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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.7.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.S.A.No.148 of 2019

and

C.M.P.No.13246 of 2019

ECS Biztech Pvt. Limited,
(Previously known as ECS
Biztech Private Limited),
rep. by Managing Director,
Mr.Vijay Mandora
"ECS House, No.11, Garden View,
Opp. Auda Garden, Pakwan Circle,
Sindhu Bhavan Road,
Off.S.G.Highway, Bodakdev,
Ahmedabad 380 054.

... Appellant/Petitioner

Versus

M/s.Redington (India) Ltd.
rep. by Mr.Srinivasan
Senior Manager-Credit,
SPL, Guindy House,
No.95, Mount Road,
Guindy, Chennai 600 032.

... Respondent/Respondent

Prayer: Original Side Appeal filed under Order XXXVI Rule 1 of
O.S. rules read with Section 37 of Arbitration and Conciliation
Act, 1996 against the order of this court dated 29.6.2018 in
O.P.No.866 of 2017.

For appellant : Mr.P.Sidharthan

For Respondent : Mr.S.S.Rajesh

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The Appellant M/s.ECS Biztech Limited, previously known as
ECS Biztech Private Limited, filed the present Appeal under
Section 37 of the Arbitration and Conciliation Act, 1996,



aggrieved by the order dated 29.6.2018, passed by the learned Single Judge dismissing their petition under Section 34 of the said Act viz., O.P.No.866 of 2017 (ECS Biztech Limited v. Redington (India) Ltd.

2. The reasons assigned by the learned Single Judge in the impugned order are quoted below for ready reference:-

" 7. From the materials available on record and after hearing the submissions made by the respective counsels, the following facts are made clear :

(a) There is no dispute with regard to the sale of goods to the petitioner by the respondent;

(b) It is not in dispute that the invoices were raised by the respondent only in favour of the petitioner;

(c) It is not in dispute that the payments are payable to the respondent under the invoices;

(d) It is not in dispute that the petitioner did not establish the existence of a tripartite agreement before the Arbitral Tribunal;

(e) It is not in dispute that in the proof affidavit filed by the petitioner before the Arbitrator, the date of the tripartite agreement was mentioned, when such document was filed before the Arbitrator;

(f) It is not in dispute that there is a clear finding by the Arbitrator that despite opportunities given to the petitioner to cross examine the respondent witnesses, the petitioner did not make use of those opportunities;

(g) The Arbitrator has passed a reasoned Award considering the pleadings and materials available on record; and the findings and conclusions are plausible conclusions;

(h) The petitioner has also not produced any documentary or oral evidence to controvert the findings of the Arbitrator;

8. From the above findings, it is clear that the petitioner has not made out any case for interference of the Arbitral Award, by this Court. The Arbitral Award dated 27.06.2017 does not suffer from any perversity or patent illegality. This Court cannot re-appreciate the evidence available with the Arbitrator who has arrived at a plausible conclusion since the scope of Section 34



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of the Arbitration and Conciliation Act is limited.

9. The Hon'ble Supreme Court in a Catena of decisions starting 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 has held only under the following grounds the Arbitrator Award can be challenged under Section 34 of the Arbitration and Conciliation Act "

3. Learned counsel for the Appellant Mr.P.Sidharthan has submitted before us that there was a tripartite agreement among the present Appellant, M/s.ECS Biztech Private Limited, M/s.Redington (India) Limited, the respondent herein and one M/s.Sai Info System India Limited, according to which, the Claimant/Respondent herein would supply certain Computer parts to the Appellant, ECS Biztech Pvt. Limited, through M/s.Sai Infosystem India Limited and the payments were to be made after such payments realised from the said Sai Infosystem India Limited and on account of certain disputes arisen between the parties, the Arbitral clause was invoked by the supplier viz. M/.Redington (India) Limited which resulted in the Award in favour of the claimant, dated 27.6.2017 passed by the learned Arbitrator Mr.K.Balasubramanian, a retired District Judge as the Sole Arbitrator.

4. The main contention raised before us in support of the present Appeal is that sufficient opportunity to cross-examine the claimant's witnesses were not allowed to the Appellant and the learned Single Judge also ought to have summoned the records from the learned Arbitrator to look into such proceedings as there was a failure of principles of natural justice and therefore, the Arbitral Award deserves to be set aside.

5. On the other hand, the learned counsel for the Respondent Mr.S.S.Rajesh, who appears on caveat, supported the Award passed by the learned Arbitrator as well as the order passed by the learned Single Judge.

6. Having heard the learned counsel for the parties, we are satisfied that the present Appeal filed under Section 37 is without any merits and the same deserves to be dismissed as held in several judgments of this Court and various High Courts and also the Supreme Court. The scope of Section 34 is very limited and still narrower is that of Section 37. We had recently held thus in a judgment in W.A.No.151 of 2019 dated 8.7.2019



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"37. Appealable orders. -(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely: -

(a) refusing to refer the parties to arbitration under Section 8;

(b) granting or refusing to grant any measure under section 9;

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a court from an order of the arbitral tribunal--

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

12. The scope of Appeal under Section 37 of the Act is only to the extent of clause (a) refusing to refer the parties to arbitration under Section 8; (b) granting or refusing to grant any measure under Section 9 and (c) setting aside or refusing to set aside an Arbitral Award under Section 34. A mere refusal of the learned Single of this Court with cogent reasons for confirming the Arbitral Award is not a ground to entertain an Appeal under Section 37 of the Act. That only further delays and defeats the very purpose for which a remedy of this nature is provided for very exceptional circumstances in the Act.

13. We are completely satisfied that these parameters are not even touched, nor established with with proper averments and evidence in the present case. Therefore, the learned Single Judge, in our opinion, was perfectly justified in rejecting the Original Petition filed under Section 34 of the Act.



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13. We do not find any merit in the present Appeal and the same is liable to be dismissed. Accordingly, it is dismissed. No costs. The connected miscellaneous petition is also dismissed. "

7. The contention raised before us by the learned counsel for the Appellant that sufficient opportunity was not given at all cannot be a ground to invoke Section 34 of the Act to set aside an Arbitral Award. Having participated in the Arbitral Proceedings and produced certain documents for perusal of the Arbitral Tribunal which resulted in a finding by the Arbitral Tribunal as well as the learned Single Judge that despite the grant of opportunity to the present Appellant to cross-examine the witnesses of the claimants, they did not avail the same, the Appellant cannot be permitted to raise these grounds in the manner raised before us under Section 37 of the Act.

8. Non-service of notice to the appellant, being a party to the contract out of which the dispute arises and the Arbitral Award being passed just as a surprise can only be said to be the breach of principles of natural justice, which can possibly be a ground to invoke Section 34 of the Act. Nothing of this sort has happened in the present case and therefore, the said ground cannot be raised by the Appellant before us, either in the Petition filed under Section 34 before the learned Single Judge or in the Appeal filed under Section 37 of the Act before the Division Bench. Therefore, we do not find any merit in the Appeal and the same is liable to be dismissed. Accordingly, it is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

ssk.
To:

The Sub Assistant Registrar,
Original Side Section,
High Court, Chennai.

O.S.A.No.148 of 2019

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srg 28/08/2019