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O.S.A.No.118 of 2020 and O.S.A.No.218 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

and

THE HONOURABLE Mrs.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A.No.118 of 2020 and O.S.A.No.218 of 2021

and

C.M.P.No.8978 of 2021 in O.S.A.No.218 of 2021

O.S.A.No.118 of 2020

M/s.ICMC Corporation Ltd.,
36, Ambattur Industrial Estate
Chennai - 600 058
Tamil Nadu.

.... Appellant

Vs

M/s.Electronics Corporation of Tamil Nadu Ltd.,
692, Anna Salai, Nandanam
Chennai - 600 035.
Tamil Nadu

... Respondent

Prayer : Original Side Appeal filed under Clause 15 of the Letters Patent read with Section 37 of Arbitration and Conciliation Act, 1996 read with Order 36 Rule 1 of Original Side Rules, praying to set aside the fair and decreetal order dated 24.01.2020 passed in O.P. No.821 of 2019 insofar as it interferes with Arbitral Award dated 22.08.2019 passed by the learned Arbitrator, and consequentially restore the Arbitral Award in its entirety by



O.S.A.No.118 of 2020 and O.S.A.No.218 of 2021

allowing the O.S.A along with costs including complete reimbursement of the cost of extension of Bank Guarantee till 23/01/2020 with interest @ 15% and pass any other orders deemed fit and necessary in the circumstances of this case.

O.S.A.No.218 of 2021

Electronic Corporation of Tamil Nadu Limited
692, Anna Salai, Nandanam
Chennai - 600 035.

.... Appellant

Vs

ICMC Corporation Limited
36, Ambattur Industrial Estate
Chennai - 600 050

... Respondent

Prayer : Original Side Appeal filed under Clause 15 of the Letters Patent read with Section 37 of Arbitration and Conciliation Act, 1996 read with Order 36 Rule 1 of Original Side Rules, praying to modify the order passed in O.P. No.821 of 2019 dated 24.01.2020 and set aside the award and allow the original petition as prayed for.

O.S.A.No.118 of 2020:

For Appellant : Mr.M.S.Krishnan,
Senior Counsel
for Mr.J.James

For Respondent : Mr.M.Vijayan
assisted by Ms.Bensi Rema
for M/s.King and Partridge



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O.S.A.No.218 of 2021:

For Appellant : Mr.M.Vijayan
assisted by Ms.Bensi Rema
for M/s.King and Partridge

For Respondent : Mr.M.S.Krishnan, Senior Counsel
for Mr.J.James

COMMON JUDGMENT

This common consent judgment/order will now dispose of the captioned intra-court Appeals i.e., 'Original Side Appeals' [hereinafter 'OSAs' for the sake of brevity] and captioned 'Civil Miscellaneous Petition' [hereinafter 'CMP' for the sake of brevity] in O.S.A.No.218 of 2021.

2. Owing to the trajectory the captioned matters took in the hearing before this Court, it is really not necessary to dilate much on facts. In other words, factual matrix in a nutshell i.e., short facts shorn of granular particulars will suffice.

3. Factual matrix in a nutshell is that the genesis of the matter is constituted by two contracts; 'contract dated 14.02.2013' [hereinafter 'I Contract' for the sake of brevity, convenience and clarity] and 'another contract dated 15.07.2013' [hereinafter 'II Contract' for the sake of brevity,



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convenience and clarity] between 'ICMC Corporation Limited' [hereinafter 'ICMC' for the sake of brevity] and 'Electronic Corporation of Tamil Nadu Limited' [hereinafter 'ELCOT' for the sake of brevity, convenience and clarity]; that I Contract is for supply of 3,00,000 laptops and II Contract is for supply of 26,000 laptops; that the laptops were to be supplied by ICMC to ELCOT; that disputes erupted; that a writ petition was filed in this Court and an order was made by a Single Judge; that this was carried in appeal vide an intra-Court appeal; that a Division Bench made an order in the intra-Court appeal; that the matter was further carried to Hon'ble Supreme Court; that Hon'ble Supreme Court disposed of the matter by directing the parties to take steps towards appointment of Arbitrator, besides directing ELCOT to pay the disputed sum to ICMC subject to issuance of bank guarantee pending arbitration; that the parties by consent constituted Hon'ble 'Arbital Tribunal' [hereinafter 'AT' for the sake of brevity, convenience and clarity]; that Justice (Retd) Ajit Prakash Shah, a former Hon'ble Chief Justice of this Court and Delhi High Court, was the sole Arbitrator ; that Hon'ble AT entered upon reference, adjudicated upon the arbitral disputes between ICMC and ELCOT and rendered a detailed award dated 22.08.2019; that this award shall be referred to as 'impugned award' for the sake of convenience; that the



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impugned award was assailed by ELCOT in Section 34 Court {to be noted, 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} in Commercial Division of this Court; that the Commercial Division of this Court [a Hon'ble Single Judge] in and by an 'order dated 24.01.2020' ['impugned order' for the sake of convenience and clarity] disposed of the Section 34 petition saying impugned award is 'partly set aside' i.e., set aside with regard to declaration that imposition of 'Liquidated Damages' ['LD'] qua II Contract is illegal and made a consequential direction for payment of amounts withheld as LD under II Contract with interest thereon; that both ELCOT and ICMC are on 'intra-Court appeals' i.e., 'captioned appeals' before this Court {to be noted, captioned 'O.S.A. No.118 of 2020' which shall hereinafter be referred to as 'I OSA' has been preferred by ICMC and captioned 'O.S.A. No.218 of 2021' which shall hereinafter be referred to as 'II OSA' has been preferred by ELCOT}; that captioned matters are now before this Bench.

4. This Court having captured a thumb nail sketch of facts i.e., broad facts imperative for appreciating this simple consent order and the trajectory the matter has taken in reaching this Court now proceeds with the kernel of



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the Section 37 legal drill at hand.

5. Mr.M.S.Krishnan, learned Senior Advocate instructed by Mr.J.James, learned counsel on record for ICMC and Mr.M.Vijayan of M/s.King and Partridge [Law Firm] assisted by Ms.Bensi Rema of M/s.King and Partridge for ELCOT submitted in one voice in unison that the impugned order made by Section 34 Court modifies the impugned award.

6. The above takes us to the moot question as to whether an arbitral award can be modified in a legal drill under Section 34 of A and C Act. This question was answered by Hon'ble Supreme Court in ***Project Director NHAI Vs. M.Hakeem*** reported in (2021) 9 SCC 1. To be noted, Hon'ble Supreme Court held that modification of an award by a Section 34 Court in a legal drill vide Section 34 is impermissible.

7. This takes us to the order of Hon'ble Single Judge i.e., Hon'ble 34 Court, which is before us in appeals i.e., captioned appeals. To be fair to the Hon'ble Single Judge, it is to be noted that the impugned order is dated 24.01.2020 but ***Hakeem*** was rendered by Hon'ble Supreme Court only on 20.07.2021. Therefore, on the date on which the impugned order was made by Hon'ble Commercial Division, ***Gayatri Balaswamy's*** case, being ***Gayatri Balaswamy Vs. ISG Novasoft Technologies Ltd.,*** reported i n 2014 (6) CTC 602 and



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confirmed by a Division Bench vide order in an intra-Court appeal reported in **2019 SCC OnLine Mad 15819** was holding the field. However, in **Hakeem, Gayatri Balaswamy** was specifically and categorically overruled. This means the modification qua legal drill under Section 34 is impermissible and in **Hakeem**, Hon'ble Supreme Court has not resorted to prospective overruling. Therefore, this principle will apply on and from 22.08.1996 i.e., the date on which A and C Act kicked in. To be noted, A and C Act {including section 34} was amended by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016) on and from 23.10.2015 and it was further amended {including section 34} by the Arbitration and Conciliation (Amendment) Act, 2019 (Act 33 of 2019) dated 09.08.2019, a conditional legislation wherein 11 out of 16 sections kicked in, on and from 30.08.2019.

8. In the light of the narrative thus far, if we were to sustain the award in its entirety by agreeing with the appellant in I OSA (ICMC), there is no difficulty but if it is going to be the other way, we would end up modifying the impugned award which is impermissible as of today. This has led to a peculiar situation in the instant case on hand as we can neither say that the impugned order is faulty nor sustain modification of an arbitral award if we



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proceed further with the legal drill and find that we are not persuaded by arguments of appellant in I OSA.

9. Be that as it may, we deem it appropriate to record that we have noticed **Gayatri Balaswamy** was carried to Hon'ble Supreme Court vide SLP.(C) Nos.15336-15337/2021 and a three member Bench of Hon'ble Supreme Court in and by order dated 20.02.2024 formulated five questions and referred the matter to a Larger Bench. In this order (making reference) Hon'ble Supreme Court has categorically held that the issue is whether in exercise of powers under Section 34 or Section 37 of A and C Act, Courts are empowered to modify an arbitral award frequently arises in proceedings not only before the Supreme Court but also before the High Courts and the District Courts. This Court being a Section 37 Court is faced with that very question which has been described as 'peculiar situation' supra. Therefore, both learned counsel i.e., senior counsel (on instructions) in I OSA and counsel on record in II OSA fairly agreed for having the impugned award set aside and remanded to Section 34 Court.

10. In the light of narrative thus far, we make the following order :

- a) Impugned order dated 24.01.2020 made in OP.No.821 of 2019 is set aside;



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- b) Impugned order is set aside solely for the purpose of facilitating a *de novo* Section 34 legal drill. This means, we make it clear that we have not expressed any view or opinion on the merits of the matter. This also means Section 34 will now deal with the matter on own its merits and in accordance with law i.e., in accordance with **Hakeem** as obtaining today;
- c) As **Hakeem** has been referred to a Larger Bench and one of the questions formulated by Hon'ble Larger Bench vide sub paragraph (4) of paragraph 3 of **Hakeem** is '*Whether the power to modify an award can be read into the power to set aside an award under section 34 of the Act?*', if the Larger Bench renders the verdict / answers the reference in the interregnum, Section 34 Court will apply the law as declared by the Larger Bench but until then, **Hakeem** which overruled **Gayatri Balaswamy** will be holding the field and therefore, Hon'ble Single Judge will proceed on that basis;
- d) Though obvious, for the sake of specificity, we make it clear that all questions are left open and all options i.e., resorting to sub section (4) of Section 34, sustaining the award or setting



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aside the award or following the verdict of Larger Bench if the verdict is returned / reference is answered in the interregnum are all open to Section 34 Court;

- e) As regards the time line for disposal of an application by Section 34 Court, sub-section (6) of Section 34 prescribes a time line of one year from the date on which notice under sub-section (5) is served upon the other party. To be noted, sub-section (6) also makes it clear that the application under Section 34 shall be disposed of expeditiously. In this regard, we deem it appropriate to refer to ***State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti*** reported in ***(2018) 9 SCC 472*** and paragraphs 25 and 26 therein which reads as follows:

'25. We come now to some of the High Court judgments. The High Courts of Patna [Bihar Rajya Bhumi Vikas Bank Samiti v. State of Bihar, 2016 SCC OnLine Pat 10104], Kerala [Shamsudeen v. Shreeram Transport Finance Co. Ltd., 2016 SCC OnLine Ker 23728] , Himachal Pradesh [Madhava Hytech Engineers (P) Ltd. v. Executive Engineers, 2017 SCC OnLine HP 2212] , Delhi [Machine Tool India Ltd. v. Splendor Buildwell (P) Ltd., 2018 SCC OnLine Del 9551] , and Gauhati [Union of India v. Durga



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Krishna Store (P) Ltd., 2018 SCC OnLine Gau 907] have all taken the view that Section 34(5) is mandatory in nature. What is strongly relied upon is the object sought to be achieved by the provision together with the mandatory nature of the language used in Section 34(5). Equally, analogies with Section 80 CPC have been drawn to reach the same result. On the other hand, in *Global Aviation Services (P) Ltd. v. Airport Authority of India* [*Global Aviation Services (P) Ltd. v. Airport Authority of India*, 2018 SCC OnLine Bom 233] , the Bombay High Court, in answering Question 4 posed by it, held, following some of our judgments, that the provision is directory, largely because no consequence has been provided for breach of the time-limit specified. When faced with the argument that the object of the provision would be rendered otiose if it were to be construed as directory, the learned Single Judge of the Bombay High Court held as under : (SCC OnLine Bom para 133)

“133. Insofar as the submission of the learned counsel for the respondent that if Section 34(5) is considered as directory, the entire purpose of the amendments would be rendered otiose is concerned, in my view, there is no merit in this submission made by the learned counsel for the respondent. Since there is no consequence provided in the said provision in case of non-compliance thereof, the said provision cannot be considered as mandatory. The purpose of avoiding any delay in proceeding with the matter expeditiously is already served by insertion of appropriate rule in the Bombay High Court (Original Side) Rules. The Court can always direct



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the petitioner to issue notice along with papers and proceedings upon other party before the matter is heard by the Court for admission as well as for final hearing. The vested rights of a party to challenge an award under Section 34 cannot be taken away for non-compliance of issuance of prior notice before filing of the arbitration petition.”

The aforesaid judgment has been followed by recent judgments of the High Courts of Bombay [Maharashtra State Road Development Corpn. Ltd. v. Simplex Gayatri Consortium, 2018 SCC OnLine Bom 805] and Calcutta [Srei Infrastructure Finance Ltd. v. Candor Gurgaon Two Developers and Projects (P) Ltd., 2018 SCC OnLine Cal 5606].

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 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



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achieved by adding Section 13(6) by the 2015 Amendment Act.'

- f) As sub-section (5) of Section 34 notice is held to be directory and not mandatory qua sub-section (6) of Section 34 and one of us sitting Single (M.Sundar.J.) in Section 34 Court in O.P.No.527 of 2020 [***M.Subbiah Vs. Daimler Financial Services India Pvt. Ltd., and another***] in and by order dated 10.12.2020 has held that the reckoning date will be the date of presentation of Section 34 petition. As sub-section (5) of Section 34 has been held to be directory and not mandatory, we hold that this principle is now good law;
- g) In the case on hand, considering the trajectory the matter has taken, the time frame qua sub-section (6) will run from today. We make it clear that we are not fixing a time frame for Hon'ble Commercial Division but we are only referring to the provisions of law and judgment of Hon'ble Supreme Court in ***Bhumi Vikas Bank;***
- h) As regards Section 34 petition, the specific sub-section has not been mentioned, as would be evident from Section 34 petition



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that has been placed before us, as part of the case file. Therefore, Rules made under Section 82 of A & C Act, being 'Madras High Court (Arbitration) Rule 2020' kicked in on 17.03.2021. Be that as it may, in the hearing today, it was fairly agreed between the two learned counsel and more particularly, learned counsel for ELCOT who is the protagonist of Section 34 petition that the legal drill before Section 34 Court which is to ensue would be on two of the eight pigeon holes qua Section 34 and those two pigeon holes are 34(2)(b)(ii) clause 2 of Explanation 1 [Public policy and contravention to policy of Indian law] and sub-section(2A) of Section 34 [patent illegality obviously with proviso thereat];

- i) Though sub-section (6) provides for one year, we are of the considered view that in the light of first limb of sub-section (6) of Section 34 which says that a 34 petition shall be disposed of expeditiously considering that the impugned award is of the year 2019 and that the contracts are more than a decade old i.e., 2013 and observation of Hon'ble Supreme Court in ***Bhumi Vikas Bank***, it may be desirable to have a expedited hearing albeit



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subject to the Board of Hon'ble Section 34 Court.

11. Captioned OSAs and captioned CMP are disposed of in the
aforementioned manner with the aforesaid observations/directions. There
shall be no order as to costs.

[M.S.,J.] [K.G.T.,J.]
24.06.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking order / Non-speaking order
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M.SUNDAR. J.,
and
K.GOVINDARAJAN THILAKAVADI.J.,

ds

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24.06.2024



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O.S.A.No.118 of 2020 and O.S.A.No.218 of 2021
and
C.M.P.No.8978 of 2021 in O.S.A.No.218 of 2021

M.SUNDAR.J.,
AND
K.GOVINDARAJAN THILAKAVADI.J.,

(Order of the Court was made by M.SUNDAR.J.,)

Captioned matters are listed under the cause list caption 'FOR BEING MENTIONED' at the instance of Mr.J.James, counsel on record for appellant in I OSA and counsel for respondent in II OSA.

2.Mr.J.James, learned counsel is before us in the physical Court and Mr.M.Vijayan of M/s.King and Partridge [Law Firm] is before us on 'VC' ['Video Conferencing'] platform (To be noted, this is a hybrid hearing, which is a regular/routine/daily feature in this Court).

3.An inadvertent typographical/secretarial error has crept into our common judgment dated 24.06.2024, vide which the captioned two OSAs were disposed of. This inadvertent typographical/secretarial error has occurred in the last sentence in paragraph 9 wherein instead of 'impugned



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order' it has been typed as 'impugned award'. To be noted, scanned reproduction of judgement/order made by us on 24.06.2024 is as follows :



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.06.2024

CORAM

THE HONOURABLE Mr.JUSTICE M.SUNDAR
and
THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN THILAKAVADI

O.S.A.No.118 of 2020 and O.S.A.No.218 of 2021
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O.S.A.No.118 of 2020

M/s.ICMC Corporation Ltd.,
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cost of extension of Bank Guarantee till 23/01/2020 with interest @ 15% and pass any other orders deemed fit and necessary in the circumstances of this case.

O.S.A.No.218 of 2021

Electronic Corporation of Tamil Nadu Limited
692, Anna Salai, Nandanam
Chennai - 600 035,

.... Appellant

Vs

ICMC Corporation Limited
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Prayer : Original Side Appeal filed under Clause 15 of the Letters Patent read with Section 37 of Arbitration and Conciliation Act, 1996 read with Order 36 Rule 1 of Original Side Rules, praying to modify the order passed in O.P. No.821 of 2019 dated 24.01.2020 and set aside the award and allow the original petition as prayed for.

O.S.A.No.118 of 2020:

For Appellant : Mr.M.S.Krishnan,
Senior Counsel
for Mr.I.James

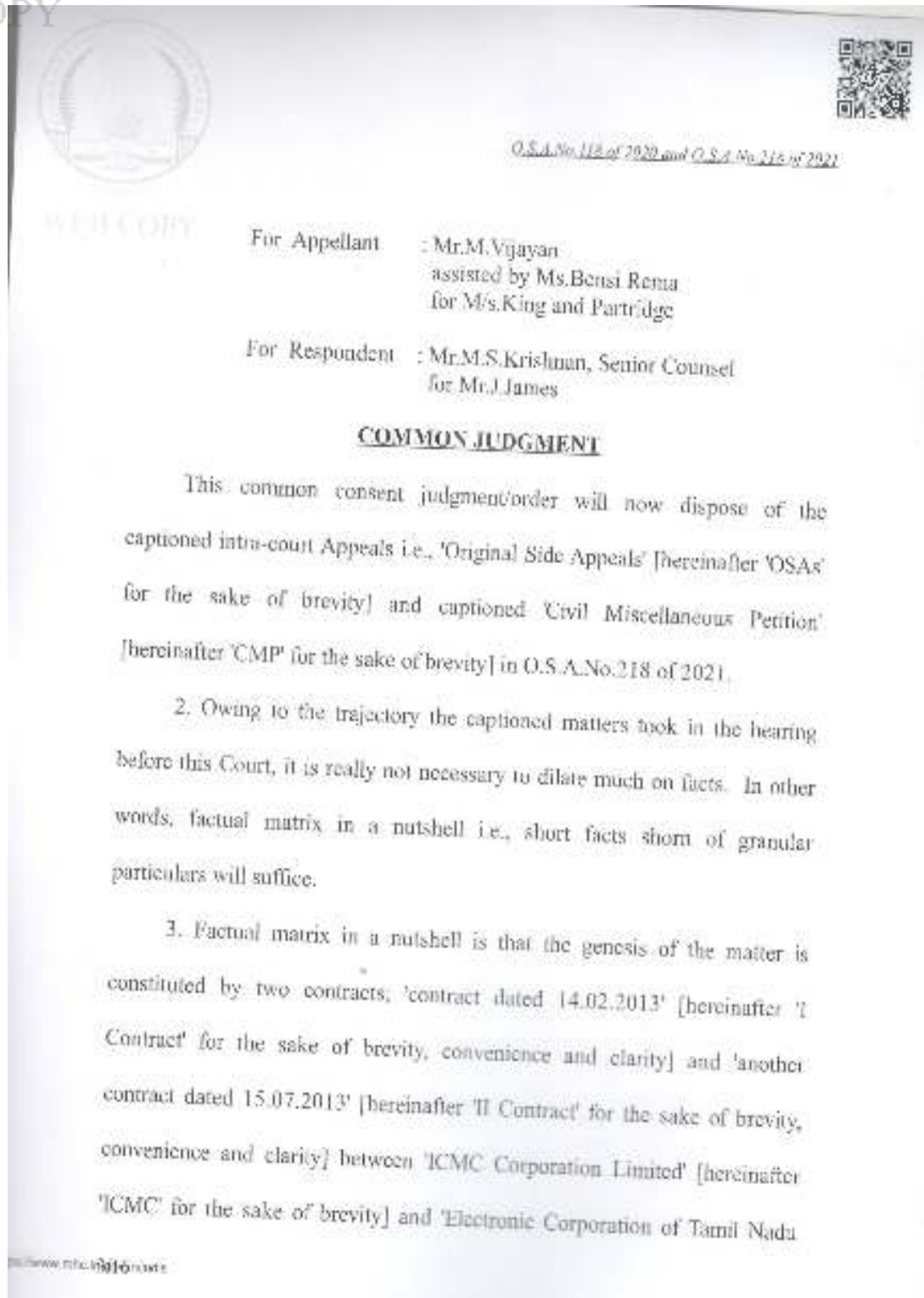
For Respondent : Mr.M.Vijayan
assisted by Ms.Bensi Rema
for M/s.King and Partridge

O.S.A.No.218 of 2021:



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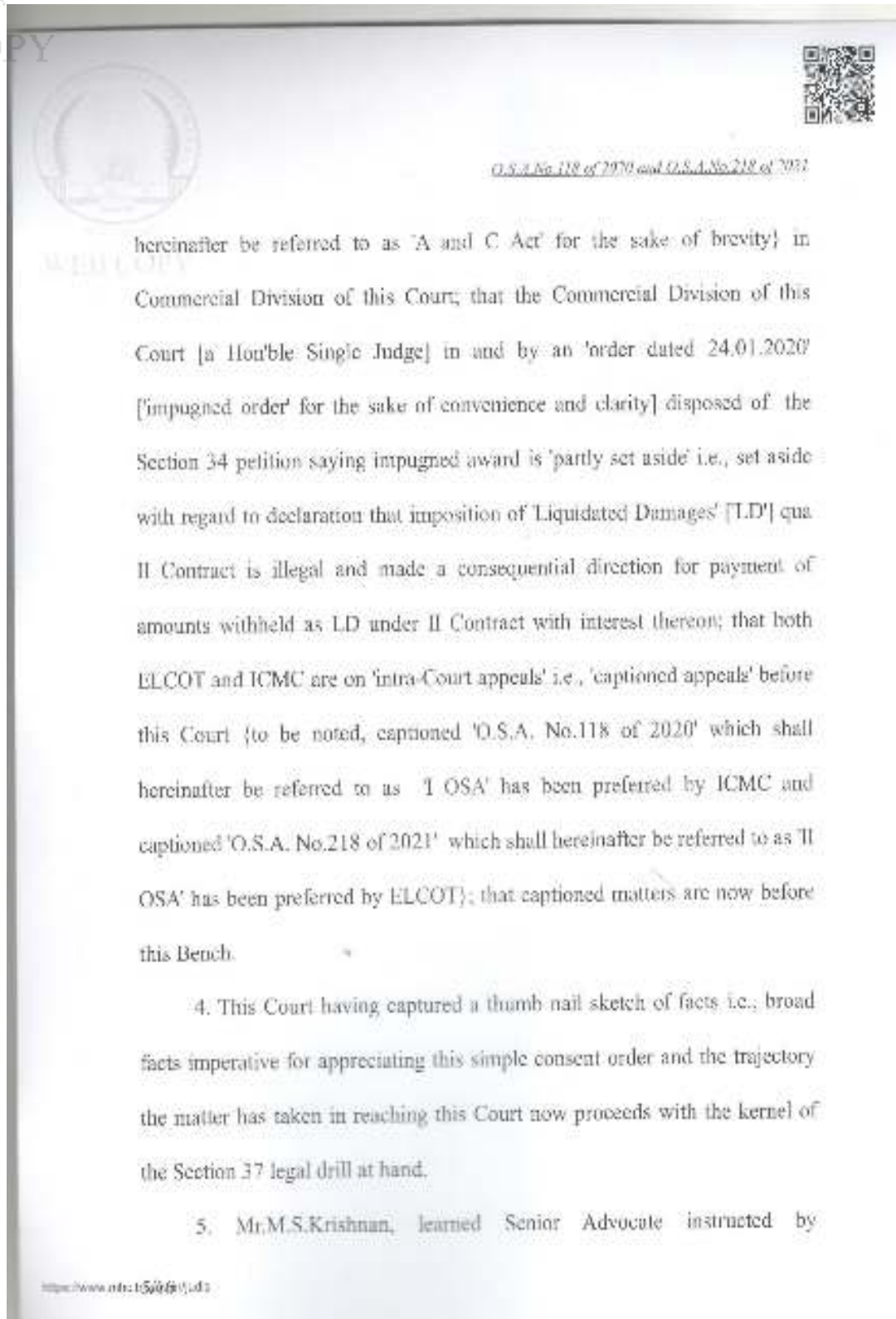
Limited' [hereinafter 'ELCOT' for the sake of brevity, convenience and clarity]; that I Contract is for supply of 3,00,000 laptops and II Contract is for supply of 26,000 laptops; that the laptops were to be supplied by ICMC to ELCOT; that disputes erupted; that a writ petition was filed in this Court and an order was made by a Single Judge; that this was carried in appeal vide an intra-Court appeal; that a Division Bench made an order in the intra-Court appeal; that the matter was further carried to Hon'ble Supreme Court; that Hon'ble Supreme Court disposed of the matter by directing the parties to take steps towards appointment of Arbitrator; besides directing ELCOT to pay the disputed sum to ICMC subject to issuance of bank guarantee pending arbitration; that the parties by consent constituted Hon'ble 'Arbitral Tribunal' [hereinafter 'AT' for the sake of brevity, convenience and clarity]; that Justice (Retd) Ajit Prakash Shah, a former Hon'ble Chief Justice of this Court and Delhi High Court, was the sole Arbitrator ; that Hon'ble AT entered upon reference, adjudicated upon the arbitral disputes between ICMC and ELCOT and rendered a detailed award dated 22.08.2019; that this award shall be referred to as 'impugned award' for the sake of convenience; that the impugned award was assailed by ELCOT in Section 34 Court (to be noted, the Arbitration and Conciliation Act, 1996 (Act 26 of 1996), which shall

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Mr.J.James, learned counsel on record for ICMC and Mr.M.Vijayan of M/s.King and Partridge [Law Firm] assisted by Ms.Bensi Rema of M/s.King and Partridge for ELCOT submitted in one voice in unison that the impugned order made by Section 34 Court modifies the impugned award.

6. The above takes us to the moot question as to whether an arbitral award can be modified in a legal drill under Section 34 of A and C Act. This question was answered by Hon'ble Supreme Court in *Project Director NHAI Vs. M.Hakeem* reported in (2021) 9 SCC 1. To be noted, Hon'ble Supreme Court held that modification of an award by a Section 34 Court in a legal drill vide Section 34 is impermissible.

7. This takes us to the order of Hon'ble Single Judge i.e., Hon'ble 34 Court, which is before us in appeals i.e., captioned appeals. To be fair to the Hon'ble Single Judge, it is to be noted that the impugned order is dated 24.01.2020 but *Hakeem* was rendered by Hon'ble Supreme Court only on 20.07.2021. Therefore, on the date on which the impugned order was made by Hon'ble Commercial Division, *Gayatri Balaswamy's* case, being *Gayatri Balaswamy Vs. ISG Novasoft Technologies Ltd.*, reported in 2014 (6) CTC 602 and confirmed by a Division Bench vide order in an intra-Court appeal reported in 2019 SCC OnLine Mad 15819 was holding the field. However, in *Hakeem*,

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Gayatri Balaswamy was specifically and categorically overruled. This means the modification qua legal drill under Section 34 is impermissible and in *Hakeem*, Hon'ble Supreme Court has not resorted to prospective overruling. Therefore, this principle will apply on and from 22.08.1996 i.e., the date on which A and C Act kicked in. To be noted, A and C Act (including section 34) was amended by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016) on and from 23.10.2015 and it was further amended (including section 34) by the Arbitration and Conciliation (Amendment) Act, 2019 (Act 33 of 2019) dated 09.08.2019, a conditional legislation wherein 11 out of 16 sections kicked in, on and from 30.08.2019.

8. In the light of the narrative thus far, if we were to sustain the award in its entirety by agreeing with the appellant in I OSA (ICMC), there is no difficulty but if it is going to be the other way, we would end up modifying the impugned award which is impermissible as of today. This has led to a peculiar situation in the instant case on hand as we can neither say that the impugned order is faulty nor sustain modification of an arbitral award if we proceed further with the legal drill and find that we are not persuaded by arguments of appellant in I OSA.

9. Be that as it may, we deem it appropriate to record that we have

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noticed **Gayatri Balaswamy** was carried to Hon'ble Supreme Court vide SLP(C) Nos.15336-15337/2021 and a three member Bench of Hon'ble Supreme Court in and by order dated 20.02.2024 formulated five questions and referred the matter to a Larger Bench. In this order (making reference) Hon'ble Supreme Court has categorically held that the issue is whether in exercise of powers under Section 34 or Section 37 of A and C Act, Courts are empowered to modify an arbitral award frequently arises in proceedings not only before the Supreme Court but also before the High Courts and the District Courts. This Court being a Section 37 Court is faced with that very question which has been described as 'peculiar situation' supra. Therefore, both learned counsel i.e., senior counsel (on instructions) in I OSA and counsel on record in II OSA fairly agreed for having the impugned award set aside and remanded to Section 34 Court.

10. In the light of narrative thus far, we make the following order :

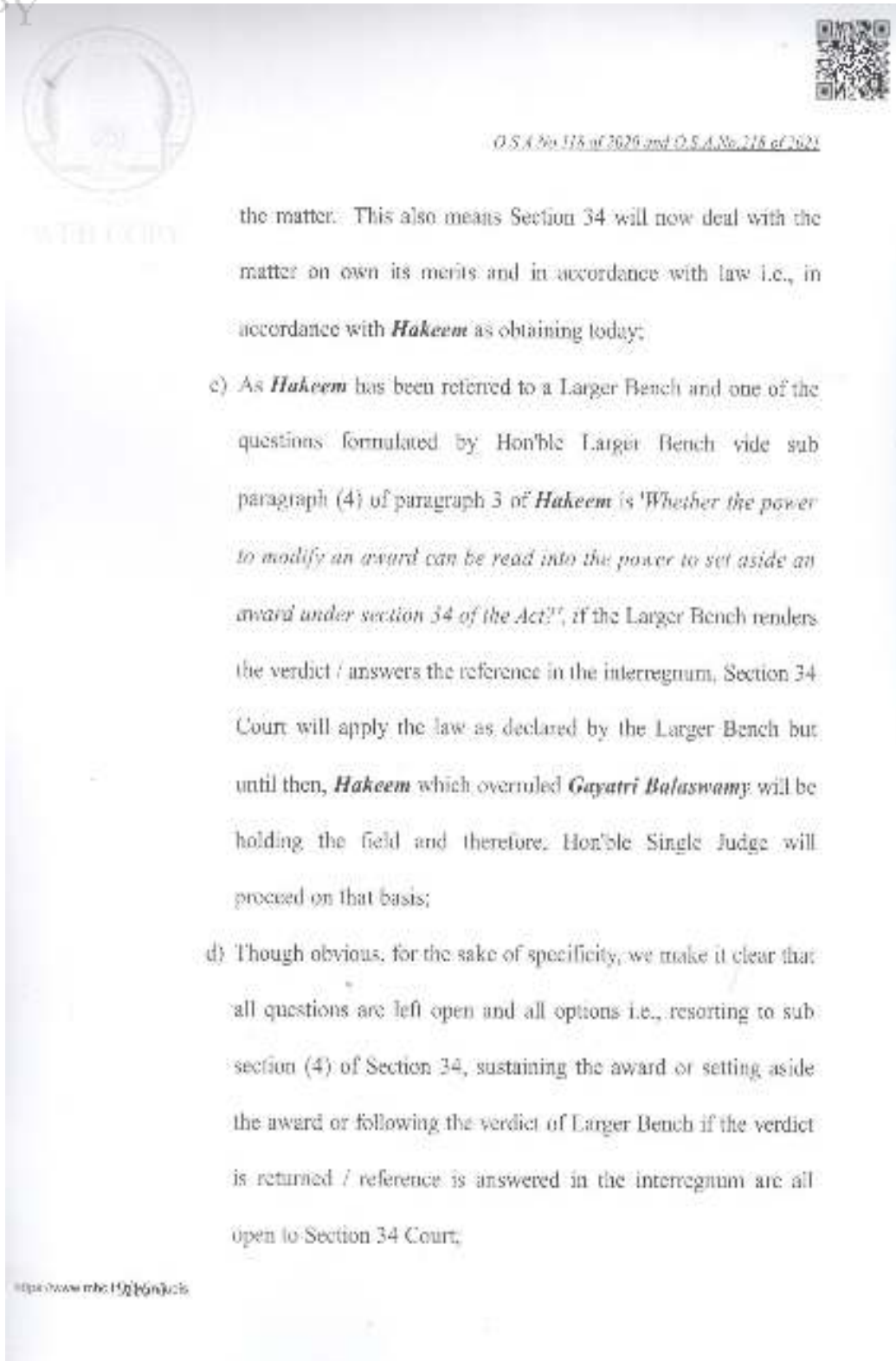
- a) Impugned order dated 24.01.2020 made in OP.No.821 of 2019 is set aside;
- b) Impugned order is set aside solely for the purpose of facilitating a *de novo* Section 34 legal drill. This means, we make it clear that we have not expressed any view or opinion on the merits of

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e) As regards the time line for disposal of an application by Section 34 Court, sub-section (6) of Section 34 prescribes a time line of one year from the date on which notice under sub-section (5) is served upon the other party. To be noted, sub-section (6) also makes it clear that the application under Section 34 shall be disposed of expeditiously. In this regard, we deem it appropriate to refer to *State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti* reported in (2018) 9 SCC 472 and paragraphs 25 and 26 therein which reads as follows:

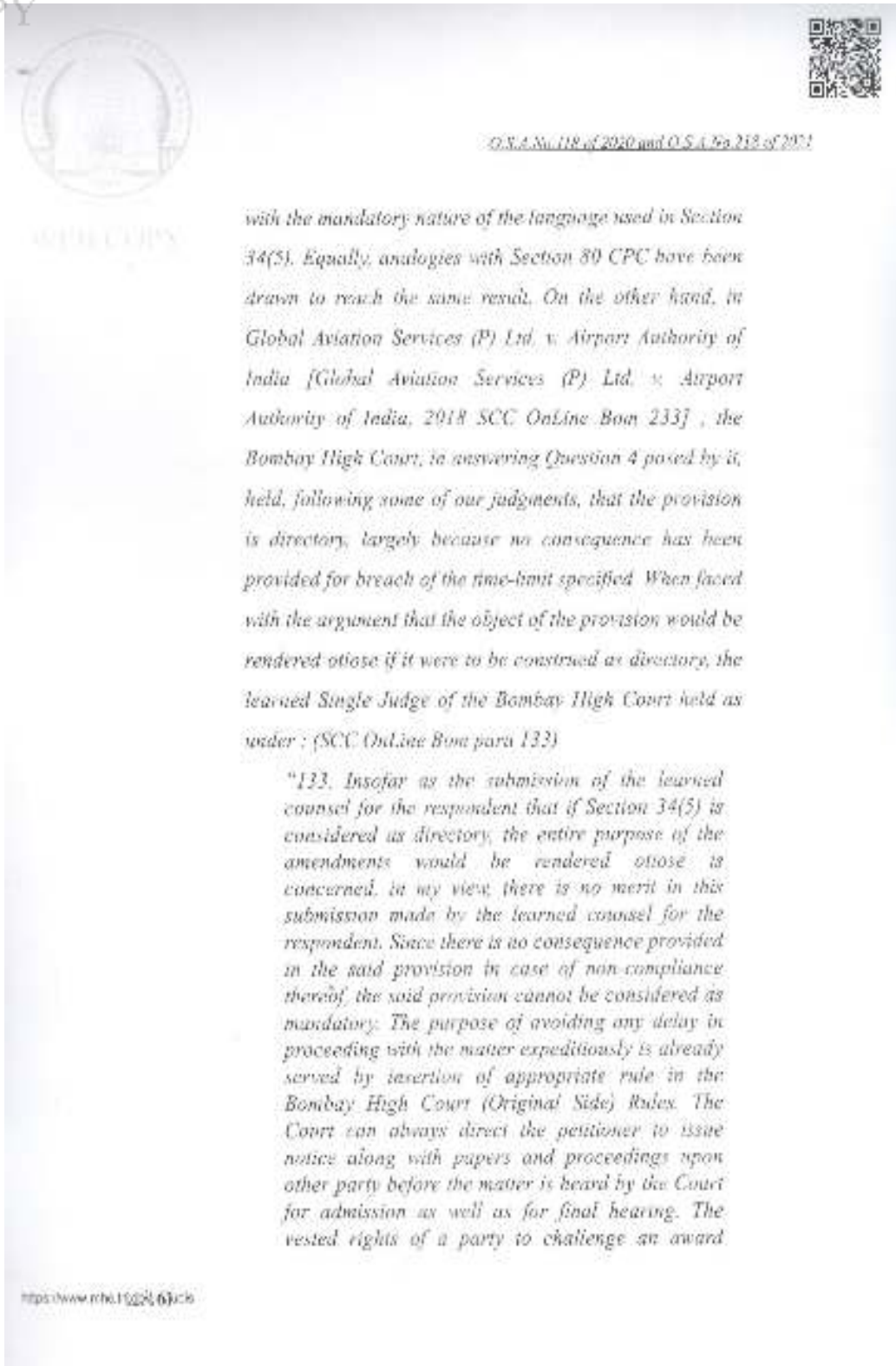
'25. We come now to some of the High Court judgments. The High Courts of Patna [*Bihar Rajya Bhumi Vikas Bank Samiti v. State of Bihar*, 2016 SCC OnLine Pat 10104], Kerala [*Shamsudeen v. Shreevarum Transport Finance Co. Ltd.*, 2016 SCC OnLine Ker 23728], Himachal Pradesh [*Madhava Hytech Engineers (P) Ltd. v. Executive Engineers*, 2017 SCC OnLine HP 2212], Delhi [*Machine Tool India Ltd. v. Splendor Buildwell (P) Ltd.*, 2018 SCC OnLine Del 9551], and Gauhati [*Union of India v. Durga Krishna Store (P) Ltd.*, 2018 SCC OnLine Gau 907] have all taken the view that Section 34(5) is mandatory in nature. What is strongly relied upon is the object sought to be achieved by the provision together

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with the mandatory nature of the language used in Section 34(5). Equally, analogies with Section 80 CPC have been drawn to reach the same result. On the other hand, in *Global Aviation Services (P) Ltd. v. Airport Authority of India* [Global Aviation Services (P) Ltd. v. Airport Authority of India, 2018 SCC OnLine Bom 233], the Bombay High Court, in answering Question 4 posed by it, held, following some of our judgments, that the provision is directory, largely because no consequence has been provided for breach of the time-limit specified. When faced with the argument that the object of the provision would be rendered otiose if it were to be construed as directory, the learned Single Judge of the Bombay High Court held as under : (SCC OnLine Bom para 133)

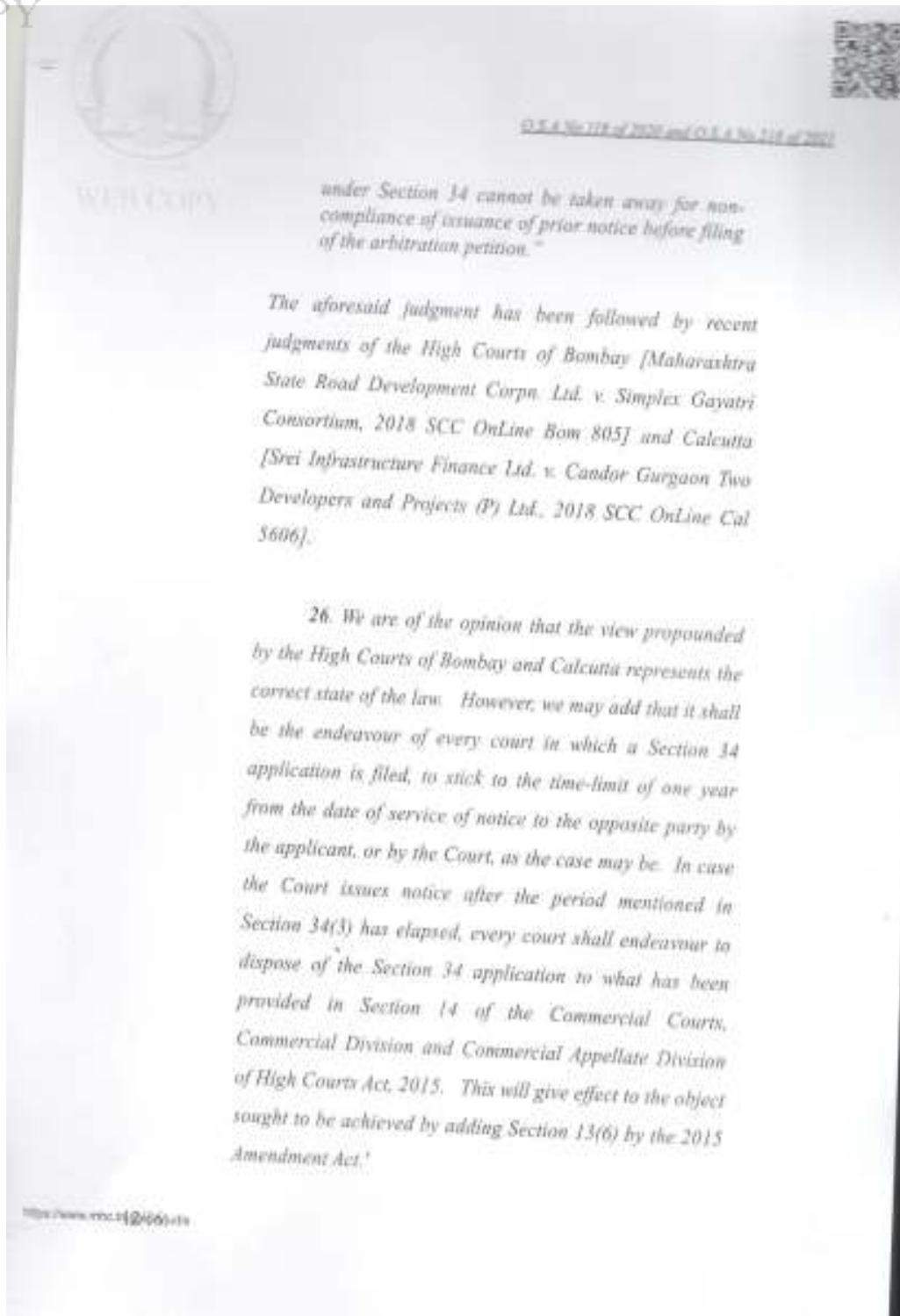
"133. Insofar as the submission of the learned counsel for the respondent that if Section 34(5) is considered as directory, the entire purpose of the amendments would be rendered otiose is concerned, in my view, there is no merit in this submission made by the learned counsel for the respondent. Since there is no consequence provided in the said provision in case of non-compliance thereof, the said provision cannot be considered as mandatory. The purpose of avoiding any delay in proceeding with the matter expeditiously is already served by insertion of appropriate rule in the Bombay High Court (Original Side) Rules. The Court can always direct the petitioner to issue notice along with papers and proceedings upon other party before the matter is heard by the Court for admission as well as for final hearing. The vested rights of a party to challenge an award

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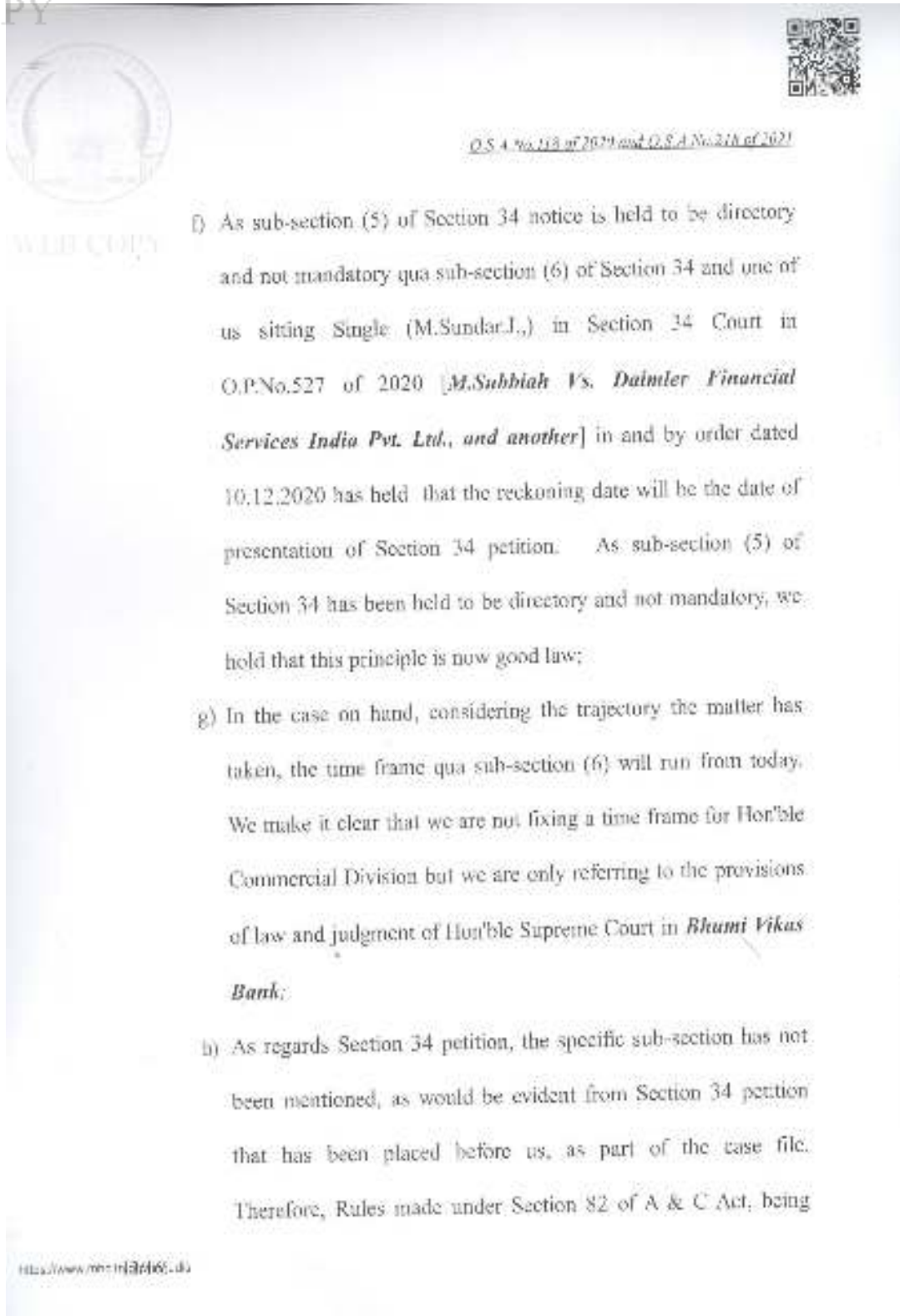
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'Madras High Court (Arbitration) Rule 2020' kicked in on 17.03.2021. Be that as it may, in the hearing today, it was fairly agreed between the two learned counsel and more particularly, learned counsel for ELCOT who is the protagonist of Section 34 petition that the legal drill before Section 34 Court which is to ensue would be on two of the eight pigeon holes qua Section 34 and those two pigeon holes are 34(2)(b)(ii) clause 2 of Explanation 1 [Public policy and contravention to policy of Indian law] and sub-section(2A) of Section 34 [patent illegality obviously with proviso thereof];

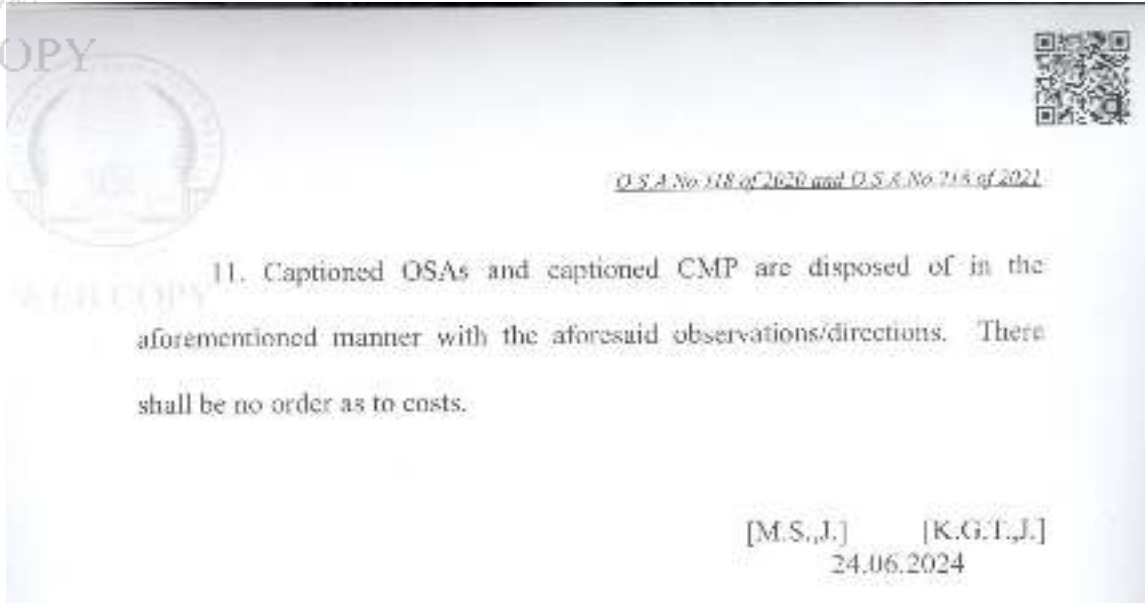
- i) Though sub-section (6) provides for one year, we are of the considered view that in the light of first limb of sub-section (6) of Section 34 which says that a 34 petition shall be disposed of expeditiously considering that the impugned award is of the year 2019 and that the contracts are more than a decade old i.e., 2013 and observation of Hon'ble Supreme Court in *Bhumi Vikas Bank*, it may be desirable to have a expedited hearing albeit subject to the Board of Hon'ble Section 34 Court.

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4.Both learned counsel before us submitted in unison in one voice that this typographical/secretarial error may please be corrected and with the consent of both sides, we correct the said error and we write that in the last sentence in paragraph 9 of the aforementioned judgement dated 24.06.2024, '*impugned award*' will now read as '*impugned order*'. In all other aspects, our common judgement dated 24.06.2024 will remain the same.

5. This corrected order will now be uploaded and it will become the corrigendum as well an addendum to our order already uploaded.

[M.S.J.] [K.G.T.J.]
10.07.2024

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M.SUNDAR.J.,
AND
K.GOVINDARAJAN THILAKAVADI.J.,

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and
C.M.P.No.8978 of 2021 in O.S.A.No.218 of 2021

10.07.2024