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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.09.2021

Pronounced on : 20.09.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.2492 of 2011
and
MP No.1 of 2011

M/s. Kwaliti Spinning Mills Ltd.,
Rep. by its Managing Director,
Meyyappan ...Appellant/Petitioner/Opp.Party

versus

1. The Cotton Corporation of India Ltd.,
carrying on business at
Door No.1057, Trichy Road,
Ramanathapuram,
Coimbatore - 641 045. ...R1/R1/Claimant

2. B.Kali ...Respondent2/R2/Arbitrator

Prayer: Civil Miscellaneous Appeal filed under Section 37(1) (b) of Arbitration and Conciliation Act, 1996 R/w Section 151 of Civil Procedure Code against the fair order and decretal order dated 25.02.2010 made in AOP No.376 of 2005 on the file of the 1st Additional District Court, Coimbatore confirming the Arbitration Award dated 14.08.2000 made in A.P. No.10 of 1997 passed by the Sole Arbitrator 2nd respondent.

For Appellant	:	Mr.T.S. Baskaran
For Respondents	:	Mr.Anirudh Krishnan for M/s. Sarvabhauman Associates for R1 R2 - Served - No appearance



JUDGMENT

This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 challenging the order dated 25.02.2010 passed by the I Additional District Court, Coimbatore in AOP No.376 of 2005 under Section 34 of the Arbitration and Conciliation Act dismissing the application filed by the appellant challenging the Arbitral Award passed against them on 14.08.2000 in AP No.10 of 1997 by the 2nd respondent /Arbitrator.

Brief facts leading to the filing of this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 :

2. The Appellant-Company and the 1st respondent-Company had entered into a Contract on 23.03.1995. Under the said Contract, the 1st respondent sold 600 bales of cotton to the Appellant. According to the 1st respondent, the Appellant had committed breach of contract by not lifting 200 bales out of 600 bales sold to it. Exercising the power conferred under the Contract, the 1st respondent caused a re-sale of those 200 bales. According to the 1st respondent by such re-sale, they had suffered a loss of Rs.14,55,193.89 as on 30.09.1997 after giving credit to the amount lying to the credit of the Appellant. There is an Arbitration clause under the contract and in accordance with the Arbitration clause, the 1st respondent has initiated Arbitration for the recovery of Rs.14,55,193.89 together with interest and costs from the Appellant. Before the 2nd respondent / Arbitrator, the Appellant had filed a Memo stating that the Appellant- Company was declared as a Sick Industrial Company by an order dated 06.03.1998 passed by the Board for Industrial and Financial Reconstruction (BIFR) and requested the 2nd respondent /Arbitrator to stay further proceedings in the Arbitration. The 2nd respondent /Arbitrator by his order dated 28.01.1999 granted suspension of the Arbitral proceedings after recording the Memo filed by the Appellant. Thereafter, another Memo was filed by the 1st respondent before the 2nd respondent/ Arbitrator stating that under Section 22 of the Sick Industrial and Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA), the stay will be in force only for a period of two years and the two years period having got expired, the Arbitral proceedings should continue. Thereafter, the 2nd respondent / Arbitrator by his order dated 23.06.2000 after hearing both the parties re-called the earlier order granting suspension of Arbitral proceedings and proceeded to continue with the Arbitration.

3. It is the case of the Appellant that it could not take further part in the enquiry and the 2nd respondent / Arbitrator passed an Arbitral Award dated 14.08.2000 in favour of the 1st



respondent against the appellant in AP No.10 of 1997, directing the Appellant to pay the 1st respondent a sum of Rs.14,55,193.89 together with interest at 18% p.a. from 01.10.1997 till the date of realisation and also pay costs of Rs.25,000/-.

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4. Aggrieved by the Arbitral Award, dated 14.08.2000 passed in AP No.10 of 1997, the Appellant filed an application under Section 34 of the Arbitration and Conciliation Act before the I Additional District Court, Coimbatore in Arbitration OP No.376 of 2005.

5. By order dated 25.02.2010, the learned I Additional District Judge, Coimbatore dismissed the Arbitration Original Petition No.377 of 2005 on the ground that the Appellant has not challenged before the 2nd respondent/ Arbitrator the order vacating the suspension of the Arbitral proceedings passed by the Arbitral Tribunal and also holding that pendency of proceedings before the BIFR will not stay the Arbitral proceedings as per the judgment of the Hon'ble Supreme Court in the case of San-A Tradubg Company Ltd., versus I.C. Textiles Ltd., reported in 2012 (7) SCC 192.

6. Aggrieved by the order dated 25.02.2010 passed by the learned Additional District Judge, Coimbatore in A.O.P. No.377 of 2005, this appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996.

7. Heard Mr.T.S.Baskaran, learned counsel for the Appellant and Mr.Anirudh Krishnan, learned counsel for the 1st respondent.

8. Mr.T.S.Baskaran, learned counsel for the Appellant at the outset would submit that the Appellant-Company having been declared as a sick Company by the BIFR, no proceedings for recovery of any amount from the Company can be initiated by the creditors except with the sanction of the Board as per Section 22 of SICA. In support of his submission, he drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of Paramjeet Singh Patheja vs. ICDS Limited reported in 2006 13 SCC 322. He would submit that as per the aforesaid judgment, the proceedings that will have to be stayed under Section 22 of SICA includes Arbitration proceedings also.

9. According to him, the judgment rendered by the Hon'ble Supreme Court in the case of San-A Tradubg Company Limited vs. I.C. Textiles Limited reported in (2012) 7 SCC 192, which is the basis for the dismissal of the appellant's application under Section 34 of the Arbitration and Conciliation Act, under the impugned order is not applicable to the case on hand as the said judgment came to be rendered only after passing of the Arbitral



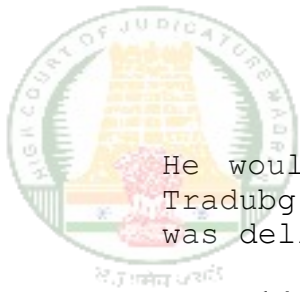
Award dated 14.08.2000 and therefore, according to him stay of the proceedings under Section 22 of SICA includes arbitration proceedings also.

10. The learned counsel for the Appellant would further submit that the Arbitral Tribunal having earlier stayed the proceedings on 28.01.1999 ought not to have recalled the said order and proceeded to pass the Arbitral Award against the Appellant. It is further submitted by him that the 2nd respondent / Arbitrator was bound to decide the case on merits but under the Arbitral Award, the 2nd respondent / Arbitrator was guilty of misconduct for not deciding the dispute on merits of the contentions between the parties.

11. The learned counsel for the Appellant further submitted that the Arbitral Award, which is the subject matter of challenge is in conflict with public policy Doctrine and shocks the conscience and therefore the I Additional District Court, Coimbatore while exercising his power under Section 34 of the Arbitration and Conciliation Act should have set aside the Arbitral Award.

12. Per contra, Mr.Anirudh Krishnan, learned counsel for the 1st respondent would at the outset submit that the grounds raised by the Appellant would amount to re-appreciation of evidence by the Court which is not permissible under Section 34 or 37 of the Arbitration and Conciliation Act.. He would submit that the Contract dated 23.03.1995 enables the 1st respondent to claim from the Appellant the loss they had suffered on account of breach of contract committed by the Appellant and are also entitled for carrying charges amount from the Appellant. With regard to the same, Mr.Anirudh Krishnan, learned counsel for the 1st respondent then drew the attention of this Court to the relevant clauses under the Contract dated 23.03.1995. He then drew the attention of this Court to the Arbitral Award dated 14.08.2000 passed in favour of the 1st respondent and submitted that only based on the contract and only based on the materials and evidence available on record, the Arbitral Tribunal has passed the Award in favour of the 1st respondent against the Appellant.

13. Mr.Anirudh Krishnan, learned counsel for the 1st respondent then drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of San-A Tradubg Company v. I.C. Textiles Limited reported in (2012) 7 SCC 192 and would submit that the Hon'ble Supreme Court has held that proceedings mentioned in Section 22 of the SICA shall not apply to Arbitral proceedings and hence, he would submit that the Arbitral Tribunal was right in proceeding with the Arbitration and passing an Arbitral Award in favour of the 1st respondent.



He would submit that though the aforesaid judgment i.e. San-A Tradubg was reported only in the year 2012, the said judgment was delivered on 28.04.2006 itself by the Hon'ble Supreme Court.

14. Mr.Anirudh Krishnan, learned counsel for the 1st respondent would also rely upon the judgment of the Hon'ble Supreme in the case of M.A. Murthy vs. State of Karnataka and others reported in (2003) 7SCC 517 for the proposition that the law declared by the Hon'ble Supreme Court is presumed to be the law at all times unless in the judgment, it has been specifically mentioned that the ratio laid therein applies only prospectively. Therefore, he would submit that the decision rendered in SAN-A Tradubg case referred to supra, where no specific mention has been made that the ratio-decidenti in that case applies only prospectively, Arbitral Tribunal was correct in proceeding with the Arbitration even though the Arbitration was prior to the decision rendered in SAN-A Tradubg Company case.

15. He would further submit that the judgment in Paramjeet Singh Patheja' vs. ICDS Limited reported in (2006) 13 SCC 322, relied upon by the learned counsel for the Appellant has no bearing for the facts and circumstances of the present case as in that judgment, the Hon'ble Supreme Court was dealing with the issue as to whether insolvency proceedings can be initiated to execute an Arbitral Award and only under those circumstances, the Hon'ble Supreme Court held that insolvency proceedings cannot be initiated for enforcing an Arbitral Award, as Section 22 of SICA gets attracted.

16. He also then drew the attention of this Court to paragraphs 4,5 and 11 of the Arbitral Award dated 14.08.2000 and would submit that the 2nd respondent / Arbitrator has considered all the objections raised by the Appellant and only thereafter has passed the Arbitral Award in favour of the 1st respondent, which according to him is in accordance with law.

17. Mr.Anirudh Krishnan, learned counsel for the 1st respondent in support of his submissions also relied upon the following authorities:

- a) Jay Engineering Works Limited vs. Industry Facilitation Council reported in (2006) 8 SCC 677
- b) Morgan Securities and Credit Private Limited vs. Modi Rubber Limited reported in (2006) 12 SCC 642
- c) India Cements Capital Limited vs. Auto Plus (India) Limited reported in 2013 (2) CTC 705
- d) MSTC Limited vs. Meherkiran Enterprises Limited reported in MANU/WB/0798/2016.

18. He would submit that the Hon'ble Supreme Court in the aforementioned judgments also has held that Arbitration



proceedings were not covered by Section 22(1) of SICA and a reference to BIFR would not bar continuance of the Arbitral proceedings. Therefore, he would submit that there is no scope for interference to the Arbitral Award passed in favour of the 1st respondent against the Appellant and the learned Additional Principal District Judge under the impugned order passed under Section 34 of the Arbitration and Conciliation Act has rightly dismissed the application filed by the Appellant.

Discussion :-

19. The Appellant has challenged the Arbitral Award questioning its liability to pay the award amount and has also challenged the same on the ground that being declared as a sick Company under Section 22 of the SICA, the Arbitral proceedings ought to have been stayed by the 2nd respondent / Arbitrator and no Arbitral Award could have been passed against the Appellant.

20. Admittedly, there is an Arbitration clause under the agreement dated 23.03.1995 entered into between the Appellant and the 1st respondent. The 1st respondent / claimant has initiated the arbitration proceedings and the 2nd respondent has been appointed as an Arbitrator to adjudicate the claim against the Appellant for the alleged breach of contract. It is the case of the 1st respondent that the appellant had committed breach of contract by not lifting 200 bales out of 600 bales of cotton sold by the 1st respondent to the appellant which resulted in loss of Rs.14,55,193.89 as on 30.09.1997.

21. Before the Arbitral Tribunal, comprising of the 2nd respondent as the sole Arbitrator, objections were filed by the Appellant and in paragraph 4 of the said objections, the Appellant has admitted that it could not take delivery of the bales in time because of the recession in the Textile market. The Arbitral Tribunal under its Award dated 14.08.2000 passed in AP No.10 of 1997 has given sound and justifiable reasons for allowing the claim filed by the 1st respondent in paragraph Nos.10 and 11 of the Arbitral Award. As seen from the said reasons, it is clear that the Appellant had committed breach of contract of the agreement dated 23.03.1995. In the grounds of this appeal filed under Section 37 of the Arbitration and Conciliation Act as well as in the application filed before the learned Principal District Judge under Section 34 of the Act, the appellant has also not raised any dispute with regard to the 1st respondent's claim that there was delay in taking delivery of the cotton bales. Having admitted the delay, in accordance with the penalty clause available under the Contract, the Arbitrator has passed an Arbitral Award directing the appellant to pay Rs.14,55,193.89 together with interest at 18% p.a. from 01.10.1997 till the date of realisation and has also awarded a cost of Rs.25,000/-. Being a well reasoned Award, there is no



scope for interference by this Court as regards the merits of the claim made by the 1st respondent against the Appellant. In the grounds of appeal, the appellant has raised the contention that the Arbitral Tribunal has not considered the merits of the matter, which cannot be accepted by this Court in view of the fact that merits of the claim was also considered by the Arbitral Tribunal under the well considered and reasoned Arbitral Award. The view taken by the Arbitral Tribunal under the Arbitral Award is a possible view and therefore, this Court cannot substitute its own view even in cases where there can be another view possible. But in the case on hand as seen from the Arbitral Award, the evidence placed on record by both the parties will conclusively establish that there can be only one possible view viz., the Appellant has committed breach of contract under the agreement dated 23.03.1995 and therefore, in accordance with the said agreement, the 1st respondent / claimant is entitled to get damages for the breach of contract committed by the Appellant under the Arbitral Award dated 14.08.2000. Hence, the first contention of the Appellant that the Arbitral Award did not go into the merits of the claim is rejected by this Court.

22. Insofar as the second contention raised by the Appellant, that the Arbitral proceedings ought to have been stayed since the Appellant-Company has been declared as a sick Company by the BIFR is concerned, the said contention also does not deserve any merit for the following reasons :-

a) Section 22 of SICA reads as follows :

22. Suspension of legal proceedings, contracts, etc.-

(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof³² [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.



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(2) Where the management of the sick industrial company is taken over or changed ³³ [in pursuance of any scheme sanctioned under section 18], notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or in the memorandum and articles of association of such company or any instrument having effect under the said Act or other law—

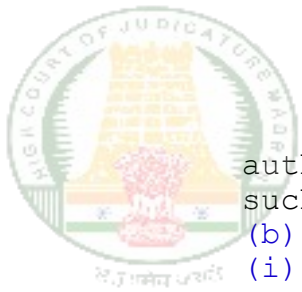
(a) it shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company;

(b) no resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the Board.

(3) ³⁴ [Where an inquiry under section 16 is pending or any scheme referred to in section 17 is under preparation or during the period] of consideration of any scheme under section 18 or where any such scheme is sanctioned thereunder, for due implementation of the scheme, the Board may by order declare with respect to the sick industrial company concerned that the operation of all or any of the contracts, assurances of property, agreements, settlements, awards, standing orders or other instruments in force, to which such sick industrial company is a party or which may be applicable to such sick industrial company immediately before the date of such order, shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising thereunder before the said date, shall remain suspended or shall be enforceable with such adoptions and in such manner as may be specified by the Board: Provided that such declaration shall not be made for a period exceeding two years which may be extended by one year at a time so, however, that the total period shall not exceed seven years in the aggregate.

(4) Any declaration made under sub-section (3) with respect to a sick industrial company shall have effect notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law, the memorandum and articles of association of the company or any instrument having effect under the said Act or other law or any agreement or any decree or order of a court, tribunal, officer or other authority or of any submission, settlement or standing order and accordingly,—

(a) any remedy for the enforcement of any right, privilege, obligation and liability suspended or modified by such declaration, and all proceedings relating thereto pending before any court, tribunal, officer or other



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authority shall remain stayed or be continued subject to such declaration; and

(b) on the declaration ceasing to have effect—

(i) any right, privilege, obligation or liability so remaining suspended or modified, shall become revived and enforceable as if the declaration had never been made; and

(ii) any proceeding so remaining stayed shall be proceeded with, subject to the provisions of any law which may then be in force, from the stage which had been reached when the proceedings became stayed.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded.

b) The Hon'ble Supreme Court in the case of San-A Tradubg Company vs I.C. Textiles Limited reported in (2012) 7 SCC 192 has made it clear that proceeding under Arbitration is neither a suit nor any other proceedings mentioned in Section 22(1) of SICA and therefore, there is no prohibition under Section 22 of SICA for the Arbitral Tribunal to proceed with the arbitration to adjudicate the dispute between the parties to the arbitration.

The relevant paragraphs of the aforementioned judgment reads as follows :

22. It is, thus, apparent from the wording of Section 22(1) of SICA and the above decisions of this Court that the proceedings covered under Section 22 are the proceedings of coercive nature, be that legal or otherwise, which would come within the purview of expression 'proceedings' as mentioned in the Section but it would not cover all proceedings. Section 22 (1) incorporated certain types of proceedings which would fall within its ambit and which are the proceedings for winding up of the industrial company or the proceedings for execution and distress against any of the properties of the industrial company or the proceedings for the appointment of a Receiver in respect of the properties of the industrial company. From the nature of the proceedings referred to in this Section, it is clear that only the proceedings which have the shape and effect of coercive nature would come within the ambit of Section 22(1) and for taking up such proceedings the permission of BIFR is required. By Act 12 of 1994, Section 22(1) was amended by insertion whereby a suit for the recovery of money or for the



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enforcement of any security against the industrial company or of any guarantee in respect of any loans or advances granted to the industrial company would not be maintainable unless consent of BIFR is obtained.

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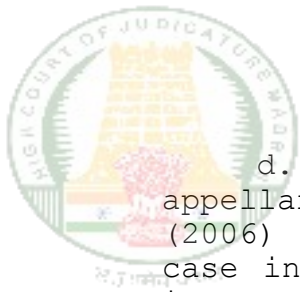
26. Section 22 further prohibits taking up of the proceedings of the nature which would be coercive for recovery of money against a sick undertaking. Proceeding in arbitration is neither a suit under sub-section (1) of Section 22 of SICA nor the proceedings thereunder and, therefore, there is no prohibition under Section 22 of SICA to take up the arbitration proceedings to adjudicate the liability of the parties to the arbitration proceedings. In my view, Section 22 of SICA does not debar the arbitration proceedings under the Arbitration and Conciliation Act, 1996. The objections to the arbitration proceedings raised by the respondent fail for the aforesaid reasons and are rejected. Mr. Manabu Nonoguchi was appointed as an arbitrator by the parties.

The aforesaid view has also been followed by the subsequent decisions of the Hon'ble Supreme Court :

- a) Jay Engineering Works Limited vs Industry Facilitation Council reported in (2006) 8 SCC 677
- b) India Cements Capital Limited vs Auto Plus (India) Limited reported in 2013 (2) CTC 705.
- c) MSTC Limited vs Meherkiran Enterprises Limited reported in MANU /WB/0798/2016

Therefore, it is settled law that even if an industrial Company is declared as a sick Company under Section 22 of SICA, there cannot be stay of Arbitral proceedings and Section 22 will come into play only at the time of execution of the Arbitral Award. The Arbitral Tribunal has followed the settled law as laid down under the aforementioned decisions and has rightly proceeded with the Arbitration and passed the Arbitral Award dated 14.08.2000 in AP No.10 of 1997.

c. The Appellant cannot escape its liability under the Arbitral Award just because the Arbitrator had initially granted stay based on the Memo filed by the Appellant and thereafter had vacated the stay and proceeded with the Arbitration. The Arbitrator has acted only in accordance with law by proceeding with the arbitration and passing an Arbitral Award in favour of the 1st respondent.



d. The decision relied upon by the learned counsel for the appellant in *Paramjeet Singh Patheja vs ICDS Limited* reported in (2006) 13 SCC 322 does not apply to the facts of the instant case in view of the fact that the said decision relates to the issue of initiation of insolvency proceedings to execute an Arbitral Award, whereas in the case on hand no execution proceedings have been initiated and the Arbitrator has only proceeded with the arbitration and has passed an Arbitral Award. Since, there is no coercive, distress or like proceedings involved against the assets of the Appellant Company, the aforementioned decision has got no bearing to the facts of this case. Further, the issue involved in *Paramjeet Singh Patheja's* case was different from the issue that is involved in the case on hand and therefore, there was no necessity for the Hon'ble Supreme Court to consider the decision rendered by the Hon'ble Supreme Court in *San-A Tradubg* case, which has made it clear that Section 22 of SICA will not apply to Arbitration proceedings.

e. The learned counsel for the Appellant has submitted that there cannot be a retrospective overruling while interpreting a statutory provision viz., Section 22 of SICA and therefore according to him, the decision rendered in *San-A Tradubg* case by the Hon'ble Supreme Court will not apply to the subject arbitration since the said arbitration was initiated much prior to the said judgment. The said argument does not hold water as the Hon'ble Supreme Court in the following decisions has consistently held that unless and until it has been made clear in the judgment that the operation of the said decision is only prospective, it is presumed that the ratio decidendi applies retrospectively also.

- a) *Golaknath vs State of Punjab* reported in (1967) 2 SCR 762
- b) *Ramdas Bhikaji Chaudhari vs. Sadanand and others* reported in 1980 1SCC 550
- c) *Assistant Commissioner vs. Saurashtra kutch Stock exchange* reported in 2008 14 SCC 171

In the case of *Assistant Commissioner vs. Saurashtra* referred to supra, which is the latest amongst the judgments referred to supra, the Hon'ble Supreme Court held as follows :

35. In our judgment, it is also well- settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make



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new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

36. Salmond in his well-known work states;

"(T)he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicata or accounts that have been settled in the meantime". (emphasis supplied)

37. It is no doubt true that after a historic decision in *Golak Nath v. Union of India*, (1967) 2 SCR 762, this Court has accepted the doctrine of 'prospective overruling'. It is based on the philosophy: "The past cannot always be erased by a new judicial declaration". It may, however, be stated that this is an exception to the general rule of the doctrine of precedent.

The decision relied upon by the learned counsel for the 1st respondent in *M.A.Murthy's* case reported in (2003) 7 SCC 517 also supports the same view. The relevant paragraph of the aforementioned judgment reads as follows :

The Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective over-ruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *L.C. Golak Nath and Ors. v. State of Punjab and Anr.* (AIR 1967 SC 1643). In *Managing Director, ECIL, Hyderabad and Ors. v. B. Karunakar and Ors.* (1993 (4) SCC 727) the view was adopted. Prospective over-ruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding



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law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See [Ashok Kumar Gupta v. State of U.P.](#) (1997) 5 SCC 201, [Baburam v. C.C. Jacob](#) (1999) 3 SCC 362). It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective over-ruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective over-ruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs.

f. In San-A Tradubg case, the Hon'ble Supreme Court has not said that the ratio-decidendi rendered in the said decision will apply prospectively only. Hence, as per the settled law, the said ratio applies retrospectively also.

g. Admittedly, when the Arbitral proceedings recommenced, the orders of the BIFR also got expired and therefore, the Appellant cannot question the continuance of the Arbitration which resulted in the Arbitral Award passed against them.

23. The scope for interference to the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, is very limited. The Appellant has not satisfied any of the requirements as laid down under the said Section. The grounds raised by the Appellant does not deserve any merit as the 2nd respondent / Arbitrator has passed a well reasoned Arbitral Award giving due consideration to the contentions raised by the Appellant. The learned I Additional District Judge has rightly dismissed the application filed by the Appellant under Section 34 of the Arbitration and Conciliation Act. Therefore, there is no merit in this appeal filed Section 37 of the Arbitration and Conciliation Act and accordingly the Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



24. Since, this appeal is dismissed, the 1st respondent is permitted to withdraw the sum of Rs.7,00,000/- (Rupees seven lakhs only) together with accrued interest if any, which was deposited pursuant to the order of interim stay granted by this Court on 04.08.2011 in MP No.1 of 2011, which is now lying to the credit of AOP No.376 of 2005, on the file of the I Additional District Court, Coimbatore by filing an appropriate application before the said Court.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi2

To

The 1st Additional District Judge,
Coimbatore.

Copy to:

1.Mr.B.Kali, District and Sessions Judge (Retired)
(Arbitrator), No.18, Easwara Nagar,
Vadamadurai, Coimbatore - 641 017.

2.The Section Officer,
V.R.Section,
High Court, Madras-104.

+3ccs to Mr.T.S.Baskaran, Advocate Sr No.47806
+1cc to Mr.Arnirudh Krishnan, Advocate Sr No.47736

CMA No.2492 of 2011

GMI (CO)
PR (22/11/2021)