

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED 04.07.2019****CORAM****THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR****O.P. No.29 of 2017**

M/s.Highpower V Infrastructure Ltd  
Represented by its Director R.K.Venkatraman  
Having office at Plot No.61  
HighpowerV towers, 5<sup>th</sup> Cross Street  
Logaih Colony, Saligramam  
Chennai – 600 093. .. Petitioner

-vs-

M/s.Evocon Private Limited  
Represented by its Managing Director  
Mr.SCP.Dhanapal  
Having its registered office at No.6,  
Vaidyaramanstreet, T.Nagar,  
Chennai – 600 017. .. Respondent

**Prayer:** Petition filed under Section 34 of the Arbitration & Conciliation Act, 1996 to set aside the Award dated 20.07.2016 passed by the Arbitral Tribunal pertaining to the dispute between the petitioner and the respondent in Arbitration Case A.F.No. 2 of 2016.

For Petitioners : Mr.E.Sathish Kumar

For Respondent : Mr.Vijayan Subramanian

**ORDER**

This petition has been filed to set aside the Award dated 20.07.2016 passed by the Arbitral Tribunal pertaining to the dispute between the petitioner and the respondent in Arbitration Case A.F.No. 2 of 2016.

2. The petitioner is the respondent and the respondent is the claimant in the Arbitration Case A.F.No.2 of 2016.

3. The brief facts leading to file this petition is as follows:

The claimant has preferred a claim for a sum of Rs.4,00,00,000/- and Rs.2,00,00,000/- towards damages and interest at the rate of 24% for Rs.4,00,00,000/-. The claimant entered into an agreement dated 11.02.2013 for development of land with respondent. The respondent agreed to purchase 32 acres in the name of the claimant out of the total extent of 40.8 acres of land for a total sale consideration of Rs.55,04,00,000/- (Rupees fifty five crores and four lakhs only). Further, the respondent had agreed to purchase the remaining extent of 8 acres of land out of its own funds for joint

development through the claimant. Further, the respondent had agreed to purchase 75 cents of land comprised in Survey Nos.560/5, 552/2D and 772/3A in the said village in the name of the claimant for earmarking the same as 60 feet road for the development of the entire extent of 40 acres on receipt of Rs.3,00,00,000/- from the claimant on 11.02.2013. The claimant has paid Rs.4,00,00,000/- to the respondent by entering into the Memorandum of Understanding. However, after receipt of Rs.4,00,00,000/-, the respondent failed to purchase the said lands in the name of the claimant but purchased the same in the name of its own staff and thereby, violated the terms of the said memorandum of understanding. Hence, the matter has been referred to Arbitration.

4. The Arbitrator was appointed by this Court. It is the case of the respondent that they spent Rs.4,00,00,000/- received from the claimant for purchasing the said lands and for developing 75 cents, but, the claimant failed to carry out his obligations. In a nut shell, the respondent denied the liability.

5. The learned Arbitrator has framed the following issues:

- 1. Whether the respondent had violated clause 7 of the memorandum of understanding dated 11.02.2013?*
- 2. Whether the claimant's claim is premature?*
- 3. Whether the claimant has breached the said memorandum of understanding dated 11.02.2013?*
- 4. Whether the claimant is entitled to recover a sum of Rs.4 crores from the respondent as claimed in the claim statement?*
- 5. Whether the claimant is entitled to recover a sum of Rs.2 cores as damages from the respondent?*
- 6. Whether the claimant is entitled for interest at the rate of 24% per annum on Rs.4 crores for the period commencing from March 2013 to till the date of payment as claimed in the claim statement?*
- 7. To what other relief the claimant is entitled?*

6. On perusal of the documents and after hearing both sides, the learned Arbitrator passed the award. Challenging the same, the petition has been filed.

7. The main contention of the petitioner that subsequent to passing an award, there was a compromise entered between the parties to pay Rs.4 crores in full quit and out of Rs.4 cores, Rs.2 Crores has already been paid and remaining amount of Rs.2 crores with interest will be paid by the claimant. Hence, submitted that the entire award cannot be sustained.

8. The learned counsel for the respondent submitted that subsequent compromise was entered only in pursuant to the interim order passed by this Court dated 02.04.2018, directing the petitioner to pay Rs.2 crores within a period of six (6) weeks from the date of receipt of copy of the order.

9. It is the contention of the respondent that even after the alleged agreement, the entire amount has not been paid. Therefore, his contention that subsequent to Memorandum of Compromise, there is no improvement with regard to the award. Hence, prays for dismissal.

10. Admittedly, the learned Arbitrator has considered the entire evidence and after hearing both side arguments, particularly, taken

note of the memorandum of understanding and also the undisputed payment of four crores paid by the respondent. Similarly, the conduct of the respondent also noted by the Arbitrator, to that effect, that instead of purchasing the property in the name of the respondent, the property has been purchased in the staff name. Therefore, the Arbitrator has awarded the amount on analysing the factual matrix.

11. When the learned Arbitrator awarded the amount on the basis of the admitted facts, this Court cannot sit as an Appellate Court to re-appreciate the evidence. The petitioner has not pointed out any ground under Section 34 of the Arbitration and Conciliation Act, 1996 to interfere with the well reasoned award.

12. Accordingly, I am of the view that any subsequent compromise with regard to the payment of the money agreed between the parties cannot be a ground to set aside the well reasoned award. It is also brought to the notice of this Court that even after such compromise the entire amount has not been paid as agreed.

13. In view of the said circumstances, this Court does not find any materials to interfere the award. Accordingly, the original petition is dismissed. No costs.

14. If any amount of Rs.2 crores paid as per subsequent compromise, the same shall be adjusted at the time of realising the award amount.

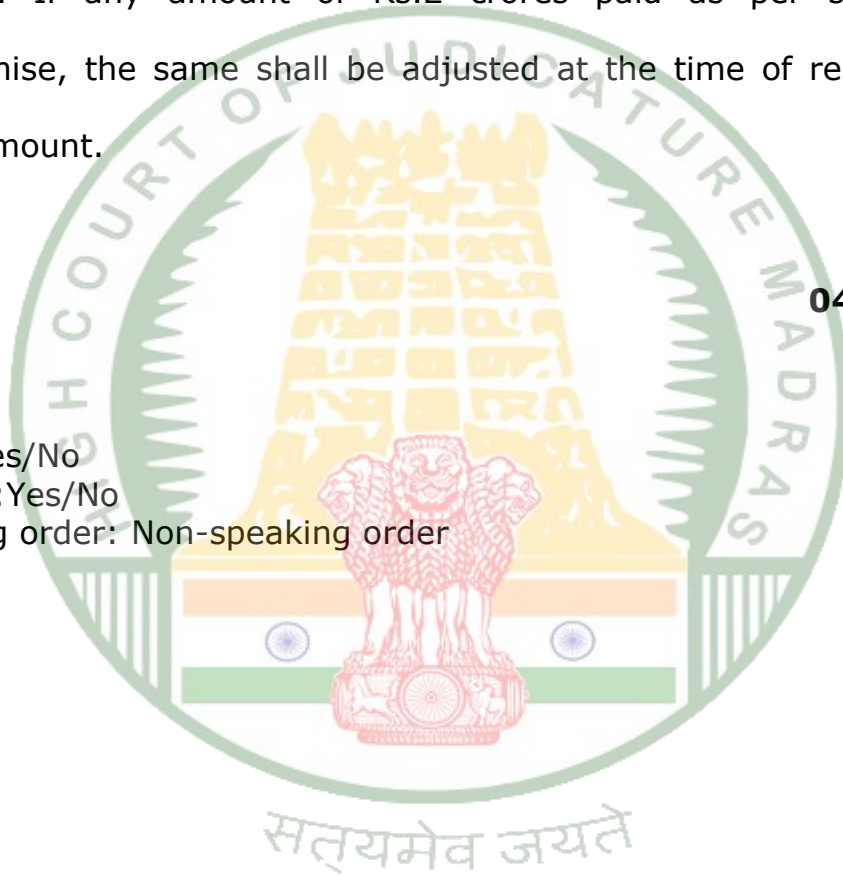
**04.07.2019**

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Index:Yes/No

Internet:Yes/No

Speaking order: Non-speaking order



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**N.SATHISH KUMAR,J.**

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