



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.09.2025

Pronounced on : 10.11.2025

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**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
and****THE HONOURABLE MR. JUSTICE MUMMINENI SUDHEER KUMAR****OSA (CAD) No.101 of 2022**

The Managing Director,
State Industries Promotion Corporation of Tamil Nadu Limited,
19-A, Rukumani Lakshmipathy Road,
Egmore, Chennai – 600 008.

... Appellant(s)

Vs.

M/s.Siemens Limited,
(Formerly known as M/s.iMetriex Technologies Limited),
9th Floor, Sigapi Achi Building,
18/3 Rukumanilakshmipathy Road,
Egmore, Chennai – 600 008.

... Respondent(s)

Prayer: Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 r/w Section 13(1) of the Commercial Courts Act to set aside the order dated 02.08.2021 passed in O.P.No.41 of 2018.

For Appellant(s) : Mr.J.Ravindran,
Additional Advocate General
assisted by Mr.Abishek Murthy,
Standing Counsel for SIPCOT



For Respondent(s) : Mr. Jose John
for M/s. King & Patridge

J U D G M E N T

(Judgment of the Court was made by **MUMMINENI SUDHEER KUMAR, J.**)

The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act, 1996'), aggrieved by an order dated 02.08.2021 passed in O.P.No.41 of 2018, filed under Section 34 of the Act, 1996, by a learned Single Judge of this court.

2. For better appreciation, the few facts, which are relevant and undisputed are noted hereunder.

2.1. The State Industrial Promotion Corporation of Tamil Nadu Limited (hereinafter referred to as the 'SIPCOT') developed an Information Technology Park at Siruseri for the promotion and development of industries. One company by name M/s.DATS (India) Limited (hereinafter referred to as the 'DATS') has applied for the allotment of a plot for their industrial unit in the said IT park. By an Allotment order dated 05.03.2004, Plot Nos.A-23, A-24, A-25, A-34 and A-35, totally admeasuring 4.57 acres, was allotted in favour of the DATS, subject to various terms and conditions, and the DATS was required to convey its acceptance of the terms and conditions within 15



days. In terms of the said order of allotment, the DATS is required to pay, in all, an amount of Rs.72,87,000/-, after adjusting the deposit amount of Rs.24,000/- already paid by it, within 90 days from the date of the order of allotment i.e., 05.03.2004. Further, allotment order requires execution of the lease deed in the prescribed format within 15 days of payment of the plot cost. The construction is required to be commenced within six months and completed within 24 months from the date of the order of allotment, and any failure will entail cancellation of the allotment order and forfeiture of the initial deposit and development charges paid. Thus, in all, 30 months from the date of allotment order was allowed for commencement of construction and completion of the construction of the factory building. In turn, the DATS addressed a letter dated 06.04.2004, seeking certain clarifications, including clarification on Clause 9 of the allotment order dated 05.03.2004. The said Clause 9 reads as under:-

“9. The plot is allotted on the specific condition that the allottee shall not assign, sub-let, transfer or part with his interest in the allotted plot either in whole or in part except with the prior written consent of SIPCOT. In the event of the allottee seeking approval for change in constitution, or change in the management or control or amalgamation, with any other company or transfer of interest to any third party either in whole or in part, SIPCOT shall grant approval provided, the allottee or any person is claiming under him agrees to pay the cost



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determined by SIPCOT and the cost determined by SIPCOT shall be final and binding on the allottee or any person, claiming under him and cannot be questioned in any Court of Law.”

2.2. It was thereafter, the DATS addressed a letter, dated 16.04.2004 requesting for extension of time for submission of the acceptance letter for allotment. It was thereafter, the SIPCOT, by its letter dated 30.04.2004, clarified Clause 9 stating that the terms and conditions of the allotment of land will be in terms of the allotment order, however, the same will be examined on receipt of specific request under Clause 9 based on the terms prevailing at that time. In response thereto, the DATS conveyed its acceptance with a caveat that the cost to be paid to SIPCOT with respect to issues arising out of Clause 9 of the allotment order only if the cost determined by SIPCOT is reasonable and commensurate with the actual cost incurred by SIPCOT to effect necessary changes.

2.3. At this stage, the DATS informed the SIPCOT that the name of DATS has been changed to iMetriex Technologies Ltd., and sought for approval of the same. Accordingly, the same was approved by the SIPCOT and was communicated by letter dated 09.05.2005. It was thereafter, the said iMetriex paid the amounts, as required under the allotment order and entered into lease deed dated 16.06.2005 with the SIPCOT and the original plots that



were allotted in favour of the DATS were all renumbered as Plot No. D18.

The said lease deed contains all the terms and conditions as contained in the allotment order dated 05.03.2004. In terms of Clause 26 of the lease deed, “construction of the building shall be commenced within six months from the date of allotment order and complete within 24 months”. Clause 26 of the lease deed is identical to Clause 9 of the allotment order which is already extracted herein above. Clause 33(i) of the lease deed requires iMetriex to take prior approval, in case of any change in its constitution and so also, in case of change of Directors causing change of ownership or management of the iMetriex. The said Clause 33 reads as under:-

“33. (i) The constitution of the Party of the Second Part in case of Proprietary concern/ Partnership firm/ Board of Directors of private limited company shall not be changed without prior approval of the Party of the First Part. For a public limited company as and when the constitution of the Board of Directors (Professionals) gets changed the same shall be informed to the Party of the First Part and acknowledgment obtained within 90 days.

However any change of directors causing change of ownership or management of the party of the second part shall be made only with prior approval of the Party of the First Part.

(ii) Any change in the name or the address of the Registered Office or Administrative Office of the Party of the Second Part should be intimated to the Party of the First Part then and there.”



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2.4. It was thereafter, on the failure of the iMetriex to commence the construction and complete the same in terms of the allotment order and the lease deed, a show cause notice was issued to the iMetriex on 23.01.2006, and thereafter, the allotment was cancelled, duly forfeiting the initial deposit and requiring the iMetriex to execute the cancellation deed. However, on considering the request made by the iMetriex, the said cancellation was revoked by letter dated 21.09.2006, subject to condition that the iMetriex should complete the construction and commence the operation by March 2008, as committed by the iMetriex in the schedule submitted by it. The gist of the said letter dated 21.09.2006 is extracted hereunder:-

“We refer to the correspondence cited and the subsequent discussions you had with us on the above subject. We have to inform that the orders for cancelling the plot allotted to your company vide our letter 1st cited is hereby revoked and accord our approval to start the construction immediately. The above approval is subject to the condition that you should complete the construction and commence operation by March 2008 as committed in the schedule submitted by you.

Please note that any further delay will lead to cancellation of plot allotted to you without any further correspondence.”



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2.5. It was thereafter, the iMetriex addressed a letter to the respondent Corporation on 19.06.2007 intimating that there was a change in its shareholding and 77% of the equity in iMetriex was acquired by Siemens Limited (hereinafter referred to as 'the claimant') and accordingly sought for approval in terms of Clause 26 of the lease deed. In response thereto, the SIPCOT by letter, dated 08.08.2007 required the iMetriex to furnish the revised registration certificate of the claimant certified by the Chartered Accountant after transfer of shares of the iMetriex, and informed that the request made by the iMetriex will be processed thereafter. Once again, the same request was made by the SIPCOT by their letter dated 20.09.2007. It was thereafter, the claimant appears to have addressed letters seeking for approval in terms of Clause 26 and various meetings were also held between the claimant and the respondent corporation in connection with the effect of Clause of 26.

2.6. While so, the respondent corporation issued a show cause notice dated 17.09.2008 alleging that the iMetriex has violated Clause Nos.3(vii), 3(viii) and 3(ix) of the allotment order and Clause Nos.17 and 18 of the lease deed, besides violation of Clause 26 of the lease deed. In response thereto, the



claimant submitted reply stating that the change in management and control was communicated on 13.06.2007, which is kept pending for consideration by SIPCOT, and requested not to proceed with the cancellation of allotment of land. As there was no response from the iMetriex, the SIPCOT proceeded to pass an order dated 30.09.2011 cancelling the allotment and forfeiting the amounts already paid by the iMetriex, while requiring the iMetriex to execute the cancellation deed within 15 days. Failing which, it was informed that the further action would be initiated to resume the plot under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 (hereinafter referred to as 'the Act, 1975').

2.7. As the iMetriex failed to comply with the same, the proceedings under the Act, 1975 were initiated, and an order dated 12.04.2012 was passed for resumption of the possession of the plot in question. It was at that stage, the claimant invoked the arbitration Clause contained in Clause 35 of the lease deed and also filed an application under Section 9 of the Act, 1996 for interim protection and obtained interim protection vide order dated 25.04.2012 Simultaneously, an application under Section 11 of the Act, 1996 was also filed, and accordingly, Hon'ble M.S.Janarathanam, Judge (Retired), Madras High Court was appointed as the Sole Arbitrator for adjudication of



the dispute that arose under the lease deed dated 16.06.2005.

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2.8. Accordingly, the claimant filed a claim statement dated 19.04.2016 and the SIPCOT filed its counter claim on 26.10.2015. During the pendency of the proceedings before the learned Sole Arbitrator, the claimant filed an amendment application under Section 23 of the Act, 1996, seeking amendment of the claim statement as well as the prayer in the claim statement. The said amendment application was kept pending to be considered while passing an Award in the main arbitral proceedings, and to that effect, the learned Sole Arbitrator passed an order dated 14.07.2017. The claimant also filed a reply to the Counter-claim on 30.11.2015.

2.9. The amended reliefs sought by the claimant are as under:

“30. In the circumstances, it is most humbly prayed that this Hon'ble Tribunal may be pleased to pass an award:

a. Declaring that the cancellation of the Lease Deed and purported forfeiture of the initial deposit communicated by letter dated 30.09.2011 of the Respondent is null and void under the Lease Deed and in law.

b. Directing the Respondent to grant unconditional approval to the Claimant under clause 26 and clause 33 of the Lease Deed dated 16.06.2005



or pass such further or other orders in accordance with clause (e) of para 27 and thus render justice.

c. Permanent Injunction restraining the Respondent or its officials from interrupting or obstructing the use, enjoy and occupy the said plot peacefully by the Claimant.

d. To pay the Claimant the cost of these proceedings and the earlier proceedings before the Hon'ble High Court and for such other relief as this Tribunal may deem fit in the interest of justice.

2.10. The reliefs sought by the SIPCOT in the counter claim are as under:

“22. The Respondent therefore prays that this Hon'ble tribunal maybe pleased to
1. Dismiss the claim of the claimant and

2. Direct the claimant to pay a sum of Rs. 19,74,70,000/- + ST @ 14% on 33% of differential land cost (Rs. 6,51,65,100/-) of Rs. 91,23,114/- being the differential land cost or on the alternative to execute the cancellation deed as directed by the Respondent.

3. Direct the claimant to pay the maintenance cost ie Rs. 15,47,980/-

4. Cost of the proceeding”

2.11. Accordingly, the learned Sole Arbitrator, having conducted a detailed enquiry marked Exhibits C1 to C22 on behalf of the claimant and Exhibits R1 to R12 on behalf of the SIPCOT, duly framed the following



issues:-

- “1. Whether the Respondent is bound under Clause 26 of the Lease Deed to grant unconditional approval?*
- 2. Whether the Lease Deed does not provide for collection of differential land cost based on the current market value of the property?*
- 3. Whether the Respondent has produced any evidence to show that the Office Order No.46/94 dated 12.12.1994 and Circular No.26/2014 dated 30.12.2014 bind the claimant?*
- 4. Whether the Office Order No.46/94 dated 12.12.1994 and Circular No.26/2014 dated 30.12.2014 are irrelevant to these proceedings as they have not been applied in the Lease Deed?*
- 5. Whether the claimant is entitled to the reliefs prayed for in the claim petition?*
- 6. Whether the claim is barred by any limitation?*
- 7. Whether Clause 33 of the Lease Deed is violated?*
- 8. Whether the respondent is entitled to the counter-claim as prayed for?*
- 9. Whether the Claimant or the Respondent is entitled to any other relief? ”*

2.12. The learned Sole Arbitrator has been pleased to pass an Award dated 14.07.2017, allowing the claim made by the claimant and rejecting the counter-claim made by the SIPCOT. A perusal of the award would disclose



that the same was made in 15 main paragraphs. In paragraphs (i) to (viii) have narrated the background facts, the case setup by both the parties. Paragraph (ix) mentions about the marking of exhibits, paragraph (x) deals with the framing of issues, paragraph (xi) is in connection with the amendment application, paragraph (xii) dealt with the issues 1 to 4, paragraph (xiii) deals with various provisions of the Indian Contract Act, 1872, the Indian Evidence Act, 1872, and the Transfer of Property Act, 1882 with special attention to the lease as defined under Section 105 of the Transfer of Property Act, 1882 and Section 108 of the said Act which deals with the rights and liabilities of the lessor and lessee. The learned Sole Arbitrator also discussed about the scope of Clause 26 of the lease deed *viz-a-viz* Sections 28 & 29 of the Indian Contract Act, 1872, and came to the conclusion that the second part of Clause 26 is void in terms of Sections 28 & 29 of the Indian Contract Act, 1872. Having arrived at a conclusion that the second part of Clause 26 is void, the learned Sole Arbitrator, in Paragraph (xiv), recorded his findings on issues 1 to 4 in favour of the claimant. The Issue No.6 is concerned, the learned Arbitrator recorded a finding that the SIPCOT has filed a memo dated 20.05.2016 not pressing the defence on the ground of limitation. The Issue No.7 is concerned, the learned Sole Arbitrator has come to the conclusion that the claimant has not violated Clause 33 of the lease deed. Thus, the learned



Sole Arbitrator has come to the conclusion that the claimant is entitled to the reliefs prayed for in the amended claim petition and on Issue No.8, the learned Sole Arbitrator came to the conclusion that the SIPCOT is not entitled for grant of any relief sought for in the Counter-claim in view of granting of relief in favour of the claimant and on Issue No.9, the learned Sole Arbitrator came to the conclusion that the claimant is entitled for costs of the arbitral proceedings for a sum of Rs.15,57,312/-

2.13. The conclusion arrived at by the learned Sole Arbitrator are extracted hereunder for clarity:-

“In fine, in view of the findings on various Issues mentioned above, the Claim Statement, as amended, filed by the Claimant SIEMENS is allowed as indicated below and the Counter-Claim filed by the Respondent is dismissed.

115. It is hereby declared that the cancellation of the Lease Deed dated 16.6.2005 [Ex.C-5] and forfeiture of the initial deposit communicated by letter dated 30.9.2011 [Ex.C-15] of the Respondent SIPCOT is null and void under the Lease Deed as well as in law.

116. The Respondent SIPCOT is directed to grant unconditional approval to the Claimant SIEMENS under Clause 26 of the Lease Deed dated 16.6.2005.

117. In view of granting the original relief prayed



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for under Relief (b) in the amended Claim Statement, the alternative relief prayed for therein is not grantable.

118. In view of granting of the relief as prayed for by the Claimant SIEMENS in paragraph No.115 above, it goes without saying that the permanent injunction restraining the Respondent SIPCOT or its officials from interrupting or obstructing the use, enjoyment and occupation of the said plot peacefully by the Claimant SIEMENS, is grantable and the same is accordingly granted.

119. The Claimant SIEMENS has prayed for grant of costs of these proceedings as well as that of the earlier proceedings before the Hon'ble High Court. The Claimant being the successful party in these arbitral proceedings, is entitled to costs of such proceedings as a matter of right and according to Section 31(8) of the Act 26 of 1996. But so far as the costs incurred by it in any earlier proceedings before the Hon'ble High Court is not grantable by this Tribunal as the proper Forum to grant such costs is the Hon'ble High Court before which said proceedings took place. Therefore the Respondent SIPCOT is directed pay to the Claimant SIEMENS the cost of the arbitral proceedings, i.e., a sum of Rs.15, 57,312/- [Rupees Fifteen lakhs fifty seven thousand three hundred and twelve only] as per the Cost Memo filed by the Claimant SIEMENS marked as Annexure III to this Award.

120. Time for compliance of this Award is three months from the date of this Award.

121. The Claim and the Counter-Claim made respectively by the Claimant SIEMENS and the Respondent SIPCOT are thus disposed of.”



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2.14. Aggrieved by the said award, dated 14.07.2017, the SIPCOT filed an application under Section 34 of the Act, 1996 before a learned Single Judge of this court, and the learned Single Judge, by an order dated 02.08.2021, dismissed the same.

2.15. The learned Single Judge has taken note of the contentions raised on behalf of the SIPCOT, including the contention that the cancellation of the allotment in favour of the iMetriex was in accordance with the contract terms, proceeded to consider the matter, and rejected the contention of violation of the principles of natural justice raised by the SIPCOT on the ground of not affording an opportunity to contest the amendment application filed by the claimant seeking amendment of the claim statement, and the ground raised by the SIPCOT by placing reliance on Section 29-A of the Act, 1996, also was rejected.

2.16. Further, the learned Single Judge, having taken note of Clause 26 of the lease deed and the conclusions arrived at by the learned Sole Arbitrator holding that the said Clause 26 is vague, uncertain and therefore the same is void under Sections 28 & 29 of the Indian Contract Act, and held that the



learned Sole Arbitrator had made a threadbare analysis of the nature of the contract between the parties holding that the transfer of interest to any third party, either in whole or in part in the company used in the second part of Clause 26 have to be understood as transfer of interest in shares in the process of amalgamation and not transfer of interest in the immovable property or leasehold interest in the allotted plot. Thus the learned Single Judge refused to interfere with the Award on the ground that the learned Arbitrator considered all the relevant materials and appreciated the evidence, and as such, the supervisory role under Section 34 of the Act, 1996 should be kept at a minimum level, and reappreciation of evidence and interpretation of the contract is not permissible for this court. Aggrieved by the said order, dated 02.08.2021, the appellant is before us.

3. Heard Mr.J.Ravindran, learned Additional Advocate General assisted by Mr.Abishek Murthy, learned Standing Counsel for SIPCOT and Mr.Jose John, learned counsel representing M/s.King and Patridge for the respondent.

4.1. Mr.J.Ravindran, learned Additional Advocate General, contended that the conclusions arrived at by the learned Sole Arbitrator would amount to rewriting the contract between the parties, as Clause 26 of the lease deed is



very clear in its terms and the same was also the subject matter of correspondence between the parties before entering into the said lease deed.

Further, he contended that the conclusions of the learned Sole Arbitrator holding the said Clause 26 as void under Sections 28 & 29 of the Indian Contract Act is also erroneous as there is no ambiguity in the said Clause and the parties to the lease deed have understood the said Clause in proper perspective and there was ad idem i.e. meeting of minds between the parties in understanding the said Clause. He also further contended that there is absolutely no uncertainty in the lease deed, and it is always open for the parties to agree on the terms of the contract, and the same is very much permissible under law, especially in the matter of a lease deed, and therefore, it is not open for the learned Sole Arbitrator to conclude that the said Clause is void on whatsoever ground.

4.2. The learned Additional Advocate General also further contended that the very arbitration proceedings were initiated consequent upon the cancellation of allotment by cancellation order dated 30.09.2011, but the learned Sole Arbitrator failed to advert to the said cancellation order and to the grounds on which the said cancellation was made. Thus, he contended that without there being any discussion on the grounds on which the cancellation



was made, the learned Sole Arbitrator proceeded to grant the relief, declaring the said cancellation dated 30.09.2011 as null and void. He also further contended that the entire proceedings were cleverly diverted to Clause 26 while sidetracking the defaults committed by the claimant or its predecessor in complying with various terms of the lease deed and allotment order, especially to conditions 3(vii) and 3(viii) of the allotment order and Clause 18 of the lease deed.

4.3. The learned Additional Advocate General also further contended that the previous cancellation order that was issued through cancellation order dated 09.08.2006 was revoked subject to condition that the iMetriex should complete the construction and commence the operation by March, 2008, as committed by the iMetriex under letter dated 21.09.2006, but the same was also failed to be complied with by the iMetriex, but approached the SIPCOT only after a lapse of about eight months' seeking for approval under Clause 26 of the Lease deed and failed to comply with the conditions imposed by letter dated 21.09.2006. He also further contended that the approval sought under Clause 26 by letter dated 19.06.2007 was replied by the SIPCOT by its letters dated 08.08.2007 and 20.09.2007, but the same was not responded by the iMetriex and therefore, the same could not be considered by the SIPCOT.



He also further contended that unless and until the approval as required under Clause 26 is accorded, the claimant cannot come into picture and cannot also maintain the arbitration proceedings by invoking arbitral Clause contained in the lease deed. In other words, it is his contention that the claimant herein has no locus to invoke the arbitration Clause contained under Clause 35 of the lease deed, as the claimant is neither party to the arbitration agreement nor a party claiming through a party to the arbitration agreement.

4.4. The learned Additional Advocate General also further contended that the learned Single Judge, having taken note of the contention of the SIPCOT regarding the cancellation of the allotment for violation of the terms of the lease deed, failed to take into consideration that the learned Sole Arbitrator has not at all considered the validity or otherwise of the cancellation order dated 30.09.2011, and without any adjudication on the said aspect, declared the said cancellation order dated 30.09.2011 as void and granted the other reliefs in favour of the claimant in an arbitrary manner and in violation of the principles of natural justice. He also further contended that there is violation of the principles of natural justice during the arbitral proceedings, as there was no opportunity afforded to the SIPCOT to contest the amended claim as the same was allowed only while passing the award in



question. Thus, he contended that the award of the learned Arbitrator is perverse and patently illegal, being the one contrary to the terms of the contract.

4.5. The learned Additional Advocate General placed reliance on various decisions of the Hon'ble Apex Court in the cases of ***“Oil & Natural Gas Corporation Ltd., -vs- Saw Pipes Ltd.,”*** reported in (2003) 5 SCC 705, ***“Associate Builders -vs- Delhi Development Authority”*** reported in (2015) 3 SCC 49, ***“Uttar Pradesh State Industrial Development Corporation Limited -vs- Monsanto Manufacturers Private Limited and another”*** reported in (2015) 12 SCC 501, ***“Kamal Gupta and another -vs- M/s.L.R Builders Pvt Ltd., and another”*** reported in 2025 LiveLaw SC 799 and ***“State of Orissa -vs- Dhaniram Luhar”*** reported in (2004) 5 SCC 568.

5.1. On the other hand, Mr. Jose John, learned counsel appearing for the respondent, contended that the learned Sole Arbitrator has gone into the matter in detail and accordingly on appreciation of evidence and analysis of the terms of the lease deed, came to the factual conclusion, duly interpreting the said Clauses and the learned Single Judge affirmed the same, and therefore, there is nothing for this court to interfere under Section 37 of the



Act, 1996. He also filed written arguments, wherein it is contended that the claimant has agreed to pay reasonable cost in terms of Clause 26 by addressing letters dated 26.06.2008 and 07.08.2008, and also offered to surrender a part of the land in favour of the SIPCOT by letter dated 25.09.2008, but the same was not considered by the SIPCOT. He also further contended that the learned Single Judge rightly rejected the contentions of the SIPCOT on the ground of violation of principles of natural justice as well as the ground raised basing on Section 29-A of the Act, 1996. He also further submitted that the learned Single Judge rightly refused to interfere that the award keeping in view the limited scope of interference in an application filed under Section 34 of the Act, 1996.

5.2. The learned counsel for the respondent also placed reliance on various decisions of the Hon'ble Apex Court on the scope of interference under Section 37 as well as on the scope of interference under Section 34 of the Act, 1996 in the cases of ***“Bombay Slum Redevelopment Corporation Private Ltd., -vs- Samir Narain Bhojwani”*** reported in (2024) SCC OnLine SC 1656, ***“Larsen Air Conditioning and Refrigeration Company -vs- Union of India and others”*** reported in (2023) 15 SCC 472, ***“UHL Power Company Limited -vs- State of Himachal Pradesh”*** reported in (2022) 4



SCC 116 and “*Hindustan Steelworks Construction Limited -vs- New Okhla Industrial Development Authority*” reported in (2023) SCC OnLine All 2146.

6. We have carefully considered the submissions made on either side and also perused the entire material on record.

7. In the light of the undisputed factual matrix noted at paragraph 2 of this order, we proceed to consider the matter, keeping in view the scope and ambit of our jurisdiction while exercising power under Section 37 of the Act, 1996 keeping in mind the law laid down by the Hon’ble Apex Court.

8. The scope of interference by this court under Sections 34 and 37 of the Act, 1996 is concerned, the same is, by now well settled and the law in this regard is very much crystallized. The leading judgment in the matter of scope of interference under Section 34 is “*Associate Builders -vs- Delhi Development Authority*” reported in (2015) 3 SCC 49, wherein the Hon’ble Apex Court has dealt with the scope of Section 34 of the Act, 1996 and laid down detailed guidelines or parameters for exercise of power under Section 34 of the Act, 1996. The law laid down by the Hon’ble Apex Court in



Paragraphs Nos.35 and 36 of the said decision is as under:-

“35. The next ground on which an award may be set aside is that it is contrary to the interest of India. Obviously, this concerns itself with India as a member of the world community in its relations with foreign powers. As at present advised, we need not dilate on this aspect as this ground may need to evolve on a case-by-case basis.

36. The third ground of public policy is, if an award is against justice or morality. These are two different concepts in law. An award can be said to be against justice only when it shocks the conscience of the court. An illustration of this can be given. A claimant is content with restricting his claim, let us say to Rs 30 lakhs in a statement of claim before the arbitrator and at no point does he seek to claim anything more. The arbitral award ultimately awards him Rs 45 lakhs without any acceptable reason or justification. Obviously, this would shock the conscience of the court and the arbitral award would be liable to be set aside on the ground that it is contrary to “justice”.

So also, while dealing with the aspect of patent illegality, the Hon’ble Apex

Court held as under in Paragraph Nos.40 and 42 of the said decision:-

“40. We now come to the fourth head of public policy, namely, patent illegality. It must be remembered that under the Explanation to Section 34(2)(b), an award is said to be in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption. This ground is perhaps the earliest ground on which courts in England set aside awards under English law. Added to this ground (in 1802) is the ground that an arbitral award would be set aside if there were an error of law by the arbitrator. This is explained by Denning, L.J. in R. v.



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Northumberland Compensation Appeal Tribunal, ex p Shaw [(1952) 1 All ER 122 : (1952) 1 KB 338 (CA)] : (All ER p. 130 D-E : KB p. 351)

*“Leaving now the statutory tribunals, I turn to the awards of the arbitrators. The Court of King's Bench never interfered by certiorari with the award of an arbitrator, because it was a private tribunal and not subject to the prerogative writs. If the award was not made a rule of court, the only course available to an aggrieved party was to resist an action on the award or to file a bill in equity. If the award was made a rule of court, a motion could be made to the court to set it aside for misconduct of the arbitrator on the ground that it was procured by corruption or other undue means (see Statutes 9 and 10 Will. III, C. 15). At one time an award could not be upset on the ground of error of law by the arbitrator because that could not be said to be misconduct or undue means, but ultimately it was held in *Kent v. Elstob* [(1802) 3 East 18 : 102 ER 502] , that an award could be set aside for error of law on the face of it. This was regretted by Williams, J., in *Hodgkinson v. Fernie* [(1857) 3 CB (NS) 189 : 140 ER 712] , but is now well established.”*”

42. In the 1996 Act, this principle is substituted by the “patent illegality” principle which, in turn, contains three subheads:



42.1. (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. This again is really a contravention of Section 28(1)(a) of the Act, which reads as under:

“28.Rules applicable to substance of dispute.—(1) Where the place of arbitration is situated in India—

(a) in an arbitration other than an international commercial arbitration, the Arbitral Tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;”

42.2. (b) A contravention of the Arbitration Act itself would be regarded as a patent illegality — for example if an arbitrator gives no reasons for an award in contravention of Section 31(3) of the Act, such award will be liable to be set aside.

42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

“28.Rules applicable to substance of dispute.—(1)-(2) * * *

(3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.”

This last contravention must be



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understood with a caveat. An Arbitral 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. 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.”

9. The present appeal before us is an appeal under Section 37. The scope of appeal under Section 37 also has fallen for consideration before the Hon’ble Apex Court in the various matters, latest of which being the case of **“Bombay Slum Redevelopment Corporation Private Ltd., -vs- Samir Narain Bhojwani”** reported in (2024) SCC OnLine SC 1656, **“UHL Power Company Limited -vs- State of Himachal Pradesh”** reported in (2022) 4 SCC 116 and **“Larsen Air Conditioning and Refrigeration Company -vs- Union of India and others”** reported in (2023) 15 SCC 472. In the decision rendered by the Hon’ble Apex Court prior to the case of **Bombay Slum Redevelopment Corporation Private Limited's case**, it was held that the scope of interference under Section 34 itself is narrow and when it comes to the scope of appeal under Section 37, the jurisdiction of the Appellate Court



in examining an order setting aside or refusing to set aside the award is now more circumscribed. However, the Hon'ble Apex Court, having reconsidered the same issue and having taken note of the case of ***“MMTC Limited -vs- Vedanta”*** reported in (2019) 4 SCC 163, ***“UHL Power Co.Ltd., -vs- State of H.P”*** reported in (2022) 4 SCC 116 and ***“Konkan Railway Corpn Ltd -vs- Chenab Bridge Project”*** reported in (2023) 9 SCC 85, in the case of ***Bombay Slum Redevelopment Corporation Private Limited***, held as under:-

“In the decision of this Court in the case of Konkan Railway Corporation Limited v. Chenab Bridge Project Undertaking, in paragraph 18, it was held thus:

“18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163: (2019) 2 SCC (Civ) 293], is akin to the jurisdiction of the court under Section 34 of the Act. [Id, SCC p. 167, para 14: “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.”] Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.”

(emphasis added)



16. The jurisdiction of the Appellate Court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the Appellate Court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the Appellate Court under Section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the Appellate Court can exercise the same power and jurisdiction that Section 34 Court possess with the same constraints.”

10. In the light of the above latest decision of the Hon’ble Apex Court, it is the duty of the Appellate Court to decide whether the Court under Section 34 has exercised its power properly or failed to exercise its power. This court, while exercising the said appellate power, can exercise the same power and jurisdiction that Section 34 possess, subject to the same constraints. Thus, now it is now well settled that the scope of power under Section 37 is co-extensive and on par with the power of the court under Section 34 of the Act, 1996.

11. The arbitration proceedings were triggered on issuance of the cancellation order dated 30.09.2011 by the SIPCOT cancelling the Lease



Deed. The said cancellation order was issued on the ground of violation of various conditions of the lease deed dated 16.06.2005 as well as the allotment order dated 05.03.2004. The terms that are alleged to have been violated by the claimant, as seen from the cancellation order dated 30.09.2011 are Clause Nos. 3(vii), 3(viii) and 3(ix) of the allotment order and Clause 17 & 18 of the lease deed. In terms of the said Clauses, the allottee shall commence construction of the buildings within six months, complete within 24 months, and commence commercial production within 30 months from the date of the allotment order dated 05.03.2004. The six months' time elapsed even before the execution of the lease deed dated 16.06.2005. By considering the starting point of time as the date of lease deed, which is 16.06.2005, the six months' time for commencing construction would elapse by 15.11.2005, the 24 months' time would elapse by 15.06.2007, the 30 months' time would elapse by 15.11.2007.

12. In addition to the terms and conditions contained in the allotment order and the lease deed, the SIPCOT, by letter dated 21.09.2006, revoked the earlier cancellation order dated 09.08.2006 subject to condition that the iMetriex should complete the construction and commence operation by March 2008. Admittedly, the same is also not complied with by the iMetriex or



claimant. But after a lapse of eight months from the date of the said revocation letter dated 21.09.2006, by letter dated 19.06.2007, the iMetriex sought for approval under Clause 26 of the lease deed, but has not chosen to comply with the requirement of completing the construction and commencement of operation by March 2008, either by iMetriex or by the claimant. This is one of the reasons for issuing the cancellation order dated 30.09.2011. Admittedly, the construction of the building is not commenced by the date of issuance of the cancellation order dated 30.09.2011. This is one of the grounds referred to in the cancellation order for cancelling the lease deed.

13. A perusal of the entire award passed by the learned Sole Arbitrator does not show any semblance of discussion on the validity of the cancellation order dated 30.09.2011. The learned Sole Arbitrator proceeded to consider the validity of Clause 26 and, on coming to the conclusion that the said Clause 26 is void in terms of Sections 28 & 29 of the Indian Contract Act, proceeded to grant all the reliefs as sought for by the claimant, including the one to declare the cancellation order dated 30.09.2011 as null and void. Thus, the relief granted in this regard is in violation of the principles of natural justice, and the same is patently illegal, as there is no reason assigned in the entire Award



to declare the cancellation order dated 30.09.2011 as null and void.

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14. Section 31(3) of the Act, 1996 requires the Arbitral Tribunal to assign reasons for passing the award for granting any relief or denying any relief. In respect of the relief of declaring the cancellation of allotment as void, absolutely no reasons are assigned by the learned Arbitrator, which is an issue that goes to the root of the matter. It is only in case if such declaration is validly made by the learned Arbitrator, the learned Arbitral Tribunal can go into the other aspects of the matter or consider the other reliefs sought by the claimant. In the instant case, the learned Sole Arbitrator absolutely failed to assign any reason for granting such a declaration, which goes to be root of the matter. Hence, the entire award is bound to be declared as perverse and as the one opposed to substantive law, namely, the Arbitration and Conciliation Act, 1996. When these are the matters that arise for consideration before the court under Section 34, the Court under Section 34 withhold its hands by exercising unwarranted restraint thereby allowing the glaring illegality to perpetrate. If we, while exercising power under Section 37, remain oblivious to all these illegalities by accepting the contentions of the respondent claimant that the scope of appeal under Section 37 is very much circumscribed than the power



under Section 34, the same would amount to a failure of justice and failure of the Appellate Court under Section 37 of the Act, 1996. The failure to comply with Section 31(3) of Act, 1996 is nothing but contravention of substantive law of India amounting to patent illegality.

15. Then, coming to the aspect of validity of Clause 26 of the lease deed is concerned, we are of the considered view that the conclusions arrived at by the learned Sole Arbitrator on this aspect are all perverse, and opposed to public policy and in contravention of the substantive law of India and patently illegal for the following reasons.

16. Clause 26 of the lease deed reads as under:-

“26. The Party of the Second Part shall not assign, sub-let, transfer or part with his interest in the allotted plot either in whole or in part except with the prior written consent of the Party of the First Part. In the event of the Party of Second Part seeking approval for change in constitution, or change in the management or control or amalgamation with any other company or transfer of interest to any third party either in whole or in part, the Party of the First Part shall grant approval provided the Party of Second Part or any person claiming under the Party of Second Part agrees to pay the cost determined by Party of the First Part and the cost determined by Party of First Part shall be final and binding on the Party of Second Part or



*any person claiming under the Party of Second Part
and cannot be questioned in any Court of law.”*

17. No doubt, the above Clause restricts or restrains a party from approaching a court of law. To the extent of restraining a party from approaching a court of law is concerned, the same can be safely held as void to that extent under Section 28 of the Indian Contract Act. Hence, the conclusion of the learned Sole Arbitrator to that extent cannot be found fault. Insofar as declaring the later part of Clause 26 as void under Section 29 of the Indian Contract Act is concerned, the conclusion of the learned Sole Arbitrator is bound to be declared as perverse, capricious besides being arbitrary.

18. Section 29 of the Indian Contract Act reads as under:-

*“29. Agreements void for uncertainty.—
Agreements, the meaning of which is not certain, or
capable of being made certain, are void.*

Illustrations

(a) A agrees to sell to B “a hundred tons of oil”. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in cocoanut-oil only, agrees to sell to B “one hundred tons of oil”. The nature of A’s trade affords an indication of the



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meaning of the words, and A has entered into a contract for the sale of one hundred tons of cocoanut-oil.

(d) A agrees to sell to B “all the grain in my granary at Ramnagar”. There is no uncertainty here to make the agreement void.

(e) A agrees to sell B “one thousand maunds of rice at a price to be fixed by C”. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(f) A agrees to sell to B “my white horse for rupees five hundred or rupees one thousand”. There is nothing to show which of the two prices was to be given. The agreement is void.”

19. The illustrations given under Section 29 of the Indian Contract Act have to be taken into consideration for the purpose of understanding the scope and ambit of Section 29 and the application of the said provision to the case on hand. The illustration (e) would be relevant for the case on hand.

20. From the above illustration (e), it is evident that ‘A’ agrees to sell to ‘B’ one thousand maunds of rice at a price to be fixed by ‘C’. As the price is capable of being made certain, it was said that there is no uncertainty to make the agreement void. The said explanation is directly applicable to the case on hand. In terms of Clause 26, the cost to be determined by the party of the first part (SIPCOT) was agreed to be final and binding on the party of the second



part or any person claiming under the party of the second part (claimant). The said cost is required to be paid by the second party to the lease deed or any party claiming under the party of the second part. The learned Sole Arbitrator, having taken note of Section 29, failed to consider the illustrations given thereunder and erroneously jumped to the conclusion that the said Clause is vague for want of certainty on the cost to be paid by the party of the second part (claimant). It is for want of considering the illustrations provided under Section 29, the conclusions arrived at by the learned Sole Arbitrator declaring the second part of Clause 26 as void because of the vagueness, is bound to be declared as patently illegality.

21. Be that as it may, as already noted above, there was an exchange of correspondence between the predecessor of the claimant and the SIPCOT prior to execution of the lease deed, and even according to the predecessor of the claimant as well as the claimant, they are ready to pay the reasonable cost for granting approval under Clause 26 of the lease deed. In terms of the letters dated 26.06.2008 and 07.08.2008, the claimant also expressed its willingness to pay the reasonable cost for granting approval for transfer under Clause 26. If that be the case, the appropriate dispute would be to determine what would be the 'cost' or 'reasonable cost' in terms of Clause 26 of the lease deed. When



it was understood by both the parties to the lease deed that some cost is required to be paid for granting approval in terms of Clause 26 of the lease deed, the conclusions arrived at by the learned Sole Arbitrator is nothing but going beyond the terms of the contract, and failure on the part of the learned Sole Arbitrator to act in terms of the contract entered into between the parties is nothing but avoiding or rewriting the contract for the parties, which is beyond the jurisdiction of the Arbitral Tribunal constituted under the Act, 1996. This shocks our conscience and in the light of law laid down by the Hon'ble Apex Court in *Associate Builders'* case at paragraph No.36, the Award is against the justice and morality.

22. In spite of agitating these aspects by the SIPCOT, the learned Single Judge refused to look into these aspects on the ground that the learned Sole Arbitrator has appreciated the material on record threadbare while interpreting Clause 26 of the lease deed and applying Sections 28 & 29 of the Indian Contract Act, 1872. In our considered view, such a restraint exercised by the learned Single Judge is wholly unwarranted in the facts and circumstances of the case, especially when the provision contained under Section 29 of the Indian Contract Act, 1872 read with illustrations therein, though not applicable to the case on hand, especially to Clause 26, the learned Sole



Arbitrator misapplied the said provision and came to an erroneous conclusion.

The court, while exercising power under Section 34 of the Act, 1996, is not expected to shut its eyes to such a glaring and patent illegality in the award passed by the learned Sole Arbitrator and allow it to perpetrate, causing grave injustice to a party to the arbitration. In the light of the settled legal position that the Arbitral Tribunal is not entitled to rewrite the contract for the parties and is bound by the terms of the contract, any award passed in contravention of the terms of the contract is liable to be declared as the one opposed to public policy in terms of Section 34 of the Act, 1996.

23. The understanding of the word used in Clause 26, namely, 'transfer of interest as the transfer in the shares of the company', is nothing but a misreading and rewriting of the contract for the parties. When Clause 26 is very clear in its terms and so unambiguous, referring to the 'transfer or part with his interest in the allotted plot' either in whole or in part in the first part of Clause 26, a further reference to the transfer of interest is bound to be construed as interest in the allotted plot alone but not otherwise. The attempt of the learned Arbitral Tribunal in reading the term 'transfer of interest' in the later part of Clause 26 as 'transfer of interest in the shares of the company' is perverse, and if the same is allowed, the same would amount to rewriting the



contract for the parties, especially when the parties have understood the clause in its true sense and the claimant also agreed to pay the reasonable cost of the plot by addressing letters to SIPCOT, as noted hereinabove.

24. Insofar as the contentions raised by the learned Additional Advocate General on the ground of limitation is concerned, in our considered view, it is not open for the SIPCOT to further pursue the said ground, having not pressed the same before the learned Sole Arbitrator, as is evident from the award as well as in the proceedings of the Arbitral Tribunal dated 20.12.2016.

25. Though the learned Additional Advocate General made several submissions by placing reliance on Officer Order No.46/94 dated 12.12.1994, and Circular Order No.26/2014 dated 30.12.2014, we do not deem it necessary to delve deep into these matters in the light of the conclusions already arrived at by us herein above.

26. In the light of the above, we are of the considered view that the learned Arbitral Tribunal failed to assign any reason for granting the relief of declaring the cancellation of allotment through cancellation order dated 30.09.2011 in favour of the claimant. As a matter of fact, there is no



discussion in the entire award or the order of the learned Single Judge.

Section 31(3) of the Act, 1996 mandates assigning of reasons for the conclusions arrived at and reliefs granted by the learned Arbitral Tribunal.

The same is patently lacking in this case. It is only on declaring the cancellation of allotment as void or illegal, the other claim made by the claimant can be considered.

27. In the light of the above, we are of the considered view that the order under appeal passed by the learned Single Judge brooks interference and accordingly, the same is set aside. Consequently and in the light of the conclusions arrived at by us herein above, the award dated 02.08.2021 passed in O.P.No.41 of 2018 of the learned Arbitral Tribunal also cannot be sustained and the same is also accordingly set aside. Consequently the OSA is allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

(Dr.G.J.,J.) (M.S.K.,J.)
10.11.2025

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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Dr.G.JAYACHANDRAN, J.
and
MUMMINENI SUDHEER KUMAR, J.
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