



WEB COPY

O.S.A.(CAD).No.157 of 2023

IN THE HIGH COURT JUDICATURE AT MADRAS

Reserved on : 19.12.2023

Pronounced on: 18.03.2024
CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.DHANABAL**

O.S.A.(CAD).No.157 of 2023
and
CMP(MD) No.26918 of 2023

Arkay Energy(Rameswaram)Private Limited
Rep. by its Authorized Signatory,
Mr.C.T.Vasan, Legal Manager,
No.20,Old No.129,Chamiers Road,
Nandanam, Chennai- 600 035

.. Appellant

Versus

Tidel Park Limited
Rep. by its Managing Director
Mr.B.Elangovan
No.4, Rajiv Gandhi Road
Taramani, Chennai- 600113

.. Respondent

Appeal filed under Section 13(1) of the Commercial Courts Act, 2015 read with section 37 of the Arbitration and Conciliation Act, 1996 , to set aside the judgment and decree dated 23.03.2023 in Arb.O.p.No.274/2021 passed by this Madras High Court .

For Appellant	:	Mr. Anirudh Krishnan
For Respondent	:	Mr. Jose John



O.S.A.(CAD).No.157 of 2023

JUDGMENT

P.Dhanabal.J

This appeal has been preferred as against the order passed in Arb.O.p.No.274 of 2021, wherein the appellant herein has filed the Arbitration Original Petition by challenging the arbitral award passed by the Arbitrator in Arbitral award dated 07.01.2021 and the additional award dated 05.03.2021.

2. The case before the Arbitrator is as follows: The claimant Tidel park Limited is the public limited company and the respondent M/s.Arkey Energy(Rameswaram) Private Limited is a company registered under the Companies Act have entered into share holding agreement and power supply agreement dated 10.11.2005. As per the terms of the agreement M/s.Arkey Energy(Rameswaram) Private Limited has to supply 26 Million Kwh on firm basis and 13 Million Kwh on non firm basis. The respondent M/s.Arkey Energy (Rameswaram) Private Limited is entitled to payment towards supply of power as per the agreement, but it was delayed. The appellant/Claimant Tidel Park has to pay monthly bills raised by the respondent M/s.Arkey Energy(Rameswaram) Private Limited but the respondent M/s.Arkey Energy(Rameswaram) Private Limited has not supplied power. There is a short supply of power from April 2006 to March 2008. Thereafter, April 2008 to January 2011 the respondent had not supplied the energy to the Tidel park. As per the agreemenet the respondent is entitled to 10% subsidy for the energy supplied to Tidel park, as per the rates fixed by the Tamil Nadu Electricity Board. Thereafter the appellant/Claimant Tidel park has claimed a sum of of Rs. 4,85,32,773/- for the short supply of power and non supply of power to the appellant/claimant, Tidel



O.S.A.(CAD).No.157 of 2023

park.

ii) The appellant/ the claimant Tidel park had filed a suit for the recovery of money and the same was defended by the respondent M/s.Arka Energy(Rameswaram) Private Limited. In that suit the M/s.Arka Energy(Rameswaram) Private Limited has filed a petition to refer the matter for Arbitration under Section 8 of the Arbitration and Conciliation Act and the said application was allowed. The said order was challenged by the Tidel park in O.S.A. No.313 of 2013 and the said O.S.A was dismissed and thereafter the Arbitration proceedings were commenced. Three Arbitrators were nominated to decide the claim and majority award passed in favour of the respondent claimant and the appellant M/s.Arka Energy(Rameswaram) Private Limited was directed to pay the amount of Rs.4,85,32,773/- with interest @ 13% per annum. As against the majority Arbitration award passed by the arbitrators, the respondent in the arbitration proceedings M/s.Arka Energy (Rameswaram) Private Limited has filed Arbitration Original Petition before the High Court in Arp.O.P.No.274 of 2021. The learned Single Judge, after hearing the both side and analysing the evidences dismissed the Arbitration Original Petition. As against the dismissal order passed by the learned Single Judge, the instant appeal has been preferred before this Court by the appellant under Section 37 of the Arbitration and Conciliation Act.

3. The learned counsel appearing for the appellant would contend that the appellant is the Gas based Electricity generating company and the plant generated electricity only through gas supplied by M/s.Gas Authority of India Ltd (GAIL). The respondent is a deemed Government company wholly owned by Tamil Nadu Industrial



O.S.A.(CAD).No.157 of 2023

Development Corporation Limited and Electronic Corporation of Tamil Nadu/ The appellant and the respondent have entered into a share holder ageement and power supply agreement on 10.11.2005 . The important obligation of the respondent is to make payment towards supply of power which includes the basic tariff charges, deemed demand charges, peak hour charges and any other benefits that it may enjoy. The obligation of the appellant was to supply the power to the respondent as contracted in the Power Supply Agreement . The power supply was denied due to various reasons including non completion of 230 KV sub station at Valathur. Further the appelant was directed by TNEB and various authorities and they are only able to generate power upto 45MW against its total capacity of 65 MW. The same was communicated to the respondent through letter dated 31.08.2006. The respondent also well aware of the contemporaneous power scenario and the TNEB notified the computation of demand charges and peak hour charges and thereby the appellant raised bill from October 2007 and the respodnent only informed about the development vide letter dated 25.09.2007. The respondent withheld the bill amount for the bills raised for the month of September 2007 to March 2008 and therefore the respondent violated the provisions of agreement . Thereafter due to various reasons the contract was terminated on 19.01.2011. However during the course of termination the respondent demanded payment of discount rate towards the short supply and non supply of power which was purchased by it from TNEB.

ii) In the light of the above the resopndent instituted civil suit before the Honourable Madras High Court on 29.04.2011. Since there was an Arbitration clause in the agreement, the appellant filed application, under Section 8 of the Arbitration and Conciliation Act and the matter was referred to arbitrator to decide the claim. Then the



O.S.A.(CAD).No.157 of 2023

respondent filed an appeal against the said order before the Division Bench of this Court in OSA No. 313 of 2013 and the same was dismissed on 08.02.2017. Thereafter Arbitration proceedings was commenced and the award passed on 07.04.2021 and additional award was passed on 05.03.2021 in favour of the respondent herein. As against the same, the appellant herein has filed Arbitration Original Petition under Section 34 of the Act bearing Arb.O.P. No. 274 of 2021 seeking to set aside the award on various grounds.

iii)The learned Single Judge has dismissed the original petition and upheld the arbitrial award. The impugned order suffered from lack of reasons, non application of mind, derogation from substantive and fundamental policy of Indian law, the impugned order camouflages the scope of Section 34(2A) and Section 34(2)(b)(ii) of the Act. The learned Single Judge has grossly and erroneously applied the principles under Section 34(2A) instead of placing reliance on the well settled and well carved out principles enunciated under Section 34(2)(b)(ii) of the Act. The test of mere erroneous application of law will hold good only when there is contravention of a statute not linked to public policy or public interest. Admittedly the Limitation Act, 1963 is law relating to public policy and hence finding the paragraphs 22 and 23 of the impugned order are liable to be set aside. The upholding of the findings of the Arbitral Tribunal by the learned Single Judge that the supply obligation under the Power Supply Agreement are continuous and not successive as per the Article 55 of the Limitation Act and the same is wholly misplaced and is liable to be set aside.

iv. The learned counsel appearing for the appellant would further contend that limitation starts from the date of notices from the Arbitrator and thereby the limitation



O.S.A.(CAD).No.157 of 2023

starts from the 13.09.2017. The claims from April 2006 to March 2008 is successive breaches. Hence the claim is barred by limitation. To support his contention he relied on the judgment in

i) M.D. Enterprises vs. Whirlpool of India Ltd reported in 2013 SCC Online Cal 22787

ii) K.V. Prasad .v V.K. Lalco Pvt Ltd reported in 2016(4) AKR 17

v). But the learned Single Judge failed to consider the above said aspect and also discussed that the mere erroneous application of the law is not a ground for interference. Infact the violation of law relating to public policy and contravention to the provisions of the Arbitration and Conciliation Act, the grounds are available under Section 34 of the Arbitration and Conciliation Act. Any contravention of law relating to public policy is a ground for challenging the award under Section 34(2)(b)(2) of Arbitration and Conciliation Act. To support his contention he relied on the following judgments.

i) Hindustan Petroleum Corporation Ltd .vs. Banu Construction and another reported in 2021 SCC Online Mad 724

ii) Temjenkaba and Ors vs. Temjenwati and others reported on 2002 10 SCC 597

iii) Ssangyong Engineering Construction Company .vs National Highways Authority of India reported in 2019 15 SCC 131

iv) Delhi Airport Metro Express Pvt Ltd., vs. Delhi Metro Rail Corporation Ltd reported in 2021 5 SCR 984.

v) N. Balakrishnan vs M. Krishnamurthy reported in 1998 7 SCC 123.



O.S.A.(CAD).No.157 of 2023

WEB COPY

vi). The Tribunal wrongly held that the breaches committed by the appellant are continuous in nature and not successive. Further it is obligation of the respondent to pay the bills and if the bills are not paid then the appellant need not supply the energy since it is reciprocal agreement. The bills have to be raised on monthly basis and if any amount is pending due, the appellant company can stop supply since the promise on one part, is not fulfilled. Therefore the award passed by the Tribunal is liable to be set aside.

vii) The learned counsel for the appellant further argued that the Tribunal failed to follow the judgment reported in State of **Gujarat v. Kothari and Associates** reported in **2016 14 SCC 761**. Therefore the ignorance of binding precedent is also one of the ground to set aside the award passed by the learned Arbitrator. Ignoring the binding precedent in violation of the fundamental policy of India in law as set out in the **Ssangyong Enginerring Construction Company** case. As per the agreement the respondent has to pay the bills raised by the appellant. Under Section 54 of the Indian Contract Act, reciprocal agreement in relation to non payment of demand deemed demanded charges and peak hour charges have not been paid by the respondent, thereby the appellant has not supplied the power from April 2008 to January 2011. The above said aspects have not been considered by the learned Single Judge and thereby the award passed by the learned Single Judge is liable to be set aside.



O.S.A.(CAD).No.157 of 2023

4. The learned counsel appearing for the respondent would contend that as per the Power Supply Agreement the respondent is the captive consumer and has to produce 26 Million Kwh per year on firm basis and has the option to purchase 13 Million Kwh on non firm basis. By entering in to Power Supply Agreement, the obligation of undertaking by captive consumer are that the captive consumer shall purchase power from M/s.Arkey Energy Private Limited from the date of commencement of supply and shall pay payment against the invoice to M/s.Arkey Energy Private Limited on or before the due date of payment stipulated in the agreement shall consume all monthly generated energy shall supplied by M/s.Arkey Energy Private Limited. The learned Arbitrator has clearly stated in the para 23 in respect of limitation and limitation starts after the disposal of the OSA 313 of 2013. As per the agreement, the power has to be supplied 26 Million Kwh per year and thereby claim are continuous breaches and not successive breaches. As per Section 55 of the Limitation Act, the claim is continuous breach and thereby not barred by limitation. Since the claim is within limitation period no question of violation of public policy would arise.

5. The Hon'ble Supreme Court approved the statement of law in ***Ssangyong Enginerring Construction Company*** case that the term public policy should be understood as comprising of fundamental notions and principles of justice after the enactment of Arbitration Amendment Act w.e.f from 23.10.2015.. Further the Hon'ble Supreme Court in ***Vijay Karia and others*** reported in ***2020 11 SCC 1*** has held that the contravention of law alone will not attract the bar of public policy and something more than contravention of law is required and further held that contravention of any provision



O.S.A.(CAD).No.157 of 2023

of an enactment is not synonymous to the contravention of fundamental policy of Indian Law. Further as per provisions of Section 34(2)(A) the award shall not be set aside merely on the ground of erroneous application of law. In this context the learned Single Judge also clearly stated in the order that as per the agreement obligation shall continuous from the terms of agreement. Merely because the order to contract the demand, monthly guaranteed energy and 26 Kwh per year are used defined and used in the agreement does not mean that the continuous obligation of the appellant to supply for the term of agreement is altered. Therefore the findings of the Tribunal that the supply obligation is continuous by examining and interpreting the holistically the clause in the agreement and confirmed by the learned Single Judge are in accordance with law. Therefore the claim is well within the period of limitation.

6. Further as per the Electricity Rules, to sustain captive consumer they have to consume 26 Kw.h power per year and thereby they entered into agreement with M/s.Arka Energy Private Limited for that reason only the 10% discount was offered as per tariff fixed by the Tamil Nadu Electricity Board. Since the appellant company has not supplied the entire power as per the agreement, they are not entitled to the above said discount of 10% of energy. Therefore the Arbitrator after elaborate discussion allowed the claim of the respondent and also awarded 13% interest as per the agreement. Further the scope of power under Sections 34 and 37 are limited. This Court cannot go into the factual aspects and only within parameter of Section 34, the Court can go and interfere with the award and there is no grounds to attract the provision of 34 and 37 of the Arbitration and Conciliation Act. The main ground urged by the learned counsel appearing for the



O.S.A.(CAD).No.157 of 2023

appellant is that the award is only against the public policy of India since the suit is barred by limitation and the same was not considered by the Arbitrator as well as the learned Single Judge. Infact the learned Single Judge has categorically and elaborately discussed and thereafter came to conclusion that there is a continuous breach and thereby the claim is well within the limitation period, thereby the present appeal is liable to be dismissed.

7. To support his contention he relied on the judgment in

- i)Konkan Railway Corporation Limited reported in 2023 9 SCC 85
- ii) UHL Power Company Limited Vs. State of Himachal Pradesh reported in 2022 4 SCC 116.
- iii) Larsen Air Conditioning and Refrigeration Company (Civil Appeal No. 3798 of 2023)
- iv)MTNL vs Fujitshu reported in 2015 SCC Online Del 743

8. This Court heard both sides and upon hearing both sides and on perusal of document the point for determination in this appeal is

- a) Whether the claim is barred by limitation?
- b) Whether the agreement is reciprocal agreement ?
- c) Whether the award passed by the Arbitrator is against the public policy of India?

Point No.1

9. In this case there is no dispute in respect of the terms of agreement. As per the



O.S.A.(CAD).No.157 of 2023

agreement the appellant herein has to raise monthly bills and the respondent herein has to settle the bills. If any default within seven days the respondent herein has to respond, otherwise the same is a ground to terminate the contract. According to the appellant/petitioner since the payment is monthly basis, the breach is successive. According to the respondent the total units are fixed for the year and upto six years the period of contract is fixed and the same is continuous breach thereby the limitation starts from the last day of termination of contract. So far as limitation is concerned, according to the appellant the amount was claimed through monthly bills for the power generated on monthly basis, thereby there is a successive breach of contract. According to the respondent the claim is upto six years and thereby the claims are continuous breaches. This Court has carefully perused the records. The dispute raised by the respondent herein before the Tribunal is that for the discount amount paid to the appellant herein. As per the agreement the appellant is entitled to 10% of the discount as the rate fixed by the Electricity Department. The appellant himself admitted that there was a short supply from April 2006 to March 2008 from April 2008 to January 2011 energy was not supplied. The respondent herein has terminated the contract on 19.01.2011. At the time of termination itself the respondent demanded the return of subsidy of 10% of the amount allotted to the appellant. Therefore the demand of return of the subsidy amount would arise only after termination of contract. Before termination the respondent cannot seek return of subsidy amount. There is no clarity in the agreement regarding return of subsidy amount. The dispute in this case is not in respect of monthly bills raised by the appellant and the dispute would arise after termination of contract and the cause of action would arise after termination of contract.



10. Therefore the contention of the appellant that there is a successive breach of contract is not acceptable. Further the suit was filed by the respondent before the civil court for recovery of money within the period of limitation and the said suit was instituted on 29.04.2011 and the same was finally disposed of 08.02.2014 through O.S. No.313 of 2017. Thereafter the arbitral proceedings was started. Therefore the limitation starts from the date of termination of contract and the case is not successive breach of contract.

11. In this context the learned counsel appearing for the appellant relied the judgments in

i)M.D. Enterprises vs. Whirlpool of India Ltd reported in 2013 SCC Online Cal 22787, wherein it is held as follows:

“Notwithstanding the agreement having been terminated in the year 2008 in this case since the suit was filed in the year 2009, the petitioner's right to pursue the substantive claim is not barred by the laws of limitation and could never have been since the petitioner had instituted the suit within the period of limitation. What could have been barred was only the petitioner's right to pursue the claim in arbitration after the suit stood disposed of by the order on the petition under [Section 8](#) of the Act; and that would have been barred if the petitioner had not commenced the arbitral proceedings within a period of three years from the date of receipt of the order under [Section 8](#) of the 1996 Act. Since the order under [Section 8](#) of the 1996 Act, in this case, was passed only on July 15, 2010 and the petitioner issued the notice invoking the arbitration agreement on April 23, 2013, the petitioner's right to proceed in arbitration has been exercised at the appropriate time and the present request made



O.S.A.(CAD).No.157 of 2023

as a consequence of the respondent not acceding to the petitioner's request can be entertained. The clock relating to the petitioner's cause of action qua arbitration has been stopped upon the petitioner invoking the arbitration agreement by the letter of April 3, 2013”.

ii) K.V. Prasad .vs. V.K. Lalco (Pvt) Ltd reported in 2016(4) AKR 17, wherein it is held as follows:

“On that aspect of the matter, the decision in the case of M.D. Enterprise -vs- Whirlpool of India Ltd., [(2014) 2 WBLR (Cal) 151] rendered by the High Court of Calcutta would be of assistance. While considering a similar contention, the High Court of Calcutta was of the opinion that in a case where reference has been made by the Court under [Section 8](#) of the Act, steps to appoint an Arbitrator will have to be taken within a period of three years from the date on which the Court had held that invoking of the clause was justified. Hence, the consideration as made therein if kept in view and in the instant case, the dates as noted are taken into consideration, the very notice dated 25.07.2013 issued by the petitioner is beyond the period of three years from the date of the order made under [Section 8](#) of the Act and consequently the petition filed before this Court is also beyond the period of limitation “

12. On careful perusal of the above said judgments, it is clear that in a case where reference has been made by the Court, under Section 8 of the Act, steps to appoint an Arbitrator will have to be taken within a period of three years from the date on which the Court had held that invoking of the clause was justified. In this case also the OSA was disposed on 08.02.2014 and proceedings were initiated immediately.

13. The learned counsel appearing for the appellant further contended that the suit



O.S.A.(CAD).No.157 of 2023

was filed in the year 2011 and the appeal was disposed in the year 2017, in the appeal the Division Bench of this Court observed that the suit was filed only to get over the Arbitration proceedings. Therefore the respondents herein are not filed the case on bonafide reasons thereby they are not entitled for benefit of Section 14 of limitation Act. In this context it is pertinent to note that the Hon'ble Division Bench of this Court had made observations, but those observations are no way affect the rights of the parties. The Division Bench has discussed about the conduct of the parties and had not given any reasons to that observation while discussing about the conduct of the parties not and passed adverse remarks in one line, therefore the said order no way affect the right of the respondents to get the benefits of Section 14 of limitation Act.

14. Further the learned Arbitrator after elaborate discussion and referring the clauses of agreement has held that the combined reading of all the above clauses as per Ex.C.7 it would definitely point out that the obligation continues during the time of contract and the case does not present successive of multiple breaches. In this case there is no successive breaches and the limitation starts from the date of termination of contract. The learned Single Judge in his judgment categorically discussed about all the aspects and fairly came to conclusion that the claim is filed within limitation since it is continuous breaches. Once the claim is within limitation there is no question of against public policy by non applying the law of limitation would arise. Therefore the arguments put forth by the learned counsel appearing for the appellant has no merits and not acceptable in that aspect. In view of the above said discussion this Court is of the view that the claim of the respondent/respondent/claimant is not barred by limitation..



Point No.2

15. The next point raised by the learned counsel for the appellant is that the contract is reciprocal agreement and the respondent has to clear the bills raised by the appellant and any default the appellant can stop the power supply, therefore there is no obligation on the part of the appellant to supply the power, since there are pending dues. This Court has carefully perused the entire agreement and as per the agreement no where whisper about the reciprocal agreement. If any bills are pending the respondent has to clear within seven days, if any breaches the same is a ground for termination of contract. No where stated about the stoppage of supply of energy. Even according to appellant the entire bill amount was not stopped and only meagre amount was dispatched and unpaid. In this context the learned Arbitrator has clearly discussed that as per the agreement the respondent is liable to pay the amount and if any, dispute after notice, the same can be settled within seven days. No where stated about the stoppage of supply by the appellant. Per contra, the agreement shows that it is a ground to terminate contract for the non payment of bills. Therefore the agreement is not a reciprocal agreement and the same is also been clearly discussed by the Arbitrator and the learned Single Judge also in this aspect elaborately discussed and decided that it is not reciprocal agreement, thereby contention of the appellant is not acceptable one.

Point No.3

16. The main contention of the appellant is that since the Arbitrator has not followed the law of limitation which amounts to against the public policy of India. It is



O.S.A.(CAD).No.157 of 2023

well settled law that the scope of the Courts to interfere the award under Section 34 and for the appellate Court under Section 37 of the Arbitration and Conciliation Act are limited and as per the judgments of the Hon'ble Supreme Court only the Court can interfere with the award passed by the Tribunal if the grounds attract under Section 34 of Arbitration and Conciliation Act. Apart from that if the award is against public policy and if there is an apparent error on the fact of records and if the Tribunal ignored the binding precedent, then the award can be interfered by the appellate Court. In this case the main ground raised by the appellant is that the claim is barred by limitation. Since it is barred by limitation the same is against the public policy of India, but in this case this Court already decided that the case is not barred by limitation. The learned counsel appearing for the appellant has relied the judgment in the case of ***Hindustan Petroleum Corporation Ltd .vs. Banu Contruction and another*** reported in ***2021 SCC Online Mad 724***, wherein the Hon'ble Supreme Court has held as follows:

“9. Limitation goes to the route of the matter and claim of limitation is founded on public policy. Therefore any plea of limitation in a petition under [section 34](#) will fall within the scope of [Section 34\(2\)\(b\)\(ii\)](#) read with clause (ii) of Explanation

I. Therefore I deem it appropriate to deal with limitation as the first point.

10. With regard to limitation, besides saying that the contractor had to wait for the final bill to make the claim qua price escalation, it was also attempted to argue that limitation was never raised before the AT. With regard to limitation, it is necessary that an adjudicating authority has to necessarily look into even if it has not been set up as a defence. This is vide [Section 3](#) of the Limitation Act. Therefore I took it upon myself to examine limitation. With regard to limitation, the fifth PO is dated 24.09.2010. There is also no disputation or disagreement before me that the final bill is dated 24.09.2010. Therefore 24.09.2010 becomes the reckoning date or the starting point of limitation, to examine the plea of limitation. This is more so in the light of Clause (6) of the escalation condition, which makes it clear that adjustment for escalation would be made in the final bill as revised index No. will not be available at the time of handing over of site. It is also in O.P.No.57 of 2015



O.S.A.(CAD).No.157 of 2023

dated 03.08.2020 [Hindustan Petroleum Corporation Limited Vs. M/s.Banu Constructions] made clear that the payment of running bills will be made at the applicable base rates only.

Now that 24.09.2010 is the reckoning date, the question is whether the claim was launched within three years from that date. For this purpose one has to turn to [section 21](#) of A and C Act. [Section 21](#) of A and C Act provides for date of commencement of arbitral proceedings. [Section 21](#) of A and C Act reads as follows

Commencement of arbitral proceedings:- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent”.

17. On careful perusal of the above said judgments it is clear that the limitation goes to the root of the matter and the claim of the limitation is founded on public policy.

18. The learned counsel appearing for the respondent had relied the following judgments :

i)Konkan Railway Corporation Limited reported in 2023 9 SCC 85

ii) UHL Power Company Limited Vs. State of Himachal Pradesh reported in 2022 4 SCC 116

iii) Larsen Air Conditioning and Refrigeration Company (Civil Appeal No. 3798 of 2023)

iv)MTNL vs Fujitshu reported in 2015 SCC Online Del 743

19. On careful perusal of the above said judgments, it is clear the findings rendered by the order of the tribunal and taking an entire different view in respect of interpretation of the relevant clauses of the implementation of agreement and the extent of judicial scrutiny under Section 34 of the Act is limited and scope of interference is narrow. Under Section 37 the extent of judicial scrutiny and scope of interference is further narrower.



O.S.A.(CAD).No.157 of 2023

WEB COPY

20. The judgment of *State of Gujarat v. Kothari and Associates* reported in **2016 14 SCC 761**, the law laid down the Hon'ble Supreme Court is not applicable to the present facts of the case. It can be said binding precedent has not been followed and thereby the award is liable to be set aside. This Court has also decided in the previous points that the claim is not barred by limitation thereby the question of against public policy would not attract. The citation referred by the learned counsel appearing for the appellant are not applicable to the present facts of the case because the above said case laws are pertaining to the public policy. Once the limitation point is decided as against the appellant no question of involvement of public policy would arise, therefore the award passed by the Arbitrator and the order passed by the learned Single Judge in Arbitration Original Petition by declining to interfere with the award of the Arbitrator is well reasoned order and thereby considering the scope of interference is very much limited by this Court as decided by the Hon'ble Supreme Court in catena of judgments, the award passed by the Arbitrator as well as the order of the learned Single Judge warrants no interference.



O.S.A.(CAD).No.157 of 2023

WEB COPY

21. In view of the above said discussions, this Court is of the opinion that this appeal has no merits and liable to be dismissed.

22. Accordingly this appeal is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

[D.K.K., J.,] [P.D.B., J.,]

18.03.2024

Index : Yes/No
Internet: Yes/No
NCC : Yes/No
aav

To

The Commercial Court, Chennai.



WEB COPY



O.S.A.(CAD).No.157 of 2023

D.KRISHNAKUMAR,J.

and

P.DHANABAL,J.

aav

Pre-Delivery Judgment in

O.S.A.(CAD).No.157 of 2023

18.03.2024