

O.S.A. No.282 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON	31.07.2025
PRONOUNCED ON	28.08.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

O.S.A.No.282 of 2022

Tamil Nadu Transmission Corporation Ltd.,
(TANTRANSCO), rep. by its
Chief Engineer/Transmission
5th Floor, TANTRANSCO Head Quarters
No.144, Anna Salai
Chennai - 600 002

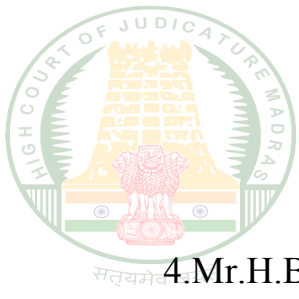
.. Appellant

VS

1.M/s.Insulators and Electricals Company
Proprietor M/s.Hindustan Urban Infrastructure Limited
at Kanchenjunga, 7th Floor
No.18, Bajukhamba Road
New Delhi - 110 001

2.Lt. Gen. (Retd) S.K.Jain
Presiding Arbitrator
C-59, Preet Vihar
Vikas Marg, New Delhi - 110 092

3.Mr.V.Natraj
Arbitrator
No.14 (Old No.95-A) Dr.Alagappa Road
Purasawakkam, Chennai - 600 084



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4. Mr.H.B.N.Shetty, I.A.S., (Retd),
New No.4 (No.17) Indira Nagar
Chennai - 600 020

.. Respondents

Prayer : Original Side Appeal filed under Order XXXVI Rule 1 of O.S. Rules, 1956 read with Clause 15 of Letters Patent against the Judgment and Decree dated 11.02.2022 in O.P. No.103 of 2010.

For Appellant : Mrs.M.Sneha

For Respondent : Mr.A.K.Sriram, Senior Counsel
for Mr.A.Thayaparan for R1
No Appearance for R2 & R3
Not ready notice reg. R4

JUDGMENT

N.SENTHILKUMAR, J.

Aggrieved by the order of the learned single Judge passed in O.P. No.103 of 2010 dated 11.02.2022, the present appeal has been filed. The petitioner in the Original Petition is the appellant herein. The respondents therein are the respondents in this appeal.

2.The brief facts, which led to the filing of the original petition are as under:

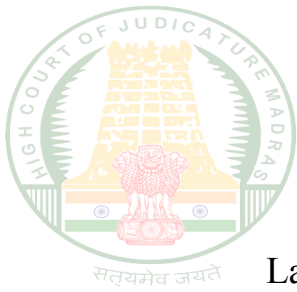


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(i) The appellant is a statutory body established under the Electricity (Supply) Act, 1948 for the averred purpose of generating electricity by putting up various generating stations and transmit electricity through various transmission lines to the end users. The appellant had invited tenders for supply of various types of disc insulators numbering 1.6 lakh pieces under Specification No.T.563 ADB Contract. Based on the above tender notification, the first respondent had submitted its tender on 17.12.1994. After evaluating the bid submitted by the first respondent, a letter of award was issued by the appellant on 29.09.1995 for a total value of Rs.269 Lakhs. Based on the said letter of award, an agreement was entered into between the appellant and the first respondent on 17.10.1995.

(ii) The appellant had claimed that the first respondent did not honour its commitment in terms of the agreement *qua* quality of the materials supplied and in terms of the technical specification under Specification No.T.563 ADB. One of the conditions agreed between both the parties was that the first respondent shall supply the entire quantity of insulators on or before 28.03.1996. However, the first respondent had started making supply of materials from 13.11.1995 and completed the same only on 04.05.1998. In this connection, there was a delay of more than two years in completing the contract.

(iii) As per the agreement, the total amount due and payable by the Board to the first respondent comes to Rs.269



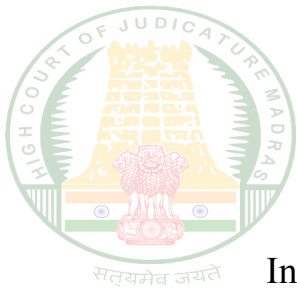
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Lakhs. As against this, the Board has paid 90% of the amount, namely, a sum of Rs.2,08,27,705/-. The contract provides for levy of liquidated damage in the event of delay in supply of the materials, and therefore, a sum of Rs.28,07,204/- was adjusted towards liquidated damage. During the execution of the present contract between the parties, the Board entered into several other contracts with the first respondent. The details of which are, (1) PORT/548, dated 13.06.1997; (2) PORT/549, dated 23.10.1998 (3) PORT/551, dated 24.10.1998; (4) PORT 554, dated 28.10.1998; (5) PORT/632, dated 3/4.2.1999, (6) PORT 634, dated 08.02.1999 (7) PORT/784 dated 10.11.1999; (8) PORT833, dated 09.08.2000.

(iv) According to the appellant, the first respondent had supplied defective materials and consequently could not complete the supplies within the stipulated period as provided in the contract. Therefore, the first respondent committed breach of the contract.

(v) The other contracts entered into between the parties gives a right to the appellant to recover the amounts due under this contract, from those contracts and its details have been furnished supra.

(vi) It is the case of the appellant that due to the default committed by the first respondent, the appellant had to incur Rs.51,56,524/- towards labour, supervision charges and stringing charges for the replacement of the defective insulators.



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In addition to the above, there were certain audit recoveries in respect of other contracts, which amounts to Rs.32,08,258/-.

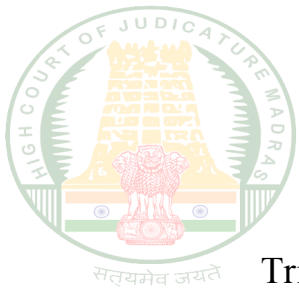
(vii) In addition to the above said total sum of Rs.83,64,782/-, the appellant Board had also levied liquidated damages as provided under the contract, for the delay in supply, and the amount of liquidated damages levied works out to Rs.28,15,800.50. The details of which are furnished hereunder:

Liquidated damages:

1. P.O.310, dated 13.06.1997	Rs.2,207.00
2. P.O.632, dated 03/04.02.1999	Rs.1308.00
3. P.O.634, dated 08.02.1999	Rs.128.00
4. P.O.784, dated 10.11.1999	Rs.2,911.00
5. P.O.833, dated 09.08.2000	Rs.2,222.30
6. ADB Contract LOA dated 29.09.1995	Rs.28,04,024.00

Total	Rs.28,15,800.30

(viii) Inspite of the adjustment so made by the Board, from the payments to be made in other contracts, a balance of Rs.47,33,425/- was still due and payable by the respondent herein in relation to the contract in dispute, namely T.553. Therefore, the appellant Board opted to invoke the bank guarantee furnished by the first respondent to the value of Rs.51,19,215/- on 01.07.2004. There were exchange of communication between the appellant and the first respondent. Finally, by invoking the arbitration clause, a



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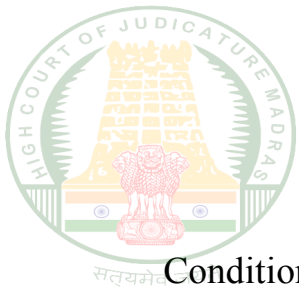
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Tribunal was constituted and a claim was made by the first respondent.

(ix) The Tribunal, after examining the first respondent's witness as CW1 and the appellant's witness as RW1 to RW5, had passed an award on 17.08.2009, awarding a sum of Rs.52,70,890/- with 8% interest from the date of reference till the date of realisation in favour of the claimant/1st respondent herein and by awarding a sum of Rs.30,93,947/- and 10% of contract price as liquidated damages for delay in delivery of insulators in favour of the appellant herein.

3. Aggrieved by the findings of the Tribunal, the appellant herein had filed original petition before the learned single Judge in O.P. No.103 of 2010. After giving a detailed consideration to the claims made by the parties, the learned single Judge dismissed the original petition and confirmed the award of the Tribunal vide order dated 11.02.2022. Aggrieved by the said order, the present original side appeal has been filed by the appellant.

4. Mrs.M.Sneha, learned counsel appearing for the appellant vehemently contended on three issues, namely, the Tribunal and the learned single Judge had committed grave illegality by disregarding clause 34 of the General



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Conditions of the Contract and by referring only to clause 35; the next contention raised by the learned counsel is that the Arbitral Tribunal and the learned single Judge had rendered arbitrary finding that the appellant was entitled to 60% of the amount deducted and the first respondent was entitled to 40%; and the last contention raised by the learned counsel is that the first respondent did not discharge the burden of proof while making a claim of Rs.1.52 Crores. Apart from the above, the learned counsel strenuously contended that the other deductions made by the appellant was towards audit recoveries. On analysis of the case of the appellant, who was the respondent before the Tribunal, the contention put-forth by the learned counsel is that the first respondent had supplied defective materials and there has been total breach of contract.

5. Per contra, the learned counsel appearing for the first respondent/claimant contended that the claimant had replaced the defective insulators and the issue regarding recovery of amount payable under other contracts were examined under issue Nos.6,8,9,11 before the Arbitral Tribunal. The learned counsel contended that it is evident from the records that the first respondent had replaced the defective materials.



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6. The Arbitral Tribunal has taken note of the terms in respect of deduction from contract price under the General Conditions of Contract. The relevant portion of the contract is extracted hereunder:

"Deduction from Contract Price

35.1 All costs, damages or expense which the owner may have paid for which under the contract, the contractor is liable will be claimed by the owner. All such claims shall be billed by the owner to the contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations to enable the contractor to properly identify such claims. Such claims shall be paid by the contractor within fifteen (15) days of receipt of the corresponding bills and if not paid by the contractor within the said period, the owner may then deduct the amount from any monies due or becoming due by him to the contractor under the contract or may be recovered by court of law or otherwise, if the contractor fails to satisfy the owner of such claims."

"33. The claimant has contended that the mandatory provisions having not been followed, the respondent is not entitled to any sum under the head 'other recoveries'. There is considerable force in the claimant's submissions. In respect of any claims relating to cost, damages or expenses which the respondent may have paid for, the respondent ought to have



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given notice to the claimant as and when they fell due supported by appropriate vouchers or explanations. There was no contemporaneous claim made, within 15 days of the event as required by clause 35 of the ADB Contract..."

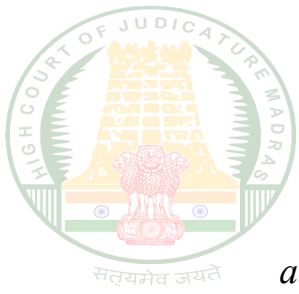
It is necessary to extract clause 34.0 of the General Conditions of the Contract:

"Clause No.34.0 ENFORCEMENT OF TERMS

The failure of the either party to enforce, at any time, the provisions of this contract or any right in respect thereto or the exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options in any way to affect the validity of the contract. The exercise by either party of any of its right herein shall not preclude or prejudice either party from exercising the same or any other right it may have under the contract."

7. The relevant portion of the order passed by the learned single Judge is extracted hereunder:

"The Petitioner also adduced oral evidence for each circle through one witness. However, as correctly pointed out by learned senior counsel for the first Respondent, the abstract of deductions at page 252 of Volume V indicates that the documentary evidence was limited to the deduction of



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about Rs.28.77 lakhs, and that no documentary evidence was provided in respect of the deduction of Rs.22,90,502/-. This position is corroborated on examining Ex.R-117A to R-117D. The oral evidence of RW-1 to RW-5 also merely refers to these documents without providing any evidence that the Petitioner incurred the expenditure of Rs.22,90,502/- for which documentary evidence was unavailable. In this context, after recording the categorical finding that Clause 35.1 had not been complied with or adhered to by the Petitioner, the Arbitral Tribunal recorded the following findings:

"34. However, we are not oblivious of the fact that the Claimant supplied defective goods. The Claimant itself had admitted in paragraphs 6 and 7 of its claim statement that it had replaced defective insulators when called upon to do. The Claimant has stated that it did so to maintain cordial business relationship with the Respondent, even though, according to it, the period of warranty had expired. As the Respondent appears to have suffered loss due to the supply of defective insulators, we are of the view that the Respondent should be compensated, even though it had strictly not followed the norms prescribed in clause 35 of not having given 15 days notice. We hold that in the interests of justice, the Respondent would be



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entitled to 60% from and out of the sum of Rs.51,56,579/- being the balance amount available under the head 'other Recoveries'. This would amount to Rs.30,93,947/-

24. As indicated earlier, the first respondent herein could have challenged this conclusion in light of the finding that Clause 35 was not adhered to. However, the challenge is by the Petitioner and not by the first respondent. By turning the spotlight on the 60:40 apportionment, the petitioner also contended that the Arbitral Tribunal committed a patent illegality in concluding that both parties committed breach. However, this contention is untenable and based on the fundamental misconception that the Arbitral Tribunal held that both parties committed breach on a 60:40 basis. On the contrary, the Arbitral Tribunal allowed 60% of the Petitioner's deduction towards expenses and rejected the remaining 40%. On the rejection of the deduction to the extent of 40%, the Petitioner is unable to controvert the contention that it had provided documentary evidence for only about 60% of the claim of Rs.51.56 lakhs. Thus, if examined in isolation, the award of 60% appears to be without basis. Even if there are gaps in reasoning, the



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Hon'ble Supreme Court instructed in Dyna Technologies, at paragraph 35, that the court should have regard to the documents submitted by the parties. If paragraph 34 of the Award is examined in light of the following: the abstract provided by the Petitioner, which is contained at page 252 of Volume-V; the documents in the said Volume, including Ex.R-117A to Ex.R-117D; and the oral evidence, the conclusion of the Arbitral Tribunal does not appear to be arbitrary since Rs.28.77 lakhs is about 56% of Rs.51.66 lakhs. In order to succeed in this challenge, the Petitioner should have demonstrated that it had adduced evidence for the rejected 40% of the claim of about Rs.51.66 lakhs; however, such evidence was not placed before the Arbitral Tribunal and is not on record. In these facts and circumstances, the Arbitral Tribunal held that the Petitioner is entitled to Rs.30,93,947/- from and out of a sum of Rs.51,56,579/-, and that the first Respondent is entitled to the remainder. In effect, the Petitioner was granted monetary compensation which marginally exceeded the expenditure for which it adduced evidence. Hence, this finding does not warrant interference at the behest of the Petitioner.



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25. *The other deduction by the Petitioner was towards audit remarks or objections. A sum of Rs.32,08,258/- was deducted on such basis. After examining the provisions of the contract, the Arbitral Tribunal recorded the following finding in paragraph 33 of the Award:*

33....Audit recoveries are not contemplated under the contract between parties and therefore, the Respondent would not be entitled to the sum of Rs.32,08,258/- claimed as audit recoveries. It is necessary to add here that the audit objections mentioned do not relate to the ADB Contract.

The above conclusion is based on a consideration of the terms of the contract. Such conclusion is eminently reasonable and does not call for interference.

8. The Arbitral Tribunal upheld the levy of liquidated damages by the appellant. The learned single Judge had observed that although there is no consideration in the award as to whether loss was caused by such delayed supply to the appellant, since the first respondent herein has not challenged the award, there is no basis to interfere with the award as regards liquidated damages. The learned single Judge took a view that as the findings rendered by the Arbitrator on the basis of the terms of the contract is reasonable, there is no



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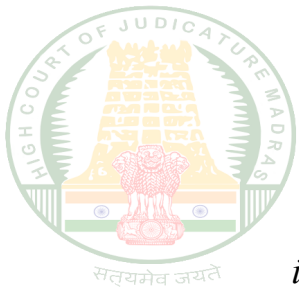
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reason to interfere with the award. In the above terms, the learned single Judge had confirmed the award passed by the Tribunal dated 17.08.2009.

9. It is to be noted that in an Appeal filed under Section 37 of the Arbitration and Conciliation Act, the scope of interference by the Appellate Court is very limited.

10. It is pertinent to refer to the judgment of the Hon'ble Supreme Court in ***Punjab State Civil Supplies Corporation Limited and Another Vs. Sanman Rice Mills and others*** reported in ***2024 SCC Online SC 2632***, wherein the Hon'ble Supreme Court has observed that the award of the Arbitrator cannot be touched unless it is contrary to the substantive provision of law, any provision of the Act or the terms of the agreement. The relevant portions are extracted hereunder:

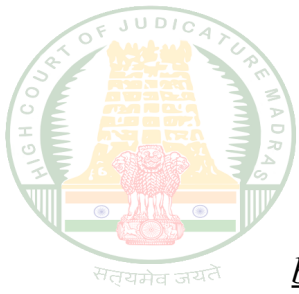
“20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It



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is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

21.It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot.



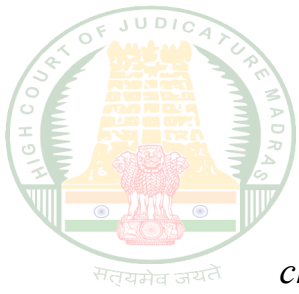
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be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.

22. In the case at hand, the arbitral award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice. It is not held to be against any substantive provision of law or the Act. Therefore, the award was rightly upheld by the court exercising the powers under Section 34 of the Act. The Appellate Court, as such, could not have set aside the award without recording any finding that the award suffers from any illegality as contained in Section 34 of the Act or that the court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better view than the one taken by the arbitral tribunal, is no ground to set aside the award.”

11. The Hon'ble full bench of the Apex Court in ***Konkan Railway Corpn. Ltd. v. Chenab Bridge Project***, reported in (2023) 9 SCC 85, observed as follows:

“25. ... While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the

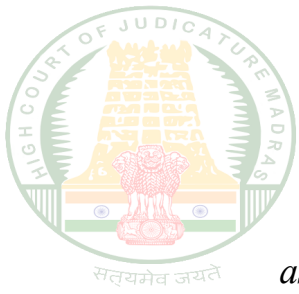


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challenge to the arbitral award. The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise....”

12. The Hon'ble Apex Court in the case of ***Somdatt Builders-NCC-NEC (JV) v. National Highways Authority of India and others***, reported in (2025) 6 SCC 757, while considering the jurisdiction of the appellate court under Section 37 of the Arbitration and Conciliation Act when the award has been upheld under Section 34 of the Act, relied upon the following judicial pronouncements and restored the arbitral award.

“48. In Reliance Infrastructure [Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479], this Court referring to one of its earlier decisions in UHL Power Co. Ltd. v. State of H.P. [(2022) 4 SCC 116], held that scope of interference under Section 37 is all the more circumscribed keeping in view the limited scope of interference with an arbitral award under Section 34 of the 1996 Act. As it is, the jurisdiction conferred on courts under Section 34 of the 1996 Act is fairly narrow. Therefore, when it comes to scope of an appeal under Section 37 of the 1996 Act, jurisdiction of the appellate court in examining an order passed under Section 34, either setting



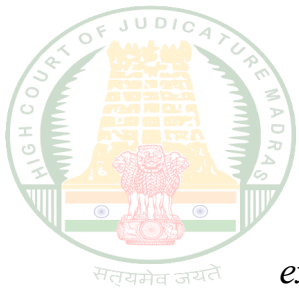
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aside or refusing to set aside an arbitral award, is all the more circumscribed.

49. Again in Larsen Air Conditioning & Refrigeration [(2023) 15 SCC 472], this Court reiterated the position that Section 37 of the 1996 Act grants narrower scope to the appellate court to review the findings in an arbitral award if it has been upheld or substantially upheld under Section 34.

50. This Court in Hindustan Construction [Hindustan Construction Co. Ltd. v. NHAI, (2024) 2 SCC 613] declared that it is the settled jurisprudence of the courts in the country that arbitral awards which contain reasons especially when they interpret contractual terms ought not to be interfered with lightly. An error in the interpretation of contractual terms by an arbitrator is an error within his jurisdiction and would, therefore, not be a ground to interfere with an arbitral award.

51. As already discussed above, the Arbitral Tribunal had interpreted Clause 51 in a reasonable manner based on the evidence on record. This interpretation was affirmed by the learned Single Judge exercising jurisdiction under Section 34 of the 1996 Act. Therefore, the Division Bench [NHAI v. Som Datt Builders-NCC-NEC (JV), 2009 SCC On Line Del 3692] of the High Court was not at all justified in setting aside the arbitral award exercising extremely limited jurisdiction under Section 37 of the 1996 Act by merely using



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expressions like “opposed to the public policy of India”, “patent illegality” and “shocking the conscience of the court”.

52. As reiterated by this Court in *Reliance Infrastructure [Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479]*, it is necessary to remind the courts that a great deal of restraint is required to be shown while examining the validity of an arbitral award when such an award has been upheld, wholly or substantially, under Section 34 of the 1996 Act. Frequent interference with arbitral awards would defeat the very purpose of the 1996 Act."

13. The above judgments clarify that the powers conferred under Section 37 of the Arbitration and Conciliation Act can be exercised by this Court only to ascertain whether the learned single Judge has acted within the ambit of Section 34 of the Act or failed to exercise the powers conferred thereon.

14. As stated supra, the learned single Judge, while considering the case of the appellant, concurred with the findings rendered by the Arbitrator, as the findings are based on the contractual terms agreed between the parties and the evidence available on record.

15. When the findings of the Arbitrator are based on facts and not on any



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legal aspects, the scope of Section 34 is very limited. All the reasons stated by the learned single Judge for dismissing the claim made by the appellant herein are also purely factual. In view of the dictum laid down by the Hon'ble Supreme Court in the above cases, the findings rendered by the arbitral tribunal, which was upheld by the learned single Judge of this Court in O.P. No.103 of 2010 dated 11.02.2022 are in accordance with law, which does not warrant any interference. Hence, the Appeal filed by the appellant is hereby dismissed. There is no order as to costs.

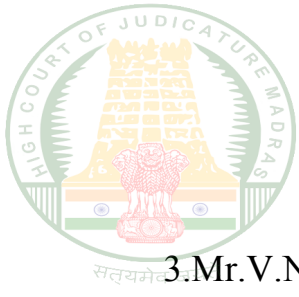
[A.S.M., J] [N.S., J]
28.08.2025

Index:Yes
Non-speaking order
Neutral Citation:Yes
Asr

To

1.M/s.Insulators and Electricals Company
Proprietor M/s.Hindustan Urban Infrastructure Limited
at Kanchenjunga, 7th Floor
No.18, Bajukhamba Road
New Delhi - 110 001

2.Lt. Gen. (Retd) S.K.Jain
Presiding Arbitrator
C-59, Preet Vihar
Vikas Marg, New Delhi - 110 092



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3. Mr. V. Natraj

Arbitrator

No.14 (Old No.95-A) Dr. Alagappa Road
Purasawakkam, Chennai - 600 084

4. Mr. H. B. N. Shetty, I.A.S., (Retd),

New No.4 (No.17) Indira Nagar
Chennai - 600 020



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and
N.SENTHILKUMAR, J.

Asr

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Dated : 28.08.2025