



Original Side Appeal (CAD) Nos.123 & 124 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR JUSTICE R.SAKTHIVEL

Original Side Appeal (CAD) No.123 and 124 of 2022

1. M/s. Oil and Natural Gas Corporation Ltd.,
Deenadayalurja Bhavan,
5, Nelson Mandela Road, Vasanthkunj,
New Delhi, through its Executive Director- Asset Manager,
Cauvery Asset, Nervy, Karaikal 609 604.
2. M/s. Oil and Natural Gas Corporation Ltd.,
Rep. by Deputy General Manager (Marketing),
Cauvery Asset Nervy, Karaikal. ... Appellants in both the Appeals

Versus

1. Sri Venkatramana Paper Mills Pvt Ltd.,
Rep by its Director S.Kadarkarai,
No.15, Sreevatsa Square, MTP Road,
Thudiyalur, Coimbatore 641 034.
2. Tamil Nadu Mercantile Bank Ltd,
Rep. by the Chief Manager,
Thiruvanmiyur Branch,
Thiruvamiyur, Chennai. Respondents in both the Appeals



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PRAYER: Original Side Appeals (CAD) filed under Sec 37(1)(b) of Arbitration and Conciliation Act, 1996 read with Sections 7 & 13 of the Commercial Courts Act, 2016 read with 36(1) of the Original Side Rules, to set aside the fair order and decretal order dated 17.02.2021, as modified by fair order and decretal order dated 08.03.2021 in (i) A.No.1748 of 2020 (ii) A.No.1749 of 2020 respectively insofar as directing the Appellants/ONGC: to constitute OEC-Outside Expert Committee (with regard to dues governing the period alleged by the 1st respondent to be affected by force majeure); to conclude OEC proceedings within three months; and barring ONGC from seeking interim measures under Section 9 of the Act in respect thereof.

For Appellant : Mr.R.Shankar Narayanan, Senior Counsel
for M/s. Giridhar and Sai

For Respondents : Mr.S.Senthil Kumar, for R2
R1 – No appearance



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COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in these Appeals is to the orders passed by the learned Single Judge in the Review Applications filed by the appellant seeking review of the orders dated 17.02.2021 made in Application Nos.1748 and 1749 of 2020. Application Nos.1748 and 1749 of 2020 were filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim protection.

2. At the Section 9 stage, it appears that there were consensus among the parties on certain issues and the learned Single Judge on 17.02.2021 passed the following order:

The parties after detailed arguments would now submit that all the applications may be closed with the following directions:-

(a) The ONGC in their counter had undertaken to resolve the disputes relating to the 'Force Majeure' through



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OEC. Recording this undertaking ONGC shall take immediate steps to constitute the OEC and the proceedings shall be concluded within a period of three months from the date of receipt of a copy of this order.

(b) The amounts that are lying with the Bank namely Tamil Nadu Mercantile Bank Limited, Thiruvannamiyur Branch, Chennai, for a sum of Rs.1,98,09,200/- standing in the name of Sri Venkatramana Paper Mills Private Limited. The said amount shall be retained by the Bank and shall not be disbursed to Sri Venkatramana Paper Mills Private Limited till the disposal of the arbitration proceedings.

(c) The ONGC shall therefore not insist on the renewal enhancement of the Letters of Credit and in the light of the above CMA.No.96 of 2020 stands disposed.

(d) It is needless to state that M/s. Oil and Natural Gas Corporation of India Limited can take whatever interim measures are required before the arbitral Tribunal.



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2. In fine, all applications are closed.

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Thereafter there was a minor modification of the order dated 17.02.2021, wherein the appellant was debarred from seeking any interim protection in respect of the force majeure clause alone.

3. The review was sought for mainly on the ground that the respondent did not cooperate with the Outside Expert Committee (OEC) which was formed with respect to an earlier dispute between the same parties and eventually after wasting about a year, the Outside Expert Committee had to be terminated. This experience was pointed out as a reason for seeking review of the order. The learned Single Judge found that this reason cannot be a ground for review within the four corners of Order XLVII of the Code of Civil Procedure, therefore rejected the review application.



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4. We have heard Mr.R.Shankarnarayanan, learned Senior Counsel appearing for the appellants in both the Appeals and Mr.G.Senthil Kumar, learned counsel appearing for the second respondent in both the Appeals.

5. While Mr.R.Shankarnarayanan, learned Senior Counsel would vehemently contend that certain subsequent events which lead to the inevitable conclusion that the order passed under Section 9 of the Arbitration and Conciliation Act, cannot be implemented effectively can be taken note of by the Court and it can form a ground for Review under Order XLVII Rule 1 of the Code of Civil Procedure.

6. Mr.Senthilkumar, learned counsel appearing for the second respondent would submit that there was no attempt to even to constitute an Outside Expert Committee in the present case and he would also point out that the Outside Expert Committee can be terminated at any point of time and its decisions are not binding on the parties. He would therefore, submit that the appellants could have constituted an Outside Expert Committee and explored the possibility of a



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consideration and if it is proved to be elusive then it was open to the appellants to have terminated the proceedings before the Outside Expert Committee and go for Arbitration.

7. We have considered the rival submissions.

8. We are unable to fault the learned Single Judge for having rejected the review, since the grounds urged in the Review Petition does not fall within the four corners of Order XLVII Rule 1 of the Code of Civil Procedure. If a subsequent event is to be taken into account to review the orders of the Court, particularly consent orders, it will amount to opening the pandora's box and there will be no end to legal proceedings. As rightly pointed out by the learned Counsel for the second respondent, it is open to the appellants to have nominated an Outside Expert Committee and attempted a settlement. In the event of the settlement proving to be elusive, it is always open to the appellants to go back to Arbitration. The fact that the appellants will be left without any security to realize the monies if he succeeds in the Arbitration cannot be a ground to have a relook



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into the order, particularly a consent order, invoking the powers on the review under Order XLVII of the Code of Civil Procedure.

9. We conclude that the orders under Appeals need not be interfered with and the Appeals will have to fail and the Appeals are therefore **dismissed**. It will be open to the appellants to constitute an Outside Expert Committee and also terminate if a settlement or conciliation is not possible within a specified time. However, we refrain to make any order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (R.SAKTHIVEL, J.)

16.02.2024

jv

Index : No

Internet : Yes

Neutral Citation : No

Speaking Order

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