



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 06TH DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

O.P. No.161 of 2017

and

A.No. 1107 of 2017

In the matter of Arbitration and
Conciliation Act 1996

and

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

and

In the matter of Arbitration between
MIEL E-Security Pvt. Ltd. (Petitioner)
and Redington (INDIA) Ltd.
(Respondents)

And

In the Matter of Award Dated
07.11.2016

Miel E-Security Pvt Ltd
MIDC Road No.9, Plot No.16
Ground Floor, Behind Samruddhi
Venture Park, Andheri (E)
Mumbai 400 093.

...Petitioner

Vs

Redington (India) Ltd
SPL Guindy House
Old No.95, New No.92
Mount Road
Guindy, Chennai 600 032.

...Respondent

**O.P. No.161 of 2017**

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Original petition praying that this Hon'ble Court be pleased to grant that the said impugned Award Dated 07.11.2016 be quashed and set aside under section 34 of the Arbitration & Conciliation Act 1996 by this Hon'ble Court.

A.No.1107 of 2017

Application praying that this Hon'ble Court be pleased to grant an order of stay to execution of the Arbitration award dated 07.11.2016, passed by the sole Arbitrator.

This Original Petition having been heard on 29/07/2021 in the presence of Mr. Suhrith Parthasarathy advocate for the petitioner in O.P.No. 161 of 2017 and for the applicant in A.No. 1107 of 2017 and Mr.S.S.Rajesh advocate for the respondent herein and upon reading the petition and the award dated 07.11.2016 filed in O.P. No. 161 of 2011 and the Judge's summon and the affidavit of M.N. Kutty Nair filed in A.No. 1107 of 2017 and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court having observed that considering the entire proceeding before the learned Arbitrator, this Court is unable to find any materials to infer any of the grounds available, under section 34 of the act, to set aside the well reasoned award and **it is ordered as follows:-**



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That the O.P. No.161 of 2017 be and is hereby dismissed.

2. That the A.No. 1107 of 2017 do stand closed.

WITNESS, THE HON'BLE MR.JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT OF MADRAS AFORESAID, THIS THE
06TH 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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28.09.2021

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O.P. No.161 of 2017

and

A.No. 1107 of 2017

ORDER

DATED 06/08/2021

THE HON'BLE MR. JUSTICE

N. SATHISH KUMAR

FOR APPROVAL: 30/09/2021

APPROVED ON: 30/09/2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>29/7/2021</i>
<i>Pronounced on</i>	<i>06/8/2021</i>

C O R A M

THE HONOURABLE Mr.JUSTICE N.SATHISH KUMAR

O.P.No.161 of 2017

Miel E-Security Pvt Ltd
MIDC Road No.9, Plot No.16
Ground Floor, Behind Samruddhi
Venture Park, Andheri (E)
Mumbai 400 093.

..Petitioner

Vs

Redington (India) Ltd
SPL Guindy House
Old No.95, New No.92
Mount Road
Guindy
Chennai 600 032.

...Respondent

Original Petition has been filed under Section 34 of the
Arbitration and Conciliation Act, 1996, to quash the impugned award dated
7/11/2016.



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ORDER

This Original Application has been filed to quash the impugned award, dated 7/11/2016, passed by the sole Arbitrator, in Arbitration Case No.1 of 2014, in a dispute that arose between the parties.

2. Award passed by the learned Arbitrator, in Arbitration Case No.1 of 2014 is as follows:-

“An award is passed with cost, directing the respondent to pay the claimant a sum of Rs.2,53,67,073/- (Two crores fifty three lakhs sixty seven thousand and seventy three only) along with further interest i.e., 18% p.a., from the date of actual due based on respective invoice date as mentioned in the claim statement till the date and at the same rate from this date till the date of realization together with cost. Though the claimant claimed interest the rate of 22% p.a., considering the nature of the case and also in the interest of justice only 18% interest per annum is ordered.”



independence and impartiality.

He has further submitted that the

appointment of Arbitrator is not proper, as the same is not confirmed by the competent Court, as per the Arbitration and Conciliation Act, 1996.

6. It is the main contention that the reply letter, dated 21/10/2014, issued by the petitioner's Advocate to the Sole Arbitrator has not been considered and no agreement has been entered into between the parties to refer any dispute that arises out of the alleged transaction between the claimant and respondent. It is his further contention that they have not given any opportunity to go through the documents. The learned Arbitrator, after framing five issues had passed the award.

7. Learned counsel appearing for the petitioner placed much reliance on the judgment of the Hon'ble Apex Court in PERKINS EASTMAN ARCHITECTS DPC AND ANOTHER Vs. HSCC (INDIA) LTD (2019 SCC ONLINE SC 1517).

8. Learned counsel appearing for the respondent submitted that objection raised by the petitioner is only with regard to the invoices not with regard to the conduct of the Arbitrator and further, it is his contention



that the learned Arbitrator proceedings itself clearly indicate that the matter has been dragged by the petitioner for many years. The primary intention of the respondent was to settle the matter. Only after amendment came into force, objection has been raised by the petitioner. When the petitioner has actively participated in the arbitration proceeding, he has not raised any objection, as to the conduct of the Arbitrator. The entire award clearly indicate that award came to be passed on merits, after considering all the documents. Therefore the same does not require any interference.

9. The learned counsel appearing for the respondent has placed reliance on the following decisions:-

(i). S.P.SINGLA CONSTRUCTIONS PRIVATE LIMITED Vs. STATE OF HIMACHAL PRADESH AND ANOTHER (2019) 2 SUPREME COURT CASES 488

(ii). GOVERNMENT OF HARYANA PWD HARYANA (B AND R) BRANCH Vs. G.F.TOLL ROAD PRIVATE LIMITED AND OTHERS (2019) 3 SUPREME COURT CASES – 505.

(iii). MANGALAM CHAUDHARY COMPANY, THROUGH ITS PROPRIETOR J.P.CHAUDHARY Vs. HINDUSTAN CONSTRUCTION COMPANY LTD, THROUGH ITS MANAGING



DIRECTOR (2019 SCC ONLINE BOM 2054)

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(iv). HRD CORPORATION (MARCUS OIL AND CHEMICAL DIVISION) Vs. GAIL (INDIA) LIMITED, FORMERLY GAS AUTHORITY OF INDIA LIMITED) (2018) 12 SUPREME COURT CASES 471.

10. It is the contention of the learned counsel for the respondent that the invoices were raised from 23/11/2012 till 19/12/2012, for a sum of Rs.9,44,592.54 (Rupees Nine lakhs forty four thousand five hundred and ninety two and paise fifty four only), after adjusting all the part payments made by the petitioner, there remains an outstanding sum of Rs.2,53,67,073/- (Rupees Two crores fifty three lakhs sixty seven thousand and seventy three only). As the amount has not been paid, the claim has been referred to the Arbitrator, in respect of pending bills in the invoices issued to the petitioner.

11. It is to be noted that pre-arbitration notice, dated 27/8/2014 was issued by the respondent Company, appointing the learned Sole Arbitrator in this matter. After appointment, notice was issued by the learned Arbitrator, dated 25/11/2014, indicating about the impartiality of the Arbitration and non existence of circumstances. The objection of the

petitioner was mainly made on the ground that there is no arbitration clause



contained in the invoices. Hence, the appointment of Arbitrator, on the basis of such invoices is not valid in the eye of law.

12. It is also relevant to note that prior to their objection, under Sections 12 and 13 of the old Act, it appears that the petitioner has sent a letter, dated 21/10/2014, after receipt of the notice from the Arbitrator wherein also they raised a formal objection contending that appointment of arbitrator is not proper. In the above letter, also, there is no objection whatsoever raised with regard to the independence and impartiality of the arbitrator. The objection also not been made within the period of fifteen days, questioning the constitution of the Arbitral Tribunal pointing out any untoward circumstances referred to sub-Section 3 of Section 12, but the letter alone was sent on 12/10/2014 much after fifteen days.

13. Be that as it may. Either in the application or in the letter of the petitioner, no serious objection whatsoever was raised as to the independence or impartiality of the learned Arbitrator. However, the main objection seems to be with regard to referring the matter to the Arbitrator on the basis of invoices and appointing the Arbitrator unilaterally on the basis of the invoices.



14. In (2019) 2 SUPREME COURT CASES 488 S.P.SINGLA

CONSTRUCTIONS PRIVATE LIMITED Vs. STATE OF HIMACHAL PRADESH AND ANOTHER has held that once the Arbitrator is already appointed by one of the parties to the agreement in terms of the agreement, arbitration agreement cannot be invoked for a second time.

15. In (2019) 3 SUPREME COURT CASES 505

(GOVERNMENT OF HARYANA PWD HARYANA (B AND R) BRANCH Vs. G.F.TOLL ROAD PRIVATE LIMITED AND OTHERS), has held that the Act does not disqualify a former employee from acting as an arbitrator, provided there are no justifiable doubts as to his independence and impartiality.

16. In 2019 SCC ONLINE BOMBAY 2054 (MANGALAM

CHAUDHARY COMPANY Vs. HINDUSTAN CONSTRUCTION COMPANY LTD) has held that since the arbitral proceedings had commenced prior to 23rd October, 2015, in view of Section 87 inserted by Arbitration & Conciliation (Amendment) Act, 2019, which states that unless otherwise parties agree, amendments made to the Arbitration Act by the Arbitration (Amendment) Act, 2015, would not apply to the arbitral



Conciliation (Amendment) Act, 2015 the amended provisions of Section 12

(5) amended on 23rd October 2015 would not apply to the facts of that case.

17. In (2018) 12 SCC 471 {HRD CORPORATION (MARCUS OIL AND CHEMICAL DIVISION Vs. GAIL (INDIA) LIMITED (FORMERLY GAS AUTHORITY OF INDIA LIMITED)}, wherein the Hon'ble Apex Court has held that doubts as to impartiality and independence of an arbitrator are only justifiable if a reasonable third person having knowledge of the relevant facts and circumstances would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case in reaching his or her decision. Further, this test requires taking a broad common sensical approach to the items stated in Schedules V and VII and this approach would, therefore, require a fair construction of the words used therein, neither tending to enlarge or restrict them unduly.

18. In the light of the above submission and the materials available on record, this Court is of the view that at the first instance, objection as to the independence or impartiality was never raised seriously.

19. Learned counsel for the petitioner made much emphasis on



the cross-examination of C.W.1. No doubt, C.W.1 has admitted that there are many arbitrations done by the sole Arbitrator. It is to be noted that the arbitrator in this case was appointed in the year 2014. The proceedings indicate that in the first hearing, i.e., on 31/10/2014, the respondent appeared and through Counsel filed preliminary objection. Thereafter, the matter was adjourned to 28/11/2014. On 28/11/2014, sought for filing counter and the case got adjourned to 26/12/2014. On 26/12/2014, the matter was adjourned to 23/1/2015. From 23/1/2015, the respondent's side expressed their willingness for settlement. Hence, the matter repeatedly got adjourned from 27/2/2015 to 11/9/2015 for settlement. In the interregnum period, a cheque for Rs.10 lakhs sent by the respondent was not honoured by the bank. As the settlement has not been fructified, the matter went on trial on 9/10/2015. Thereafter, since the petitioner's counsel wanted to cross-examine C.W.1, the matter was adjourned to 18/12/2015. In the meanwhile, an application was filed by the petitioner, invoking the provisions of Sections 12 (1) (a) and 12 (1) (b) of the amended Arbitration Act. Thereafter, the matter has got adjourned to 6/5/2016. On 6/5/2016, since no argument was presented on the side of the petitioner, the matter was posted for orders, on 7/11/2016. Even on 7/11/2016, there was no representation on the side of the petitioner.



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20. From the records, it can be seen that the petitioner has participated in the arbitral proceedings and took time from the very inception, under the pretext of settlement and finally filed various applications particularly taking advantage of the amended Act and questioned the independence and impartiality of the Arbitrator at a later point of stage. On the initial stage, their objection is mainly towards appointment of an arbitrator on the basis of terms contained in invoices.

21. Learned Arbitrator also recorded that the petitioner has delayed the proceeding under the pretext of settling the matter. Finally, award came to be passed, after considering the pleadings and scrutinising the documents submitted before the Arbitral Tribunal. Therefore, having participated in the proceedings of the Arbitral Tribunal cannot be held vitiated on the ground of bias and partiality. What is relevant is the date of appointment of arbitrator. Arbitrator has made a disclosure that no circumstance what so ever existed as to his independence or impartiality at the time of his appointment. Admittedly, this case was pending for more than 2 years. Cross examination of C.W.1 was done almost after one and a half years. Thereafter, even assuming that arbitrator was appointed as an



held that the entire proceedings are done with bias. Further merely on the basis of truncated admission by P.W.1 such admission cannot be taken as a conclusive proof to doubt the independence or impartiality of Arbitrator. At any event impartiality and independence cannot be decided merely on the basis of the truncated admission of the witnesses who was examined year and a half after the present arbitration proceeding commenced. On a perusal of the entire award makes it very clear that this Court do not find any materials to infer partiality and bias on the part of the Arbitrator.

22. In such a view of the matter, the contention of the learned counsel for the petitioner in this regard cannot be countenanced.

23. Another contention of the learned counsel for the petitioner is that the documents and proceedings were not furnished. It is to be noted that from 2014 to 2016, the petitioner has appeared before the learned Arbitral Tribunal and in fact, he has cross-examined the witness. Therefore, it cannot be said that there is violation of the provisions of Section 24 (2) and 3 of the Act to contend that no opportunities were given.

24. In any event, considering the entire proceedings before the learned Arbitrator, this Court is unable to find any materials to infer any of the grounds available, under Section 34 of the Act, to set aside the well



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25. Accordingly, this Original Petition is dismissed.

Consequently, connected A.No.1107 of 2017 is closed.

Sd/- N.S.K.J.
06/08/2021

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Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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