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OSA (CAD) Nos.62 and 81 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

CORAM

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

and

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

**O.S.A. (CAD) Nos. 62 and 81 of 2024**

and

**C.M.P. No.15975 of 2024 in O.S.A. (CAD) No.81 of 2024**

**O.S.A. (CAD) No.62 of 2024**

SEW-NCILLP Joint Venture  
C/o. M/s.SEW Infrastructure Limited,  
6-3-871, Snehalatha, Greenlands Road,  
Begumpet, Hyderabad – 500 016  
Telangana State rep. By Mr.G.Ramesh  
Power of Attorney Holder

.. Appellant

Vs

- 1.Rail Vikas Nigam Limited (RVNL)  
Mezzanine Floor, Tirumailai Railway Station,  
Mylapore, Chennai – 4.
- 2.B.Kamalakara Reddy,  
Chief Project Manager/Co-ordination,  
Rail Vikas Nigam Limited (RVNL)  
Mezzanine Floor, Tirumailai Railway Station,  
Mylapore, Chennai – 4.
- 3.Team Leader,  
AEON, General Consultant,  
Metros, 5<sup>th</sup> Floor, No.327, Anna Salai,  
Nandanam, Chennai – 34.



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4.Chennai Metro Rail Ltd (CMRL),  
Metros, Anna Salai,  
Nandanam, Chennai – 35.

5.ICICI Bank Ltd., rep. By its  
Account Manager,  
Unit – 2, Solitaire Plaza,  
DLP Phase III, M.G. Road,  
Gurugram – 122 001.

.. Respondents

**O.S.A. (CAD) No.81 of 2024**

1.Rail Vikas Nigam Limited (RVNL)  
rep. By its Power Agent  
Mr.B.Kamalakara Reddy,  
Mezzanine Floor, Tirumailai Railway Station,  
Mylapore, Chennai – 4.

2.B.Kamalakara Reddy,  
Chief Project Manager/Co-ordination,  
Rail Vikas Nigam Limited (RVNL)  
Mezzanine Floor, Tirumailai Railway Station,  
Mylapore, Chennai – 4.

.. Appellants

Vs.

1.SEW-NCILLP Joint Venture  
C/o. M/s.SEW Infrastructure Limited,  
6-3-871, Snehalatha, Greenlands Road,  
Begumpet, Hyderabad – 500 016  
Telangana State rep. By Mr.S.Saravanan  
Employed as Project Head

2.Team Leader,  
AEON, General Consultant,  
Metros, 5<sup>th</sup> Floor, No.327, Anna Salai,  
Nandanam, Chennai – 34.

3.Chennai Metro Rail Ltd (CMRL),  
Metros, Anna Salai,  
Nandanam, Chennai – 35.



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4.ICICI Bank Ltd., rep. By its  
Account Manager,  
Unit – 2, Solitaire Plaza,  
DLP Phase III, M.G. Road,  
Gurugram – 122 001.

.. Respondents

(Power of Attorney Mr.B.Kamalakara Reddy  
is recognised and cause title accepted vide  
order dated 15.07.2024 made in C.M.P.  
Nos.14490 and 14451 of 2024 in  
O.S.A. (CAD) SR. No.88096 of 2024)

**Prayer in O.S.A. (CAD) No.62 of 2024:** Appeal filed under  
Section 13 (1A) of The Commercial Courts Act, 2015 r/w Section  
37(1)(b) of The Arbitration and Conciliation Act, 1996 against the  
order dated 14.02.2024 as modified by order dated 20.03.2024 in  
O.A.No.50 of 2024 except insofar as the direction issued in para 11  
to restore bank guarantee is concerned.

**Prayer in O.S.A. (CAD) No.81 of 2024:** Appeal filed under  
Section 13 (1A) of The Commercial Courts Act, 2015 r/w Section  
37(1)(b) of The Arbitration and Conciliation Act, 1996 to set aside  
paragraphs 10 and 11 of the judgment and decree dated  
14.02.2024 as modified by order dated 20.03.2024 passed in the  
common order in O.A.No.50 of 2024.



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**O.S.A. (CAD) No.62 of 2024**

For Appellant : Mr.R.Sankara Narayanan,  
Sr. Counsel  
for Mr.Arjun Suresh  
and Mr.Akash Srinanda V.

For Respondents : Mr.P.S.Raman,  
Sr. Counsel  
for Ms.Aparajitha Vishwanath  
for R1 and R2  
Mr.S.Krishna and  
Mr.M.Anthony Moses  
for M/s.Acivity Law Associates  
for R5

**O.S.A. (CAD) No.81 of 2024**

For Appellants : Mr.P.S.Raman,  
Sr. Counsel  
for Ms.Aparajitha Vishwanath

For Respondents : Mr.R.Sankara Narayanan,  
Sr. Counsel  
for Mr.Arjun Suresh  
and Mr.Akash Srinanda V.  
for R1  
Mr.S.Krishna and  
Mr.M.Anthony Moses  
for M/s.Acivity Law Associates  
for R4  
R2 & R3 given up



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## COMMON JUDGMENT

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

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

2. Before we proceed further, we deem it appropriate to record that the parties before us are RVNL and Mr.B.Kamalakara Reddy on one side represented by Ms.Aparajitha Vishwanath and led by Mr.P.S.Raman, learned senior counsel, SEW-NCILLP a joint venture represented by Mr.Akash Srinanda V. and led by learned senior counsel Mr.R.Sankara Narayanan assisted by Mr.Arjun Suresh and for ICICI Bank Limited, Mr.S.Krishna of M/s.Acivity Law Associates (Law Firm) (Enrolment No.1376/02 with address for service at Plot No.4, Vijay Deluxe Apartments, C.I.T. Colony, I Main Road, Mylapore, Chennai - 4) accepts notice. All other parties are given up by the respective protagonists of the captioned OSAs and captioned CMP thereat.



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3. We have already mentioned the parties before us. All the three parties before us are represented by their respective counsel. As regards ICICI Bank, it is not an adversary as it is the bank which issued the performance bank guarantee. Therefore, learned counsel for ICICI Bank is present and learned counsel submits that he would only abide by the orders which are being made by this Court and otherwise ICICI Bank does not have any say on the merits of the matter.

4. As regards the lis itself, the epicentre of the lis is a contract captioned 'Contract Agreement bearing reference No.RVNL/CPM/MAS/CMRL Works/Elevated Corridor/SLT – 01 dated 23.05.2023' between RVNL (employer) and SEW (contractor), the contract is for 'Construction of elevated viaduct (Approximate Length of 10 km), Nine (9) elevated metro stations at Sholinganallur Lake-I, Sholinganallur Lake-II, Semmeancheri – I, Semmeancheri – II, Gandhi Nagar, Navallur, Siruseri, Siruseri SIPCOT-1 and Siruseri SIPCOT-2 and Stabling Viaduct at SIPCOT excluding architectural works, finishing works and other miscellaneous works' and the value of the contract is about Rs.465 crores (Rs.465,06,14,420.72 to be precise). This contract shall



hereinafter be referred to as 'said primary contract'. Suffice to say that 'General Conditions of Contract' which is a template (hereinafter 'GCC' for the sake of convenience and clarity) has become part of the said primary contract. To be noted, clause 20.1 of GCC captioned 'Claims, Disputes and Arbitration' as amended is a dispute resolution clause and therefore this clause in the GCC forming part of the said primary contract is an arbitration agreement i.e., arbitration agreement within the meaning of Section 2(1)(b) r/w Section 7 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity, convenience and clarity) as between contracting parties viz., RVNL and SEW i.e., between the employer and contractor.

5. Both learned senior counsel before us submitted that said primary contract derailed at some stage and the derailment led to resort to A and C Act. Four applications were taken out, three by SEW (contractor) and one by RVNL (employer). The three applications taken out by SEW (contractor) are O.A.No.50 of 2024, Arb. Appln. Nos.59 and 71 of 2024 with prayers to (a) not to terminate the said primary contract (b) seeking punishment (Order XXXIX Rule 2A CPC) for alleged violation of order dated 24.01.2024 made in O.A.No.50 of 2024 and (c) for a direction to RVNL,



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Thiru.B.Kamalakara Reddy and ICICI Bank to restore the bank guarantee to the tune of a little over Rs.11.82 crores (Rs.11,82,36,000/- to be precise) respectively. As regards A.No.1580 of 2024 taken out by RVNL, the same is with a prayer seeking clarification of paragraphs 10 and 11 of order dated 14.02.2024 made in O.A.No.50 of 2024.

6. All the four applications i.e., aforementioned four applications came to be disposed of by a common order dated 14.02.2024 by a Hon'ble Single Judge presiding the Commercial Division on the Original Side of this Court. Though all four applications have been disposed of by a common order, the order in O.A.No.50 of 2024 alone has been carried in appeal by RVNL vide OSA (CAD) No.81 of 2024 and by SEW vide O.S.A. (CAD) No.62 of 2024.

7. As regards the four applications, it is very fairly submitted by both sides that O.A.No.50 of 2024 has become infructuous as the said primary contract has since been terminated. Arb. Appln. No.59 of 2024 can be closed as the parties would now be going before a three member Arbitral Tribunal about which there will be allusion infra. To be noted, 'Arbitral Tribunal' shall hereinafter



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be referred to as 'AT' for the sake of brevity, convenience and clarity and as regards Arb. Appln. No.71 of 2024, the bank guarantee has not been restored as yet but this position shall continue for four weeks from today i.e., upto 12.08.2024 but Arb. Appln. No.71 of 2024 shall be taken up by AT to be constituted as an application under Section 17 of A and C Act. To be noted, this submission is by consent of both sides and it is recorded.

8. As regards the composition of AT, by consent, there was a composition and subsequently the composition was changed as one Hon'ble Arbitrator and one learned Arbitrator recused but we refrain from going into those details as both learned senior counsel before us on instructions from their respective counsel on record (in turn on instructions from the respective clients) have submitted that they have agreed for two arbitrators vide aforementioned arbitration agreement between the parties. It was further agreed that the two arbitrators shall appoint presiding arbitrator so that the three member AT is put in place. The two arbitrators agreed upon are as follows:

(i) Hon'ble Mr.Justice D.S.R. Varma, Former

Judge of Telangana High Court (Mobile No.9704236666)



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(ii) Thiru.V.Somasundaram, Retired Principal,  
Chief Engineer, Southern Railway, residing at Flat No.201,  
Thirumala Elite Apartment, 78/3, Sri M.Visweswaraya  
Road, BTM 6<sup>th</sup> Stage, Bangalore – 560 076

9. It is also submitted by both sides by consent that the  
aforementioned two arbitrators shall appoint a third arbitrator who  
shall be the presiding arbitrator and the AT will thus be constituted.  
Both sides submit that they have taken the consent of  
aforementioned two arbitrators. Though obvious, we make it clear  
that we are requesting the Hon'ble Arbitrator and learned Arbitrator  
to decide on the presiding Arbitrator and ensure that the first sitting  
is well before 12.08.2024 so that the aforementioned Arb. Appln.  
No.71 of 2024 can be taken up as a Section 17 application and  
heard out.

10. When the aforementioned Arb. Appln. No.71 of 2024 is  
taken up as a Section 17 application and heard out by the AT, the  
same shall be dealt with by the AT on its own merits and in  
accordance with law, *de hors* the obtaining position that the order of  
the Commercial Division as well as orders of this Commercial



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Appellate Division (CAD) are judicial orders.

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11. Before we drop the curtains on the captioned matters for the sake of completion of facts, we add that one other modification sought by RVNL vide A.No.1580 of 2024 i.e., paragraphs 10 and 11 of order dated 14.02.2024 in O.A.No.50 of 2024 pertains to deletion of a concession said to have been made by learned Solicitor. That has been deleted and this position stands. As it does not fall for consideration and it is outside the remit of legal perimeter of the adjudicatory drill on hand, we deem it appropriate to record that both sides have no grievance about the deletion of the concession said to have been made by learned Solicitor.

12. Considering the nature of this order and trajectory the hearing before us took today, for the sake of clarity and specificity, we make it clear that by consent of both sides, the common order of Hon'ble Single Judge dated 14.02.2024 as modified by order dated 20.03.2024 made in O.A.No.50 of 2024 is set aside in its entirety and this order of the Division Bench will replace the impugned common order which has now been set aside.



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13. Captioned OSAs are disposed of in the aforesaid manner with the aforementioned observation/directives. Consequently, captioned CMP thereat is also disposed of as closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)  
15.07.2024

Index:Yes/No  
Neutral Citation: Yes/No  
mmi

**P.S. I:** *Upload forthwith*

**P.S.II :** *All concerned including the Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.*

To

- 1.The Rail Vikas Nigam Limited (RVNL)  
Mezzanine Floor, Tirumailai Railway Station,  
Mylapore, Chennai – 4.
- 2.The Chief Project Manager/Co-ordination,  
Rail Vikas Nigam Limited (RVNL)  
Mezzanine Floor, Tirumailai Railway Station,  
Mylapore, Chennai – 4.
- 3.The Team Leader,  
AEON, General Consultant,



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- 5.The Account Manager,  
ICICI Bank Ltd.,  
Unit – 2, Solitaire Plaza,  
DLP Phase III, M.G. Road, Gurugram – 122 001.
- 6.The Sub Assistant Registrar,  
Original Side, High Court,  
Madras.



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**M.SUNDAR.J.,  
and  
K.GOVINDARAJAN THILAKAVADI, J.,**  
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**15.07.2024**