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OSA.Nos.37 to 39/2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.04.2025

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

OSA [CAD] Nos.37 to 39/2025 & CMP.Nos.8182 & 8188/2025 in
OSA.[CAD].Nos.37 & 39/2025

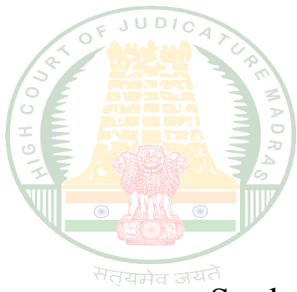
1.Goseago Multimodal Corporation
rep.by its Managing Partner
Sumathi Selvakumar,
Having its registered office at
W760, 4th Avenue, 3rd Floor
Anna Nagar, Western Extension
Chennai – 101.

2.Mrs.Sumathi Selvakumar
3.Mr.Selva Kumar

.. Appellants in all
the appeals

Versus

M/s.Priya Blue Industries Pvt Ltd
rep.by its Managing Director
Mr.P.Sanjay P.Mehta
Aashirwad, Plot No.1563/A
Opp.to Panna Tower, Rupani



OSA.Nos.37 to 39/2025

Sardarnagar, Near Laxmi Apartment
Bhavnagar 364001.

.. Respondent
in all the appeals

Common Prayer:- Original Side Appeals filed Clause 15 of Letters Patent read with Order 36 Rule 9 of Original Side Rules and Section 37 of the Arbitration and Conciliation Act, 1996, against the order and decreetal order dated 03.03.2025 passed in Original Application Nos.110/2025 and 109/2025 and A.No.843/2025 in OA.Nos.109 and 110/2025.

For Appellants in
all Appeals : Mr.N.Murali Kumaran
Senior counsel for
Mr.Anandh Venkataramani

For Respondent in
all petitions : Mr.P.V.Balasubramaniam
Senior Counsel for
M/s.Deepika Murali

COMMON JUDGMENT

[Order of the Court was made by S.S.SUNDAR, J.,]

(1)The above Original Side Appeals have been directed against the common order dated 03.03.2025 passed in OA.Nos.110 and 109/2025 and A.No.843/2025 in OA.Nos.109 & 110/2025.



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(2) All the above appeals have been preferred by the same appellants who are the applicants in OA.Nos.109 and 110/2025. Since all the appeals are connected, these appeals are disposed of by this common order.

(3) Brief facts that are necessary for the disposal of these appeals, are as follows:-

(a) The 1st appellant appears to be an unregistered Partnership Firm and appellants 2 and 3 are partners of the 1st appellant Company. The appellants entered into an Agreement on 26.03.2024 with the respondent. It appears that the respondent took part in a tender relating to dismantling and removal of scrap from the thermal power unit of M/s.Neyveli Lignite Corporation. Even before the tender process was finalized, a preliminary Agreement known as Composite Agreement was entered into on 26.03.2024. Thereafter, as per the first agreement, the parties had agreed for resolution of dispute by arbitration and the seat of Arbitration was agreed to be at Chennai. However, it is not in dispute that a subsequent Agreement dated 06.07.2024 was entered into and the second agreement was after the



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respondent became the successful bidder. It appears that a dispute arose between the parties and the appellants issued notice in terms of 21 of Arbitration and Conciliation Act, 1996, calling upon the respondent, not to remove any material which is the subject matter of the Agreement dated 26.03.2024 and the business Agreement dated 06.07.2024 and to choose any one of the Judges for resolving the issues which arise out of the Agreement dated 26.03.2024 and further business Agreement dated 06.07.2024.

(b) The appellants claiming that the respondent had committed breach of Composite Agreement dated 26.03.2024, filed applications under Section 9 of the Arbitration and Conciliation Act, seeking for an injunction restraining the respondent herein from moving/removing/handling the scrap materials which are the subject matter of the two Agreements. The appellants claimed that they were ready and willing to perform the terms of the Composite Agreement dated 26.03.2024 and the respondent had quite contrary to the terms and conditions of the composite Agreement dated 26.03.2024, started



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dismantling and removing the scrap from the premises of M/s.NLC without the concurrence of the appellants. Hence, the appellants filed OA.Nos.109 and 110/2025 seeking interim orders.

(c) Even though interim protection was given vide order dated 13.02.2025 in OA.Nos.109 and 110/2025, the respondent filed an application in A.No.843/2025 to vacate the interim order granted in OA.Nos.109 and 110/2025.

(d) The objection raised by the respondent is that as per the second Agreement dated 06.07.2024 and the subsequent Addendums, the seat of Arbitration was agreed to be at Bhavnagar, Gujarat. In the application filed for vacating the interim order, the respondent specifically pleaded that the appellants have filed the applications in OA.Nos.109 and 110/2025 suppressing the material facts and the addendum dated 06.07.2024 wherein the appellants had agreed to pay additional payment of Rs.60 Crores within sixty days of respondent making the said payment. One of the objection raised by the respondent is that the arbitration clause as per the Composite



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Agreement dated 26.03.2024 is superseded by the subsequent Agreement dated 06.07.2024 and therefore, the applications are not maintainable before this Court.

(e) The learned Single Judge, after elaborately considering the issues agreed with the submissions of the respondent on merits and held that the Composite Agreement dated 26.03.2024 was only a preliminary one showing mere understanding reached between the parties even before the respondent became the successful bidder and therefore, the subsequent Agreement dated 06.07.2024 which specifically refers to an arbitration agreement and seat of arbitration should prevail. In other words, it is stated that by virtue of subsequent Agreement dated 06.07.2024, the arbitration clause in the first agreement is not enforceable. Learned Judge also held that the first agreement is unenforceable. Referring to some of the clauses in the first Agreement dated 26.03.2024 and the subsequent Agreement and Addendums dated 06.07.2024, learned Judge also found that the appellants had not fulfilled their obligations under the Agreements



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and thereby, committed breach of contract. After finding prima facie case and balance of convenience in favour of respondent, the learned Judge who held that the respondent would be put to irreparable loss if interim order is vacated. It is admitted that the appellants themselves issued notice for constitution of Arbitration Tribunal consisting of three members as per the subsequent Agreement dated 06.07.2024. Since the seat of arbitration is at Bhavnagar, Gujarat, as per subsequent Agreement, learned Single Judge held that this Court does not have jurisdiction to decide OA.Nos.109 and 110 of 2025. Therefore, learned Single Judge dismissed OA.Nos.109 and 110 of 2025 and allowed A.No.843/2025. Challenging the common order of the learned Single Judge dated 03.03.2025, the above appeals are preferred.

(4)Learned Senior counsel appearing for the appellants submitted that when there are two agreements relating to the arbitration clause, the subsequent agreement cannot be treated as one superseding the agreement which was entered into earlier on 26.03.2024. It is to be noted that the first



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agreement dated 26.03.2024 also refers to the rights of parties to amend any clauses in the first agreement if such amendment is mutual. There cannot two Agreements which can be enforced if clauses are mutually reconcilable. As between the first agreement which is just a Memorandum of Understanding or preliminary agreement, in contemplation of final agreement, it is seen that there are several modifications with reference to rights and obligations of the parties. In such circumstances, by virtue of second agreement, those modified terms which are in variance with the first agreement, are also binding.

(5)The appellants have not raised any dispute as to the enforceability of those clauses which are in deviation of the terms of the first agreement. However, it is contended by the learned Senior counsel that the 2nd agreement which is quite contrary, cannot be treated as one superseding the earlier agreement. This argument cannot be countenanced for obvious reasons. As pointed out by this Court earlier, the subsequent agreement dated 06.07.2024 in effect was entered into consciously keeping in mind, the clauses in the first agreement. Though in the



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subsequent agreement dated 06.07.2024, there is no specific clause regarding supersession of first agreement, having regard to the terms of first and second agreements and the time line, this Court has no hesitation to hold that the learned Single Judge is right in holding that the 2nd agreement should be treated as one superseding the first agreement.

(6) Secondly, the subsequent agreement provides for three Member Arbitral Tribunal. However, in the first agreement dated 26.03.2024, the procedure for constitution of Arbitral Tribunal has not been stipulated. It is also admitted before this Court that the appellants in its notice specifically refer to the subsequent agreement dated 06.07.2024. It is admitted that as per subsequent Agreement dated 06.07.2024, the seat of arbitration is at Bhavnagar, Gujarat.

(7) Learned counsel for the appellants relied upon the judgment of Hon'ble Supreme Court reported in **1999 [5] SCC 651 [Olympus Superstructures Pvt Ltd Vs. Meena Vijay Khetan and Others]**. The question arose before the Hon'ble Supreme Court was not akin to the issue on hand. In the said case, the dispute between the parties revolved around multiple

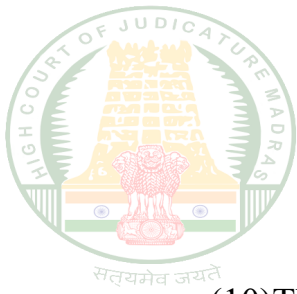


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agreements. The Hon'ble Supreme Court dealt with a case where the dispute is regarding the issues that can be referred to Arbitrators and not regarding the jurisdiction of arbitrators which is raised in this matter.

(8) This Court, on principle is unable to get any clue from the said judgment as to its relevance. On the admitted facts, this Court is in perfect agreement with the findings of the learned Single Judge that this Court does not have jurisdiction to decide the applications since the seat of arbitration as agreed in the second agreement is at Bhavnagar, Gujarat.

(9) Even though the learned Single Judge has given a finding that the appellants have not satisfied the trinity test, i.e., prima facie case, balance of convenience and irreparable loss, this Court finds that the observations of the learned Single Judge on merits of the applications may not be appropriate. Once the jurisdictional issue is raised before the Court and the Court has answered the issue that the Court hearing the case has no jurisdiction, it may not be appropriate to decide again the applications on merits.



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(10)Therefore, while confirming the order passed by the learned Single Judge dated 03.03.2025, the findings of the learned Single Judge on merits will not operate as res judicata when the appellants files necessary applications before the Court which is competent and has jurisdiction.

(11)In the result, the Original Side Appeals stand **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

[SSSRJ] [AANJ]
08.04.2025

AP
Internet: Yes
Neutral Citation: Yes



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A.A.NAKKIRAN, J.,

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