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Arb.Appeal No.11 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.03.2025

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

Arb.Appeal No.11 of 2025
and CMP.Nos.5568 of 2025

M/s.Marg Limited,
Rep by its Managing Director,
392 and 393, Rajiv Gandhi Salai,
3rd Floor, Anjali Building,
Kottivakkam, Chennai – 600 041.

... Appellant/Petitioner

VS.

1.M/s. PGA Trading and Services,
Rep by Mr.Venkata Sheshan,
Having Office at No.637, 3rd Floor,
Dr.S.P.Road, 3rd Stage, 3rd Block,
Basaveshwara Nagara,
Bangalore – 560 079.

2.M/s.Prime Group Associates,
Rep. by Mr.Venkata Sheshan,
Having Office at No.637, 3rd Floor,
Dr.S.P.Road, 3rd Stage, 3rd Block,
Basaveshwara Nagara,
Bangalore – 560 079.

... Respondents/claimants



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Arbitration Appeal is filed under Section 37 of the Arbitration and Conciliation Act, against the order passed by the Arbitral Tribunal comprising Hon'ble Retd.Justice Mr.S.Vaidyanathan (Sole Arbitrator) in I.A.No.1 of 2025 in Arb.O.P.Nos.147 and 148 of 2021.

For Appellant/Petitioner : Mr.A.Gogula Krishna

For Respondent : Mr.R.Mukundan for R1 and R2

J U D G M E N T

This application has been filed challenging the order passed by the Sole Arbitrator in I.A.No.1 of 2025 in Arbitration O.P.Nos.147 and 148 of 2021.

2. The respondents 1 and 2 filed Arbitration claim petition against the appellant in Arbitration O.P.Nos147 and 148 of 2021, seeking recovery of money under a contract for supply of VRF and HVAC Systems Materials to appellant. It was the case of the appellant that it placed purchase order with respondents for supply of those materials for executing project of Hindustan Aeronautics Limited. It is stated that the respondent delivered the materials to the Hindustan Aeronautics Limited site directly. The Hindustan



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Aeronautics Limited complained that the quality of the material supplied was not in accordance with the contract and therefore, the appellant was forced to terminate the contract with the respondents. While the materials were still available in the site of Hindustan Aeronautics Limited, the respondents initiated arbitration claim seeking payment from the appellant. In these circumstances, the appellant filed the above said interlocutory application seeking impleadment of Hindustan Aeronautics Limited as a party respondent in Arbitration Original Petition. Claiming that the said Interlocutory Application was dismissed by the Arbitrator vide his minutes dated 04.01.2025, this appeal has been filed.

3. When the appeal came up for hearing, this Court raised a preliminary objection as to the maintainability of the appeal and the learned counsel for the appellant was heard on the maintainability.

4. This appeal has been preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred as 'Arbitration Act') treating the order passed in I.A.No.1 of 2025 as refusal of interim measure. Therefore, the main question to be decided is whether a petition for



impleadment filed by the appellant herein can be treated as a petition seeking interim measure within the meaning of Section 17 of Arbitration Act and thereby, the appellant is entitled to invoke Section 37(2) of Arbitration Act to maintain the present appeal.

5. Section 37 of Arbitration Act reads as follows:

“37. Appealable orders:

(1)[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) Appeal shall also lie to a court from an order of the arbitral tribunal--



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Arb.Appeal No.11 of 2025

alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”

7. Obviously, the order impugned in this appeal cannot be treated as a plea regarding the jurisdiction of Arbitral Tribunal or a plea regarding the Arbitral Tribunal exceeding the scope of its authority. Therefore, the order impugned in this appeal cannot be treated as the one covered by Section 16(2) or (3) of Arbitration Act.

8. Section 37 (2) (b) refers about refusal or grant of interim measure under Section 17. Therefore, in cases where one of the parties to the Arbitration seeks interim measure before the Arbitrator and the same is granted or refused, an appeal shall lie to the Court under Section 37(2) (b) of Arbitration Act. Section 17 of Arbitration Act reads as follows:

17. Interim measures ordered by arbitral tribunal.-- (1) A party may, during the arbitral proceedings, apply to the arbitral tribunal--



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Arb.Appeal No.11 of 2025

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:--

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;



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Arb.Appeal No.11 of 2025

*(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.*

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.]”

9. The prayer for impleadment of Hindustan Aeronautics Limited will not come under Section 17(1) (i), (ii) a, b, c and d.

10. The learned counsel appearing for the appellant submitted that the petition for impleadment will be covered by Section 17(1) (ii) (e). Therefore, we have to decide, whether the prayer in the interlocutory application can be treated as "other interim measure of protection" within the meaning of Section 17(i) (ii) (e) of Arbitration Act.



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11. A close reading of Section 17 makes it clear that the expression "such other interim measure of protection" shall be understood in *ejusdem generis* in relation to the interim measures mentioned in Clauses a, b, c and d of Section 17(1) (ii). A close scrutiny of Clauses a, b, c and d of Section 17(1) (ii) would make it clear that the interim measures referred to in Section 17 only aimed at an interim arrangement pending final decision in original petition so as to protect the rights of the parties to the arbitration. The expression interim measure as used in Section 17 only refers to an interim arrangement pending final award. The aim of interim measure is to preserve the rights of the parties pending final decision and avoidance of irreparable or irreversible injury. A prayer for impleadment of a 3rd party cannot be treated as an interim arrangement. If the impleading application is allowed, the proposed party will become a party to the arbitration and the final award is binding on him. He will also be treated as a party for the further proceedings under Sections 34 and 37 of the Arbitration Act and also for enforcement of award.



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12. In these circumstances, a prayer for impleadment of a 3rd party cannot be treated as an interim measure for preservation of the rights of the parties pending final award in claim Petition. Therefore, I hold the application filed by the appellant seeking impleadment of Hindustan Aeronautics Limited in main arbitration Original Petition is not the one for interim measure within the meaning of Section 17 of the Arbitration Act. Therefore, any order passed in the said Interlocutory Application is not open to appeal under Section 37(2) (b) of Arbitration Act.

13. Further perusal of the minutes dated 04.01.2025 would indicate that no order has been passed in Interlocutory Application for impleadment and parties were directed to file the notes of submission. In any event, this Court has come to the conclusion that any decision in an application for impleadment cannot be treated as an interim measure within the meaning of Section 17 of Arbitration Act and therefore, no appeal shall lie under Section 37 of said Act.



Arb.Appeal No.11 of 2025

14. Accordingly, the appeal is dismissed as not maintainable and

Civil Miscellaneous Petition in C.M.P.No.5568 of 2025 is closed. No costs.

.03.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
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To

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