



Arb.O.P.(Com.Div.) No.125 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.02.2024
Pronounced On	04.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.125 of 2023

and

A.No.1711 of 2023

M/s.TSMT Technology (India) Private Limited,
Through its Authorised Representative
Praveen Kumar

... Petitioner

Vs.

S & J Turn-Key Contractor (India) Private Limited

... Respondent

Prayer: Original Petition is filed under Section 34(2) and 2A of the Arbitration and Conciliation Act, 1996, to set aside the impugned Award dated 23.12.2022 passed by the Arbitral Tribunal.

For Petitioner : Mr.Raviverma
for Mr.Sriram Venkatavaradan

For Respondent : Mr.Manoj Sreevalsan



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ORDER

The petitioner has challenged the impugned Award dated 23.12.2022 passed by the Arbitral Tribunal. The petitioner was the respondent before the Arbitral Tribunal.

2. By the impugned Award, the Arbitral Tribunal has awarded a sum of **Rs.11,19,22,870/-** to the respondent-claimant together with interest at 15% from the date of claim petition till the date of realization as against claim amount of **Rs.21,74,95,091/-** before the Arbitral Tribunal.

3. The brief facts of the case are that the petitioner had entered into contracts with the respondent-claimant. About seven different categories of contracts were awarded by the petitioner to the respondent-claimant. Details of the contracts awarded and the amount paid by the petitioner to respondent-claimant are as under:-

Table - I



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Sl. No.	Date	Descrip-tion	Total Amount (Rs.)	VAT and GST Difference (Rs.)	Amount paid to Respondent by petitioner (Rs.)	Balance Amount (Rs.)
1.	01.12.2016	Material Contract	7,19,18,129	75,32,312	5,67,45,108	2,27,05,333
2.	01.12.2016	Project Contract	2,60,41,376		47,90,630	2,05,10,140
3.	10.01.2017	Sales Contract	4,72,63,608	85,07,450	0	5,57,71,057
4.	10.01.2017	Installation Contract	60,02,750		60,02,750	0
5.	12.04.2017	Project Contract	12,00,000	1,48,580	4,74,000	9,74,680
6.	17.04.2017	Project Contract	12,74,456		12,74,456	0
7.	27.04.2017	Material Contract	1,70,000		1,49,940	20,060
8.	01.06.2017	Performance Guarantee Agreements	1,01,20,000	18,21,600	0	1,19,41,600
9.	06.01.2017 to 14.06.2017	Other Additional Items	18,51,608		0	18,51,608
10.		SIIB Charges	29,50,000		0	29,50,000
11.		Six Containers	7,08,000		0	7,08,000
12.		All Materials and Equipment in Site	47,20,000		0	47,20,000
13.		NCLT Lawyer Fees	12,39,000		0	12,39,000
14.		Travelling Cost for	11,21,000		0	11,21,000



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Sl. No.	Date	Description	Total Amount (Rs.)	VAT and GST Difference (Rs.)	Amount paid to Respondent by petitioner (Rs.)	Balance Amount (Rs.)
		NCLT from Taiwan to India				
15.		Interest Rate 18%	2,35,45,729		0	2,35,45,729
			19,99,55,656	1,80,09,942		
16.	Total		21,74,95,091		6,94,36,884	14,80,58,207

Note: Sl. Nos. 1 to 3, 5,7,8 awarded.
(No dispute regarding Sl.Nos.4 and 6).
Sl.No. 9 to 15 rejected.

4. The challenge to the impugned Award passed by the Arbitral Tribunal is primarily on the ground that the Arbitral Tribunal has re-written the contract by awarding tax component even though the contract at Sl.Nos.1, 2 and 5 were inclusive of tax.

5. That apart, it is submitted that the Arbitral Tribunal has ignored the stand of the petitioner herein that the contract at Sl.Nos.3 to 7 were not stamped. Therefore, the contract at Sl.Nos.3 to 7 were in violation of



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Section 35 of the Indian Stamp Act, 1899, and the Arbitral Tribunal ought to have considered the same.

6. It is submitted that the learned Arbitrator has ignored the submissions made by the petitioner. In this connection, a reference was made to the following decisions of the Hon'ble Supreme Court:-

- (i) **Vijay Vs. Union of India and others**, (2023)
SCC Online SC 1585.
- (ii) **N.K.Surana Vs. Ramu and others**, (2016)
SCC Online Mad 127.

7. That apart, it is submitted that the contract at Sl.No.7 is neither signed nor stamped. Ignoring the same, the learned Arbitrator has awarded the amount in an incomplete contract.

8. It is further submitted that although there is no dispute with reference to the contract at Sl.Nos.4 and 6, the Arbitral Tribunal failed to note that the respondent-claimant who was engaged for supply of materials for setting up the factory for the petitioner, had abandoned the contract midway and therefore a Supplementary Contract was signed on



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01.06.2017 and pursuant to the aforesaid sub-contract, the petitioner has paid a sum of **Rs.44,00,000/-** (Rs.22,02,653/- + Rs.21,97,347/-) to various sub-contractors.

9. Therefore, under the aforesaid Supplementary Agreement dated 01.06.2017, the petitioner was entitled for compensation and damages apart from setting-off the amounts directly payable to the sub-contractors of the respondent-claimant.

10. It is further submitted that the respondent-claimant has also not let in evidence before the Arbitral Tribunal. Therefore, on this count also, there is perversity in the impugned Award passed by the Arbitral Tribunal and the Arbitral Tribunal has committed a grave error in awarding the aforesaid amount to the respondent-claimant.

11. The learned counsel for the petitioner would also submit that the Arbitral Tribunal has also failed to note that the respective GST Acts came into force with effect from 01.07.2017 whereas, the respondent-claimant has raised invoices for the month of **March, April and May 2017** with



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GST. It is therefore submitted that there was a patent illegality in the impugned Award.

12. That apart, it is submitted that the Arbitral Tribunal has re-written the contract. In this connection, the learned counsel for the petitioner has placed reliance on the following decisions of the Hon'ble Supreme Court :-

- (i) **Satyanarayana Construction Company Vs. Union of India and others**, (2011) 15 SCC 101.
- (ii) **PSA SICAL Terminals (P) Ltd. Vs. Board of Trustees of V.O.Chidambranar Port Trust, Tuticorin**, (2022) 4 SCC 463.
- (iii) **Associate Builders Vs. Delhi Development Authority**, (2015) 3 SCC 49.
- (iv) **Ssangyong Engineering and Construction Co Ltd. vs. National Highway Authority of India**, (2019) 15 SCC 131.

13. That apart, the learned counsel for the petitioner would further submit that the Arbitral Tribunal has wrongly rejected the counter-claim of the petitioner for a sum of **Rs.25,79,31,371/-**.



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14. The learned counsel for the petitioner submitted that the Arbitral Tribunal has erred in concluding that time was not the essence of the contracts and that the contracts were inter-related. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in **P.Dasa Muni Reddy Vs. P.Appa Rao**, (1974) 2 SCC 725.

15. Defending the impugned Award passed by the Arbitral Tribunal, learned counsel for the respondent-claimant submits that the impugned Award does not call for any interference. It is submitted that the impugned Award is well-reasoned and there is no patent illegality in the impugned Award under Section 34(2A) of the Arbitration and Conciliation Act, 1996. He is also contended that the impugned Award has not been passed in violation of public policy warranting interference under Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996.

16. Learned counsel for the respondent-claimant referred to a decision of the Delhi High Court in **Delhi Electric Supply Undertaking Vs. Victor Cable Industries Ltd**, [(2006) 1 Arb LR 297 (Del)] and submitted that where the Arbitrator has referred to facts of the case and



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has noticed some reasoning which in view of the Arbitrator was sufficient to arrive at a conclusion for granting relief, award cannot be stated to be unreasoned.

17. Learned counsel for the respondent-claimant also referred to yet another decision of the Delhi High Court in **Kumar Construction Co. Vs. DDA, [(1996) 64 DLT 553]** wherein, it has been observed that the Arbitrator is not expected to write an elaborate judgment and where the Arbitrator has noticed contentions of the counsel, it cannot be said that the arbitrator failed in stating reasons for the Award.

18. I have considered the arguments advanced by the learned counsels for the petitioner and the respondent. I have also perused the impugned Award passed by the Arbitral Tribunal.

19. The learned Arbitrator after perusing the pleadings and documents had framed 18 issues as detailed below:-

- 1) Whether the 7 contracts executed between the Claimant and the Respondent are inter-linked or they are separate contracts ?



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- 2) Whether time was the essence of the two contracts dated 01.12.2016 and whether the claimant completed the two contracts dated 01.12.2016 within the stipulated time?
- 3) Whether the act of the respondent in awarding three additional contracts on 12.04.2017, 17.04.2017 and 27.04.2017 to the Claimant amounts to extension of time for performance of the four contracts awarded to the Claimant by the respondent prior to April 2017?
- 4) Whether the Force-majeure clause is applicable to the delay on account of detention of the containers by the Special Intelligence and Investigation Branch?
- 5) Whether the Claimant abandoned the contractual project in the beginning of July 2017?
- 6) Whether the sales contract dated 10.01.2017 is pertaining to supply of second-hand equipment and whether the Claimant completed supply and installation of the equipment in May 2017?
- 7) Whether the respondent tested the equipment in June 2017?
- 8) Whether the respondent rescinded the contract with the Claimant ?
- 9) Whether the respondent is justified in not returning the six containers of the claimant containing tools and equipments worth Rs.54,28,000/-?
- 10) Whether the claim of the Claimant is to be allowed or not ?
- 11) Whether the machines supplied by the Claimant to the respondent were defective ?
- 12) Whether the claimant agreed to invoke the bank



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guarantee ?

- 13) Whether the claimant permitted the respondent to encash the Performance Guarantee due to non-performance and delay in projects?
- 14) Whether the claimant is liable to pay damages and rental charges for the six containers left at the factory premises of the Respondent?
- 15) Whether all the agreed main projects/works stipulated in the contracts dated 01.12.2016 were jointly inspected by the Claimant and Respondent and if yes, then corroboration of the same?
- 16) Whether the Claimant has played fraud upon the Respondent/Counter Claimant by giving false invoices along with invalid GST number?
- 17) Whether the counter claim of the respondent is to be allowed or not?
- 18) To what other reliefs the parties are entitled?

20. Each of the issues framed have been considered threadbare and have been answered by the learned Arbitrator. The learned Arbitrator has grouped them and answered as detailed below:-

Table - II

Issue No (s)	Page No (s)
2 to 5	39 to 90
1	90
12 & 13	90 & 91



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Issue No (s)	Page No (s)
9 & 14	92
10	92 to 95
9,14 & 17	92 to 95
9,14 & 17	95 & 96
18	96 & 97

21. All the issues that were framed by the learned Arbitrator have been answered without an exception. Therefore, the Arbitral Tribunal's conclusions arrived in the above mentioned paragraphs cannot be interfered with unless the conclusion arrived by the learned Arbitrator are improbable or incapable.

22. The Hon'ble Supreme Court in “**Ssangyong Engineering and Construction Co. Ltd. Vs. National Highway Authority of India**”, (2019) 15 SCC 131, has held that an Award can be set aside on the ground of patent illegality under Section 34(2-A) of the Arbitration And Conciliation Act, 1996 only where the illegality in the Award goes to the root of the matter. It is further held that finding of erroneous application of law by an Arbitral Tribunal or the re-appreciation of evidence by the Court



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under Section 34(2-A) of the Arbitration and Conciliation Act, 1996 is not available.

23. The Hon'ble Supreme Court further held that the above ground is available only where the view taken by the Arbitral Tribunal is plausible while construing the Contract between the parties or where the Award of the Tribunal lacks justifiable reasons. The Hon'ble Supreme Court further held that an Award can be set aside only if an Arbitrator/Arbitral Tribunal decides the question beyond the Contract or beyond the terms of reference or if the finding arrived by the Arbitral Tribunal is based on no evidence or ignoring vital evidence or is based on documents taken as evidence without notice to the other side. This view is applicable to the facts of the case.

24. The Hon'ble Supreme Court in “**Patel Engineering Limited Vs. North Eastern Electric Power Corporation Limited**”, (2020) 7 SCC 167 further held that patent illegality as one of the grounds for setting aside an Award. It is available only if the decision of the Arbitrator is found to be perverse or so irrational that no reasonable person would have arrived at or the construction of the Contract is such that no reasonable



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person would take or that the view of the Arbitrator is not even a plausible view. I find no perversity in the impugned Award.

25. The Hon'ble Supreme Court in “**McDermott International Inc. Vs. Burn Standard Co. Ltd**”, (2006) 11 SCC 181, held that while interpreting the terms of a Contract, the conduct of the parties and correspondences exchanged between them would also be relevant factors and it is well within the Arbitrator's jurisdiction to deal with the same. This is now statutorily recognized in Section 28 of the Arbitration and Conciliation Act, 1996.

26. The Hon'ble Supreme Court in “**Sutlej Construction Limited Vs. Union Territory of Chandigarh**”, (2018) 1 SCC 718, has held that when the Award is a reasoned one and the view taken is plausible, re-appreciation of evidence is not allowed while dealing with the challenge to an Award under Section 34 of the Arbitration And Conciliation Act, 1996. It is further held that the proceedings challenging the Award cannot be treated as a First Appellate Court against the decree passed by the Trial Court. Therefore, the impugned Award does not warrant any interference



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under Section 34 of the Arbitration and Conciliation Act, 1996.

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27. This Court in “**Sheladia Associates Inc. Vs. Tamil Nadu Road Sector Project II, Represented by its Project Director**”, 2019 SCC Online Mad 17883, reminded itself of the Hodgkinson's principle, has been explained by the Hon'ble Supreme Court in the oft-quoted and celebrated Associate Builders Case being “**Associate Builders V. Delhi Development Authority**”, (2015) 3 SCC 49. It has held that Hodgkinson's principle in simple terms means that the Arbitral Tribunal is the best Judge with regard to quality and quantity of evidence before it. It further held that if there is no infraction of Section 28(3) of the Arbitration and Conciliation Act, 1996, the question of challenge on the grounds of public policy does not arise.

28. In “**Photo production Ltd. Vs. Securicor Transport Ltd.,**” [1980] AC 827, it has been held as follows:-

“A basic principle of the common law of contract, to which there are to exceptions that are relevant in the instant case, is that parties to a contract are free to determine for themselves what primary obligations they will accept. They may state these in express words in the contract



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*itself and, where they do, the statement is determinative; but in practice a commercial contract never states all the primary obligations of the parties in full; many are left to be incorporated by implication of law from the legal nature of the contract into which the parties are entering. **But if the parties wish to reject or modify primary obligations which would otherwise be so incorporated, they are fully at liberty to do so by express words.***

..... These secondary obligations of the contract breaker and any concomitant relief of the other party from his own primary obligations also arise by implication of law - generally common law, but sometimes statute, as in the case of codifying Statutes passed at the turn of the century, notably the Sale of Goods Act 1893. The contract, however, is just as much the source of secondary obligations as it is of primary obligations; and like primary obligations that are implied by law, secondary obligations too can be modified by agreement between the parties, although, for reasons to be mentioned later, they cannot, in my view, be totally excluded. In the instant case, the only secondary obligations and concomitant reliefs that are applicable arise by implication of the common law as modified by the express words of the contract.

Every failure to perform a primary obligation is a breach of contract. The secondary obligation on the part of the contract breaker to which it gives rise by implication of the common law is to pay monetary compensation to the other party for the loss sustained by him in consequence of the breach; but, with two exceptions, the primary obligations of both parties so far as they have not yet been fully performed remain unchanged. This secondary obligation to pay compensation (damages) for non-performance of primary obligations I will call the



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"general secondary obligation". It applies in the cases of the two exceptions as well."

29. This view has been followed by the Hon'ble Supreme Court in **Dyna Technologies Private Limited Vs. Crompton Greaves Limited**, (2019) 20 SCC 1, wherein, it has been observed as under:-

"25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

29. There is no gainsaying that arbitration proceedings are not per se comparable to judicial proceedings before the Court. A party under Indian Arbitration Law can opt for an arbitration before any person, even those who do not have prior legal experience as well. In this regard, we need to understand that the intention of the legislature to provide for a default rule, should be given rational meaning in light of commercial wisdom inherent in the choice of arbitration.

34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts



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from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order, three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasonings in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with



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the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards”.

30. The Hon’ble Supreme Court has reiterated the above position in the case of **MMTC Limited Vs. Vedanta Limited**, (2019) 4 SCC 163, wherein, it has been held as under:-

“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

31. In **“South East Asia Marine Engineering and Constructions Limited (SEAMEC Limited) Vs. Oil India Limited”**, (2020) 5 SCC 164, the Hon’ble Supreme Court has reiterated that if the interpretation of



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Contract by Arbitral Tribunal is perverse and is not a possible interpretation, the Award passed by the Arbitral Tribunal, is liable to be set aside.

32. In “**Patel Engineering Limited case**” (cited supra), the Hon’ble Supreme Court has reiterated the position that while interpreting the Contract, if the view taken by the Arbitral Tribunal was a possible view, the Award is liable to be set aside.

33. In “**PSA Sical Terminals case**” [PSA Sical Terminals (P) Ltd. Vs. V.O. Chidambranar Port Trust, 2021 SCC OnLine SC 508], this Court clearly held that the role of the Arbitrator was to arbitrate within the terms of the contract. The Arbitrator had no power apart from what the parties had given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction.

34. In “**UHL Power Company Limited Vs. State of Himachal Pradesh**”, (2022) 4 SCC 116, the Hon’ble Supreme Court has reiterated the view in “**Dyna Technologies Private Limited case**” (cited supra) and



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held as under:-

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*“18. It has also been held time and again by this Court that if there are two plausible interpretations of the terms and conditions of the contract, then no fault can be found, if the learned arbitrator proceeds to accept one interpretation as against the other. In **Dyna Technologies (P) Ltd. v.Crompton Greaves Ltd.** [**Dyna Technologies (P) Ltd.v.Crompton Greaves Ltd.**, (2019) 20 SCC 1] , the limitations on the Court while exercising powers under Section 34 of the Arbitration Act has been highlighted thus : (SCC p. 12, para 24)*

“24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute



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resolution would stand frustrated.”

19. In *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , advertng to the previous decisions of this Court in *McDermott International Inc.v.Burn Standard Co. Ltd.* [*McDermott International Inc.v.Burn Standard Co. Ltd.*, (2006) 11 SCC 181] and *Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran* [*Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran*, (2012) 5 SCC 306] , wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner; then the award ought not to be set aside on this ground, it has been held thus : (*Parsa Kente Collieries case* [*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , SCC pp. 244-45, para 9)

“9.1. ...It is further observed and held that construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has



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necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

*9.2. Similar is the view taken by this Court in **NHAI v. ITD Cementation India Ltd.** [**NHAI v. ITD Cementation India Ltd.**, (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716] , SCC para 25 and **SAIL v. Gupta Brother Steel Tubes Ltd.** [**SAIL v. Gupta Brother Steel Tubes Ltd.**, (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16] , SCC para 29.”*

35. An identical line of reasoning has been adopted in **South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) Vs. Oil India Ltd.** [**South East Asia Marine Engg. & Constructions Ltd. (Seamec Ltd.) Vs. Oil India Ltd.**, (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows:-

*“12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in **Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.** [**Dyna Technologies***



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(P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)

‘24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.’”

36. In “**Larsen Air Conditioning and Refrigeration Company Vs.**



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Union of India and others”, 2023 SCC Online SC 982, it has been
observed as under:-

*“15. The limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality, i.e., that **“illegality must go to the root of the matter and cannot be of a trivial nature”**; and that the tribunal **“must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground”** [ref : **Associate Builders (supra)**]. The other ground would be denial of natural justice. In appeal, Section 37 of the Act grants narrower scope to the appellate court to review the findings in an award, if it has been upheld, or substantially upheld under Section 34. It is important to notice that the old Act contained a provision which enabled the court to modify an award. However, that power has been consciously omitted by Parliament, while enacting the Act of 1996. This means that the Parliamentary intent was to exclude power to modify an award, in any manner, to the court. This position has been iterated decisively by this court in **Project Director, National Highways No. 45E and 220 National Highways Authority of India v. M. Hakeem:***

*“42. It can therefore be said that this question has now been settled finally by at least 3 decisions [**McDermott International Inc.v.Burn Standard Co. Ltd.,(2006) 11 SCC 181**], [**Kinnari***



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Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328 : (2018) 5 SCC (Civ) 106], [Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd., (2021) 7 SCC 657] of this Court. Even otherwise, to state that the judicial trend appears to favour an interpretation that would read into Section 34 a power to modify, revise or vary the award would be to ignore the previous law contained in the 1940 Act; as also to ignore the fact that the 1996 Act was enacted based on the Uncitral Model Law on International Commercial Arbitration, 1985 which, as has been pointed out in Redfern and Hunter on International Arbitration, makes it clear that, given the limited judicial interference on extremely limited grounds not dealing with the merits of an award, the “limited remedy” under Section 34 is coterminous with the “limited right”, namely, either to set aside an award or remand the matter under the circumstances mentioned in Section 34 of the Arbitration Act, 1996.”

37. The facts on record indicate that the total value of contract inclusive of other miscellaneous expenses incurred by the respondent-claimant was **Rs.21,74,95,091/-** as detailed in Table-1 to this order. Out of the aforesaid amount, the petitioner had earlier paid a sum of



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Rs.6,94,36,884/- to the respondent-claimant.

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38. The respondent-claimant claimed the balance **Rs.14,80,58,207/-** [Rs.11,19,22,870/- +Rs.3,61,35,337/-]. An amount of **Rs.3,61,35,337/-** allegedly borne by the respondent-claimant towards miscellaneous expenses incurred by the respondent-claimant during supply and execution of the contracts signed between the petitioner and the respondent-claimant.

39. The Arbitral Tribunal after considering the overall facts and circumstances of the case allowed only a sum of **Rs.11,19,22,870/-** to the respondent-claimant and has rejected the counter-claim of the petitioner for a sum of **Rs.2,61,35,337/-**. The counter-claim of the petitioner was towards the amount paid by the petitioner to the respondent's sub-contractor(s)/vendors and towards alleged damage suffered by the petitioner.



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40. Thus, as against the total claim of **Rs.14,80,58,207/-** [Rs.11,19,22,870/- +Rs.3,61,35,337/-], the Arbitral Tribunal has awarded a sum of **Rs.11,19,22,870/-** being the balance amount payable by the petitioner to the respondent-claimant in respect of the contracts signed between the petitioner and the respondent.

41. As far as the objection of the petitioner regarding the amount awarded towards GST for the supply effected prior to implementation of GST Enactment on 01.07.2017 is concerned, the Arbitral Tribunal has considered the issue in the impugned Award as follows:-

*“With regard to the alleged fraud played by the claimant by giving false vouchers along with invalid GST number. Though much argument have been advanced in this regard, **this Tribunal is of the opinion that mentioning the GST number cannot be taken as a fraudulent act on the part of the claimant and at the most it would be an avoidable mistake. Thus, Issue No.16 is answered accordingly**”.*

42. In any event, there would have been no major implication on the petitioner as for the supply of goods made, the respondent-claimant would have charged VAT or CST (service tax) under the provision of the Finance Act,1994.



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43. Even if there was any excess billing on account of GST being charged, it would have been minor. It was incumbent on the part of the petitioner to assist the Arbitral Tribunal by giving particulars of the excess amount that was claimed by the respondent-claimant.

44. Instead, the petitioner merely denied the liability by pointing out the above inconsistency which is not material. There is a possibility of the excess amount being awarded to the respondent-claimant on account of the above factor. However, the petitioner who is responsible to such lapses as it failed to assist the Arbitral Tribunal. Instead of pointing of the excess claim being charged *post-facto* on account of GST, the petitioner has merely denied the liability since the respondent-claimant was entitled to pass on the tax liability to the petitioner.

45. While deciding and making the impugned Award, an Arbitral Tribunal shall in all cases has to take into account the terms of the contract and trade usages applicable to the transaction under Section 28(3) of the Arbitration and Conciliation Act, 1996.



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46. In this case, about 7 different contracts were originally signed between the parties. In my view, the Arbitral Tribunal has considered the terms of contract and has award the amounts to the respondent-claimant.

47. Thus, infraction of Section 28(3) of the Arbitration and Conciliation Act, 1966 cannot be inferred to warrant interference. As far as the first contract i.e., Material Contract dated 01.12.2016 is concerned, the goods and equipments were imported by the respondent-claimant and Bills of Entry were filed for clearing them. However, they could not be cleared as the Special Intelligence and Investigation Branch (SIIB) of the Custom Department delayed the clearance.

48. The Arbitral Tribunal has not attributed the delay on the respondent-claimant. Ultimately, the goods imported under the first contract i.e. Material Contract dated 01.12.2016 were cleared from the Customs Department during the month of March, 2017 and April, 2017. Pursuant to the above, the petitioner has executed the second contract i.e., Project Contract dated 01.12.2016.



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49. Despite the delay in the clearance of the imported goods under the Material Contract dated 01.12.2016 and consequential delay in execution of Project Contract dated 01.12.2016, the petitioner signed five other contracts with the respondent-claimant as detailed in Sl.No.3 to 7 to Table-1 of this order.

50. It is in the above background, the learned Arbitrator has come to the conclusion that the time was not essence of the Material Contract and Project Contract both dated 01.12.2016 and Sales Contract and Installation Contract both dated 10.01.2017 (i.e.Contracts at Sl Nos.1 to 4 to Table-1).

51. It is also evident from the fact that at a particular point of time the respondent-claimant had liquidity crunch and was unable to make payment to the sub-contractor/vendors. Therefore, the petitioner agreed to pay upto a sum of **Rs.1,01,20,000/-** (New Taiwanese Dollar 44,00,000/-) to various sub-contractors of the respondent-claimant.

52. The respondent-claimant had therefore earlier executed a Bank



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Guarantee for **Rs.1,01,20,000/-** on 01.12.2016 in favour of the petitioner.

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The petitioner was also permitted to invoke the aforesaid Bank Guarantee for a sum of **Rs.1,01,20,000/-**.

53. Under these circumstances, Eighth Contract namely **Performance Guarantee Contract/Supplementary Contract** dated 01.06.2017 was signed wherein, it is expressly agreed that the petitioner had already paid **NTD 22,02,653/-** (New Taiwan Dollars) to various sub-contractors and balance amount **NTD 2,197,347/-** was to be retained by the petitioner for the future supply of goods and service by such sub-contractors/vendors of the respondent-claimant.

54. Thus, it cannot be stated that there was any error committed by the learned Arbitrator while awarding the amounts claimed. Therefore, on this account it cannot be stated that the Award passed by the learned Arbitrator was perverse or amounts to any patent illegality to warrant interference.



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55. The challenge to the impugned Award on the ground that the Contract Nos.1 to 7 were not stamped and therefore not binding on the petitioner cannot be countenanced in the light of the fact that the parties have acted upon them and only a part of payment fell due from the petitioner to the respondent-claimant which was subject matter of arbitration.

56. That apart, the Hon'ble Supreme Court in **In Re : Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899**, 2023 SCC Online SC 1666, has answered the issue on account of under-stamping/non-stamping of the contract. Therefore, the impugned Award does not call for any interference.

57. As far as the contract dated 27.04.2017 for a sum of **Rs.1,70,000/-** is concerned and the argument that neither the Contract was signed nor stamped is concerned, it is noticed that an amount of **Rs.1,49,940/-** had been paid by the petitioner to the respondent-claimant and the claim was confined only for the balance amount of **Rs.20,060/-**.



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Therefore, the impugned Award does not warrant any interference under Section 34 of the Arbitration and Conciliation Act, 1996.

58. Therefore, arguments that the contracts are independent of each other cannot be countenanced as there is an express finding given by the Arbitral Tribunal. This Court cannot substitute its conclusion with the conclusion arrived by the Arbitral Tribunal.

59. Further, the Arbitral Tribunal is the ultimate fact finding body/authority, its conclusion on facts cannot be set aside unless there is patent illegality. In this case, I do not find any patent illegality in the impugned Award if the Hodgkinson principle recognized by the Hon'ble Supreme Court in **Associate Builders Vs. Delhi Development Authority**, (2015) 3 SCC 49. It has to be therefore held that the Arbitral Tribunal is the best judge with regard to quality and quantity of evidence before it. Therefore, on this count also the impugned Award does not warrant any interference under Section 34 of the Arbitration and Conciliation Act,



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60. This Arbitration Original Petition is therefore liable to be dismissed. It is accordingly dismissed leaving open to the respondent-claimant to initiate appropriate proceedings to enforce the Award and Award amount to the petitioner. Since some of the contracts signed between the petitioner and the respondent are not either not-stamped or under-stamped, it is open for the Executing Court to impound these documents and determine the stamp duty and penalty payable by the parties. No costs. Consequently, connected application is closed.

04.06.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

kkd/arb

Pre-Delivery Order in
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