



OSA (cad) No.121 of 2021

OSA (cad) No.121 of 2021

WEB CO **D.KRISHNAKUMAR, J.**
and
P.DHANABAL, J.

This matter is listed today under the caption " for being mentioned ",
at the instance of the learned counsel for the appellants.

2. After hearing the learned counsel for the appellants as well as the
first respondent, the order passed in OSA(CAD) No.121/2021, dated
31.10.2023 is modified.

3. Accordingly, paragraph No.2 of the judgment passed in OSA(CAD)
No.121/2021, dated 31.10.2023, shall be read as follows.

2. Today, when the matter is listed for hearing, the learned counsel
appearing for the appellants submitted that, challenging the Award
passed by the Arbitral Tribunal, the above said original petition was filed
before this Court. He further submitted that the learned Single Judge,
while allowing the original petition in part, has set aside the majority
Award passed by the Arbitrators, however, not upheld the minority
Award. Therefore, he fairly submitted that to uphold the minority
Award, the remedy is only before the Hon'ble Supreme Court, in the
light of the decision of the Hon'ble Supreme Court in *National
Highways Authority of India Vs. M.Hakeem and another reported in*



OSA (cad) No.121 of 2021

(2021) 9 Supreme Court Cases 1. Hence, the learned counsel for the appellants seeks permission of this Court to withdraw the present appeal to seek his remedy by filing an appeal before the Hon'ble Supreme Court under Article 142 of the Constitution of India with liberty to exclude the period of limitation under Section 14 of the Limitation Act.

4. In other respects, the earlier order dated 31.10.2023 passed in OSA(CAD) No.121/2023 shall stand unaltered.

(D.K.K., J.) (P.D.B., J.)

11.12.2023

mst

Note: Registry is directed to issue a fresh order copy, after making necessary corrections.

**D.KRISHNAKUMAR, J.
and
P.DHANABAL, J.**



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OSA (cad) No.121 of 2021

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OSA (CAD) No.121 of 2021

11.12.2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

Page 3 of



OSA (cad) No.121 of 2021

CORAM :

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

OSA(Cad) No.121 of 2021

1. IJM-SCL-JV

House No.1-90/A, Plot Nos.20 & 21,
RBI Colony, Madhapur, Hyderabad 500 081.
Presently: 1-89/1, Plot No.42 & 43,
Kavuri Hills-Phase-1,
Madhapur, Hyderabad 500 081.

2. IJM Corporation House,

House No.1-90/A, Plot Nos.20 & 21,
RBI Colony, Madhapur, Hyderabad 500 081.
Presently: 1-89/1, Plot No.42 & 43,
Kavuri Hills-Phase-1,
Madhapur, Hyderabad 500 081.

3. Maytas Infra Ltd (formerly, Satyam Constructions Ltd.)

6-3-1186/5A, III Floor, Amogh Plaza,
Begumpet, Hyderabad 500 016.
Presently: IL & FS Engineering and Construction Company,
Limited, D.No.8-2-120/113/3/4F, Sanali Info Park,
Cyber Towers, Road No.2, Banjara Hills,
Hyderabad 500 033.
(Cause title accepted, vide court order dated 22.10.2021).

... Appellants

Vs.

**1. National Highway Authority of India,
Plot No.G-5, Sector-10, Dwarka,**



OSA (cad) No.121 of 2021

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New Delhi 110 005.
and its local office at 8th floor, SPIC House,
Annex Building, 88, Anna Salai,
Guindy, Chennai 600 032.

2. Hon'ble Mr.Justice R.C.Lahoti,
Former Chief Justice of India,
B-56,Sector-14, Noida 291 301.

3. Hon'ble Mr.Justice Avadha Behari Rohatgi,
Former Judge of the High Court of Delhi,
N-217, Greater kailash-I,
New Delhi 110 048.

4. Er.Wasim Ur Rehman,
20, Avas Vikas Colony, Pili Khoti,
Civil Lines, P.O.Moradabad, Uttar Pradesh

... Respondents

Prayer: Original side appeal filed under Order XXXVI Rule 1 of O.S.Rules read with Clause 15 of the Amended Letters patent, 1865 and Section 13(1-A) of the Commercial Courts Act and Section 37 of the Arbitration & Conciliation Act, 1996 to set aside the order dated 07.01.2020 passed by this Court in O.P.No.132/2010.

For appellants : Dr.Amit George, Mr.Adhishwar Suri
and Mr.Kurian Manavalan

For Respondent : Mr.Su.Srinivasan, standing counsel
for the first respondent

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Original side appeal has been filed to set aside the order passed



OSA (cad) No.121 of 2021

by this Court in O.P.No.132/2010, dated 07.01.2020, in and by which, the Award passed by the Majority Arbitrators, dated 15.11.2009 was partly set aside and the remaining was upheld. The order of the learned single judge is extracted hereunder.

*"Accordingly, the award in respect of Claim 1 in both references is set aside, Like wise, the award in respect of Claim 4 and Claim 6 in reference No.1 is set aside. The computation of the net payable under the final award is completely flawed and it set aside. The award in respect of counter claims 4, 5 and 8 is set aside by accepting the preliminary objection that the mandatory pre-arbitral procedure was not complied with. On all these aspects, the Award violates both public policy and is patently illegal as per the law laid down in **Associate Builders Vs. Delhi Development Authority (2015) 3 SCC 49** and in particular, paragraphs 29 and 31 thereof and paragraph 42 of **SSYANGTNG**. The award in respect of all other claims are based on an appraisal of evidence or a plausible construction of contractual clauses and therefore, no interference is warranted.*

Consequently the petitioners are granted leave to initiate de nova arbitration proceedings in respect of claims 1, 4 and 6 in reference No.1 and claim 1 in reference No.2 and also for interest thereon. If such proceedings are initiated, the petitioners shall be entitled to the benefit of Section 14 of the Limitation Act, 1963 in respect of time taken both in the Arbitral proceedings and in



proceedings before this Court.

2. Today, when the matter is listed for hearing, the learned counsel appearing for the appellants submitted that, challenging the Award passed by the Arbitral Tribunal, the above said original petition was filed before this Court. He further submitted that the learned Single Judge, while allowing the original petition in part, has set aside the majority Award passed by the Arbitrators and upheld the minority Award. Therefore, he fairly submitted that to challenge the Award, the remedy is only before the Hon'ble Supreme Court, in the light of the decision of the Hon'ble Supreme Court in ***National Highways Authority of India Vs. M.Hakeem and another reported in (2021) 9 Supreme Court Cases 1***. Hence, the learned counsel for the appellant seeks permission of this Court to withdraw the present appeal to seek his remedy by filing an appeal before the before the Hon'ble Supreme Court under Article 142 of the Constitution of India with liberty to exclude the period of limitation under Section 14 of the Limitation Act for the purpose of filing appeal.

3. The learned counsel for the first respondent has no serious



OSA (cad) No.121 of 2021

objection for the above said requests made by the learned counsel for the appellants.

4. Accepting the request made by the learned counsel for the appellant, this Original Side appeal is dismissed with the above liberty.

(D.K.K.J.) (P.D.B.J.)

31.10.2023

Internet: Yes/No
Index : Yes/No
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OSA (cad) No.121 of 2021

D.KRISHNAKUMAR, J.

and

P. DHANABAL, J.

mst

OSA (cad) No.121 of 2021

31.10.2023