

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.521 of 2016

Padam Chand Kothari
Proprietor
M/s.Paras Padam Kothari
46, Erulappan Street,
Sowcarpet, Chennai - 600 079

... Petitioner

Vs

1.Shriram Transport Finance Co. Ltd.
123, Angappa Naickan Street, Chennai - 1.

2.Mr.V. Pauldas
Sole Arbitrator
7th Floor, Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004

... 1st respondents

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 29.07.2015 passed by the learned sole Arbitrator.

For Petitioner : Mr.Sharath Chandran
for Mr.V.Raghavachari

For 1st respondent 1 : Mr.M.B.Raghavan
M/s.M.B.Gopalan Associates

ORDER

The respondent before the arbitral tribunal is the petitioner before this Court. The petitioner seeks to challenge the ex parte award passed against him by the arbitral tribunal. The point that arises for consideration in the above petition is whether three agreements and having different modes for appointment of the Arbitral Tribunal can be clubbed together in a single petition?

2. In order to arrive at a decision regarding the above, it is necessary to briefly narrate the facts that have preceeded the filing of the Claim Petition by the 1st respondent herein.

3. The 1st respondent is engaged in the business of extending hire purchase, lease and loan cum Hypothecation

finance in respect of vehicles both light motor as well as heavy. The petitioner herein is a sole proprietary concern engaged in a similar business on a smaller scale. In the year 2007, it appears that the petitioner had approached the 1st respondent herein offering his expertise and stating that he has the necessary infrastructure, personnel and capacity to procure prospective customers in need of finance and recommending such persons to the 1st respondent for finance. The petitioner herein had undertaken to process the application of these customers, help in the disbursement of the loan amounts sanctioned or advanced by the 1st respondent. The petitioner had also undertaken to ensure collection and recovery of the monthly instalments from such customers.

4. Impressed by the offer of the petitioner herein, the 1st respondent had originally appointed the petitioner as a franchisee and the franchisee agreement dated 19.01.2007 was entered into between the petitioner and the 1st respondent. Thereafter,

the two of them had entered into a Joint Venture Agreement dated 01.06.2008. The agreement, would inter alia fix responsibility on the petitioner to collect the monthly instalments due under the respective loan cum Hypothecation agreement and remit the same to the 1st respondent within 72 hours of its collection. Thereafter on 01.03.2010, the petitioner and the 1st respondent had entered into a Revenue Sharing Agreement and the agreement would clearly set out that the rights and liabilities of the parties under the earlier agreements does not in any way stand affected by reason of the Revenue Sharing Agreement.

5. The 1st respondent would submit that pursuant to these agreements the 1st respondent had disbursed a sum of Rs.4,76,82,000/- as an advance in respect of the vehicles relating to various customers who had sought finance through the petitioner herein. The 1st respondent would further submit that the finance charges payable under all these agreements would in all amount to a sum of Rs.1,82,12,686/-.

6. It was also the 1st respondent's case that despite collecting the instalments from various customers, the petitioner herein had not remitted the said sums to the 1st respondent and in some cases the remittance was belated though under the terms of the agreement the remittance had to be made within a period of 72 hours from the time of collection from the customers. The 1st respondent would further submit that under the agreement the petitioner was liable to pay interest at the rate of 36% per annum in case he fails to remit the amounts to the 1st respondent as stipulated. On 20.11.2014, the 1st respondent had issued a legal notice to the claimant demanding settlement of a sum of Rs.3,40,24,988/-. The petitioner herein neither paid the outstanding nor did he respond to the notice. The 1st respondent therefore issued a final notice dated 20.12.2014 informing the petitioner about the appointment of the sole arbitrator. The 1st respondent in the claim statement would submit that the Claim Petition was being filed as per clause

13 of the terms and conditions of the Revenue Sharing Agreement. However, the entire claim statement would proceed on the basis that the amounts were due under the Franchisee agreement/ JVP agreement/ Revenue Sharing Agreement.

7. The arbitrator pursuant to his appointment had issued a notice dated 07.01.2015 informing the petitioner about his appointment and calling upon him to be present for the hearing on 26.02.2015. The notice has been sent to the address given in each of the agreements, however, the notice has been returned with the endorsement "not known". It is also seen that since the notices sent to the addresses had been returned, the Arbitrator had directed substituted service. The substituted service had been taken to the petitioner by publication in the Maalai Sudar, a tamil daily on 07.03.2015. Despite such notice the petitioner had not appeared before the sole arbitrator and ultimately recording evidence and hearing arguments on behalf of the 1st respondent, the sole arbitrator had passed an award dated

29.07.2015 which is the subject matter of challenge herein.

8. The petitioner herein has filed the instant petition under Section 34 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as the Act, on 30.09.2015. In the petition under Section 34, the petitioner would contend that he had received a copy of the award on 04.09.2015 as the said award had been despatched by the arbitrator only on 01.09.2015. Interestingly, the address to which the award has been despatched and received is the very same address to which all earlier notices and the paper publication had been addressed to. The main challenge is on the ground that notice had not been served on the petitioner and the ex parte order has come to be passed without giving the petitioner an opportunity of being heard.

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9. The petitioner had further contended that the Arbitrator who was appointed as per clause 13 of Revenue Sharing

Agreement dated 01.03.2010, had decided the disputes which were outside the scope of Revenue Sharing Agreement by considering the Franchise Agreement and the Joint Venture Agreement. The issue regarding the scope of clubbing the three agreements before the Sole Arbitrator contrary to the terms of the other Agreements has not been raised as a ground in the Section 34 petition.

10. Mr.Sharath Chandran, learned counsel appearing on behalf of the petitioner would primarily argue the legal issue about the scope of the 3 agreements being clubbed into a single arbitration. He would contend that the same is not maintainable as the 3 agreements are separate and one agreement did not supersede or novate the earlier one. On the contrary, the rights and liabilities under the earlier agreement remained intact. The Arbitral Tribunal contemplated in 2 of the agreements is different to the 3rd and therefore cannot be clubbed together. In support of this contention the learned counsel would rely upon the

following Judgements:

1) ***Duro Felguera, S.A. Vs. Gangavaram Port Limited***
reported in **(2017) 9 SCC 729.**

2) ***National Aluminium Co. Ltd. Vs. Metalimpex Ltd***
reported in **(2001) 6 SCC 372.**

3) ***Atul R.Shah Vs. M/s. V.Vrijlal Lalloobhai and Co.***
and another reported in **1999(1) Mh.L.J. 629**

11. Apart from making the above legal statement he would also contend that the claimant has not proved his case and without there being an evidence in support of the claim the arbitrator has passed the award only on the basis of the claim statement. To buttress his argument that if there is no evidence the award made by the arbitrator is erroneous, he would rely upon the Judgement in ***State of Rajasthan and another Vs. Ferro Concrete Construction Private Limited*** reported in **(2009) 12 SCC 1.**

12. The learned counsel would further argue that the arbitrator has committed a grave error in coming to the conclusion that the petitioner herein had collected the out standings and not remitted the same back to the 1st respondent without there being any proof to substantiate such statement. In fact the arbitrator has simply considered the claim statement and nothing more. Such an award is illegal and unsustainable. The counsel would further submit that the service of notice on the petitioner was also not carried out in the manner known to law. The arbitrator has simply accepted the return as proof of service which once again is totally erroneous. The counsel further argued that there cannot be joinder of different causes of action. According to him, each of the agreement contemplated a different procedure and trying to join all these issues into one claim was totally erroneous. In support of the argument, the counsel would once again rely upon the Judgement in ***Duro Felguera, S.A. Vs. Gangavaram Port Limited*** reported in

(2017) 9 SCC 729.

13. He would therefore submit that the very constitution of the arbitral tribunal being erroneous and the award having been passed without there being any evidence, the award suffers from perversity and is a patent illegality liable to be set aside. The counsel would further submit that the arbitral proceedings are barred by limitation as the last of the agreement was on the year 2010 and there is no evidence to show from when the amounts were due.

14. Per contra, Mr.M.B.Raghavan, learned counsel appearing for the 1st respondent would submit that the Joint Venture Agreement and the franchisee agreement got superseded by the Revenue Sharing Agreement and therefore the invocation of the arbitration clause under the terms of the Revenue Sharing Agreement is correct. This agreement contemplates the disputes to be decided by a sole arbitrator. He

would further contend that the notice had been issued by the arbitrator to the address which has been given by the petitioner herein and therefore the argument that the sole arbitrator had not taken steps to serve the petitioner is absolutely unfounded. He would further submit that the ultimate statement of account had been mailed to the petitioner along with the claim statement. He would also submit that the petitioner who was in direct contact with the various customers had received payments from the customers but had failed to remit the same into the account within the agreed time of 72 hours and in many cases the amounts were not at all collected by the petitioner herein.

15. The counsel would further submit that the time would start running only from the date of service of the notice as contemplated under Section 21 of the Act. The learned counsel in support of his arguments would rely upon the Judgement in ***Madan & Co Vs. Wazir Jaivir Chand*** reported in ***AIR 1989 SC 630*** which was the case where the notice had been addressed to

the tenant at the address last known. However substituted service had been ordered since the tenant had left the premises without intimating change of address. The Honourable Supreme Court has held that the landlord had attempted to serve notice on the address which had been notified by the tenant and having failed to do so had resorted to substitute service and therefore the landlord had proved his bonafides in trying to serve the tenant.

16. The counsel would submit that in the instant case also the notice has been attempted to be served on the petitioner at the address which were given in all the three agreements and thereafter the arbitrator, on account of the failure to serve the petitioner by post to his last known address has ordered publication. He would therefore submit that the petitioner cannot now question the service of notice upon him. He would further rely upon the Judgement of the Hon'ble Supreme Court in

Young Achievers Vs. IMS Learning Resources Private

Limited reported in **(2013) 10 SCC 535** which was the case where the arbitration clause in the contracts dated 01.04.2007 and 01.04.2010 was superseded and abrogated by the new agreement dated 01.02.2011. The Honourable Supreme Court would state that the earlier contracts stood novated by the subsequent agreement and therefore the invocation of the arbitration clause in the latter agreement was correct.

17. The counsel would also rely upon the Judgement of the Honourable Supreme Court in **Ameet Lalchand Shah and others Vs. Rishabh Enterprises and another** reported in **(2018) 15 SCC 678**. It was a case where there were four agreements. One of the issues before the Honourable Supreme Court was whether these agreements were interconnected and whether it was right to refer to the parties to arbitration though two of the agreements did not contain an arbitration clause. Ultimately, the Honourable Supreme Court has held that since all the other agreements emanates from a principal agreement

which included an arbitration clause, the invocation of the arbitration clause appointing a sole arbitrator in terms of the Principal agreement was valid. Therefore the learned counsel would contend that the award cannot be called in question and the application filed under Section 34 of the Act deserves to be dismissed.

18. Heard the counsels on either sides and perused the records.

19. The three main points which arise for consideration in the above Original Petition are:

a) Whether the agreements are interconnected?

b) Whether the reference to arbitration invoking the Arbitral Clause of the Revenue Sharing Agreement which contemplated a sole Arbitrator was valid since the Franchisee Agreement and the Joint Venture Agreement contemplated an Arbitral Tribunal consisting of 3 Arbitrators?

C) Whether the Revenue Sharing Agreement superseded the other 2 agreements?

20. In order to appreciate the issue on hand it is necessary to extract the Arbitration Clause in each of these agreements, its duration and savings clause.

Franchisee Agreement Dated 19.01.2007

2.2. *This Agreement shall continue to be in force, until the same is terminated in accordance with the other provisions of this Agreement.*

8.9. *Notwithstanding anything stated elsewhere in the Agreement, all indemnity provisions shall survive the term/termination of this Agreement. All other terms and conditions specifically or impliedly being of a nature to survive the term and termination of this Agreement,*

*including without limitation the clauses on confidentiality, intellectual property, jurisdiction **and arbitration shall survive the term and termination of this Agreement.***

15.1. All disputes and differences and claims and questions whatsoever which shall either during the continuance of the Agreement or afterwards either between the parties hereto or their representatives touching these presents or the construction or application thereof, or any clause or thing therein contained, or any account or liability between the parties hereto, or as to any act, deed or omission or any hereto in any way relating to these presents, shall be referred to arbitration of two arbitrators, one to be appointed by each party and a

third arbitrator shall be appointed by consent of the other two arbitrators to act as an Umpire. Such arbitration shall be in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force.

15.2. All such arbitration proceeding shall be held and conducted in Chennai.

15.3. Each party shall bear its own costs in respect of such arbitration, unless otherwise awarded by the arbitrator, subject to the same, in the case of any matter requiring to be or permitted to be referred to the court under the provisions of the Arbitration and Conciliation Act, 1996, the Courts at Chennai shall have

exclusive jurisdiction in the matter

Joint Venture Agreement dated 01.06.2008

2. Extent, AND TERM OF DURATION

This agreement shall be in force with effect from 01.06.08 and shall be for the duration of one year. The parties may, at their options, renew or extend the duration of the term of this agreement on such terms and conditions as mutually agreed. "The said business" in joint venture shall be carried only in the centers and locations, as mutually agreed, in Tamil Nadu. Other location and centres can be added by mutual consent.

13. ARBITRATION

13.1. All disputes, differences, claims and questions whatsoever which shall either during the continuance of the

Agreement or afterwards either between the parties hereto or their representatives touching these presents or the construction or application thereof, or any clause or thing therein contained, or any account or liability between the parties hereto, or as to any act, deed or omission of any hereto in any way relating to these presents, shall be referred to arbitration of two arbitrators, one to be appointed by each party and a third arbitrator to be appointed by consent of the two arbitrators to act as an Umpire. Such arbitration shall be in accordance with and subject to the provisions of the Arbitration and Conciliation Act, 1996, or any statutory modification or re-enactment thereof for the time being in force.

13.2. All such arbitration proceedings

shall be held and conducted in Chennai and the proceedings of arbitration shall be in English.

13.3. Each party shall bear its own costs in respect of such arbitration, unless otherwise awarded by the arbitrator. The remuneration of the Umpire and the expenses for conduct of the proceedings shall be shared equally by the parties. Subject to the same, in the case of any matter requiring to be or permitted to be referred to the court under the provisions of the Arbitration and Conciliation Act, 1996, the courts at Chennai shall have exclusive jurisdiction in the matter.

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14. Survival of Provision

14.1. The terms and condiditions of

this Agreement that by their nature and contents are intended to survive the performance hereof by any or all the parties hereto shall survive the completion and/or termination of this agreement.

17.4. This Agreement supersedes all the earlier agreements or arrangements, if any, entered into between the Parties.

However, the rights, liabilities and obligations already incurred in respect of and/or on account of the transactions entered under earlier agreements/arrangements shall survive and continue to be in force till the transactions are legally satisfied and completed entirely.

REVENUE SHARING AGREEMENT

2. EXTENT AND TERM OF DURATION

This agreement shall be in force with effect from 01/03/2010 and shall be for the duration of one year. The parties may, at their options, renew or extend the duration of the term of this agreement on such terms and conditions as mutually agreed upon. " The revenue sharing business" shall be carried on revenue sharing basis only at the centres and locations, as mutually agreed. Other location and centers can be added by mutual consent.

13. ARBITRATION

13.1. All disputes, differences, claims and questions whatsoever which shall either during the continuance of the agreement or afterwards either between the parties hereto or their representatives touching these presents or the construction

or application thereof, or any clause or thing therein contained, or any account or liability between the parties hereto, or as to any act, deed or omission of any hereto in any way relating to these presents, shall be referred to sole arbitrator to be nominated and appointed by FRSP. During the course of arbitration the sole arbitrator so appointed for any reason becomes incapacitated or not willing to continue with the arbitration, FRSP shall nominate and appoint another arbitration and the Arbitrator newly appointed shall continue the Arbitration proceedings from the stage where it was left by his predecessor. Such arbitration shall be in accordance with and subject to the provisions of the Arbitrator and Conciliation

Act, 1996, or any statutory modification or re-enactment thereof for the time being in force.

13.2. All such arbitration proceeding shall be held and conducted in Chennai and the proceedings of arbitration shall be in English

13.3. In the case of any matter requiring to be or permitted to be referred to the court under the provisions of the Arbitration and Conciliation Act, 1996, the courts at Chennai shall have exclusive jurisdiction in the matter.

14. SURVIVAL OF PROVISION:

14.1. The terms and conditions of this agreement that by their nature and contents are intended to survive the performance hereof by any or all the

parties hereto shall so survive the completion and/or termination of this agreement."

21. The procedure for an appointment of the arbitral tribunal in these agreements differ with respect to the number of arbitrators. While the first two agreements contemplated an Arbitral Tribunal consisting of three arbitrators, the third agreement would clearly stipulate that the tribunal would consist only of a sole arbitrator to be nominated by the 1st respondent. The cause of action in support of each of the agreements would also be different. The duration in respect of the Franchisee agreement continued till its termination in accordance with the provisions contained in that agreement. Under the Joint Venture Agreement the duration was one year with effect from 01.06.08 with the parties having an option to renew or extend the same on mutually agreed terms and conditions. The Revenue Sharing Agreement also contained the same terms as in the Joint Venture

Agreement, however with the agreement being valid for a year with effect from 01.03.2010 with a similar option to renew or extend the term.

22. The Joint Venture and Revenue Sharing agreements have also made it clear that the respective agreements superseded the earlier agreements / arrangements. However, the rights and liabilities of the party and the transactions entered into under the earlier agreements would survive and continue to be in force till they are legally satisfied and completed entirely. Infact, under the first agreement viz; the Franchisee Agreement Clause 8.9 would stipulate that the arbitration shall survive the term and termination of the Agreement. Therefore the arguments that the earlier agreements have been novated into the third agreement cannot be accepted in view of the language of the agreements. The language and terms of each of the agreements makes it clear that though the object is similar in all of them, however, each of the agreement stood independent of

the other. It is not the case that one of the agreement is a principal agreement and the other agreements were its ancillaries. Therefore, the facts of the instant case would be covered by the dicta laid down in the Judgement in ***Duro Felguera, S.A. Vs. Gangavaram Port Limited*** reported in ***(2017) 9 SCC 729***, Supra. In this Judgement the Honourable Supreme Court has held that six arbitral Tribunals should independently try the issues covered under the six agreements each of which contained independent provisions for arbitration. The Hon'ble Supreme Court has held so since each each of the contract stood independent and did not depend on the terms and conditions of the original contract / MOU.

23. That apart, there were minor variations with reference to scope of the work under each of the contracts and therefore there cannot be a joinder of cause of action arising under each of the agreements. The Hon'ble Supreme Court in the Judgement ***Duro Felguera, S.A. Vs. Gangavaram Port Limited*** reported

in **(2017) 9 SCC 729** has held as follows:

"60.In the case at hand, there are six arbitrable agreements (five agreements for works and one Corporate Guarantee) and each agreement contains a provision for arbitration. Hence, there has to be an Arbitral Tribunal for the disputes pertaining to each agreement. While the arbitrators can be the same, there has to be six Tribunals - two for international commercial arbitration involving the Spanish Company-M/s Duro Felguera, S.A. and four for the domestic."

24. The dispute between the claimant and the 1st respondent arises out of three different agreements with the subsequent agreement's clearly stating that the rights and obligations under the earlier agreement would continue. Further the duration of the Joint Venture Agreement and the Revenue Sharing agreement was for a period of one year commencing from 01.06.2008 and 01.03.2010 respectively. The Revenue sharing Agreement was entered into after the period of the Joint Venture Agreement. Therefore it is clear that the agreements

are not interconnected and the reference of the disputes to a sole arbitrator of the two earlier agreements also was not correct.

25. Further, the constitution/composition of the arbitral tribunal is different in each of these agreements. The franchisee agreement and the Joint Venture Agreement contemplate a tribunal consisting of three members whereas the Revenue Sharing Agreement contemplated only a sole arbitrator and that too nominated by one party alone. The 1st respondent has by ignoring the terms of the arbitration clause in the Franchisee and Joint Venture agreements violated the agreed procedure of appointment. Further by clubbing the three agreements the petitioner's right to appoint one Arbitrator in respect of the Franchisee Agreement and the Joint Venture Agreement has been taken away from the petitioner. The award is therefore liable to be set aside in the light of the provisions of Section 34 (2) (v) of the Act.

26. The argument of the 1st respondent that all the three agreement emanates from a Principal Agreement and therefore covered by the judgement in **Ameet Lalchand Shah and others**, supra cannot be accepted for the following reasons.

In para 5 of the Claim statement the 1st respondent would contend as follows:

"The respondent's liability under the franchisee agreement and Joint Venture Agreement are not affected in any way by reason of the said Revenue Sharing agreement and still the respondent liable to pay the amount due in respect of the franchisee agreement and Joint Venture Agreement and the respondent is liable to perform the acts and deeds that are remaining to be carried out by the respondent by virtue of the terms and conditions of the franchisee agreement and Joint Venture Agreement."

In the claim statement at para 6 the 1st respondent contends *"Thus the total agreement value for all the respective*

agreements and the vehicles pertaining to the said agreements is Rs.6,58,94,686/- (Rupees Six Crores Fifty Eight Lakhs Ninety Four Thousand Six Hundred and Eighty Six only)".

That the claim is in respect of all the three agreements is further clear from para 11 of the claim statement where the 1st respondent would contend

"The claimant submits that in respect of and towards account in pay payment of the sum of Rs.6,58,94,686/- the total value of all the agreement the respondent had paid only a sum of Rs.4,20,16,259/- (Rupees Four Crores Twenty Lakhs Sixteen Thousands Two Hundred and Fifty Nine only). The claimant submits that as on 30.09.2014 the respondent liable to pay a sum of Rs.3,40,24,988/- (Rupees Three Crores Forty Lakhs Twenty Four Thousands Nine Hundreds and Eighty Eight only) together with interest at 36% per annum."

It is therefore evident that the claim is in respect of all the three agreements. The terms of the 3 being independent of each other, the clubbing of all the three into a single claim is unsustainable.

27. In view of the above narration, it is therefore clear that the tribunal did not have the Jurisdiction to hear the arbitration pertaining to the disputes covered under all the three agreements under a single arbitration. The terms and conditions of each of the contracts being independent, the tribunal which is constituted invoking one agreement cannot go beyond that agreement.

28. In the claim statement although in paragraph no.14, the 1st respondent would contend that the petition is filed as per clause 13 of the terms and conditions of the Revenue Sharing Agreement, however, in paragraph nos.6 and 7 the 1st respondent has clearly referred to all the three agreements and the amount is claimed under all the three agreements. The Division Bench of this Court in *Alaska Export Usa Inc vs M/S. Alaska Exports* has held that where there are two independent arbitration clause even if the same has identical Arbitration

clause the parties cannot appoint a single arbitral tribunal choosing one of the agreements. The tribunal constituted in terms of one agreement cannot look into disputes arising under other agreement.

29. To sum up the above discussions the award passed by the 2nd respondent is liable to be set aside for the following reasons:

(a) There is no bar in clubbing different agreements if there is a principal agreement and its ancillary agreements. However, in the instant case the three agreements are independent of the other and there is no principal agreement from out of which the other two agreements emanate.

(b) The duration of the agreements are different. The duration of the Franchisee agreement was till its termination as per the provisions of the agreement, whereas, the duration of the Joint Venture Agreement and the Revenue Sharing Agreement

was for a period of one year from 01.06.2008 and 01.03.2010 respectively.

(c) The number of arbitrators and the procedure for appointment of the Arbitrator is different in the three agreements. While the Franchisee and the Joint Venture agreements contemplate each of the parties appointing their respective Arbitrator and the two of them appointing a third, the Revenue Sharing agreement contemplated the appointment of a sole Arbitrator and that too to be nominated and appointed only at the behest of the 1st respondent. The dispute has been referred to a Sole Arbitrator by invoking the provisions of the Revenue Sharing agreement ignoring the other two agreements. This is clearly in violation of the terms of Section 34 (2) (v) of the Act.

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(d) The petitioner has lost its right to appoint an arbitrator of their choice since the disputes have been clubbed and the

invocation made under the Revenue Sharing agreement.

(e) The amount claimed even according to the claimant is the due towards all the three agreements and not the outstanding only under the Revenue Sharing agreement. Therefore, considering the fact that each of the agreement stood independent of the other, the clubbing of the three agreements into one was not maintainable.

(f) The Judgement relied on by the 1st respondent viz, **Ameet Lalchand Shah and others Vs. Rishabh Enterprises and another** reported in **(2018) 15 SCC 678** would not apply to the facts of this case as each of the agreement is independent and there is no principal agreement and its ancillary.

(g) The Judgement in **Duro Felguera, S.A. Vs. Gangavaram Port Limited** reported in **(2017) 9 SCC 729**

would apply on all fours to the facts of the case as discussed supra.

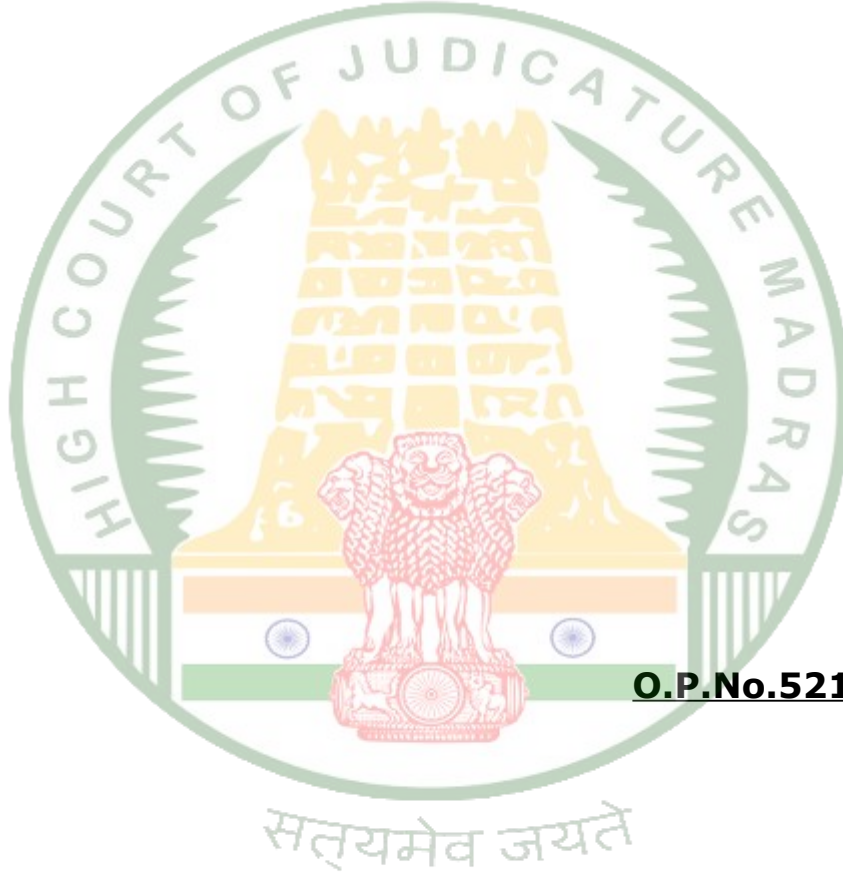
30. In view of the above discussions the petition is allowed as the constitution and composition of the arbitral tribunal is totally contrary to the terms of the agreement and the award passed is and one without jurisdiction in violation of the provisions of Section 34 (2) (v). Since this petition is being allowed on an issue of Jurisdiction this Court is not considering the merits of the case. It is however open to the 1st respondent to once again invoke the arbitration under the three agreements in the manner known to law. There shall be no order as to costs.

20.01.2020

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Index : Yes/No
Speaking order/non-speaking order

P.T.ASHA, J.,

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