

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
23~07~2019	01~08~2019

CORAM

THE HONOURABLE MR.JUSTICE **N. SATHISH KUMAR**

O.P.No.117 of 2007

M/s. Vijay Tanks & Vessels Limited
Rep.by its Managing Director,
Mr.Ranganathan Raghavan
N.H.No.8, Sankarda
Baroda 391350.

.. Petitioner/Respondent

.Vs.

M/s. Simplex Infrastructure Limited
Rep.by Director Mr.Shankar Guha
No.21, Casa Major Road,
Egmore,
Chennai 600008.

.. Respondent/claimant

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 08.07.2006 made by the Arbitrator in the matter of disputes between the Petitioner and the Respondent and to direct the Respondent to pay a sum of Rs.50,30,119/- to the Petitioner along with interest @ 18% p.a.from

18.06.2003 till payment with costs.

For Petitioner : Mr.K. Harishankar

For Respondent : Mr. Thriyambak J. Kannan
for M/s. S. Raghunathan

ORDER

This Original Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award passed by the sole Arbitrator in favour of the claimant and to pay a sum of Rs.50,30,119/- to the Petitioner along with interest @ 18% p.a. from 18.06.2003 till payment. For the sake of convenience the parties are arrayed as per their own rankings before Arbitral proceedings.

2. The brief facts leading to file this Original Petition is as follows:

2.(a) The claimant is a company engaged in business of designing and installation of pile foundation and general civil works. Indian Oil Tanking Limited planned to construct a Mounded LPG Bulk Storage facility at Manali, Chennai and appointed the Respondent as

the main contractor for executing that work. The Respondent called for offers in respect of the foundation works. The Claimant made an offer on 03.05.2002. On 04.05.2002 the Respondent requested the Claimant to provide the design of piling system and bill of quantities. The Claimant submitted the design and gave a revised offer on 03.05.2002 after discussion. A letter of intent was given on 19.07.2002 for a lump sum consideration of Rs.5,96,50,000/- and the possession was handed over on 25.07.2002. The Claimant prepared a particular design but the Respondent asked the claimant to revert the original design. The Claimant demurred and said that it was not appropriate and will cost more. The Respondent insisted on the Claimant sticking to the original design and also taking the responsibility for that design, which the claimant refused and accordingly the contract was terminated. According to the Claimant it was an unreasonable termination because of which the claimant had suffered damage. Therefore, the claimant seeks Rs.47,69,475/- towards mobilisation, Rs.36,62,392/- for idle charges, Rs.40,52,288/- for works executed and Rs.89,47,500/- for loss of profit, totalling Rs.2,14,31,655/-, along with interest at 18% per annum from

01.02.03 till payment, with costs.

3. It is the contention of the the respondent that the contract was given for laying pile foundation. When the claimant suggested an alternate design, it was not considered suitably and therefore the Claimant was asked to give a design in accordance with the tender, which the claimant refused. It is also pleaded that the claimant had agreed for a lump sum contract to execute the work, irrespective of the length or number of the piles required but went back on the commitment on the flimsy grounds. The Respondent was therefore forced to give the work to another sub-contractor which resulted in extra time and cost. Therefore, the Respondent claimed damages for a sum of Rs.3,02,78,754/-with interest at 18% per annum from 1.2.2003 and costs.

4. Based on the pleadings of both the parties, the learned Arbitrator has formulated the following issues:

A) Is the termination valid?

B) Is there breach by Claimant/Respondent?

C) What damages are parties entitled to?

D) What is the amount due to Claimant / Respondent?

5. After considering the entire evidence the learned Arbitrator arrived at a finding in favour of the claimant, directed the Respondent to pay a sum of Rs.68,58,135/- to the claimant as compensation with interest at 12% per annum from the date of the Award till the date of payment. Aggrieved over the same the Respondent/Petitioner has filed the present Original Petition.

6. Learned counsel appearing for the Petitioner would submit that originally a tender was called for conventional pile system. Whereas the Claimant has given alternative design. The Petitioner rejected the same and insisted the conventional pile system. Therefore, the same cannot amount to breach of original tender condition. It is his contention that only the owner to approve the design for the foundation and not for the sub-contractor to dictate the design. Therefore, it is his contention that the refusal by the Claimant to carry out the work in accordance with the tender conditions amounted to

abandonment of the contract. It was really a breach by the claimant. The learned counsel also submitted that the Arbitrator has ignored the vital documents and the correspondences between the parties. Therefore, the Award is certainly in the result of patent illegality and violation of public policy of India. When the documents have not considered and the Arbitrator has considered the irrelevant materials and passed an Award, that Award cannot be sustained in the eye of law.

7. In support of his contention he relied upon the following Judgments:

1. *Associate Builders v. Delhi Development Authority [(2015) 3 SCC 49]*
2. *McDermott International Inc. v. Burn Standard Co. Ltd., and others [(2006) 11 SCC 181]*

8. Whereas it is the contention of the learned counsel for the Respondent/claimant that the learned Arbitrator has taken note of all the correspondences and documents and given a reasonable finding.

Merely because the Arbitrator's finding is capable of some other view, the finding of the Arbitrator cannot be questioned. Hence, it is his contention that the well reasoned award does not require any interference.

9. In support of his contention he relied upon the following judgments of the Honourable Apex Court:

1. *Chettinad International Coal Terminal Pvt. Ltd., v. Karmarajar Port Ltd., and others* [O.S.A.No.231 of 2015 dated 01.03.2018 Madras High Court]

2. *NHAI vs. M/s.BSC -RBM-Pati Joint Ventrue* [FAO (OS)(Comm)107/2017 & CM NOS.18458-59/2017]

3. *Municipal Corportaion of Delhi v. Jagan Nath Ashok Kumar* [(1987) 4 SCC 497]

4. *Puri Construction Pvt. Ltd., vs. Union of Indian* [(1989) 1 SCC 411]

5. *UP State Electricity Board v. Searsole Chemicals Ltd.*, [(2001) 3 SCC 397]

6. *State of UP vs. Allied Constructions* [(2003) 7 SCC 396]

7. *Bharat Coking Coal Ltd., vs. LK Ahuja* [(2004) 8 SCC 109]

8. *National Highways Authority of India vs. M/s. ITD Cementation India ltd.*, [2015 SCC Online SC 384]

9. *Navodaya Mass Entertainment Ltd.,vs. J.M.Combines* [(2015) 5 SCC 698]

10. *Organizing Committee Commonwealth Games vs. Pico Deepali Overlays Consortium & Another* [(2016) SCC Online Del 1582]

11. *P.R. Shah, Shares and Stock Borkers Pvt. Ltd., vs. B.H.H.Securities Pvt. Ltd.,and others* [(2012) 1 SCC 594]

10. It is well settled that the scope of interference of the

Award under Section 34 of the Arbitration and Conciliation Act is very limited. The Supervisory role is to kept minimum level and the interference of the award is possible only when the ground set out in the section 34 of the Act is made out. The scope of interference of the Award is dealt by the Apex Court in the following judgments:

10(a) Scope of interference under Section 34 of the Arbitration and Conciliation Act 1996 is discussed in ***Oil and Natural Gas Corporation Ltd., v. Saw Pipes Ltd., [2003 (5) SCC 705]***, wherein the Honourable Apex Court has held that an Award can be set aside if it is contrary to:

- a) fundamental policy of Indian law; or
- b) the interest of India; or
- c) justice or morality; or
- d) if it is patently illegal

Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.

10(b). The power of the Court to set aside the Award would be exercised only in cases where the Court finds that the Arbitral Award is on the face of it erroneous or patently illegal or in contravention of the provisions of the Act. In the case on hand, considering the entire findings of the Arbitrator this court do not find any materials to show that this case requires interference under Section 34 of the Act. In **Swan Gold Mining Ltd., v. Hindustan Copper Ltd reported in 2015(5) SCC 739** the Honourable Apex Court has held as follows:

"12. Section 34 of the Arbitration and Conciliation Act, 1996 corresponds to Section 30 of the Arbitration Act, 1940 making a provision for setting aside the arbitral award. In terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. The Arbitrator's decision is generally considered binding between the parties and therefore, the

power of the Court to set aside the award would be exercised only in cases where the Court finds that the arbitral award is on the fact of it erroneous or patently illegal or in contravention of the provisions of the Act. It is a well settled proposition that the Court shall not ordinarily substitute its interpretation for that of the Arbitrator. Similarly, when the parties have arrived at a concluded contract and acted on the basis of those terms and conditions of the contract then substituting new terms in the contract by the Arbitrator or by the Court would be erroneous or illegal."

"13. It is equally well settled that the Arbitrator appointed by the parties is the final judge of the facts. The finding of facts recorded by him cannot be interfered with on the ground that the terms of the contract were not correctly interpreted by him."

"21. Mr. Sharan, learned senior counsel appearing for the appellant, also challenged the arbitral award on the ground that the same is in conflict with the public policy of India. We do not find any substance in the said submission. This Court, in the case of Oil and Natural Gas Corporation Ltd. (supra), observed that the term 'public policy of India' is required to be interpreted in the context of

jurisdiction of the Court where the validity of award is challenged before it becomes final and executable. The Court held that an award can be set aside if it is contrary to fundamental policy of Indian law or the interest of India, or if there is patent illegality. In our view, the said decision will not in any way come into rescue of the appellant. As noticed above, the parties have entered into concluded contract, agreeing terms and conditions of the said contract, which was finally acted upon. In such a case, the parties to the said contract cannot back out and challenge the award on the ground that the same is against the public policy. Even assuming the ground available to the appellant, the award cannot be set aside as because it is not contrary to fundamental policy of Indian law or against the interest of India or on the ground of patent illegality.

22. The words “public policy” or “opposed to public policy”, find reference in [Section 23](#) of the Contract Act and also [Section 34 \(2\)\(b\)\(ii\)](#) of the Arbitration and Conciliation Act, 1996. As stated above, the interpretation of the contract is matter of the Arbitrator, who is a Judge, chosen by the parties to determine and decide the dispute. The Court is precluded from re-appreciating the evidence and to arrive at different conclusion by holding that the arbitral award is against the public policy."

10(c). The Honourable Apex Court in ***McDermott International Inc., v. Burn Standard Co.,Ltd., [2006 (11) SCC 181]*** explained the term patent illegality and held 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 at a minimum level and interference is envisaged only in case of fraud or bias, violation of natural justice, etc., If the Arbitrator has gone contrary to or beyond the express of 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.

10(d). A Division Bench of this Court in ***Puravankara Projects Limited v. Mrs.Ranjani Venkatraman Ganesh and Another [2018 (6) MLJ 588]*** also followed the above judgment of the Apex

court and held that only in the circumstances envisaged under the decision of the Apex Court the Award can be interfered.

10(e). In ***Associate Builders Vs. Delhi Development Authority*** reported in ***(2015) 3 SCC 49***, the Honourable Apex Court has held as follows:

'42. In the 1996 Act, this principle is substituted by the 'patent illegality' principle which, in turn, contains three sub-heads:

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

'28. Rules applicable to substance of dispute. (1) Where the place of arbitration is situated in India__

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India.' 42.2.

(b) A contravention of the [Arbitration Act](#) itself would be

regarded as a patent illegality _ for example if an arbitrator gives no reasons for an award in contravention of [Section 31\(3\)](#) of the Act, such award will be liable to be set aside.

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

"28. Rules applicable to substance of dispute._ (1)-(2) (3) In all cases, the Arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."

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

10(f). In **Chettinad International Coal**

Terminal Private Limited vs. Kamarajar Port Limited and others [O.S.A.No.231 of 2015 dated

01.03.2018] the First Bench of this Court in para 7

(r) has held as follows:

"7(r) On an extreme demurer, even if there is another plausible interpretation to the covenant, that cannot become a ground for interference either under Section 34 or under Section 37 of the A and C Act. As set out supra, only when what has not been agreed upon by the parties or when the new covenant or new principle which was not the intention of the parties is read into a contract, can there be any scope for interference under Section 34 or Section 37 of the A and C Act. As we find no such aspects in this appeal, we find no ground to interfere with the order of the learned single judge."

11. In the light of the above submissions it is not in dispute that the respondent/claimant offered for laying piling foundation and general civil works as per the specifications. The specification including the ground improvement on the basis of the geo technical report and soil data. The tenderer shall consider pile and raft foundation to enhance bearing capacity on ground to required levels. It

was stated that the bill was for “piling and raft foundation” and the deviation should be highlighted separately. On 3.5.2002 the claimant gave the design for foundation of driven cast in situ piles of 18 meters for mounting three bullets and offered to do that work for a lump sum of Rs.6,26,09,105/-On 04.05.2002 the Respondent asked for the design and construction methodology of the piling system. On 7.5.2002 the claimant gave a revised tender for Rs.6,16,27,540/- along with the tentative lay out plan. There was a discussion on 24.06.2002 when it was noted that the claimant will give a lump sum price irrespective of change in diameter and length of pile, if desired capacity is not achieved and additional piles will be run at no extra cost but if seismic zone and important factors have changed the price will be revised.

12. On 01.07.2002 the Claimant gave a revised tender in respect of 4 bullets for a lump sum of Rs.7,71,51,450/-. After discussion the claimant gave a rebate of Rs.1 crore and finally they arrived at Rs.5.7 crores as a lump sum which was again revised to Rs.5,96,50,000/-. Accordingly the letter of intent was issued on 19.07.2002. The scope of

work will be "design, supply and insulation of driven case in situ piles" of requisite size and length. The claimant prepared and submitted a design which was examined by IIT and a report was given in July 2002. In that report it was stated that since the soil has inadequate bearing capacity the pile raft foundation concept was used which partly transferred the load of the structure on the pile and the raft.

13. On 21.08.2002 the Respondent informed the Claimant that the soil investigation report could be erroneous and therefore it was imperative to conduct soil investigation. On 23.08.2002 Indian Oil Tanking Limited observed that the statement that the soil investigation report could be erroneous was not acceptable. On 24.08.2002 the claimant pointed that the actual length required may be 30 to 32 meters which was never anticipated. On 26.08.2002 the claimant suggested an alternative proposal for providing pre cast RCC segmental piles at depth of 30 meters and such a variation will call for special consideration. On 02.09.2002 the Respondent noted that the soil investigation work was in progress and it will be premature to broach the subject of reviewing the contract.

14. On 07.09.2002 Indian Oil Tanking Limited communicated their dissatisfaction at the way the soil test was being carried out. On 11.09.2002 the Respondent intimated Indian Oil Tanking Ltd that fresh soil investigation was being undertaken and would require a review. On 12.09.2002 the Respondent informed Indian Oil Tanking Limited that the discussions was required about the approval for revised pile system of pre cast RCC driven segmental piles up to 30 to 32 meters and this will entail cross escalation upto 15 per cent. On 13.09.2002 the Respondent also informed Indian Oil Tanking that this proposal would mitigate the time which was lost in soil test. The matter was referred to IIT and Sri.S.R.Gandhi Professor and Consultant stated that the scope of work indicated pile and raft system by which the load is transferred through the raft directly to the soil and that the design given by the Claimant was appropriate and the adoption of "piled raft" concept was justified. Sri S.R. Gandhi stated that the situation of entire load being transferred to the pile is only hypothetical and that the system as proposed fully met the tender requirements.

15. On 5.10.2002 the claimant and Respondent had a meeting with the consultant, that there was a difference of opinion in the matter of interpretation of the contract condition and also reluctance to accept piled raft design concept just because it was not adopted extensively in India. It was further stated

"In view of the uncertainties are inevitable delay in using the design concept and its final acceptance and also considering the substantial delay that has already taken place in the project schedule arising from the incorrect sub-soil data furnished by M/s.I.O.T.L. We are of the considered opinion that it would be moire appropriate at this stage to revert the conventional pile and pile raft design, considering piles to take the entire load and ignoring the load carried by raft and transmitted through the soil. As was evident during the discussions with M/s. I.O.T.L.,their interpretation of the contract was for this type of conventional pile design and hence expeditious approval of this scheme is expected. We are therefore, proceeding in this line and have commenced our revised design with conventional piles."

16. On 21.10.2002 the claimant sent a fax message to the respondent noting that it was unanimously agreed among claimant, Respondent and IOTL at a meeting on 24.09.2002 to adopt RCC driven pre cast segmental piles in place of driven case in situ piles as

warranted by the prevalent sub soil conditions, which incidentally is entirely in contradiction with the soil report furnished with the tender enquiry. It was also mentioned "it may be recalled that the decision to adopt only driven pre cast RCC segmental piles, was taken keeping in view the fact that the pre casting activities can be commenced without waiting for the initial pile load test results thereby minimizing the impact in the overall completion schedule. This message also informed the Respondent that there will be a cost escalation of Rs.2 crores for providing 31 meter depth. on 31.10.2002 the Respondent requested the Claimant to sort out the remaining unsolved problems such as approval of pile design, extra cost of 31 meter pre case segmental piles etc.,

17. On 19.11.2002 IOTL informed the Respondent that the load test being completed and the results being more or less in line with the original soil report, there was no need for testing pre cast piles and therefore requested submission of proposal for cast in situ piles and accordingly Respondent also asked the Claimant to submit the design for cast in situ pile foundation. On 22.11.2002 the Respondent

informed the claimant that conclusive data may be available the next day and hence design engineering work may be commenced immediately. The Claimant asked for an urgent meeting sending the evaluation of the load test which indicated that for the 18 meter long cast in situ piles the capacity was 68Te whereas for 21 meter depth it was 98.3Te which however come down to 68Te when negative friction developed.

18. On 27.11.2002 the Respondent stated that they did not warrant any review of the design basis indicated by the Respondent earlier and stated that they reiterate that the design basis recommended by them is adequate. However, being their LSTK Civil Subcontractor, they may pursue alternative piled foundation signs within the contractual framework as required without recourse to any additional cost or time since their agreement with VTV explicitly provides for them to:

- verify tender soil investigation report (provided as a guideline) and take responsibility for the final pile design accordingly

- Execute the contract on a lump sum price notwithstanding any increase in the size and quality of piles.

It is also stated that if they did not receive an adequate response within 24 hours, that fulfil the responsibilities placed on them vide their subcontract, they will be constrained to view their contract as breach of contract and be forced to take further measures to redress the same.

19. On 28.11.2002 the Claimant replied stating that the desing for 21 meter pile was based on adhoc decision before the load test was carried out and the Claimant was prepared to carry out the work provided the Respondent takes the responsibility and liability on the adequacy on the pile capacity. In respect of alternative pile design it was stated that the pre case pile segment design was not clear and it will also involve cost escalation.

20. On 30.11.2002 the Respondent informed the Claimant that the position taken by the Claimant was not well received by IOTL and concluded "we once again request your confirmation on the action taken by Simplex with regard to finalization of design on the basis of the referred letter and submit us your detailed plan of action for design and construction commensurate with the existing project schedule. It is also required that Simplex takes overall guarantee for the design and workmanship without reservation." Since the claimant did not accept that responsibility, the Respondent terminated the letter of intent on 03.12.2002 "due to continued lack of responsiveness to project requirements and contractual conditions. Thereafter the work was carried out through another subcontractor.

21. From the facts the learned Arbitrator has specifically recorded the sequence of the following events:

- The tender called for ground improvement under pile and raft system.
- The GEO technical report was only tentative.

- The Claimant gave a design of piled raft which was cleared by IIT but not accepted by the Respondent.
- Further tests were carried out
- The claimant's evaluation on the basis of the test was that 21 meter in situ piles were inadequate
- The Respondent's contention was it was adequate and the Claimant should adopt the design also taking responsibility for its adequacy.
- The Claim refutes the position that the design should be according to the Respondent's wish but the responsibility for adequacy will be that of the Claimant.

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22. The learned Arbitrator in the entire discussion found that the Respondent itself referred the matter to the consultant Mr. S.R.Gandhi

who had stated that the "piled raft" system was within the tender requirement and found that the tender documents did not make any such distinction and also found that expressions used was "pile and raft foundation" and not shown to be a technical expression but only referring to conventional system. The learned Arbitrator also found that "piled raft" in both the systems are piles and rafts but in the former, the load is taken only by the piles while in the latter the load is taken by the raft also. Learned Arbitrator specifically found that the expression used in the tender documents merely stated that the design should use pile and raft. Since "piled raft" also requires pile and raft there is nothing to show that "piled raft" system was excluded and factually found that since the expressions used were comprehensive and not exclusive, there is no deviation by the claimant from the project requirement and held that the respondent had not specifically rejected the design proposed by the claimant.

23. Further the claimant also reverted to the conventional system as required by the owner. Hence, the learned Arbitrator found that there was no deviation from the project requirements and also found

that since the contract was for a lump sum and the Letter of Intent specifically pointed out that any change in quantities will be within the price agreed upon. By holding so, the learned Arbitrator in para 17 of the Award has recorded as follows:

"17. Therefore, the core issue is whether it will be unreasonable for the Respondent to insist on the Claimant carrying out the design, which the Claimant says is inadequate, but the Respondent considers adequate, and yet impose the liability for the adequacy of the design on the claimant, though the design is ultimately to be approved by the Respondent and IOTL as well as the consultants. I recollect the words of Lord Denning in Graves & Co.Ltd v. Baynham Meikle & Partners [1975-3 All England Reports] that in a general construction contracts, the law does not usually imply a warranty that the contractor will achieve the desired result but only that he will use reasonable skill and case. "The surgeon does not warrant that he will cure the patient. Nor the Solicitor warrant that he will win the case. But, when a dentist agrees to make a set of false teeth for a patient, there is an implied warranty that they fit his gums, see Samuels v Davies". The question here is not whether a professional contractor, considered to be an expert in soil consolidation, should give a warranty that the consolidation will be fit for the purpose. That question has

certainly to be answered in the affirmative. If the professional contractor gives a design for soil consolidation there is an implied warranty that the design will fit the purpose. But the question here is whether that professional contractor should be compelled to give a warranty, when the design is at the instance of the owner and against the professional advice of the contractor. I am of the considered opinion that the Respondent cannot be compelled to give a warranty in respect of a design which he had no freedom to alter to make it fit for the purpose. The claimant was therefore justified in refusing to carry out the work and it cannot be called a breach by the claimant."

24. Learned Arbitrator also held that the claimant is an expert in the field, he has been entrusted with the work of consolidation of the soil for proper foundation for heavy bullets, any technical discussion of the types of foundation which is not defined with clarity in the agreement would be a needless introduction of uncertainty and held that warrant to be given by the claimant was intended to be enforceable only if the design given by the claimant is adopted. Since the design proposed by the claimant was to have been accepted by the owner with the assistance of the consultants, it was incumbent on the part of the Respondent to show why the design proposed by the

claimant was unacceptable. Instead of doing that, the Respondent has imposed the design without giving the claimant opportunity to see if the design will fit the purpose and finally held that the sub contract between the Respondent and the claimant was a back to back arrangement with the main contract between the Respondent and IOTL. Therefore, when IOTL insisted on a particular design being carried out it was not possible for the respondent to refuse the same. The Respondent was compelled by the terms of its own contract with IOTL to terminate the subcontract with the Claimant when it was found that the subcontractor was not willing to carry out the work without being relieved of the responsibility for the adequacy of the work.

25. By holding that the termination of the contract was inevitable and finally allowed the claim for mobilisation and demobilisation charges of Rs.47,69,475/- and allowed a sum of Rs.20,88,660/- only on the basis of the commissioner report. Though it is the contention of the learned counsel for the Petitioner that the Commissioner was not authorised to evaluate the value for the work done, learned Arbitrator has arrived such finding without any evidence. The learned Arbitrator

taking note of the fact that there is no objection made to the Commissioner report as to the actual evaluation has accepted the above amount. In respect of the other claim the learned Arbitrator has dismissed their claim. When the learned Arbitrator taking note of the technical nature of the contract and interpreted the contract and taken note of all the correspondences between the parties and found that the termination of the contract is not correct and allowed certain claim. Merely some other view is possible, the Arbitrator's Award cannot be interfered. The entire Arbitral Award indicates that from the date of tender and subsequent correspondences between the parties, experts report and consultant report have been considered by the learned Arbitrator and factually arrived a conclusion interpreting the technical nature of the contract. Learned Arbitrator is bound to interpret the contract taking note of the technical nature involved in the nature of the work. Therefore, this Court cannot re-appreciate the entire evidence as the First Appellate Court. I do not find any ground to interfere the Award. Merely because Arbitrator has interpreted the contract considering the nature of the contract, it cannot be termed as patent illegality as contended by the learned counsel for the Petitioner.

Hence, I do not find any material to set aside the Award of the learned Arbitrator. Accordingly the petition is dismissed.

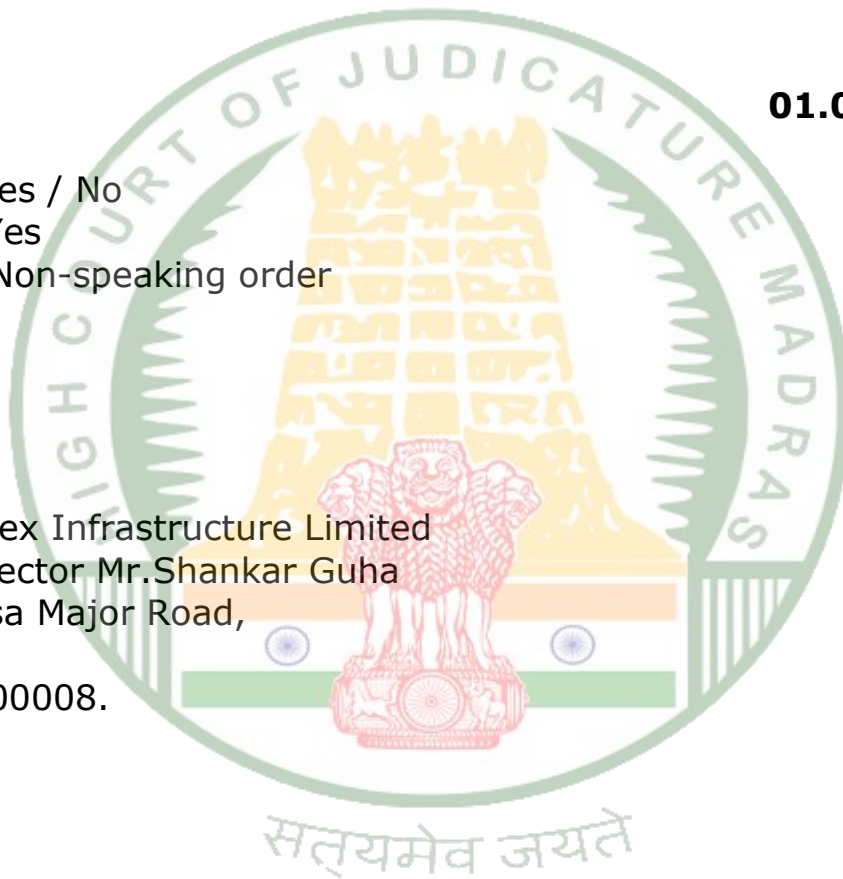
26. In the result, the Original Petition is dismissed. No costs.

01.08.2019

Index : Yes / No
Internet: Yes
Speaking/Non-speaking order
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To

M/s. Simplex Infrastructure Limited
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N. SATHISH KUMAR, J.

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Pre-delivery order in:
O.P.No.117 of 2007

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01.08.2019