



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 20TH DAY OF JANUARY 2021

THE HON'BLE MR.JUSTICE R.PONGIAPPAN

OP NO 605 OF 2016

In the matter of Section 34
of the Arbitration and
Conciliation Act, 1996

AND

In the matter of the Appellate
Arbitral Award dated 18-05-2016
of the National Stock Exchange
of India Ltd.

AND

In the matter of disputes between
M/s.Coimbatore Capital Limited
and Mr.R.Rajmohan

R.Rajmohan,
No.2/52, North Street,
Elandurai, Manakuppam,
Villupuram - 607 209.

M/s Coimbatore Capital Ltd.,
Rep. by its Executive Director
Stock Exchange Building - I Floor,
No.686,Trichy Road,
Coimbatore - 641 005.

Original petition praying that this Hon'ble Court be pleased to set aside the
Arbitral Award dated 18/05/2016 passed by the Learned Appellate Arbitrators in the
Appellate Arbitral proceedings between the petitioner and the respondent and
consequently dismiss the claim petition preferred by the respondent.

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This original Petition coming on this day before this Court for hearing in



the presence of Mr.T.Sai Krishnan, Advocate for the petitioner herein and the respondent herein, not appearing in person or by advocate and upon reading the petition and the award dated 20/01/2021 filed herein and this Court having observed that the appellate Aribital Tribunal has proceeded on the basis of surmises or in other words, by going to the realm of conjectures and surmises quo imputing knowledge to the constituent with no material before it and that an arbitral award shall not be interfered with in casual and cavalier manner, therefore, there is a clear breach of Section 31(3) also, which in the considered view of this court, would sound the death-knell to the impugned award,

it is ordered as follows:-

That the Arbitral Award dated 18-05-2016 passed by the learned Appellate Arbitrators in the Appellate Aribital proceedings between the petitioner and the respondent herein, be and is hereby set aside.

2.That there shall be no order as to costs.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 20th DAY OF JANUARY 2021.

Sd/-

ASSISTANT REGISTRAR (OS II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



OP.No.605 of 2016

ORDER :-
DATED :20-01-2021

THE HON'BLMR.JUSTICE
M.SUNDAR

FOR APPROVAL: 12/02/2021

APPROVED ON: 12/02/2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.01.2021

CORAM:

THE HONOURABLE Mr.JUSTICE M.SUNDAR

O.P.No.605 of 2016

R.Rajamohan

... Petitioner

Vs.

M/s. Coimbatore Capital Limited
Rep. by its Executive Director
Stock Exchange Building – I Floor
No.686, Trichy Road
Coimbatore – 641 005

... Respondent

Prayer: Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 18.05.2016 passed by the learned Appellate Arbitrators in the Appellate Arbitral proceedings between the petitioner and the respondent and consequently dismiss the claim petition preferred by the respondent and pass such further or other orders and thus render justice.

For Petitioner : Mr.T. Sai Krishnan

For Respondent : No appearance

**ORDER**

'National Stock Exchange of India Limited' ('NSE' for brevity) trading in 'Futures & Options Segment' ('F & O Segment' for the sake of brevity) and disputes arising out of such trading is the central theme of the lis between the parties herein, which has culminated in the captioned 'Original Petition' ('OP' for the sake of brevity), which is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' and this statute shall hereinafter be referred to as 'A and C Act' for the sake of brevity).

2. Captioned OP has been filed assailing an 'arbitral award dated 18.05.2016' made by an 'Appellate Arbitral Tribunal' ('Appellate AT' for brevity) constituted by three arbitrators.

3. To be noted, petitioner in the captioned OP, who is an individual, is a Constituent qua NSE and respondent in the captioned OP, who is a juristic person i.e., a public limited company, is a Trading Member qua NSE, from hereon for convenience and clarity, 'Petitioner' in captioned OP shall be referred to as 'Constituent' and 'Respondent company' in captioned OP shall be referred to as 'Trading Member'.

4. Trading in F & O segment by the Constituent through the Trading Member is governed by 'National Stock Exchange (Futures & Options Segment) Trading Regulations' ('said Regulations' for brevity). To be noted, Clause 5 of said Regulations captioned 'ARBITRATION' is the dispute resolution clause.

5. Mr. T Saikrishnan, learned counsel on behalf of Constituent, who is protagonist of captioned OP, who is before me in this web-hearing on a videoconferencing



platform, adverting to aforementioned dispute resolution clause in said Regulations submits that the same *inter alia* provides for a two tiered arbitration. Learned counsel submits that it provides for arbitration by a 'sole Arbitrator' (hereinafter 'AT' for the sake of convenience) and the same can be carried to Appellate AT, which will be constituted by three members. This for all practical purposes is the arbitration agreement between the Constituent and Trading Member being arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

6. Captioned OP being an application under Section 34 of A and C Act, owing to the short statuary perimeter and limited landscape of Section 34 of A and C Act within which a legal drill of testing an arbitral award should perambulate, short facts shorn of elaboration or in other words, factual matrix in a nutshell containing essential facts imperative for appreciating this order will suffice. Short facts are that Constituent (who is an Agriculturist by avocation) became a client of Trading Member on 08.11.2014; that Constituent had opted for trading in derivatives qua F & O Segment; that constituent had also opted for internet trading facility agreeing to receive trade notice, ledger statement bills etc., through electronic mail; that on 25.05.2015 NSE was notified of sanction of a composite Scheme of Arrangement concerning 4 different Adani companies *inter alia* notifying the record date for the purpose of implementation of the scheme as 04.06.2015; that constituent had on 02.06.2015 bought 6 slots of 500 shares each in what is described as 'ADANIENT'; that Put 25.06.2015 with strike price at Rs 540 with various premium are the terms; that owing to the revised trading cycle option, it expired on 02.06.2015 itself i.e., the date on which constituent had bought



this slots of 500 shares each in ADANIENT; that the equity of ADANIENT shares closed at Rs.637/- on 02.06.2015 in the capital segment, the strike price of the Put Option had been bought by the constituent at Rs.540, he did not exercise the option and premium paid at the time of purchase became a loss; that this is the crux and gravamen of the lis between the parties; that arbitration was triggered, the matter went before the first tier of arbitration, namely a sole arbitrator before whom the Trading Member was the applicant/claimant and the Constituent was respondent. Both parties made claims and counter claims and AT dismissed both the claim and counter claim besides directing the parties to bear the costs equally vide an award dated 23.01.2016. This Court is informed that Constituent did not carry this to Appellate AT, but the Trading member carried the matter to the Appellate AT. The Appellate AT in and by an 'Appellate Tribunal award dated 18.05.2016' (hereinafter 'impugned award' for brevity), set aside the award dated 23.01.2016 of AT and *inter alia* directed the Constituent to pay a sum of little over 6.54 lakhs to the Trading member along with interest at the rate of 12% per annum from 23.06.2015; that assailing the impugned award captioned OP has been filed.

7. This Court having set out short facts shorn of elaboration or in other words, factual matrix in a nutshell containing essential facts imperative for appreciating this order, which also captures the trajectory the matter has taken in reaching this Court, this Court plunges into examining the arguments advanced by learned counsel for Constituent i.e. protagonist of captioned OP, discussing the same and giving its dispositive reasoning for arriving at a conclusion.



8. Before that is done, it is necessary to set out the trajectory of captioned OP before me in some detail. Before me, there were as many as four earlier listings on 27.08.2020, 17.09.2020, 24.09.2020 and 18.01.2021. Proceedings made in these four earlier listings are as follows:

Proceedings made on 27.08.2020

'Mr.Kumaraguru, learned counsel representing the counsel on record for sole petitioner is before me in this web-hearing on a videoconferencing platform, but there is no representation for the lone respondent.

2.However, aforementioned learned counsel submits that Mr.T.Saikrishnan, learned counsel who is to argue this matter, is under quarantine and seeks three weeks adjournment.

List on 17.09.2020'

Proceedings made on 17.09.2020

'Read this in conjunction with and in continuation of earlier proceedings dated 27.08.2020.

2. Today also there is no representation for the lone respondent, but Mr. Saravanan, learned counsel representing the counsel on record for sole petitioner is before me in this web-hearing on a video-conferencing platform.

3.Be that as it may, with the intention of giving further opportunity to the respondent, this matter is adjourned today, but with a caveat that it will be open to this Court to dispose of main OP on merits, if the respondent does not turn up in the ensuing listing also.

4. Name of the sole respondent is shown in the cause list also, but as a matter of abundant caution full/complete address of the sole respondent shall also be shown in the cause list in the next listing.

List on 24.09.2020.'

Proceedings made on 24.09.2020

Read this in conjunction with and in continuation of earlier proceedings dated 17.09.2020.



2. Mr. T. Sai Krishnan of M/s. Sai and Bharath (Law Firm) on behalf of sole petitioner is before me in this web-hearing on a videoconferencing platform, but today also there is no representation for the lone respondent, though the lone respondent has entered appearance through a counsel, though the name of the counsel as well as name of the lone respondent together with full/complete address as in the short and long cause titles of the OP are duly shown in the cause list.

However, with the intention of giving further opportunity to the lone respondent, list this matter after a fortnight.'

Proceedings made on 18.01.2021

'Read this in conjunction with and in continuation of earlier proceedings dated 24.09.2020.

2. Mr. R. Saravanan, learned counsel of M/s. Sai and Bharath (Law Firm) on behalf of sole petitioner is before me in this web hearing on a video conferencing platform.

3. With regard to lone respondent, position is no different today i.e., there is no representation for lone respondent though the name of learned counsel as well as the name, full/complete address of lone respondent as in short and long cause titles of captioned OP has been duly shown in cause list today. To be noted, this is the third consecutive listing in which there is no representation for lone respondent.

4. Be that as it may, with the intention of giving another opportunity to lone respondent, however with a caveat that the matter will be heard and disposed of on merits in the next listing if the same scenario continues qua respondent.

5. List under the same caption day after tomorrow i.e., on 20.01.2021.'

9. Aforesaid proceedings are tell-tale qua trajectory the matter has taken and as to

the circumstances under which the captioned OP is being taken up, heard out in full and
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is being disposed of on merits. To be noted, even prior to the aforementioned four



listings, there were earlier listings before predecessor Hon'ble Judges. Be that as it may, this Court also cannot lose sight of the fact that the Hon'ble Supreme Court in ***Bhumi Vikas Bank*** case law [***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in **(2018) 9 SCC 472**] , which is for the broad proposition that sub-section (5) pre-application notice is directory and not mandatory, has made an observation emphasizing the one year timeline. The relevant paragraph is Paragraph 26, which reads as follows:

'26. We are of the opinion that the view propounded by the High Courts of Bombay and Calcutta represents the correct state of the law. However, we may add that it shall be the endeavour of every court in which a Section 34 application is filed, to stick to the time-limit of one year from the date of service of notice to the opposite party by the applicant, or by the Court, as the case may be. In case the Court issues notice after the period mentioned in Section 34(3) has elapsed, every court shall endeavour to dispose of the Section 34 application within a period of one year from the date of filing of the said application, similar to what has been provided in Section 14 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. This will give effect to the object sought to be achieved by adding Section 13(6) by the 2015 Amendment Act.'

10. Therefore, it is necessary that Section 34 applications cannot be allowed to languish in this Court owing to one of the parties or their counsel absenting themselves that too repeatedly inspite of several opportunities / listings.

11. As captioned OP has been presented on 03.08.2016, the other peripheral aspect is it would be governed by post 23.10.2015 regime of A and C Act or in other words, by the amended A and C Act as amended by Amending Act 3 of 2016, which



kicked in with retrospective effect on and from 23.10.2015. This is by applying ***Ssangyong*** principle i.e., principle laid down by Hon'ble Supreme Court in ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India*** reported in ***(2019) 15 SCC 131***. Therefore, patent illegality being a ground of challenge is ingrained in sub-section (2-A), which was brought into the Statute book on and from 23.10.2015, falls for consideration and discussion on the same will be made infra. Trading member, which carried the matter to Appellate AT, made a three fold challenge to the award of the AT and this three fold challenge is captured by Appellate AT in the impugned award in one compartment of the impugned award captioned 'Grounds of Appeal', which reads as follows:

'Grounds of Appeal:

The appellant has stated the following as grounds of appeal in their statement of appeal dated 22nd February, 2016:

(1) The respondent was fully briefed of his obligations under the Rights and Obligations of Stock Brokers and Clients as prescribed by SEBI and NSE. The respondent's attention was also drawn to Risk Disclosure Document which highlights the inherent risks involved in derivative trading and particularly the risks of being an option writer.

(2) The above mentioned circulars of NSCCL and NSE regarding early closure of ADANIENT options (issued prior to demerger) on 2nd June, 2015 and fresh issue of Options after the demerger on 3rd June, 2015, were in public domain and were put up on NSCCL/NSE portal. An informed investor like the respondent dealing in F & O will obviously not take a position without analysis and without the knowledge of important happenings relating to the company concerned. Therefore, the respondent's plea that he was not aware of the modified trading cycle of ADANINET is difficult to believe. Further the



respondent was specifically put on notice by the appellant of the position over phone.

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(3) The respondent was informed of the shortfall in margin on 4th June, 2015 and as the respondent failed to meet his obligation, the appellant had to close the open position on 8th June, 2015.'

12. Adverting to the aforementioned three fold challenge before the Appellate AT qua the award dated 23.01.2016 of AT, learned counsel submitted that Appellate AT has interfered with the award of AT in a casual and cavalier manner by giving implausible reasons or views which no reasonable person would have taken to arrive at a conclusion on the basis of facts and submissions articulated in the hearing before it.

13. To buttress the aforementioned submissions, learned counsel drew the attention of this Court to Contract Note No.0003694 dated 03.06.2015, a scanned reproduction of which is as follows:



Shipping Policy: All orders are shipped via air freight to ensure timely delivery. Delivery times are estimated and subject to change without notice.

Self-Service: Customers can view and manage their orders online.

Order Status: Track your order's progress.

Contact Us: For inquiries, please email us.

Privacy Policy: Read our privacy policy.

Terms of Service: Read our terms of service.

FAQ: Find answers to common questions.

Feedback: We value your feedback.

Support: Get help with your order.

Account: Manage your account.

Cart: View items in your cart.

Checkout: Complete your purchase.

Shipping: View shipping options.

Payment: Choose your payment method.

Refunds: View our refund policy.

Returns: Initiate a return request.

Warranty: View product warranty.

Support: Contact our support team.

Feedback: Share your experience.

Privacy: Manage your privacy settings.

Terms: Review our terms and conditions.

FAQ: Browse frequently asked questions.

Help: Get assistance with your account.

Sign In: Log in to your account.

Sign Up: Create a new account.

Forgot Password: Reset your password.

My Account: View your account details.

My Orders: Track your order history.

My Cart: View items in your shopping cart.

My Wishlist: Save items for later.

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Contact Us | About Us

FAQ | Shipping Policy

Refund Policy | Return Policy

Warranty | Support Center

Feedback | Sign In

Sign Up | My Account

My Orders | My Cart

My Wishlist | My Account

My Account | My Orders

My Orders | My Cart

My Cart | My Wishlist

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Cambridge Capital Limited

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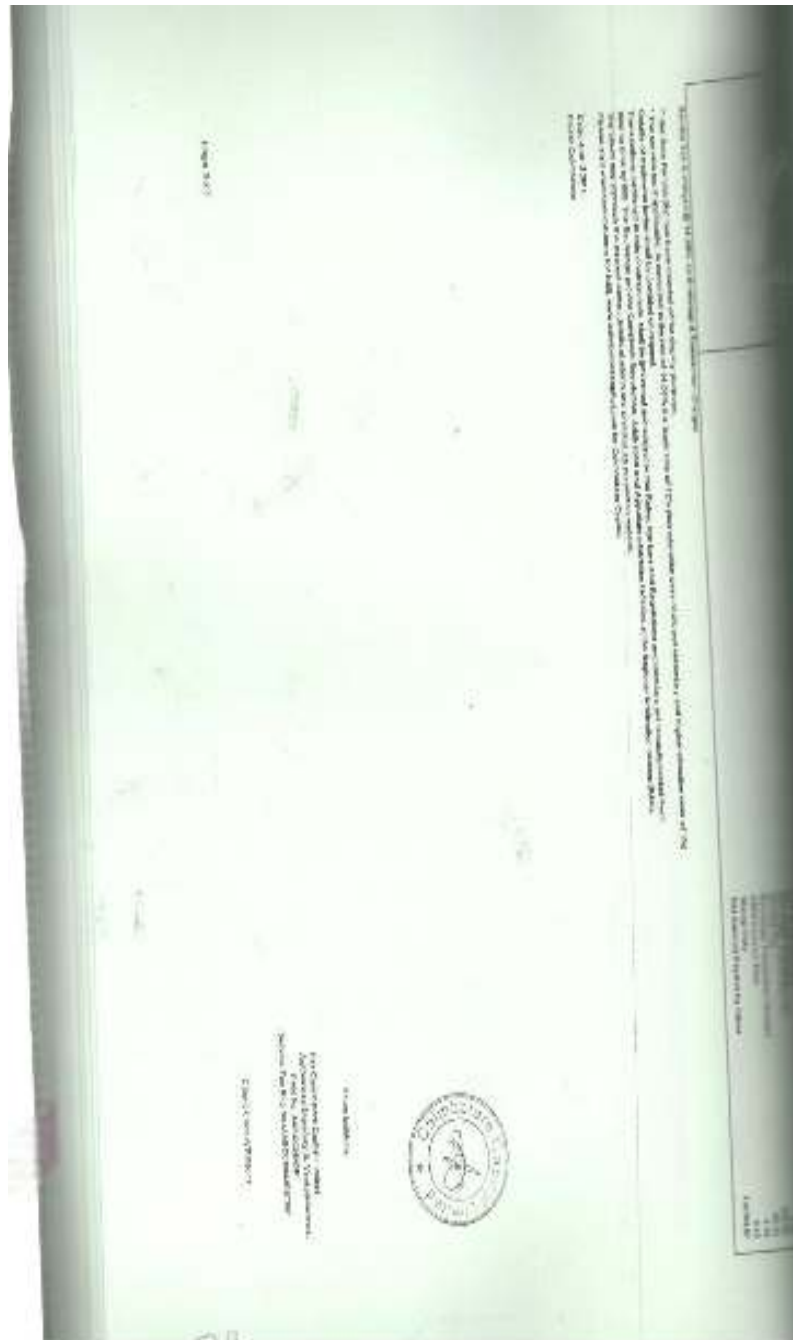


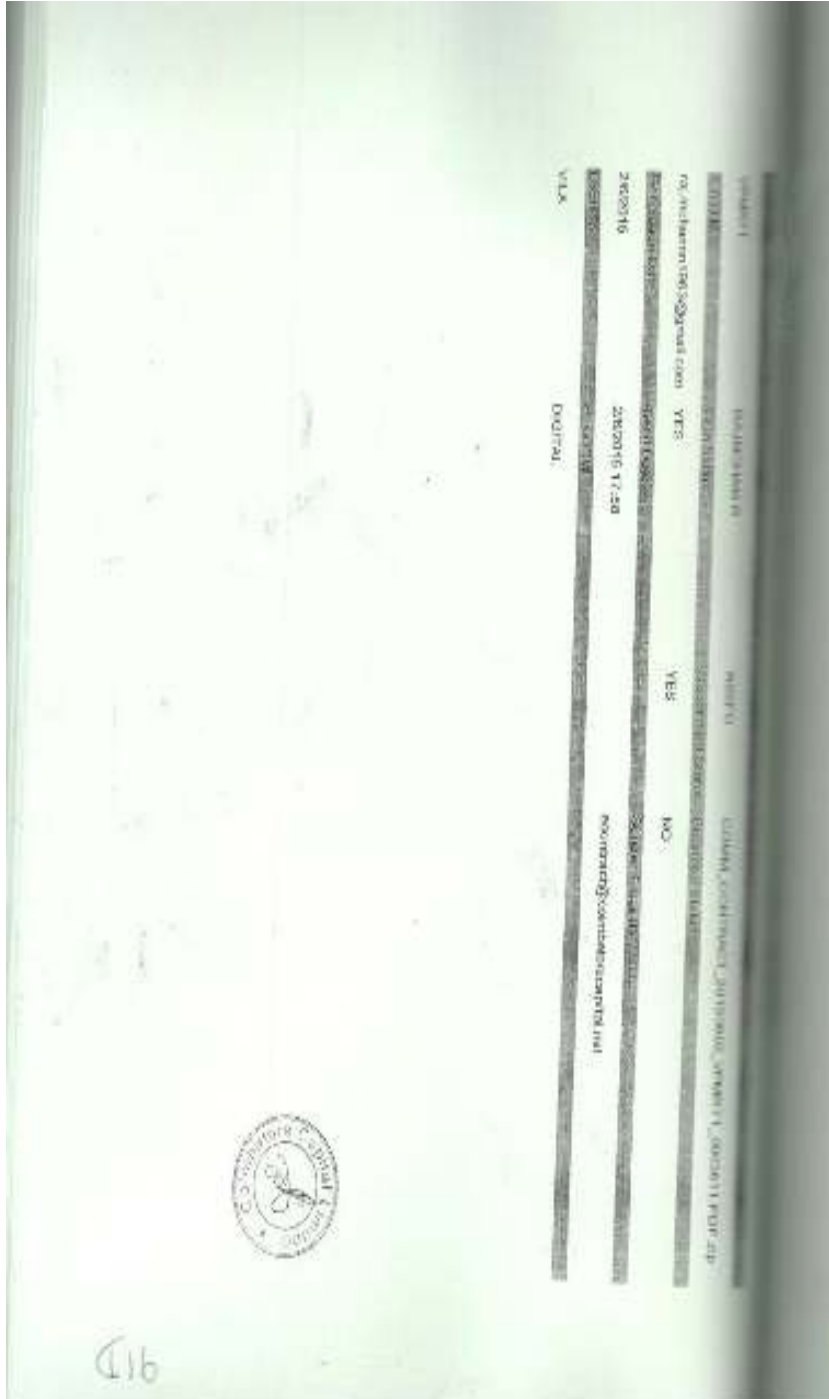
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14. To be noted, as already alluded to supra, this is a case where the Constituent opted to receive contract notes via e-mail transmission at the time of entering into the agreement with Trading Member on 08.11.2014.

15. Adverting to the aforementioned contract note and more particularly Entries 8 to 11 i.e., order number ending with 882986, wherein transaction has happened between 09.00am and half past 10.00 on 02.06.2015 with regard to ADANIENT, learned counsel submitted that under the column captioned Security/Contract Description the date has been shown as 25.06.2015 and the fact that the auction stood expired on 02.06.2015, which is owing to subsequent development, has not been shown in the contract note. Learned counsel also drew the attention of this Court to certain news items in Business Lines and Economic Times and submitted that this cannot be put against the Constituent, whereas it should have been put against the Trading Member for having continued to show the date as 25.06.2015 without mentioning the date as 02.06.2015, which would have put the Constituent on guard.

16. This Court carefully considered the submissions made by learned counsel for petitioner. Primary aspect of the matter, which needs to be looked into is, whether the three fold challenge to the award of the AT by Trading Member before the Appellate AT has been dealt with in a manner which does not breach implausible view ground qua challenge to an arbitral award. To be noted, the three grounds, as contained in the impugned award, have been extracted and reproduced supra. In the considered view of

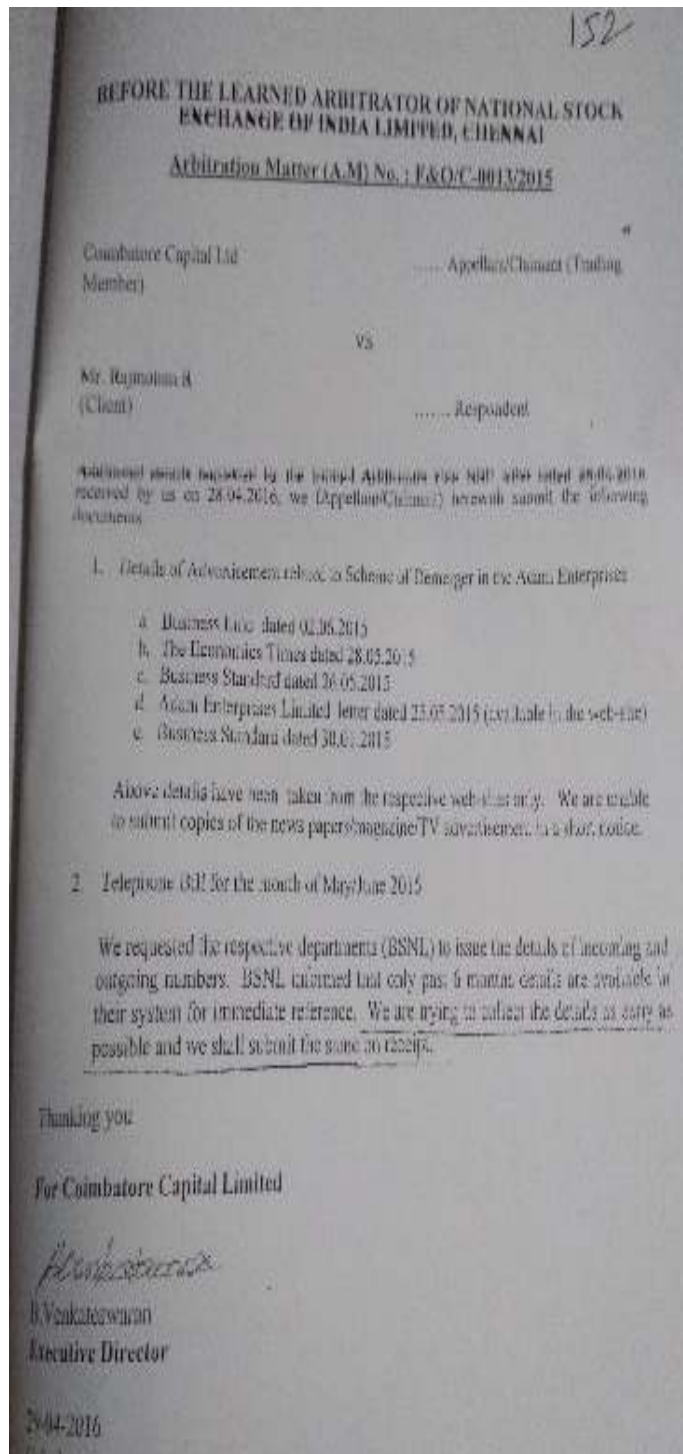
this Court, Grounds 1 and 3 fall in one basket as that turn on whether the Trading Member informed the Constituent about the changed position qua ADANIENT.



Ground No.2 falls in another basket and that is, whether the Constituent was presumed to have knowledge about the advanced closure on 02.06.2015 itself. Therefore, effectively it is a two pronged attack, though there are three grounds. With regard to the question as to whether Trading Member had informed the Constituent about the changed date/changed position qua ADANIENT, learned counsel for petitioner/ Constituent drew the attention of this Court to the proceedings before the AT wherein an attempt had been made to prove the call record qua phone calls to demonstrate that Trading Member had intimated the Constituent. The relevant portion of the proceedings before AT in this regard read as follows:



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17. Adverting to the above, it was submitted that it was the case of Trading Member that they are trying to collect the details as early as possible and they shall submit the same on receipt, but the same never happened. It was never established by the Trading Member that Constituent was kept informed about the changed position qua



the ADANIENT. This aspect of the matter has not been dealt with by the Appellate AT.

On the contrary, Appellate AT has merely presumed an imputed knowledge to the Constituent by saying that changed position was available in public domain. To be noted, it is the appellate AT which interfered with the award of the AT. This Court therefore accepts the submission of learned counsel that the intervention is in a casual and cavalier manner. To be noted, 'casual and cavalier manner' is an expression used by Hon'ble Supreme Court in Dyna Technologies case law which shall be discussed infra.

18. With regard to the second ground of attack i.e., knowledge to be imputed to the Constituent, owing to the peculiar facts and circumstances of this case, this Court is of the view that this is no argument because the Appellate AT vide the impugned award has clearly observed that in the contract note, Trading Member has mentioned 25.06.2015 as the date, but the Constituent did not object knowing the seriousness of the same. In other words, an obvious error on the part of Trading member has been put against the Constituent. This is contained in Paragraph 3 of the compartment captioned 'Observations and findings' in the impugned award and the same reads as follows:

'(3) The respondent's contention that he sold three lots of ADANIENT Put Option 25th June, 2015 strike Rs 540, on the morning of 3rd June, 2015 out of six lots bought on 2nd June, is difficult to believe as he could not explain why he did not sell the balance three lots on 3rd June when the premium on Put Option shot up to Rs 32.90 from around Rs.0.40 the earlier day, i.e., 2nd June. Further the respondent stated during the hearing that the six lots of ADANIENT Put Options 25th June bought on 2nd June, were shown as outstanding position on the morning of 3rd June in the appellant's trading system though he could not prove it with any evidence. However the respondent knowing the seriousness of the matter did not lodge his protest either through a letter or by email till 7th



June, 2015. Also the email sent by the respondent on 7th June does not mention that six lots bought on 2nd June were shown as open position on the morning of 3rd June in the appellant's trading software. Hence the respondent's claim that he was not aware of the expiry of six lots of ADANIENT Put Option 25th June, 2015 strike Rs 540, on 2nd June, 2015 appears to be an afterthought.'

19. To be noted, Contract Note No.0003611 dated 02.06.2015 and the relevant portion has already been extracted and reproduced supra. Relevant four entries have also been discussed supra. The Trading Member having shown 25.06.2015 as the date and not having shown 02.06.2015 is now being put against the Constituent. In this regard, this Court has no difficulty in accepting the submissions of learned counsel for Constituent that this is a view which no reasonable person would take or in other words, this is an implausible view and therefore it became patent illegality. As already alluded to supra, captioned OP is governed by post 23.10.2015 A and C Act regime and therefore, patent illegality is available as a ground under sub-section (2-A) of Section 34 of A and C Act, which means proviso to sub-section (2-A) of Section 34 of A and C will also operate. The two limbed proviso talks about there being no re-appreciation of evidence and mere erroneous application of law not being made a ground of patent illegality. Neither of these are attracted in this case. In other words, neither mere application of law nor any re-appreciation is required qua award of AT. Dehors these two facets which are excluded vide the proviso, it is clearly an implausible view. Therefore, the impugned award is vitiated by patent illegality.

20. There is one other aspect this Court observes. That turns on Section 31(3) of A and C Act. Section 31(3) talks about basis on which the impugned award is made.



The basis on which an impugned award has been made has three facets. The three facts have been explained by Hon'ble Supreme Court in ***Dyna Technologies*** principle being principle laid down by Hon'ble Supreme Court in ***Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd. reported in (2019) 20 SCC 1 = 2019 SCC OnLine SC 1656.***

21. Going by the ***Dyna Technologies*** principle, three facets are (a) proper, (b) intelligible and (c) adequate. To put it as grounds, they are a) impropriety; b) unintelligible and c) inadequacy. With regard to impropriety, Hon'ble Supreme Court held that it should be such that it falls within the four corners of Section 34. It may not be necessary to advert to that. With regard to unintelligible, Hon'ble Supreme Court held in ***Dyna Technologies*** that it is as good as giving no reasons. With regard to inadequacy, Hon'ble Supreme Court made it clear that it depends on the particularities required qua each case and the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularities of reasoning which are required on the facts and circumstances of each case. This Court is of the considered view that the Appellate AT has proceeded on the basis of surmises or in other words, by going to the realm of conjectures and surmises qua imputing knowledge to the Constituent with no material before it. This is clearly inadequacy with regard to basis. The Contract Note gives 25.05.2015 as the date without amending the same as 02.06.2015. In other words, tiding over this has been done in the casual manner. Even in ***Dyna Technologies***, Hon'ble Supreme Court has held that an ~~arbitral award shall not be interfered with in~~ casual and cavalier manner. Therefore, there is a clear breach of Section 31(3) also, which in the considered view of this Court,



would sound the death-knell to the impugned award.

22. Owing to all that have been set out supra, the impugned award is liable to be set aside.

23. Before parting with this matter, it is made clear that this Court is not sitting on appeal qua the impugned award. It is based on the particularities required in the case on hand. Another facet before parting with this matter is with regard to prayer in the captioned OP, which reads as follows:

'Therefore, it is humbly prayer that this, Hon'ble Court to set aside the Arbitral Award dated 18.05.2016 passed by the learned Appellate Arbitrators in the Appellate Arbitral proceedings between the petitioner and the respondent and consequently dismiss the claim petition preferred by the respondent and pass such further or other orders and thus render justice.'

Though prayer in the captioned OP is couched in the aforementioned language, while drawing up the decretal order it will suffice to say that impugned award, being award dated 18.05.2016 made by Appellate AT, is set aside and OP is allowed. The consequence will obviously follow as a sequitur. This is for the purpose of clarity qua drawing up the decretal order. There shall be no order as to costs.

24. OP allowed in the aforesaid manner.

Sd./-M.S.J.

20/01/2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)