

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.01.2021

DATE OF DECISION : 05.02.2021

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

O.P.No.334 of 2020
and
A.No.1497 of 2020

M/s.Engineering Projects India Ltd.,
rep by its General Manager,
Shri Om Prakash Agarwal,
having its Registered office at :
Southern Regional Office,
3-D, EC Chambers, 92,
G.N.Chetty Road, T.Nagar,
Chennai-600 017.

.. Petitioner

Vs.

M/s.Balaji Projects,
No.5, Balaji Enclave,
1st Floor, Jawaharlal Street,
Platform Road,
Seshadripuram,
Bengaluru-560 020
rep by its Managing Partner V.Shekar

.. Respondent

This original petition is filed under Section 34(2)(b)(ii) and section 34(2A) of the Arbitration and Conciliation Act, 1996 seeking to set aside the award dated 04.12.2019 and the additional award dated 23.01.2020 passed by the Sole Arbitrator in respect of the arbitral proceedings between the petitioner – M/s.Engineering Projects India Ltd. and the respondent –

M/s.Balaji Projects and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.P.J.Rishikesh

For Respondent : Mr.H.Karthik Seshadri
of M/s.Iyer and Thomas (Law firm)

ORDER

Captioned 'Original Petition' (hereinafter 'OP' for the sake of brevity and convenience) is an application under section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, convenience and clarity.

2 Captioned OP has been filed assailing an 'Arbitral Award dated 04.12.2019 and additional award dated 23.01.2020 bearing reference AC No.30/2018' (hereinafter collectively and compendiously referred to as 'impugned award' for the sake of brevity, convenience and clarity) made in the State of Karnataka by a 'Arbitral Tribunal' ('AT' for brevity) constituted by a Sole Arbitrator, who is a retired District Judge

in the State of Karnataka, who was appointed as sole arbitrator by Hon'ble Karnataka High Court at Bengaluru vide order dated 11.10.2017 in a application under section 11 of A and C Act being C.M.P.No.34 of 2017. To be noted, the entire arbitral proceedings of AT were held in Arbitration Centre – Karnataka (Domestic & International), Bengaluru.

3 Captioned OP being an application under section 34 of the A and C Act, short facts shorn of elaboration will suffice owing to the short statutory perimeter and limited legal landscape of section 34 of the A and C Act within which a legal drill of testing an arbitral award should perambulate. In this view of the matter, it will suffice to set out factual matrix in a nutshell.

4 Short facts, i.e., essential facts imperative for appreciating this order are that there is an agreement dated 18.07.2011 between the petitioner and respondent; that instructions to tenderers / memorandum to tenderers and General Conditions of Contract (GCC) together with this agreement dated 18.07.2011 shall be compendiously and collectively referred to as 'said contract' for the sake of convenience and clarity; that said contract was for 'Construction of common computerized checkpoint at Attibele in Anekal Taluk, Bangalore' ('hereinafter 'said work' for

convenience and clarity); that petitioner in captioned OP is an enterprise under the Government of India engaged in infrastructural development / construction / civil work, which was awarded some work by a tender process by the Public Works Department, Government of Karnataka in the year 2005; that tender process culminated in an agreement dated 12.08.2005; that petitioner subcontracted some of the work originally to one sub contractor and subsequently to the respondent in captioned OP; that for the sake of convenience and clarity, petitioner shall be referred to as 'EPI' denoting 'Engineering Projects India Ltd.' and respondent 'Balaji Projects' shall be referred to as 'contractor'; that contractor was claimant before AT and EPI was respondent before AT; arbitrable disputes arose between EPI and contractor; that there is no dispute that there is arbitration clause in said contract; that this arbitration clause serves as an arbitration agreement between parties being arbitration agreement within the meaning of section 2(1)(b) read with section 7 of the A and C Act; that arbitration clause was triggered; that AT was appointed vide order dated 11.10.2017 made in C.M.P.No.34 of 2017 being proceedings under section 11 of the A and C Act by Karnataka High Court; that before AT, contractor as claimant made claims under various heads of claim, such as

price enhancement, loss due to delay of three months in handing over the site, unproductive additional overhead charges, loss due to non utilization of material, balance payments, interest, refund of deposits, loss of profits, refund of royalty, etc.; EPI as respondent before AT filed statement of defence opposing claims, it sought amendment of statement of defence and made counter claims also; that AT entered upon reference, adjudicated upon arbitrable disputes and after full contest which included oral and documentary evidence, made the impugned award at Karnataka, Bengaluru; that EPI has filed captioned OP in this court under section 34 of A and C Act assailing the impugned award.

5 Mr.P.J.Rishikesh, learned counsel for EPI and Mr.Karthik Seshadri of M/s.Iyer and Thomas (Law Firm) for contractor were before this court in the web hearings on a video conferencing platform.

6 The proceedings of this court in the listings on 24.08.2020 when notice was issued is of relevance and the same reads as follows:

'Mr.PJ.Rishikesh, learned counsel on record for petitioner in captioned main OP and applicant in captioned application is before me in this web-hearing on a view conferencing platform. Learned counsel submits that an arbitral award dated 04.12.2019 and an additional award dated 23.01.2020 have been called in question in the main

OP.

2.It is inter alia submitted that issue of jurisdiction by way of preliminary objection under Section 16 of The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996) has been raised the same has been negated by the arbitral Tribunal vide order dated 07.03.2019 and the same is also part of challenge in captioned OP. It is also submitted that the entire appointment procedure is wrong against the terms of the contract, more particularly clauses 76.1 and 76.3 of the General Conditions of Contract. Besides this, it is also pointed out that a issue of limitation predicated on conflict with public policy ground has also been raised.

3.In the light of aforementioned narrative, on perusal of case file, this Court is of the view that petitioner has made out a prima facie case for issue of notice. Issue notice in captioned OP and captioned application to respondent returnable in three weeks i.e., by 21.09.2020. Private notice permitted. Counsel for petitioner is permitted to take out private notice through electronic modes of communication such as email, whatsapp etc., (besides conventional mode) subject to being able to demonstrate service on the noticee/respondent.

4.it is submitted by learned counsel for applicant in captioned application that applicant has not received any notice regarding execution of the impugned award. If the applicant receives any notice or if there is any other imminence, liberty of the applicant is preserved to mention

the matter and bring it up on board within next three weeks.

5.List under the caption 'NOTICE REGARDING ADMISSION' on 21.09.2020.'

7 Post notice, contractor entered appearance and aforementioned two counsel were before me.

8 A very interesting threshold issue regarding jurisdiction of this court arose. Arbitration agreement between the parties, i.e., arbitration agreement within the meaning of section 2(1)(b) read with section 7 of the A and C Act is in the form of two clauses, namely clauses 76.1 and 76.3 in GCC and the same reads as follows:

'76.1 Before resorting to arbitration as per the clause given below, the parties if they so agree may explore the possibility of conciliation as per the provisions of Part-III of the Arbitration and Conciliation Act, 1996. When such conciliation has failed, the parties shall adopt the following procedure for arbitration:

i) Except where otherwise provided for in the contract, any disputes and differences relating to the meaning of the Specifications, Design, Drawings and Instructions herein before mentioned and as to the quality of workmanship or materials used in the work or as to any other question, claim, right, matter or thing whatsoever in any way arising out of or relating to the Contract, Designs, Drawings, Specifications,

Estimates, Instructions, or these conditions, or otherwise concerning the works or the execution or failure to execute the same whether arising during the progress of the work or after the completion or abandonment thereof shall be referred to the Sole Arbitration of the Chairman and Managing Director (CMD) of Engineering Projects (India) Limited (EPI), or any other person discharging the functions of CMD of EPI and if CMD or such person discharging the functions of CMD of EPI is unable to act, to the sole Arbitration of some other person appointed by CMD of EPI or such other person discharging the functions of CMD of EPI. There will be no objection if the arbitrator so appointed is an employee of Engineering Projects (I) Ltd. However, such an employee shall not have directly dealt with the said Contract or the works there under on behalf of EPI. Such Arbitrator shall be appointed within 30 days of the receipt of letter of invocation of arbitration duly satisfying the requirements of this clause.

ii) If the arbitrator so appointed resigns or is unable or unwilling to act due to any reason whatsoever, or dies, the Chairman & Managing Director aforesaid or in his absence the person discharging the duties of the CMD of EPI may appoint a new arbitrator in accordance with these terms and conditions of the contract, to act in his place and the new arbitrator so appointed may proceed from the stage at which it was left by his predecessor.

iii) It is a term of the contract that the party invoking the arbitration shall specify the dispute / differences or questions

to be referred to the Arbitrator under this clause together with the amounts claimed in respect of each dispute.

iv) The Arbitrator may proceed with the arbitration ex-parte, if either party, in spite of a notice from the arbitrator, fails to take part in the proceedings.

v) The work under the contract shall continue as directed by the Engineer-in-Charge, during the arbitration proceedings.

vi) Unless otherwise agreed, the venue of arbitration proceedings shall be at the venue given in the 'Memorandum' to the 'Form of Tender'.

vii) The award of the Arbitrator shall be final, conclusive and binding on both the parties.

viii) Subject to the aforesaid, the provisions of the Arbitration and Conciliation Act, 1996 or any statutory modifications or re-enactment thereof and the Rules made there under and for the time being in force shall apply to the arbitration proceedings and Arbitrator shall publish his Award accordingly.

NOTE

NOTWITHSTANDING ANYTHING CONTAINED HEREINABOVE, THIS CLAUSE SHALL NOT BE APPLICABLE WHERE THE DISPUTE IS BETWEEN EPI AND ANOTHER CENTRAL PUBLIC SECTOR ENTERPRISE OR GOVT. OF INDIA DEPARTMENT, FOR WICH A SEPARATE ARBITRATION CLAUSE IS PROVIDED VIDE CLAUSE NO.76.2 GIVEN BELOW:

76.3 JURISDICTION

The courts mentioned in the 'Memorandum' to the 'Form of Tender' alone will have jurisdiction to deal with matters arising from the contract, to the exclusion of all other courts.'

9 Clauses 76.1(vi) and 76.3 take us to the Memorandum to the Form of Tender which consists of a xvii seriatim adumbration and serial Nos.(xvi) and (xvii) which are relevant for present discussion read as follows:

- | | | | |
|-------|--------------|------|--|
| 'xvi) | Arbitration | 76 | Arbitration shall be as per provisions of clause no.76 of GCC. The Venue of Arbitration shall be EPI,SRO, Chennai. |
| xvii) | Jurisdiction | 76.3 | Courts in Chennai.' |

10 There is no disputation or disagreement before me that according to arbitration agreement, Chennai is clearly the seat and venue. However, contractor who triggered arbitration clause, chose to file section 11 application (details set out supra), in the Karnataka High Court, notice was served on EPI, but EPI did not go before Karnataka High Court and allowed orders to be passed. As mentioned supra,

Hon'ble Karnataka High Court vide order dated 11.10.2017 appointed a retired District Judge of the Karnataka State judiciary who constituted AT and he held the entire arbitral proceedings at 'Arbitration Centre – Karnataka (Domestic & International), Bengaluru' (hereinafter 'Karnataka Arbitration Centre' for convenience and clarity). Before AT, EPI entered appearance and filed statement of defence in which counter claims were also made. To be noted, claim statement is dated 29.01.2018 and statement of defence / objections, wherein counter claim has been made, is dated 10.07.2018. Thereafter, as many as 25 issues were framed on the rival pleadings. Post framing of issues, oral and documentary evidence was let in by both sides.

11 After letting in oral and documentary evidence, towards the fag end of the arbitral proceedings, EPI orally raised the issue of territorial jurisdiction and requested AT to treat this as a plea under section 16 of the A and C Act. AT without insisting on a written application entertained this oral plea and made a detailed order dated 07.03.2019 rejecting EPI's plea that AT does not have territorial jurisdiction and called upon parties to address arguments on the basis of pleadings / oral and documentary evidence which was already before AT.

To be noted, jurisdiction of AT raised pertains solely to territoriality and not arbitrability or any other issue. EPI now says that (in the light of sub sections (5) and (6) of section 16) it is assailing this 07.03.2019 order of AT on territorial jurisdiction also.

12 Therefore, this leads this discussion to the question as to whether this court has jurisdiction under section 34 of the A and C Act to entertain captioned OP, i.e., challenge to impugned award.

13 Learned counsel on both sides very fairly agreed that they will first argue on territorial jurisdiction of this court and further proceedings (if that be so) will be subject to the decision of this court on jurisdiction. To put it differently, if this court holds that it does not have territorial jurisdiction to entertain captioned OP, the question of examining any other plea qua challenge to impugned award on merits would not arise and only in the event of this court coming to the conclusion that it has territorial jurisdiction to entertain the captioned OP, can the matter proceed further.

14 In the aforesaid setting or in other words, in the aforesaid legal stage, both learned counsel advanced extensive and exhaustive arguments on territorial jurisdiction of this court.

15 This court now proceeds to set out the point, counter point, discussion on the same and give its dispositive reasoning one after the other.

16 It was contended by EPI that the contractor ought not to have filed section 11 application in Hon'ble Karnataka High Court as it does not have jurisdiction. To this, learned counsel for contractor very fairly submitted that going by *Indus Mobile, Brahmani River Pellets Limited* and *BGS SGS Soma* principles being principles laid down by Hon'ble Supreme Court in *Indus Mobile Distribution Private Limited Vs. Datawind Innovations Private Limited and others* reported in (2017) 7 SCC 678, *Brahmani River Pellets Limited Vs. Kamachi Industries Limited* reported in (2020) 5 SCC 462 and *BGS SGS Soma JV Vs. NHPC Limited* reported in (2020) 4 SCC 234, Chennai being the venue and seat, section 11 application should have been filed in the Madras High Court. However, it was filed in Karnataka High Court, but EPI did not oppose section 11 application and therefore, it should be

construed that EPI consented for making Bangalore as venue/seat. It was submitted by learned counsel for Contractor that this should be treated as novation of arbitration agreement and it should be treated as waiver of right of EPI to object being waiver within the meaning of section 4 of the A and C Act.

17 To buttress this argument, it was pointed out that EPI not only did not oppose section 11 application, but participated in the proceedings before AT, submitted itself to the jurisdiction of the AT inter-alia by making a counter claim, let oral and documentary evidence and only at the argument stage made a mere oral plea purportedly under section 16. In response to this, learned counsel for EPI submitted that there is nothing in section 16 to suggest that application in writing should be made and it was also pointed out that a party is not precluded from raising the plea that AT does not have jurisdiction merely because it has either appointed or participated in the appointment of arbitrator.

18 This court carefully considered these rival submissions. At the outset, this court is clear that lead case laws with regard to territorial jurisdiction in matters of this nature are *Indus Mobile*, *Brahmani River Pellets Limited* and *BGS SGS Soma supra*.

19 These judgments were rendered by Hon'ble Supreme Court in the order in which they were set out and therefore, this court deems it appropriate to set out, extract and reproduce the most relevant paragraph in the last of the three case laws, namely, *BGS SGS Soma*, wherein relevant paragraph is 53 and it reads as follows:

'53. In *Indus Mobile Distribution (P) Ltd. [Indus Mobile Distribution (P) Ltd. v. Datawind Innovations (P) Ltd., (2017) 7 SCC 678 : (2017) 3 SCC (Civ) 760]*, after clearing the air on the meaning of Section 20 of the Arbitration Act, 1996, the Court in para 19 (which has already been set out hereinabove) made it clear that the moment a seat is designated by agreement between the parties, it is akin to an exclusive jurisdiction clause, which would then vest the courts at the "seat" with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties.'

20 Therefore, going by arbitration agreement between the parties, as the parties have originally agreed that the seat and venue shall be Chennai, this court certainly had exclusive jurisdiction, i.e., to the exclusion of all other courts. Therefore, there can be no doubt or debate that section 11 filed by the contractor in Hon'ble Karnataka High Court

was erroneous and on the date of filing of section 11 application that Hon'ble Court did not have jurisdiction.

21 This takes us to two questions. First question is, whether jurisdiction can be conferred ex post facto and second question is, whether parties by contract can confer jurisdiction on a Court which otherwise does not have jurisdiction. In the classical sense of a traditional suit governed by 'The Code of Civil Procedure, 1908' ('CPC' for brevity), going by the principles ingrained in sections 16 to 21 of CPC, the answer to both the questions is in the negative. However, in arbitration matters, courts have repeatedly held that sections 16 to 21 of CPC have no applications as inter-alia AT itself is a creature of contract. Relevant paragraph in *Indus Mobile* is paragraph 19 and the same reads as follows:

'19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts,

a reference to “seat” is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment “seat” is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties. '

22 If sections 16 to 21 of CPC are not applicable, the question as to whether *Patel Engineering* and *A.B.C. Laminart* principles being principles laid down in *Patel Engg. Ltd. v. North Eastern Electric Power Corpn. Ltd.*, reported in (2020) 7 SCC 167 and *A.B.C. Laminart (P) Ltd. Vs. A.P. Agencies*, Salem reported in (1989) 2 SCC 163 will not apply arises and the answer is, absent sections 16 to 21 of CPC dovetailed with AT itself being creature of a contract, these principles will not apply. Therefore, parties by contract can confer jurisdiction on a court as far as an arbitration agreement is concerned. To be noted, parties can agree on venue or seat where not even a infinitesimally small or a

speck of cause of action has arisen. Juridical seat can even be different from venue. This means juridical seat or court having supervisory jurisdiction can be one within whose jurisdiction neither cause of action has arisen nor arbitral proceedings have been held (venue). In this case, venue is Bengaluru / Karnataka. To be noted, Hon'ble Supreme Court has made it clear that 'place' occurring in sub-sections (1) and (2) of section 20 is 'seat' and 'place' occurring in sub-section (3) of section 20 is 'venue'. There is a reference to this *Indus Mobile* principle elsewhere infra in this order.

23 This leaves us with the other question as to whether jurisdiction can be conferred ex post facto. Again in the classical sense of a civil suit, jurisdiction is a condition precedent qua legal proceedings and it cannot be ex post facto, but under the A and C Act, as AT itself is a private Tribunal which is a creature of contract, overarching legal philosophies being (a) party autonomy, (b) consent and (c) continuing consent, it certainly can be ex post facto and this theory is buttressed by waiver concept ingrained in section 4 of A and C Act. In this regard, it is to be borne in mind that anything that is derogable under A and C Act

can be waived vide section 4. Section 20 captioned 'Place of Arbitration' is undisputedly derogable.

24 In BGS SGS Soma, Hon'ble Supreme Court after survey of various prior judgments, concluded that whenever there is designation of place of arbitration in an arbitration clause as being 'venue' of arbitration proceedings, the expression 'arbitration proceedings' would make it clear that 'venue' is really 'seat' of arbitration proceedings. Relevant paragraph in *BGS SGS Soma* is paragraph 82 and the same reads as follows:

'82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also

indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration.'

25 It has also been held that vide section 2(2) of A and C Act, territoriality has been recognised and 'court' within the meaning of section 2(1)(e) has to be read and understood in the context of section 20. To be noted, vide *Indus Mobile*, it was explained that sub-sections (1) and (2) of section 20 is 'seat' and sub-section (3) is 'venue'. Further to be noted, Hon'ble Supreme Court has held in *Indus Mobile* supra that section 20 encompasses in it seat and venue vide sub-sections (1)/(2) and (3) respectively and relevant paragraph in *Indus Mobile* reads as follows:

'18. The amended Act, does not, however, contain the aforesaid amendments, presumably because the *BALCO* [*BALCO v. Kaiser Aluminium Technical Services Inc.*, (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810] judgment in no uncertain terms has referred to “place” as “juridical seat” for the purpose of Section 2(2) of the Act. It further made it clear that Sections 20(1) and 20(2) where the word “place” is used, refers to “juridical seat”, whereas in Section 20(3), the word “place” is equivalent to “venue”. This being the settled law, it was found unnecessary to expressly incorporate what the Constitution Bench of the Supreme Court has already done by way of construction of the Act. '

26 Therefore, it is well open to the parties to waive qua a arbitration agreement and change the seat. In this case, EPI which admittedly received notice in section 11 proceedings, admittedly did not go before Hon'ble Karnataka High Court and take the plea / object that seat is Chennai, admittedly after the order was made by Hon'ble Karnataka High Court on 11.10.2017 did not challenge the same in a manner known to law. In other words, nothing prevented EPI from seeking review of the order before Hon'ble Karnataka High Court or to carry the matter to Hon'ble Supreme Court under Article 136. On the

other hand, EPI accepted the order, submitted itself to the jurisdiction of AT constituted by sole arbitrator, who is a retired District Judge of Karnataka judiciary (who held that the entire arbitral proceedings in Bangalore in Karnataka Arbitration Centre) and more importantly made a counter claim before AT. Therefore, there is a clear novation going by section 62 of the Indian Contract Act, 1872. Once there is novation, parties are under no compulsion to perform the original covenant. In this case, one need not even go to the Contract Act, as section 4 of the A and C Act provides for waiver and section 4 of the A and C Act reads as follows:

'4.Waiver of right to object.-- A party who knows that --

(a)any provision of this Part from which the parties may derogate, or

(b)any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.'

27 A careful reading of section 4 makes it clear that with regard to any requirement under arbitration agreement, a party who knows that

there is non compliance with regard to such requirement, but proceeds with the arbitration without stating its objection to such non compliance is deemed to have waived his right to so object. This takes us to the question as to whether right to raise a plea of jurisdiction under section 16 has time limit. There is a time limit albeit with two exceptions. The time limit is, a party should raise the issue pertaining to jurisdiction of AT not later than submission of statement of defence and therefore, in this case, it should have been done on or before 10.07.2018. Admittedly, it was not done. One other exception is, a party appointing or participating in the appointment of arbitrator will not preclude that party from raising this plea. In this case, in the considered view of this court, it is no argument to say EPI did not participate in the appointment proceedings as it received notice and chose not to go before the court in section 11 proceedings. Post order, EPI neither sought review nor carried the matter to Hon'ble Supreme Court. Therefore, there is clearly implied participation owing to second limb of sub-section (2) of section 16, but this implied participation cannot be put against the EPI. To be noted, on 11.10.2017, Hon'ble Karnataka High Court appointed arbitrator. Thereafter also EPI did have the right to raise objection but that should

have been done by 10.07.2018 which is the date of submission of statement of defence. This is owing to first limb of sub-section (2) of section 16 as it uses the expression 'not later than'. EPI did not do this. More importantly, EPI has made counter claim. A counter claim becomes a plaint by itself and one cannot shy away from this principle. Therefore, it is clear that EPI has submitted itself to the jurisdiction of AT by making counter claim and has clearly waived its right to object owing to section 4.

28 A faint argument was made by relying on a English case law being *Ases Havacilik Servis Ve Destek Hizmetleri A.S. Vs. Delkor UK Ltd* reported in [2012] EWHC 3518 (Comm) to say that counter claim is only a matter of defence. English case law at the highest has persuasive value, but in any event, it is clearly distinguishable as that is a case where the counter claim that was relied upon was a mere case of set off. In this case, though originally EPI sought set off, subsequently it sought amendment of counter claim which included a prayer for unliquidated damages. In this view of the matter, the English case law does not come to the aid of EPI. Therefore, it is clear that EPI proceeded with the arbitration without stating its objection within the time limit, i.e., before

submission of statement of defence. In this regard, this court does notice that a AT can admit a later plea vide sub-section (4) of section 16, in the case on hand, AT negated the prayer vide order dated 07.03.2019 wherein AT inter-alia held that EPI has waived its right and it is too late in the day. A perusal of this order of AT leaves one with the impression that AT has come to the conclusion that section 16 plea (being a later plea) is one where delay is not justified. However, this court refrains itself from examining the impugned award on merits (absent jurisdiction, this court will not examine the impugned award on merits). Instead, this court deems it appropriate to independently examine the waiver plea and come to the conclusion regarding whether seat got shifted from Chennai to Bengaluru owing to waiver attracting trappings of novation.

29 This takes us to *Quippo Construction* judgment of Hon'ble Supreme Court being *Quippo Construction Equipment Limited Vs. Janardan Nirman Pvt. Limited* reported in *2020 SCC OnLine SC 419*. In *Quippo Construction*, Hon'ble Supreme Court surveyed sections 4, 16 and 20 of the A and C Act and held that a party which did not raise any submission (in that case, failed to participate) that arbitrator did not have jurisdiction, must be deemed to have waived such objection. Though one

of the four agreements provided for Calcutta as seat (other three provided for Delhi), award made in Delhi for the contract with Kolkata seat was held to be subject to Delhi Court jurisdiction owing to waiver vide section 4. An attempt was made to factually distinguish *Quippo Construction* by saying that it was a case where according to one of the agreements, the venue was Calcutta, but it was an institutional arbitration where institution empowered did not nominate the arbitrator. This Court is unable to agree that *Quippo Construction* is factually distinguishable as the principle that a party which did not raise territorial jurisdiction issue before Arbitrator and allowed the proceedings to go on will come within the canvass of waiver qua section 4 of the A and C Act is the ratio decidendi is equally applicable to this fact setting also as Quippo was also a case where party did not object albeit by not participating, here the party did not object within time line, participated and later plea was negatived.

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30 Another submission that was advanced was that a party can raise such preliminary issues even directly in section 34 without raising it before AT in the light of authoritative pronouncement of Hon'ble

Supreme Court in Lion Engineering case being ***Lion Engineering Consultants Vs. State of Madhya Pradesh*** reported in (2018) 16 SCC 758. There can be no dispute that Lion Engineering which held that *MSP Infrastructure Ltd. Vs. Madhya Pradesh Road Development Corporation Ltd.* reported in (2015) 13 SCC 713 is no longer good law is holding the field. Lion Engineering was an arbitrability plea (turning on Booz Allen being ***Booz Allen and Hamilton Inc. Vs. SBI Home Finance Limited and others*** reported in (2011) 5 SCC 532) and not territoriality issue. However, without going into this further, suffice to say that this court is not (cannot) taking the view that jurisdiction plea cannot be raised now. It has been raised and it is being tested on the touchstone of waiver concept ingrained in section 4. To be noted, even in *Lion Engineering*, matter was left to the lower fora to decide on arbitrability plea. Be that as it may, now that jurisdiction issue has been raised, the same has to be examined as this court is not taking the view that jurisdiction issue cannot be gone into. This court is going into the jurisdiction issue, examining the same, giving its dispositive reasoning and returning a finding. Therefore, *Lion Engineering* principle does not aid EPI in the case on hand as *Lion Engineering* principle permits the

plea being raised for first time in section 34, but does not preclude the section 34 court from testing it on merits. On the contrary, *Lion Engineering* principle says it has to be tested without being thrown out at the threshold by saying it is being raised in section 34 for the first time. In this regard, it is to be noticed that EPI is not able to give any reason or explanation whatsoever much less a tenable explanation (a) for not responding to section 11 application though it was duly served (b) as to why EPI did not seek review of section 11 order on the ground of lack of jurisdiction (c) as to why EPI did not assail the section 11 order (on the ground of lack of jurisdiction) in Hon'ble Supreme Court, (d) for not raising the issue of jurisdiction before the AT before submissions of its statement of defence, (e) for making counter claim before the AT, (f) for amending the counter claim and claiming liquidated damages thereby submitting itself to the jurisdiction of AT, (g) after making counter claim, why EPI let in oral and documentary evidence and fully participated in the proceedings before the AT without raising any objection and (h) why EPI did not file a written application before AT invoking sub-section (4) of section 16 qua later plea justifying delay. To put it in a nutshell, there is absolutely no explanation as to why EPI waited till the argument stage.

If some reason is adduced or if some explanation is given, then the same can be examined. In this case, there is none. Absent any explanation, it is a clear case of waiver within the meaning of section 4 of the A and C Act. If post waiver, a party which chose to change the original position and agreed for a different seat (impliedly in this case) is permitted to rescind at the fag end of arbitral proceedings without giving any reason for not objecting earlier / allowing waiver to kick in, in the considered view of this court it would become a passport for parties to keep changing the seat at will and hopping from territorial jurisdiction to another, thereby endlessly delaying the arbitration proceedings which run contrary to the sublime philosophy and salutary principle underlying A and C Act, i.e., expeditious dispute resolution.

31 There are some other significant aspects of the matter which shall be dealt with one after the other.

32 The first significant aspect is, this matter stands on a unique factual platform. To put it differently, the factual matrix of this case is unique in the light of section 11 application being filed in the Karnataka High Court by one party, the other party not opposing the same going

before AT in Bengaluru and making a counter claim. Both learned counsel before me submitted that such a factual matrix is unprecedented and they are unable to find direct case laws of Hon'ble Supreme Court on this factual aspect of the matter. Be that as it may, this Court has already held in the earlier part of this order that section 11 application presented in Karnataka High Court lacked jurisdiction on the date of the presentation, but was subsequently clothed with jurisdiction by parties owing to waiver by EPI under section 4 of the A and C Act resulting in trappings of the concept of novation. In this regard, it is necessary to look at the arbitration agreement between the parties. As already alluded to supra in this order, the memorandum of tenderers and GCC form part of the said contract. Memorandum of Tenderers captioned 'MEMORANDUM' consists of a xvii seriatim adumbration and serial Nos.(xvi) and (xvii) which are relevant have already been extracted and reproduced supra elsewhere in this order.

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33 This has to be read in juxtaposition with clauses 16 and 24 of Instructions of Tenderers forming part of 'Notice Inviting Tender'. These clauses 16 and 24 read as follows:

'16.These 'Instructions to Tenderers' shall form part of the 'Tender documents'.

24.Jurisdiction: All disputes shall be subject to Chennai Courts alone.'

34 This court is informed that clause 76.0 of GCC provides for appointment of arbitrator by Chairman and Managing Director of EPI, but this was not availed inspite of notice issued by the contractor. In other words, Chairman and Managing Director did not exercise his power to appoint arbitrator as per this clause despite stipulation in clause 76.1(i) that arbitrator shall be appointed within 30 days of the receipt of letter of invocation of arbitration duly satisfying the requirements of this clause. It is under such circumstances, aforementioned section 11 application came to be filed in Karnataka High Court and the order appointing Arbitrator came to be passed on 11.10.2017 in C.M.P.No.34 of 2017 by Hon'ble Karnataka High Court. Most relevant paragraphs are paragraphs 4 and 5 and the same read as follows:

'4.The notice of this petition was ordered to the respondent. The respondent though served has not chosen to appear and oppose this petition. In that light, having heard the learned counsel for the petitioner, though this Court need not

go into the merits of the claim as made by the petitioner, all that is necessary to be taken note is that Clause-30 of the special conditions of contract provides for settlement of disputes through Arbitration. Though the said clause provides that the Chairman and Managing Director (CMD) of EPI or the person appointed by him to adjudicate the dispute between the parties, keeping in view the fact that the respondent has not appointed the Arbitrator in such manner pursuant to the demand made by the petitioner invoking the said clause, this Court is required to exercise its power under section 11 of the Act and appoint a suitable Arbitrator to resolve the dispute between the parties.

5. Since, the name as suggested by the petitioner has not been opposed by the petitioner, it would be appropriate to appoint the Arbitrator as prayed by the petitioner in this petition. However, the arbitration shall be conducted in accordance with the Rules governing the Arbitration Centre, Bangalore at the Arbitration Centre.'

35 Before proceeding further, it is made clear that this court is conscious of the position that a application and orders under sections 11 and 8 of the A and C Act fall in one separate basket as opposed to application and orders under other provisions of A and C Act. In other words, this is not section 42 principle.

36 Be that as it may, going by the landmark judgment of Hon'ble Supreme Court rendered by seven members Larger Bench in Patel Engineering case regarding the issue of whether section 11 is an administrative exercise or judicial exercise being ***SBP & Co. Vs. Patel Engineering Ltd.*** reported in (2005) 8 SCC 618, after section 11 is invoked and after an order under section 11 is made, a section 16 exercise before the AT may be impermissible. This is captured in paragraphs 12 and 13 of Patel Engineering case, which read as follows:

'12. Section 16 of the Act only makes explicit what is even otherwise implicit, namely, that the Arbitral Tribunal constituted under the Act has the jurisdiction to rule on its own jurisdiction, including ruling on objections with respect to the existence or validity of the arbitration agreement. Sub-section (1) also directs that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. It also clarifies that a decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. Sub-section (2) of Section 16 enjoins that a party wanting to raise a plea that the Arbitral Tribunal does not have jurisdiction, has to raise that objection not later than the submission of the statement of defence, and that the party shall not be precluded from raising the plea of jurisdiction merely because he has appointed or participated in the appointment of an arbitrator. Sub-section (3) lays down that

a plea that the Arbitral Tribunal is exceeding the scope of its authority, shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. When the Tribunal decides these two questions, namely, the question of jurisdiction and the question of exceeding the scope of authority or either of them, the same is open to immediate challenge in an appeal, when the objection is upheld and only in an appeal against the final award, when the objection is overruled. Sub-section (5) enjoins that if the Arbitral Tribunal overrules the objections under sub-section (2) or (3), it should continue with the arbitral proceedings and make an arbitral award. Sub-section (6) provides that a party aggrieved by such an arbitral award overruling the plea on lack of jurisdiction and the exceeding of the scope of authority, may make an application on these grounds for setting aside the award in accordance with Section 34 of the Act. The question, in the context of sub-section (7) of Section 11 is, what is the scope of the right conferred on the Arbitral Tribunal to rule upon its own jurisdiction and the existence of the arbitration clause, envisaged by Section 16(1), once the Chief Justice or the person designated by him had appointed an arbitrator after satisfying himself that the conditions for the exercise of power to appoint an arbitrator are present in the case. Prima facie, it would be difficult to say that in spite of the finality conferred by sub-section (7) of Section 11 of the Act, to such a decision of the Chief Justice, the Arbitral Tribunal can still go behind that decision and rule on its own jurisdiction or on the existence of an arbitration clause. It

also appears to us to be incongruous to say that after the Chief Justice had appointed an Arbitral Tribunal, the Arbitral Tribunal can turn round and say that the Chief Justice had no jurisdiction or authority to appoint the Tribunal, the very creature brought into existence by the exercise of power by its creator, the Chief Justice. The argument of the learned Senior Counsel, Mr K.K. Venugopal that Section 16 has full play only when an Arbitral Tribunal is constituted without intervention under Section 11(6) of the Act, is one way of reconciling that provision with Section 11 of the Act, especially in the context of sub-section (7) thereof. We are inclined to the view that the decision of the Chief Justice on the issue of jurisdiction and the existence of a valid arbitration agreement would be binding on the parties when the matter goes to the Arbitral Tribunal and at subsequent stages of the proceeding except in an appeal in the Supreme Court in the case of the decision being by the Chief Justice of the High Court or by a Judge of the High Court designated by him.

13. It is common ground that the Act has adopted the UNCITRAL Model Law on International Commercial Arbitration, but at the same time it has made some departures from the Model Law. Section 11 is in the place of Article 11 of the Model Law. The Model Law provides for the making of a request under Article 11 to “the court or other authority specified in Article 6 to take the necessary measure”. The words in Section 11 of the Act are “the Chief Justice or the person or institution designated by him”. The fact that instead of the court,

the powers are conferred on the Chief Justice, has to be appreciated in the context of the statute. “Court” is defined in the Act to be the Principal Civil Court of original jurisdiction of the district and includes the High Court in exercise of its ordinary original civil jurisdiction. The Principal Civil Court of original jurisdiction is normally the District Court. The High Courts in India exercising ordinary original civil jurisdiction are not too many. So in most of the States the court concerned would be the District Court. Obviously, Parliament did not want to confer the power on the District Court, to entertain a request for appointing an arbitrator or for constituting an Arbitral Tribunal under Section 11 of the Act. It has to be noted that under Section 9 of the Act, the District Court or the High Court exercising original jurisdiction, has the power to make interim orders prior to, during or even post-arbitration. It has also the power to entertain a challenge to the award that may ultimately be made. The framers of the statute must certainly be taken to have been conscious of the definition of “court” in the Act. It is easily possible to contemplate that they did not want the power under Section 11 to be conferred on the District Court or the High Court exercising original jurisdiction. The intention apparently was to confer the power on the highest judicial authority in the State and in the country, on the Chief Justices of the High Courts and on the Chief Justice of India. Such a provision is necessarily intended to add the greatest credibility to the arbitral process. The argument that the power thus conferred on the Chief Justice could not even be delegated to any other

Judge of the High Court or of the Supreme Court, stands negatived only because of the power given to designate another. The intention of the legislature appears to be clear that it wanted to ensure that the power under Section 11(6) of the Act was exercised by the highest judicial authority in the State or in the country concerned. This is to ensure the utmost authority to the process of constituting the Arbitral Tribunal. '

37 Therefore, the first aspect of the matter is section 11 proceedings in Karnataka High Court and order passed therein for the factual matrix of this case on hand being unique.

38 The second unique aspect of the matter is, a perusal of statement of defence reveals that there is a clear prayer paragraph therein consisting of three limbs of prayers. These three limbs of prayers are supported by abstract and extract contained in paragraph 2 of the statement of defence. Paragraph No.2 ends by saying that EPI can establish the facts before AT with documentary evidence during the course of the proceedings. Therefore, it is very clear that on 10.07.2018, the waiver kicked in owing to the first limb of sub-section (2) of section 16 of A and C Act. To be noted, this court has already held supra that the plea that it is merely a set off and not a counter claim is untenable. Be

that as it may, what is of significance is on 10.07.2018 as the time line set out in the first limb of sub section (2) of section 16 elapsed, waiver under section 4 kicked in owing to Quippo Principle. There is a sequitter to this waiver. The sequitter to this waiver is novation of the seat. From the arbitration agreement culled out from the said contract and reproduced supra, it will be clear that this talks about venue and does not really about seat and therefore, juridical seat in that sense of the matter.

39 Hon'ble Supreme Court in *BGS SGS Soma* has settled the issue that in the absence of separate mention about seat and juridical seat, the venue becomes seat. The sequitter of the waiver that kicked on 10.07.2018, on the facts and circumstances of the case on hand is that both parties, namely EPI and the contractor by exercise of party autonomy agreed that the seat which was originally Chennai now stands changed / novated as Karnataka /Bengaluru.

40 In continuation of aforementioned second aspect, it is to be noticed that Hon'ble Supreme Court in *Indus Mobile* has explained that sub sections (1) and (2) of section 20 talk about seat, whereas sub section (3) talks about venue and when there is no separate mention about seat and juridical seat, venue becomes seat. To be noted, relevant paragraph

has been extracted and reproduced elsewhere supra in this order.

41 Reverting to the sequitter that flows inevitably from the waiver that kicked in on 10.07.2018 owing to Quippo principle, it is to be noticed that the later plea within the meaning of sub section (4) of section 16 has been negated by AT vide order dated 07.03.2019. A perusal of this 07.03.2019 order of AT brings to light that AT has held that EPI has not made any pleadings, specific reasons for delay in raising jurisdiction issue at the fag end of the arbitral proceedings. (This is to capture facts qua trajectory of arbitral proceedings and it is made clear that this is no expression of views on merits and this shall not be construed as this court having examined or tested the impugned award or section 16 order part of it). Continuing further with this caveat within parenthesis, the two reasons attempted to be advanced orally have been repelled. First reason is that EPI believed that owing to section 11 order of the Court, jurisdiction plea is not available. This was repelled by AT by holding that EPI was right in thinking so and it is in the light of Patel Engineering Larger Bench case and relevant paragraph having been set out supra. The second reason is, counsel realised the mistake only at the stage of arguments being advanced and that counsel came across *Indus*

Mobile case law only at this belated stage. This has been also repelled. As both these points have been repelled, it can be safely inferred that the later plea or in other words, the plea under sub-section (4) of section 16 has not been entertained by holding that delay is not justified though this order speaks about some other aspect on merits. This court is constrained to say that the two reasons that were attempted to be advanced before AT in section 16 oral plea are no arguments and non starters. One reason is, EPI honestly believed that section 16 plea cannot be raised before AT after section 11 order. This is buttressed by the view taken by the Larger Bench of Hon'ble Supreme Court in *Patel Engineering* case reported in (2005) 8 SCC 618. Second reason is, the counsel was not aware of *Indus Mobile* case law and came to know about the same only at an advanced stage of arguments. These two are only faint attempts for giving reasons and therefore, they are no reasons and no arguments at all. Ignorance of law, more so in matters of this nature can hardly be an excuse.

42 On an extreme demurrer (assuming without accepting) even if the two reasons are accepted, that does not explain what prevented EPI from seeking review of section 11 order or assailing it in Hon'ble Supreme Court. To put it differently, on coming to know the correct legal

position, nothing prevented EPI from seeking review or carrying the matter to Hon'ble Supreme Court qua section 11 albeit with a prayer for condonation of delay. Taking one more step forward, the order under section 16 was made on 07.03.2019 and impugned award was made only on 04.12.2019. At least after 07.03.2019 order, section 11 order could have either been sought to be reviewed or carried to Supreme Court. That has also not been done, whereas EPI wants to challenge it in section 34. On an extreme demurrer again, if that be so that section 34 can be heard (on Lion Engineering principle) only by the jurisdictional court in Karnataka, Bengaluru and not in Tamil Nadu, Chennai as parties have shifted their juridical seat from Chennai in Tamil Nadu to Bengaluru in Karnataka.

43 On a further demurrer, EPI is a larger entity, which is a Government of India enterprise which obviously should either have a inhouse legal team or regular professional legal team advising them. In any event, as there is no material on this score, I do not want to enter into the realm of surmises and conjectures. Therefore, I chose to test it on demurrer.

44 In this regard, it is made clear that as already alluded to supra, this court is not going into the merits of this order which forms part of the impugned award as this court is coming to the conclusion that this court does not have jurisdiction to test the impugned award. In other words, this court is not the supervisory court in the case on hand. This aspect of the matter is stated only to highlight and emphasis that waiver that kicked in on 10.07.2018 leads one to the inevitable sequiter of novation (shifting juridical seat from Chennai, Tamil Nadu to Bengaluru, Karnataka) and the same was sealed vide 07.03.2019 order of AT.

45 In terms of juridical seat, arbitral proceedings are anchored in the seat which has been agreed upon by the parties and in the case on hand, parties by conduct, i.e., waiver turning on section 4 of the A and C Act which in turn turns on Quippo principle, have chosen to move the centre of gravity of arbitral proceedings, i.e., anchor from Chennai, Tamil Nadu to Bengaluru, Karnataka and having done this, to rescind this position qua anchor / centre of gravity is clearly impermissible as that would virtually keep the Vessel (supervisory Court) continuously in voyage with no firm destination, which will tell upon stability factor which in turn is dependant on point of centre of gravity in every sense of

the matter and this will run contrary / counter productive qua the scheme / objective of the A and C Act and the purpose of arbitration as ADR mechanism, i.e., expeditious disposal.

46 The third aspect is, learned counsel for EPI attempted to say that the order of Karnataka High Court dated 11.10.2017 made in section 11 application being CMP No.34 of 2017 is incorrect as it appears to have been made without examining the arbitration agreement between the parties which mentions Chennai as the venue. The order of Karnataka High Court has been made by another Hon'ble Single Judge (as His Lordship then was) in Karnataka High Court and such argument which is in the nature of appeal assailing the order cannot be countenanced by this Court and judicial discipline does not permit me to do so. In any event, as already alluded to supra, the parties by their consent have clothed section 11 court with jurisdiction ex post facto, waiver kicked in on 10.07.2018 leading to sequitter which has been delineated supra.

47 There was a reference to *Pandi Meenakshi* case being a reported judgment penned by me (***S.Pandi Meenakshi Vs. Hinduja Leyland Finance Ltd.*** reported in ***2019 SCC OnLine Mad 5415 : (2020) 4 CTC 216***). In *Pandi Meenakshi*, Lion Engineering principle was

applied for the purpose of saying that limitation and no arbitration agreement pleas can be raised in a section 34 exercise directly even if not raised before AT. This court has also already explained supra as to how *Lion Engineering* principle does not advance the case of EPI in the case on hand.

48 Learned counsel for contractor drew the attention of this court to an order dated 02.01.2020 in O.P.No.540 of 2015 made by another Hon'ble Single Judge of this court in *Seahorse Marine Engineering Pvt. Ltd.* case, wherein a section 34 O.P was transferred to Hyderabad to be tried along with a cross OP filed therein. This was done by relying on *Indus Mobile* principle. It does not really help either of the parties in this case as a perusal of *Seahorse Marine Engineering* case reveals that it is an order passed by consent. This is captured in paragraph 7 of the said order.

49 The fourth aspect of the matter is EPI is a Government of India Enterprise. It has presence throughout India and there is hardly going to be any hardship for EPI if section 34 was to be presented in the jurisdictional court, i.e., supervisory court in Karnataka and pursued there. Though this aspect of the matter is in the nature of forum

convenience, it does not really come into play, as it was pointed out by learned counsel for contractor. This court deems it appropriate to capture the same and observe that this submission of learned counsel for contractor is factually sound.

50 The fifth aspect of the matter is, as would be evident from the narrative thus far, AT in the case on hand has entertained a oral application as section 16 plea, has dealt with the same and has passed a detailed order. As already alluded to supra, this court is not going into the merits of the matter qua impugned award owing to lack of territorial jurisdiction and therefore, the question as to whether a section 16 plea that too section 16 plea predicated on sub section (4) of section 16 being a later plea can be entertained without a written application is left open.

51 The sixth aspect is, though obvious it is made clear that this order shall not be construed as an order sustaining 07.03.2019 order made by the AT qua section 16 plea. To be noted, it has already been delineated supra that this court has not tested the impugned award on merits owing to lack of territorial jurisdiction. The sequitter to this is, if

impugned award is assailed in the jurisdictional court in Karnataka, all these questions will be wide open / left open for being canvassed. In other words, only those aspects of the matter which are essential and imperative for the purpose of appreciating this order or in other words those facts which are imperative for appreciating this discussion and dispositive reasoning of this order have been touched upon without expressing any view on merits qua impugned award which includes 07.03.2019 order made by AT. For the purpose of enhancing clarity, it is deemed appropriate to state with specificity that the view of this court regarding jurisdiction is an independent view of this court in the captioned OP without testing 07.03.2019 order on merits, i.e., without sustaining or dislodging the same.

52 Owing to all that have been set out supra, this court is of the considered view that challenge to the impugned award if any should be made only in the Courts in Karnataka / Bengaluru and this court does not have territorial jurisdiction to entertain the captioned OP and this captioned OP is rejected. As this court which does not have jurisdiction, i.e., territorial jurisdiction to entertain the captioned OP, it does not deal with any other submissions on merits.

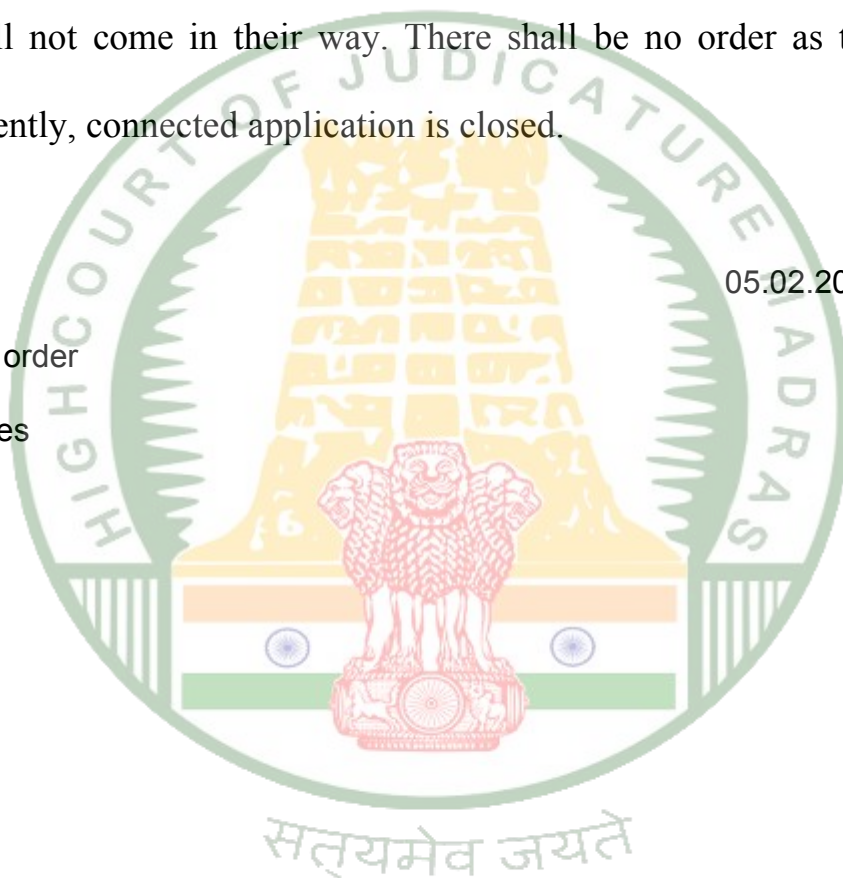
53 In the result, captioned OP is rejected. Though obvious, it is made clear that it is open to petitioner EPI to approach the appropriate court in Karnataka / Bengaluru and if petitioner chooses to do so, this order will not come in their way. There shall be no order as to costs. Consequently, connected application is closed.

05.02.2021

Speaking order

Index : Yes

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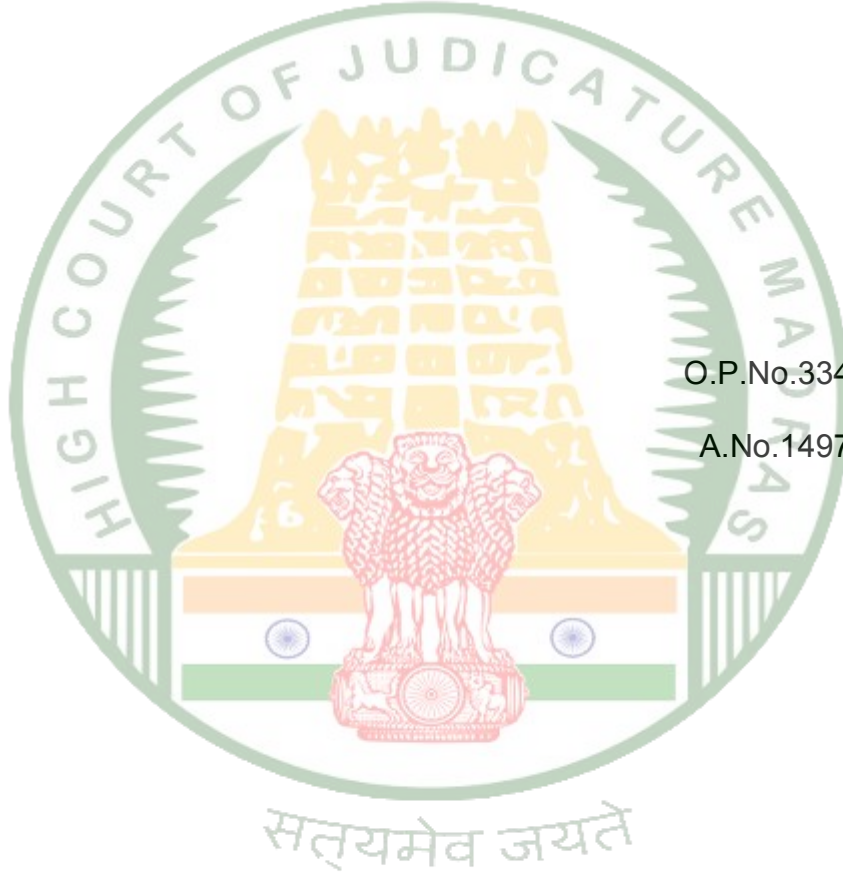


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O.P.No.334 of 2020 and A.No.1497 of 2020

M.SUNDAR, J.

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order in
O.P.No.334 of 2020
and
A.No.1497 of 2020

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