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O.S.A Nos.158 & 159 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.10.2024**

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**

and

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

O.S.A Nos.158 & 159 of 2020

Suryadev Alloys and Power Private Limited
Represented by its Authorized Signatory
Mr.Govind Gagona
Having its registered office at
No.497, Poonamallee High Road
Arumbakkam
Chennai - 600 106

... Appellant
in both appeals

Vs.

Shri Govindaraja Textiles Private Limited
Represented by its Director
Having its registered office at
No.258, Tiruchuli Road
Aruppukottai
Virudhunagar District - 626 101

.. Respondent
in both appeals

O.S.A Nos.158 of 2020 : Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the common order and decretal order dated 08.05.2020 in O.P.No.955 of 2019.

O.S.A Nos.159 of 2020 : Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Section 37 of the Arbitration and Conciliation Act, 1996 to set aside the common order and decretal order dated 08.05.2020 in O.P.No.15 of 2020.



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For Appellant : Mr.Sharath Chandran
in both appeals for Mr.P.Krishnan

For Respondent : Mr.A.Muthukumar
in both appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

This common consent order will now dispose of the captioned two intra-court appeals i.e., captioned 'Original Side Appeals' ['OSAs' in plural and 'OSA' in singular for the sake of brevity].

2. The nucleus of the captioned matters is a 'Power Purchase Agreement dated 20.03.2015' [hereinafter 'said PPA' for the sake of brevity]. This said PPA is between 'Suryadev Alloys and Power Private Limited' [hereinafter 'SAPPL' for the sake of brevity] and 'Shri Govindaraja Textiles Private Limited' [hereinafter 'SGTPL' for the sake of brevity]. Arbitrable disputes arose between SAPPL and SGTPL qua said PPA leading to arbitration by an 'Arbitral Tribunal' ['said AT' for the sake of brevity]. To be noted, said AT is a sole Arbitrator and the sole Arbitrator is a former Hon'ble Judge of this Court.

3. The afore-referred said AT made an 'award dated 13.09.2019'



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[hereinafter 'said award' for the sake of convenience and clarity]. Owing to this being a consent order, this Bench is not dilating either on the arbitrable disputes qua said PPA or the said award. Suffice to say that said award was assailed by both SAPPL and SGTPL. While SAPPL filed O.P.No.955 of 2019, SGTPL filed O.P.No.15 of 2020. Both OPs are obviously under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity]. Section 34 Court took up both OPs and disposed of the same in and by a common order dated 08.05.2020. This common order dated 08.05.2020 shall be referred to as 'impugned order' for the sake of brevity and convenience. In and by the impugned order, Section 34 Court allowed O.P.No. 15 of 2020 filed by SGTPL and dismissed O.P.No.955 of 2019 filed by SAPPL. The squitur was, said award dated 13.09.2019 was set aside. As against this impugned order of Section 34 Court, SAPPL has filed the captioned two OSAs.

4. Suffice to say that the matter before us turned heavily on Section 29A of A and C Act as it was the specific case of SGTPL that said award had been made after the mandate of AT had lapsed. However, Section 34 petition filed by SAPPL pertains to *pende lite* interest. We again refrain from delving into these aspects of the matter as captioned



appeals are now being disposed of by a simple consent order.

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5. Considering the position that matter turns on a short point notwithstanding myriad grounds raised and also taking into account the lack of specificity with regard to certain dates qua the short point, both parties agreed for re-arbitration and both parties also agreed on the sole Arbitrator for re-arbitration. Both parties agreed that Hon'ble Mr.Justice K.Kannan (Retired), No.3/11, Lakshmi Colony, North Crescent Road, T.Nagar, Chennai-600 017 (Mobile : 97800 08145, Land line : 044-2815 4145) shall be the sole Arbitrator.

6. Be that as it may, both parties agreed that in re-arbitration, pleadings already on record (to be noted, both sides agree that pleadings were complete before said AT after which the said award was rendered) shall be used for re-arbitration. This means that both parties shall neither add nor redact qua pleadings already on record. However, it is open to both parties to lead any oral evidence and/or mark exhibits afresh.



7. In the light of the consensus arrived at, the following consent

order is made:

a) Award already made being award dated 13.09.2019 is set aside in its entirety;

b) The aforementioned award is set aside solely for the sake of facilitating re-arbitration and therefore, we make it clear that we have not expressed any view or opinion on the merits of the matter;

c) In re-arbitration, pleadings already completed shall be the basis for re-arbitration drill;

d) In re-arbitration, all questions are left open;

e) In re-arbitration based on the pleadings already complete, it is open to the parties to lead any oral evidence and/or mark exhibits afresh;

f) The parties agreed that they will extend fullest cooperation to the Hon'ble Arbitrator in the re-arbitration for expeditious conclusion and pronouncement of award;

g) In all other aspects, though obvious we make it clear that the ensuing arbitration shall be governed by A and C Act and arbitration shall be at 'Madras High Court



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Arbitration and Conciliation Centre under the aegis of this Court' ('MHCAC' for the sake of brevity) in accordance with the Madras High Court Arbitration Proceedings Rules 2017 and learned Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Captioned OSAs are disposed of in the aforesaid manner in and by instant consent order. There shall be no order as to costs.

(M.S.J.) (K.G.T.,J.)
21.10.2024

Index:No
Neutral Citation: No
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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,
gpa**

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