



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 22nd DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.1048 of 2019

In the matter of the Arbitration &
Conciliation Act 1996

And

In the matter of SICAL Multimodal
and Rail Transport Ltd. And Central
Warehousing Corporation.

M/s SICAL Multimodal and
Rail Transport Ltd.
Having its registered office at
73, Armenian St, Mannady,
George Town, Chennai,
Tamil Nadu 600 001,
represented by its Authorised
Signatory Mr.T.Subramanian.

... Petitioner

Versus

Central Warehousing Corporation,
Represented by its Regional Director,
No.485, North Avenue, Srinagar Colony,
Saidapet, Chennai 600 015.

... Respondent

Original Petition praying that this Hon'ble Court be pleased to
partially set aside the Award dated 28.09.2018 passed by the Learned
Arbitrator to the extent stated above.

This Original Petition coming on this day before this court for hearing

<https://hcservices.ecourts.gov.in/hcservices/>

in the presence of Mr.Anand Sashidharan, Advocate for the petitioner



herein and Mr.Avinash Watwani for Mr.V.Raghavachari, Advocates for the respondent herein, and upon reading the petition and the award dated 28.09.2018 filed herein and this court having observed that when the award is passed at Delhi, any challenge on such award has to be made only before the Delhi High Court and not before this court and the present Original Petition challenging the award of the sole Arbitrator is not maintainable before this court, it is ordered as follows:-

That the Original Petition No.1048 of 2019, be and is hereby dismissed.

2. That the petitioner herein, shall be at liberty to file Original Petition before the Delhi High Court as per law.

3. That this Original Petition is returned to the petitioner to represent the same before the Delhi High Court within a period of one month from the date of return.

4. That there shall be no costs of this petition.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
22nd DAY OF JULY 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)



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04.08.2021

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O.P. No.1048 of 2019

ORDER:-

DATED: 22.07.2021

THE HON'BLE MR. JUSTICE

N.SATHISH KUMAR

FOR APPROVAL: 04.08.2021

APPROVED ON : 05.08.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.1048 of 2019

M/s.SICAL Multimodal and Rail Transport Ltd.

Having its registered office at

73, Armenian St, Mannady,

George Town, Chennai,

Tamil Nadu 600001

represented by its Authorised

Signatory Mr.T.Subramanian

. . . Petitioner

Versus

Central Warehousing Corporation,

Represented by its Regional Director

No.485, North Avenue, Srinagar Colony,

Saidapet, Chennai 600015

. . . Respondent

PRAYER : Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 to set aside the award dated 28.09.2018 passed by the learned Arbitrator to the extent stated above.

For Petitioner : Mr.Anand Sashidharan

For Respondent : Mr.Avinash Watwani
for Mr.V.Raghavachari

ORDER

This original petition has been filed to set aside the award dated



2. The primary objection of the learned counsel for the respondent is that the seat of Arbitration is at Delhi. Therefore, the petition filed to challenge the award under Section 34 of the Arbitration and Conciliation Act, 1996 will not be maintainable before this Court, whereas, it is contention of the learned counsel for the petitioner that the respondent has also filed other original petition challenging the award before Arbitral Tribunal at Vishakhapatnam since the primary objection has been raised as to the jurisdiction of this Court.

3. After perusing the materials and also without going into the merits of the award, it is an admitted fact that the dispute arose in respect of invocation of bank guarantee by the respondent and also certain claim on unbilled amount. The respondent has also raised the counter claim for a sum of Rs.5.7 crores. However, the learned Arbitrator rejected the counter claim and allowed the original claim. The claim statement and Defence statements have been filed before the Delhi High Court and the parties have participated at Delhi High Court. Though the contract between the parties did not reveal the Seat of arbitration, the fact remains that the participation of both sides without any demur, allowed the Arbitrator to conduct the proceedings at Delhi which clearly exhibits the intention of the parties to have the Seat of arbitration at Delhi. In such view of the matter when the



before the Delhi High Court and not before this Court.

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4. Since the parties have chosen Delhi as a seat of Arbitration, it is also held by the Hon'ble Apex Court in the case of **BGS SGS Soma JV vs. NHPC Ltd** in Para 98 is as follows:

“ 98. However, the fact that in all the three appeals before as the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have therefore, chosen that the Courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the “seat” has been chosen, which would then amount to an exclusive jurisdiction clause so far as courts of the “seat” as concerned.”

5. In the light of the above judgment and having regard to the facts of this petition, this Court is of the view that present original petition challenging the award of the Sole Arbitrator is not maintainable before this Court. Hence, this original petition is dismissed. No costs. However, liberty is granted to the petitioner to file original petition before the Delhi High Court as per law.



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6.This Original petition is returned to the petitioner to represent the same before the Delhi High Court within a period of one month from the date of return.

Sd./-N.S.K.J.
22.07.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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