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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 02nd DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P.No.41 of 2018

and

A.No.456 of 2018

In the matter of Arbitration and Conciliation Act, 1996 And in the matter of Award Dated 14.7.2017 passed by the Hon'ble Sole Arbitrator Justice M.S.Janarthanam (Retd)

In the matter of Lease Deed Dated 16.6.2005 Between M/s Imetrex Technologies Limited, the predecessor in interest of M/s Siemens Limited and M/s State Industries Promotion Corporation of Tamil Nadu Limited.

The Managing Director,
State Industries Promotion Corporation
of Tamil Nadu Limited.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.

. . . Petitioner/Applicant

Versus

M/s.Siemens Limited,
[Formerly known as M/s.Imetrex Technologies Limited],
9th Floor, Sigapi Achi Building,
18/3, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008.

. . . Respondent/Respondent

O.P.No.41 of 2018:-

<https://hcservices.ecourts.gov.in/hcservices/> Original Petition praying that this Hon'ble Court be pleased to set

aside the Award dated 14.07.2017 passed by the Hon'ble Sole Arbitrator



Justice M.S.Janarthanam (Retd) and allow all the Counter claims filed by the petitioner.

A.No.456 of 2018:-

Application praying that this Hon'ble Court be pleased to stay the Award dated 14.7.2017 passed by the Hon'ble sole Arbitrator Justice M.S.Janarthanam (Retd.) the Arbitral Award.

This Original Petition alongwith the Application having been heard on 20.07.2021 in the presence of M/s Sudharshana Sundar, Advocate for the Petitioner in O.P.No.41 of 2018 and for the applicant in A.No.456 of 2018 and Mr.Jose John for M/s King & Patridge, Advocate for the respondent in O.P.No.41 of 2018 and A.No.456 of 2018 and upon reading the petition and the award dated 14.07.2017 filed in O.P.No.41 of 2018 and the Judge's Summons and the affidavit of I.Mangalaraj Immanuel filed in A.No.456 of 2018 and having stood over for consideration till this day and coming on this day before this court for hearing in the presence of said advocate for the parties hereto and this court having observed that when the learned Arbitrator considered all the relevant materials particularly all the documents and appreciated the evidence, the supervisory role of the courts under section 34 of the Act should be kept a minimum level, the court cannot re-appreciate the entire evidence and interpret the contract which has been made by the learned Arbitrator considering various judgments on this aspect, therefore this court is of the view that none of the grounds available



under section 34 is made out to interfere with the well reasoned award, **it is**

ordered as follows:-

That the Original Petition No.41 of 2018, be and is hereby dismissed.

2. That the A.No.456 of 2018, do stand closed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
02nd DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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08.12.2021

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O.P.No.41 of 2018
and
A.No.456 of 2018

ORDER:

DATED: 02.08.2021

THE HON'BLE MR.JUSTICE

N. SATHISH KUMAR

FOR APPROVAL: 09.12.2021

APPROVED ON: 09.12.2021



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5

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
20~07~2021	02-08~2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.41 of 2018 & A.No.456 of 2018

The Managing Director,
State Industries Promotion Corporation
of Tamil Nadu Limited.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008.

. . . Petitioner

Versus

M/s.Siemens Limited,
[Formerly known as M/s.Imetrex Technologies Limited],
9th Floor, Sigapi Achi Building,
18/3, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008.

. . . Respondent

PRAYER : Petition filed under Section 34 of Arbitration and Conciliation Act, 1996 to set aside the Award dated 14.07.2017 passed by the Sole Arbitrator Justice M.S.Janarthanam [Retd] and allow all the counter claims filed by the petitioner.

For petitioner : M/s.Sudharshana Sundar

For respondent : Mr.Jose John
for M/s.King & Patridge



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ORDER

Challenging the award passed by the learned sole arbitrator in a dispute referred for resolution between the petitioner and the respondent, the present petition has been filed under section 34 of Arbitration and Conciliation Act, 1996, by the respondent.

2. The learned arbitrator has passed the following award :

“114. In fine, in view of the findings on various issues mentioned above, the claim statement, as amended, filed by the claimant Siemens is allowed as indicated below and the counter claim filed by the respondent is dismissed.

115. It is hereby declared that the cancellation of the Lease Deed dated 16.06.2005 [Ex.C-5] and forfeiture of the initial deposit communicated by letter dated 30.08.2021 [Ex.C.15] of the respondent SIPCOT is null and void under the Lease Deed as well as in law.

116. The respondent SIPCOT is directed to grant unconditional approval to the claimant Siemens



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under clause 26 of the Lease Deed dated 16.06.2005.

117. In view of granting the original relief prayed for under relief [b] in the amended claim statement, the alternative relief prayed for therein is not grantable.

118. In view of granting of the relief as prayed for by the claimant Siemens in paragraph No.115 above, it goes without saying that the permanent injunction restraining the respondent SIPCOT or its officials from interrupting or obstructing the use, enjoyment and occupation of the said plot peacefully by the claimant Siemens, is grantable and the same is accordingly granted.

119. The Claimant Siemens has prayed for grant of costs of these proceedings as well as that of the earlier proceedings before the Hon'ble High Court. The claimant being the successful party in these arbitral proceedings, is entitled to costs of such proceedings as a matter of right and according to Section 31[8] of the Act 26 of 1996. But so far as the costs incurred by it in any earlier proper forum to



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grant such costs is the Honourable'ble High Court before which said proceedings took place. Therefore, the respondent SIPCOT is directed to pay to the claimant Siemens the cost of the arbitral proceedings i.e., a sum of Rs.15,57,312/- [Rupees fifteen lakhs fifty seven thousand three hundred and twelve only] as per the cost memo filed by the claimant Siemens marked as annexure III to this award.

120. Time for compliance of this Award is three months from the date of this Award.

121. The claim and the counter claim made respective by the claimant Siemens and the respondent SIPCOT as thus disposed of.”

3. Brief facts leading to filing of this petition is as follows :

The State Industries Promotion Corporation of Tamil Nadu [for short, SIPCOT] is located in Egmore Chennai. The Information Technology Park at Siruseri was developed for promotion and development of Industries. M/s.DATS [India] Ltd., DATS Corporate Centre applied to SIPCOT for allotment of a plot for their industrial unit. By an Order dated 05.03.2004



acres has been granted for lease for a period of 99 years to the DATS for setting up computer hardware and software including electrical and electronic units at the price of Rs.16 lakhs per acre, including other charges, totalling Rs.73,12,000/-. The allotment Order dated 05.03.2004 stipulate that the construction of the factory building has to be made within a period of six months from the date of allotment Order. Failure of the same, will entail cancellation of allotment and forfeiture of initial deposit and development charges paid for the extent allotted. Similarly, it contains various other clauses also. However, DATS, by their letters dated 05.04.2005, 05.04.2005, 11.04.2005, 29.04.2005 and 16.05,2005 informed SIPCOT that they have become part of M/s.Imetric Technologies Limited [for short Imetrex] and would operate as a division of iMetrex. Change of name of the company from DATS to iMetrex was approved by the SIPCOT by their letter dated 19.05.2005. Thereafter, on payment of entire cost, registered lease Deed dated 16.06.2005 came into existence. Lease Deed also contained various clauses giving right to SIPCOT to cancel the allotment, if any of the conditions set forth in the agreement are violated. In 2007, the claimant M/s.Siemens Limited claiming under iMetrex acquired 77% of equity share capital of iMetrex. The same was informed to SIPCOT on 13.06.2007 and impending change of name from Imetrex to Siemens in



claimant that amalgamation of Siemens and M/s.Vista Security Technics Private Limited was ordered by the High Court in C.P.No.60 of 2010.

However, SIPCOT demanded difference between the original allotment price of Rs.16 lakhs per acre and current price of 4.2 Crores per acre for approval and for impending change of name from iMetrex to Siemens. However, the same was disputed by the claimant. SIPCOT issues a letter dated 30.09.2011 cancelling the allotment of plot and forfeiture of the initial deposit and also passed an eviction Order. The Estate Officer appointed under the Tamil Nadu Public Premises [Eviction of Unauthorised Occupants] Act, 1975 by a letter dated 12.04.2012 agreed to refer the matter to the sole arbitrator appointed by this Court.

4. Following reliefs have been claimed by the claimant :

a] Declaring that the cancellation of the Lease Deed and purported forfeiture of the initial deposit communicated by letter dated 30.09.2011 of the respondent is null and void under the Lease Deed and in law.

b] Directing the respondent to grant unconditional approval to the claimant under clause 26 and clause 33 of the Lease Deed



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dated 16.06.2005.

c] Permanent injunction restraining the respondent or its officials from interrupting or obstructing the use, enjoy and occupy the same plot peacefully by the claimant.

d] To pay the claimant the cost of these proceedings and the earlier proceedings before the Hon'ble High Court and for such other relief as this Tribunal may deem fit in the interest of justice.”

5. Thereafter, by way of amendment, following reliefs were also sought :

a] Declaring that the cancellation of the Lease Deed and purported forfeiture of the initial deposit communicated by the letter dated 30.09.2011 of the respondent is null and void under the Lease Deed and in law.

b] Directing the respondent to grant unconditional approval to the claimant under clause

26 and clause 33 of the Lease Deed dated 16.06.2005



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or pass such further or other orders in accordance with clause [e] of para 27 and thus render justice.

c] Permanent injunction restraining the respondent or its officials from interrupting or obstructing the use, enjoy and occupy the said plot peacefully by the claimant.

d] To pay the Claimant the close of these proceedings and the earlier proceedings before the Hon'ble High Court and for such other relief as this Tribunal may deem fit in the interest of justice.

6. The main defence of the respondent is that the claim is barred by limitation and claimant has committed breach of the terms and conditions of the lease deed. The claimant's predecessors-in-interest was given enough opportunity, however they did not comply with the conditions of the lease deed. The respondent has taken action for cancellation of allotment and resumption of plot allotted to iMetrex in accordance with the terms and conditions of the allotment order. The lease deed in which approval for change of name, would have been given by the respondent if the claimant has complied with the conditions including payment of differential land cost



Clause 17 and 18 of the lease deed. The project has not been implemented as agreed between the parties. Hence, cancellation of the lease deed and claiming differential amount in respect of additional amendment is according to law and prayed for dismissal of this petition. Besides, they also claimed following reliefs :

[i] direct the claimant to pay a sum of Rs.19,74,70,000/- + ST @ 14% on 33% of differential land cost [Rs.6,51,65,100/-] of Rs.91,23,114/- being the differential land cost or on the alternative to execute the cancellation deed as directed by the respondent ;

[ii] direct the claimant to pay the maintenance cost i.e., Rs.15,47,980/-

[iii] direct the claimant to pay the cost of the proceeding.

7. After framing necessary issues and hearing both sides, the learned sole arbitrator dismissed the counter claim of the respondent and passed the award as indicated above. For arriving such a conclusion, the learned arbitrator held that the clause 26 of the lease deed is not enforceable and even with regard to the differential cost, the same is vague and uncertain



and hence, the same is not enforceable. Similarly, the learned arbitrator has held that mere acquiring or transferring the shares will not amount to transfer of the immovable property.

8. The learned counsel appearing for the petitioner vehemently contended that the award has not been passed in time. Such award is against provision of Section 29-A of the Arbitration and Conciliation Act. Amendment petition was filed after the oral submissions were over. The learned arbitrator has not given any opportunity to the parties to put forth their reply in respect of the amendment petition. The very claim itself is barred by limitation. It is her further contention that when there is a specific condition in the lease deed for change of ownership and such condition is violated. The applicant is entitled to claim differential cost of the land as per their Board circular, which has not been considered by the learned arbitrator. Further, for change of ownership, no permission is obtained. Therefore, cancellation of allotment is as per the contract. The learned arbitrator has not taken note of all these facts and considered irrelevant materials and passed an award. It is the further contention of the learned counsel for the Petitioner that the learned Arbitrator has not given any opportunity after amendment Application has been filed. The Award has been passed based on the claim made in the amended claim petition.



Therefore, the principal of natural justice has not been complied in this matter. Learned Arbitrator has relied portion of one clause of contract and held other portion is vague and void which is not permissible. Hence, prayed for setting aside the award.

9. In support of her contention she relied upon the following judgments:

1. E.Sugumaran –Vs- M.Malarmaran&Ors [O.P.No. 627 of 2018, Dated 26.02.2020 (MHC)]

2. Ssangyong Engeineering& Construction Co.Ltd –Vs- National Highway Authority of India (NHAI) [(2019) 15 SCC 131]

10. Whereas, the learned counsel appearing for the respondent submitted that the learned arbitrator has considered the entire evidence and found that there is no transfer of interest in the immovable property. It is just a transfer of shares. Further, clause 26 of the lease restricting the parties from establishing their right in any Court of law is void in law as per Sections 28 and 29 of the Indian Contract Act and the same has been discussed by the learned arbitrator. Similarly differential cost also not mentioned any where in the contract entered between the parties. When the



contract is vague and uncertain as to the nature of the cost, the same cannot be enforced. The learned arbitrator has considered all these facts and passed the award. The contention that no opportunity is given to the claimant to put forth their reply to the amendment application has no legs to stand. In fact, the learned arbitrator heard both sides in this aspect and minutes also passed on the same day and held that the amendment application can be disposed along with the main petition. Such an Order passed was made known to the respondent/applicant counsel, who is also a party to the minutes on the same day. Therefore, the contention that the amendment application is allowed without giving any opportunity has no legs to stand. It is his further contention that the learned arbitrator considered all the legal aspects and passed a reasonable Order. Hence, prayed for dismissal of the application.

11. In support of his contention he relied upon the following judgments:

1. Olympus Superstructure Pvt.Ltd –Vs- Meena Vijay Khetan And Others [(1999) 5 SCC 651]

2. Mc Dermott International Inc -Vs- Burn Standard Company Ltd.[(2006)11 SCC 181]



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3. Delhi Development Authority –Vs- M/S Bhardwaj Brothers [(2014) 3 SCC Online Del 1581]

4. Associate Builders –Vs- Delhi Development Authority [(2005) 3 SCC 49]

5. National Highways Authority Of India –Vs- JSC Centrodorstory [(2016) 12 SCC 592]

12. In the light of the above submissions, it is not in dispute that plot measured 4.57 acres was allotted to M/s. DATS (India) Limited by the Petitioner on 05.03.2004 at Rs.16 lakhs per acre for setting up a computer software and hardware unit. The said company DATS was subsequently become part of M/s. iMetrex Technologies Limited and requested approval for change in the name of the company from M/s. DATS (India) Ltd., to M/s. iMetrex Technologies Limited. The approval was accorded for change in the name of the company. Thereafter, the said iMetrex Technologies Limited informed the Petitioner herein that the Claimant has acquired 77% of equity share capital of M/s iMetrex Technologies Limited and has approved the integration of its existing Building Technologies business (SBT India) in India with iMetrex Technologies Limited, with consequential name change and requested SIPCOT for approval in this



regard. As the differential cost has claimed as per the Clause 26 of the agreement, the dispute arose between the parties and the matter has been referred to the Arbitration. The learned Arbitrator has considered various clauses in the contract between the parties and its enforceability has held that the clause restricting the party approaching the Court of law is void. Similarly a part of the clause as to the claiming cost also held to be void due to uncertainty as per Section 29 of the Act. The main contention of the Petitioner is that the learned Arbitrator has not given any opportunity to the Petitioner in amendment Application. Whereas the Award was passed based on the amendment petition. With regard to this contention when materials perused the Claim Petition was filed on 18.09.2015 to declare the cancellation of Lease Deed and purported forfeiture of the initial deposit communicated by letter dated 30.09.2011 and also for direction to grant unconditional approval to the Claimant under Clause 26 and Clause 33 of the Lease Deed dated 16.06.2005 and Permanent Injunction with cost of the proceedings.

13. The Petitioner herein also raised a counter claim based on the prevailing policy and Circular Orders claimed differential cost. Thereafter the Petitioner herein has filed rejoinder along with Office Order dated



substantial change (more than 50%) in ownership of the unit by transfer of shares to new persons. The office order indicates that when there is a change

or any merger with another company the current land cost would be collected. The above office circular was pressed into service in the rejoinder. Thereafter, amendment application has been filed on 19.4.2016 to amend the claim statement. Amendment was brought in para 27 of the claim petition mainly indicating that the cost used in the Clause 26 of the Lease Deed dated 16.06.2005 is vague and uncertain, to that extent it is void for uncertainty as there is no concluded contract. Thereafter it appears that the Petitioner has filed a Memo to pass an order in the amendment application. Thereafter, Arbitral Tribunal on 19.07.2016 passed interim order indicating that appropriate order in the application will be passed along with the Award. After elaborate submissions of both sides the learned Arbitral Tribunal passed an order in para 34 that *“if a final order is passed in disposal of this interlocutory application for amendment of the pleadings in the Claim Statement filed by the Claimant, it is likely to cause a profound impact on the reliefs grantable to the parties and the same may tantamount to consideration of the issues for disposal of the main Claim and Counter Claim and finally held that that Tribunal desires to pass appropriate orders in the Amendment Application filed by the claimant*



disposal of the claim as well as the counter claim, on consideration of all issues involved.” Accordingly application has been disposed of.

14. On the date of disposal of the amendment application the minutes of the proceedings were recorded by the Arbitral Tribunal, wherein both sides counsels were present and signed. Both sides counsels have advanced their arguments on merits. Thereafter the matter has been adjourned. The Arbitral Tribunal has followed the procedure and passed an order and both side counsels were also parties to the Minutes and agreed to argue on merits after disposal of the amendment application. The contention of the Petitioner that no opportunity given to argue the amendment application cannot be countenanced. The contention that principal of natural justice is not followed is also found to be false. Therefore, the contention that opportunities were not given in the amendment application cannot be countenanced.

15. It is also relevant to note that even during pending of Amendment Application the Additional Advocate General appeared for the petitioner submitted that he will project his arguments in the main proceedings. Only after the submissions made by both sides learned Arbitral Tribunal passed an Award. The nature of amendment sought in the application is also



discussed in para No.39 to 61 and finally the Award has been passed not on the basis of the amended prayer. What was considered by the learned Arbitrator is only documents produced by the Petitioner in response to the notice to produce. Therefore, the main contention of the Petitioner that the Award suffers from violation of principles of natural justice as no opportunity was given cannot be countenanced. Accordingly the ground has to be rejected.

16. As for the other contention that the Award is vitiated for violating the provisions of the Section 29(A) of the Arbitration and Conciliation Act when considered, the Arbitration was invoked by issuing letter dated 28.5.2012 as there was no response from the Respondent an application under Section 11 of the Arbitration and Conciliation Act has been filed before this court in O.P.No.467 of 2012. This Court has appointed learned Arbitrator to enter into the reference. This order was dated 30.01.2015 and the Arbitral Tribunal has also held its first sitting on 04.07.2015. Therefore, the contention of the learned counsel that the Award is not passed in time and since there was no extension of time granted by the Court cannot be pressed into service for the simple reason that Amended Act 2015 (3 of 2016) came into effect only on 31.3.2015. In the present case, Arbitral



before the commencement of the Amended Act. Therefore, the amended Act will not apply to the proceedings commenced under principal Act. Hence, the contention raised by the Petitioner in this regard during the final argument will noway helpful to the Petitioner. Such ground not even raised in Application under section 34 of the Act.

17. Be that as it may. As the proceedings were already commenced as per the principal Act prior to the amended provisions, the Amended Act would not apply to the pending Arbitral Proceedings as per Section 26 of the Act. In such a view of the matter the contention of the counsel for the petitioner that the Award is vitiated has no leg to stand.

18. With regard to the other submissions of the learned counsel for the Petitioner that the learned Arbitrator taking the view that bifurcating the particular clause into two and holding that one portion is void and other is binding is not valid in law and similarly the learned Arbitrator's finding contrary to the contract when considered. The entire dispute revolves around Clause 26 of the Contract. It is not in dispute that original allotment was made to DATS (India) Ltd., as indicated and it changed into iMetrex Technologies Limited. The iMetrex informed to the petitioner that Siemens



Petitioner that since the ownership has been changed for any change in name, differential cost has to be paid. It is relevant to extract the Clause 26 of the Lease Deed dated 16.06.2005, which is as follows:-

“26. The Party of the Second Part shall not assign, sub-let, transfer or part with his interest in the allotted plot either in whole or in part except with the prior written consent of the Party of the first part. In the event of the party of Second Part seeking approval for change in constitution, or change in the management or control or amalgamation with any other company or transfer of interest to any third party either in whole or in part, the party of the first part shall grant approval provided the Party of the Second Part or any person claiming under the Party of the Second Part agrees to pay the cost determined by Party of the First Part and the cost determined by Party of First part Shall be final and binding on the Party of Second Part or any person claiming under the Party of Second part and cannot be questioned in any Court of law.”

19. Clause 26 makes it very clear that the first part deals with the provision to transfer the interest in the allotted plot except with the prior written consent of the Party of the First Part. Wheres, the second part deals



company or transfer of interest to any third party either in whole or in part.

Such change in constitution is permissible on grant of approval by the SIPCOT on payment of cost determined by the party of the First Part viz., SIPCOT and also stipulate that such cost determined by the SIPCOT shall not be questioned in any Court of Law. Learned Arbitrator in Paras 73, 74, 75 to 81 and 84 to 90 concluded that the payment of cost referable to the second part of the Clause 26 of the Lease Deed so vague and not certain therefore the same is void as per Section 29 of the Contract Act. Similarly, the Arbitrator held that the clauses stipulated in the Lease Deed, that party cannot approach any court of law in respect of cost fixed by the SIPCOT is also held to be void as per Section 28 of the Act. Learned Arbitrator in fact made a threadbare analysis of the nature of the contract between the parties and also held that transfer of interest to any third party either in whole or part in the company words must have to be understood as the transfer of interest in shares in the process of amalgamation and not transfer of interest in the immovable property or leasehold interest of the allotted plot. While holding so the learned Arbitrator relied upon the Judgment of the Apex court in *Rohit Pulp and Paper Mills Ltd., vs. Collector of Central Excise, Baroda* [(1990) 3 SCC 447] and *State of Bombay vs. Hospital Mazdoor Sabha* [(1960) 2 SCR 866 (pp 873-74) = AIR 1960 SC 610] and similarly,

the learned Arbitrator also relied upon the Judgment in *M/s.Raptakos Brett*



& Co. Ltd., vs. Ganesh Property [AIR 1998 SC 308 = (1998) 7 scc 194)]

and para 80 of the Award is read as follows:

“80. Section 29 of the Act 9 of 1872 deals with agreements void for uncertainty. It provides that “Agreements, the meaning of which is not certain, or capable of being made certain, or void.” In Indian contract and Specific Relief Acts, [Pollock & Mulla-Twelfth Edn. Published by Butterworth- Vol.1] at page 871, it is mentioned as follows.

“Requirement of certainty

An Agreement may be uncertain either because its terms are ambiguous or vague, or because it is incomplete. The general rule is that, the term of an agreement are so vague or indefinite that it cannot be ascertained with reasonable certainty what is the intention of the parties, there is no contract enforceable by law. This section provides that the meaning of an agreement shall be clear on the force of it [Kovuru kalappa devara v. Kumar Krishna mitter AIR 1945 Mad 10]; but effect can be given to the contract if its meaning can be found with reasonable clearance. If this is not possible, the contract cannot be enforced [Barkat Ram v. Anant Ram AIR 1915 Lah 328]. But mere difficulty in interpretation is



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not synonymous with vagueness[Kandamath Cine Enterprises Pvt. Ltd. V. John Philipose AIR 1990 Ker 198]. The principle has also been formulated as follows: a party who seeks a remedy from a court for breach of contractual obligation must be able to identify the obligation with sufficient precision to justify the remedy. The law thus stated is more flexible and recognizes that different levels of certainty may be needed for the remedies.[Bai Mangu v. Vijli AIR 1967 Guj 81]”

20. In Para 82 of the Award also reads as follows:

“82.Learned Counsel Mr. Jose John also placed reliance on the decision of the Supreme Court in M/s. Raptakos Brett & Co.Ltd. v. Ganesh Property [AIR 1998 SC 3085= (1998) 7 SCC194] to explain the position regarding interaction and interconnectivity of the statutes viz. The act 4 of 1882 and the Act 9 of 1872 in the process of operation of those statutes. He pointed out that the statutory rights and liabilities of the lessor and the lessee in a concluded contract of lease as has been provided in section 108 of the Act 4 of 1882 can be restricted or altered by means of a contract entered into between the lesser and the lessee. Such a contract restricting the rights of the



lessor and the lessee will prevail and the statutory right cannot at all prevail and the rights covered by the contract between the lessor and the lessee alone will prevail. This sort of a legal position is very well established by the Supreme Court as observed in para 25 of the Judgment which is to the following effect:-

“25. Section 108 of the Property Act lays down that in the absence of a contract to the contrary the rights and liabilities of the lessor and lessee would be those which are covered by the rules mentioned in that Section. Consequently it must be held that as compared to what is laid down by this Section by way of rights and liabilities to the lessor and lessee, if the contracting parties have not provided anything to the contrary to such statutory rights and liabilities in their contract, then these statutory rights and liabilities would prevail. But if any contrary provision is mentioned in the contract qua such rights and liabilities then because of [Section 4](#) of the Property Act such a contrary provision in the contract will get saved on the combined operation of [Section 4](#) of the Property Act and [Section 1](#) of the Indian Contract Act, 1872. But that would also be subject to the rider that such an inconsistent contract should not be inconsistent with the provisions of the [Indian Contract Act](#). Thus in absence of any contrary provision in the contract, [Section 108](#) will operate on its own. If



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there is any contrary provision in the contract it will prevail over the provision in [Section 108](#), provided such contrary provision in the contract is not inconsistent with the main provision of the [Indian Contract Act](#). The combined operation of [Section 108](#) and [Section 4](#) of the Property Act and [Section 1](#) of the Indian Contract Act can be better visualised by illustrations. Clause (b) of Part A of [Section 108](#) deals with statutory rights of lessor to put the lessee in possession of the property leased at the lessee's request That is the mandate of the aforesaid statutory provision. This statutory right of the lessee and Corresponding liability of the lessor can be subject to a contract to the contrary. If under the contract of lease the parties have agreed to a stipulation that the lessor will put the lessee in possession after a period, say, three or four months within which the lessor will effect necessary repairs to the premises by way of white wash etc., then the statutory right of the lessee to be put in possession on the extent of the lease as per the said sub-section (b) would get curtailed or superimposed by the contractual right of the lessor to wait for the aforesaid period of delay and it will simultaneously cut across the statutory right of the lessee to be put in possession on the latter's request. Such contrary provision in the contract will in its turn be saved by [Section 4](#) of the Property Act read with [Section 1](#) of the Contract Act as it in its turn is not inconsistent with any of the provisions of the



present *Indian Contract Act.*””

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and concluded in para 86 and 87 that the Clause 26 restricting the right of other parties to challenge the same in any Court of law is void to that extent as has been provided in Section 28 of the Act 1872. Similarly held that the payment of cost referable to the second part of Clause 6 of the Lease Deed is so vague and not certain and therefore, the same is void as per Section 29 of the Act 9 of 1872. With regard to the office order projected by the Petitioner counsel, office order dated 12.12.1994 has not been incorporated in the agreement.

21. Learned Arbitrator after factually considering the correspondence particularly in Ex.R.6 to Ex.R.10 held those correspondence does not contain any intrinsic materials as to the payment of differential cost as has been provided in the Office Order Ex.R.11 and finally relying upon the Apex Court in ***Bharat Sanchar Nigam Ltd., & Nr. vs. BPL Mobile Cellular Ltd & Ors [2008 (8) SCALE 106]*** wherein it is held that Office Orders and Circulars are issued basically for internal and official use and unless the relevant contents thereof are respectively made known to the parties to the agreement and/or contracts, it cannot be presumed that they are generally known to them and factually found that there is no evidence on record to indicate that SIPCOT has informed the Claimant in categorical



terms that the terms of the Departmental Circulars, Office Orders, etc., would be applicable in the matter of calculation of differential land cost and the circumstances contemplated in the Office Orders are relevant. It is crystal clear that the office circulars and Orders are basically for internal and official use and unless the relevant contents thereof are respectively made known to the parties through agreements it cannot be presumed that these are generally known to them.

22. The learned Arbitrator also relied the judgment of the Apex Court in ***Delhi Development Authority & Another vs. Joint Action Committee, Allottee of SFS Flats & others [(2008) 2 SCC 672]*** wherein the Honourable Apex Court held as follows:

“It is well known principle of law that a person would be bound by the terms of the contract subject of course to its validity. A contract in certain situations may also be avoided. With a view to make novation of a contract binding and in particular some of the terms and conditions thereof, the offeree must be made known thereabout. A party to the contract cannot at a later stage, while the contract was being performed, impose terms and conditions which were not part of the offer and which were based upon unilateral issuance of office orders, but not communicated to the other party to the contract and which were not even the subject matter of a public notice. Apart from the fact that the parties rightly or wrongly proceeded on the basis that the demand by way of 5th instalment was a part of the original scheme, DDA in its



counter affidavit either before the High Court or before us did not raise any contra plea. Submissions of Mr. Jaitley in this behalf could have been taken into consideration only if they were pleaded in the counter affidavit filed by DDA before the High Court.”

23. Taking note of the all the well settled position of law the learned Arbitrator considered all the documents filed by both sides and factually analysed and passed a well reasoned order. When the learned Arbitrator considered all the relevant materials particularly all the documents and appreciated the evidence, the supervisory role of the Courts under section 34 of the Act should be kept a minimum level. The Court cannot re-appreciate the entire evidence and interpret the contract which has been made by the learned Arbitrator considering various judgments on this aspect. Therefore this Court is of the view that none of the grounds available under Section 34 is made out to interfere with the well reasoned Award.

24. Accordingly, the Original Petition is dismissed. Consequently, connected Application is closed.

Sd./-N.S.K.J.
02.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)