is so unfair and unreasonable that it shocks the conscience of the Court.

(ii) McDermott International Tnc., Vs Burn Standard Co., Ltd and others reported in (2006) 11 SCC 181, which followed the decision in Oil & Natural Gas Corporation Ltd., vs Saw Pipes Limited referred to supra and the Hon'ble Supreme Court explained the term patent illegality and observed that patent illegality must go to the root of the matter. Public policy violation should be so unfair and unreasonable as to shock the conscience of the Court. The supervisory role of the Court under section 34 is to be kept a minimum level and interference is envisaged only in case of fraud or bias, violation of the natural justice, etc. If the Arbitrator has gone contrary to or beyond the express law of the contract or granted relief in the matter not in dispute, that would come within the purview of Section 34 of the Arbitration and Conciliation Act 1996.

According to the said decision, what would constitute public policy is a matter dependent upon the nature of transaction and

nature of statute. For the said purpose, the pleadings of the parties and the materials brought on record would be relevant to enable the Court to judge what is in public good or public interest or otherwise would be injurious to the public good at the relevant point. The Supreme Court in its latest decision in the case of Associated Builders vs. DDA (2015) 3 SCC 49 has also followed the decisions rendered in Oil & Natural Gas Corporation Ltd., vs Saw Pipes Limited reported in (2003) 5 SCC 705 and McDermott International Tnc., Vs Burn Standard Co., Ltd and others reported in (2006) 11 SCC 181.

k) The Division Bench of the Delhi High Court in its recent decision dated 25.09.2017 in the case of Ogene Systems India Pvt., Ltd., Vs Technology Development Board reported in 2017 SCC Online DL 11136 delineated the following propositions after considering all the decisions of the Hon'ble Supreme Court relating to the scope of Section 34 of the Arbitration and Conciliation Act right from Renusagar Power Company Ltd vs. General Electric Company 1994 Supp (1) SCC 644 to the recent Associated Builders Vs DDA (2015) 3 SCC 49.

(i) The four reasons motivating the legislation of the Act, in 1996, were:-

- (a) to provide for a fair and efficient arbitral procedure,
- (b) to provide for the passing of reasoned awards,
- (c) to ensure that the arbitrator does not transgress his jurisdiction, and
- (d) to minimize supervision, by courts, in the arbitral process.

(ii) The merits of the award are required to be examined only in certain specified circumstances, for examining whether the award is in conflict with the public policy of India.

(iii) An award would be regarded as conflicting with the public policy of India if:-

(a) it is contrary to the fundamental policy of Indian law, or

(b) it is contrary to the interests of India,

(c) it is contrary to justice or morality,

(d) it is patently illegal, or

(e) it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.

(iv) An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if

(a) it disregards orders passed by superior courts, or the binding effect thereof, or

(b) it is patently violative of statutory provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a "judicial approach", i.e. has not acted in a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have been violated.

(v) The "patent illegality" had to go to the root of the matter. Trivial illegalities were inconsequential.

(vi) Additionally, an award could be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law,

Or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case, or

(d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute submitted to arbitration, or

(e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or

(g) the award contravenes the Act, or

(h) the award is contrary to the contract between the parties.

(vii) "Perversity", as a ground for setting aside an arbitral award, has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which

(a) the findings, in the award, are based on no evidence, or

(b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or

(c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.

(viii) At the same time,

(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as "perverse",

(b) if the view adopted by the arbitrator is a plausible view, it has to pass muster,

(c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.

(ix) "Morality" would imply enforceability, of the agreement, given the prevailing mores of the day. "Immorality", however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.

(x) For examining the above aspects, the pleadings of the parties and materials brought on record would be relevant.

(x) The court cannot sit in appeal over an arbitration award. Errors of fact cannot be corrected under Section 34. The arbitrator is the last word on facts."

1)The Arbitrator has considered each and every objection raised by the first respondent and only thereafter the Award has been passed in favour of the first respondent. The first respondent has filed 99 documents, and the Appellant had filed 33 documents before the Arbitrator and all the documents were marked as exhibits. The stand taken by the Appellant in the Application filed under Section 34 of the Arbitration and Conciliation Act 1996, that exclusive jurisdiction is vested with Bangalore Courts is inconsistent and contrary to the stand taken before the Arbitral Tribunal, wherein they have averred that the entire cause of action arose only at Delhi. The reply filed by the Appellant to the statement of claim filed by the first respondent is reproduced below:-

" this Hon'ble Authority has got no jurisdiction to try and entertain the present claim petition because the agreement dated 16.04.2007 was entered into between the parties at Delhi, the orders for purchase of goods were placed by the respondent at Delhi, the goods were supplied at Delhi and the payments were made at Delhi, hence, dispute, if any, has arisen in Delhi and in view of this only Courts at Delhi have got the jurisdiction in the matter."

m)The Appellant also entered appearance in the Application filed by the first respondent under Section 11(6) of the Arbitration and Conciliation Act 1996, for appointment of Arbitrator and did not raise any objection for appointing the second respondent, former Judge of this Court as Arbitrator. The Hon'ble Chief Justice by the order dated 19.03.2010 in O.P.No.

574 of 2009 appointed the second respondent as Arbitrator and the objections earlier raised by the Appellant were not raised by the Appellant in O.P.No.574 of 2009. The order passed in O.P.No.574 of 2009 under Section 11 (6) of the Act has become final, since the Appellant has not challenged the same. As held by the Hon'ble Supreme Court in SPB & Co., Vs Patel Engineering Ltd., and another reported in (2015) 8 SCC 618 cited supra the order passed under Section 11(6) of the Act is a judicial order. Hence, if the Appellant was aggrieved by the appointment of the Arbitrator, they should have challenged the said order, which they have not done so in the instant case. The Appellant has also filed the Application under Section 34 of the Arbitration and Conciliation Act 1996, to set aside the Award dated 11.10.2011, passed by the second respondent only before the Madras High Court. The Appellant has approbated and reprobated its stand by challenging the Award on the ground that Madras High Court does not have jurisdiction and only Bangalore Court has the jurisdiction to entertain an the Application under Section 34 before the Madras High Court. The Arbitrator has passed a reasoned and detailed Award. As seen from the award, no serious dispute has been raised by the Appellant on the merits of the claim. The Arbitrator has considered each and every objection raised by the Appellant to the statement of claim in accordance with law. Therefore, the decisions relied upon by the learned Senior Counsel for the Appellant are not applicable to the facts of the instant case.

n)The learned Single Judge has also considered all the grounds of challenge raised by the Appellant under section 34 of the Arbitration and Conciliation Act 1996 in accordance with law and has rightly come to the conclusion that there is no scope for interference under section 34 of the act. We are in agreement with the decision of the learned Single Judge and hold that no ground has been made out by the Appellant to challenge the Arbitration Award dated 11.10.2011.

Accordingly, the Appeal shall stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

sts/pam

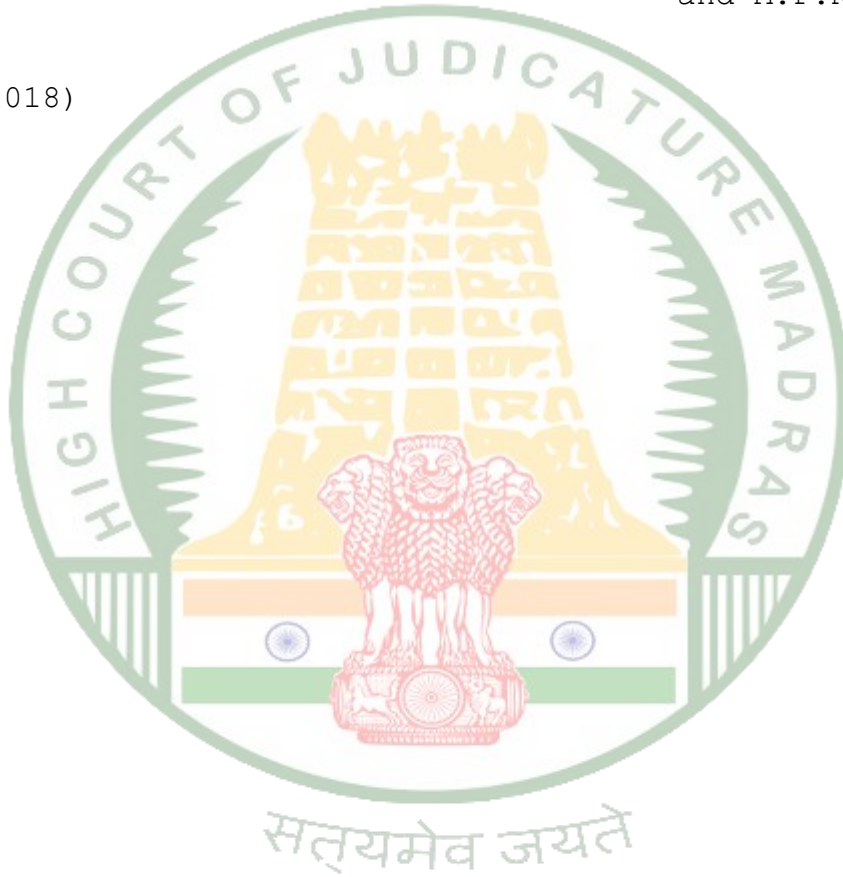
1 THE SUB ASSISTANT REGISTRAR,
ORIGINAL SIDE, HIGH COURT, MADRAS.

2 THE SUB ASSISTANT REGISTRAR,
JUDICIAL DEPARTMENT, HIGH COURT, MADRAS.

+1cc to Mr.THRIYAMBAK J KANNAN, Advocate, S.R.No.53828
+1cc to Mr.ML.GANESH, Advocate, S.R.No. 54129

O.S.A.No.155 of 2014
and M.P.No.1 of 2014

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