

Arb.O.P.(Com.Div) No.582 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2025

Pronounced on : 10.03.2025

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.582 of 2022

M/s.G.Sakthi Constructions,
rep. by its Partner

... Petitioner

Vs.

Union of India,
rep. through Deputy Chief Engineer/
MTP(R)/Southern Railway,
Mylapore, Chennai 600 004.

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34(2)(b)(ii) and 34(2A) of the Arbitration and Conciliation Act, 1996 to set aside the impugned Award dated 24.01.2022 passed by the Hon'ble Arbitral Tribunal in the arbitration between the petitioner and the respondent with respect of Claim Nos.3, 5, 13-16 and 24-26 only and to direct the respondent to pay the costs of the proceedings.

For petitioner : Mr.Sricharan Rangarajan,
Senior Counsel for
Mr.Athiban Vijay A.K.

For respondent : Mr.R.Rajesh Vivekananthan,
Deputy Solicitor General of India

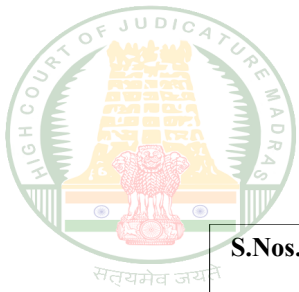


Arb.O.P.(Com.Div) No.582 of 2022

ORDER

WEB COPY This petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the impugned Arbitral Award dated 24.01.2022 passed by the Arbitrator.

2.The petitioner is the claimant and the respondent is the respondent in the arbitration. The petitioner was a contractor appointed by the respondent. There arose disputes between the petitioner and the respondent under the said contract. In accordance with the arbitration clause, the petitioner had invoked arbitration. In accordance with the arbitration clause, an Arbitrator was appointed from the panel of Arbitrators maintained by the respondent. Both the parties participated in the arbitration. The petitioner had made various claims before the Arbitrator against the respondent. The details of the claims made by the petitioner against the respondent and the amounts awarded by the Arbitrator under the Award are summarised hereunder:



Arb.O.P.(Com.Div) No.582 of 2022

S.Nos.	Description of claim	As per SOC	Amount awarded by AT
1	Tender Form Cost	10,930.00	NIL
2	Earnest Money Deposit	3,67,180.00	3,67,180.00
3	Tools for site lab	70,000.00	52,500.00
4	Labour for providing site shed	50,000.00	50,000.00
5	Material for providing site shed	1,06,525.00	80,000.00
6	Furniture for site shed	23,300.00	18,640.00
7	Steel works for site shed	30,277.00	NIL
8	Preparation of program chart and design mix	75,000.00	75,000.00
9	Design Engg. site visit for alignment marking including survey	0	NIL
10	Borewell provided at site for water managements	96,400.00	96,400.00
11	Motor for Borewell	17,600.00	17,600.00
12	Site labour payments	0	NIL
13	Site Watchman Salary	9,64,000.00	Lumpsum Award for Claim No.13
14	Site Supervisor Salary	6,00,000.00	Claim No.14
15	Site Engineer Salary	12,30,000.00	Claim No.15
16	Store maintainers Salary	3,60,000.00	Claim No.16 6,00,000.00
17	Pile foundation machinery advance	2,00,000.00	1,00,000.00
18	MSME - Material charges	23,136.00	23,136.00
19	Survey charges for bridge marking	50,000.00	50,000.00
20	JCB hire charges	40,000.00	40,000.00
21	BG charges remitted to bank	17,984.00 + 5,985.00 = 23,969.00	23,969.00
22	Interest 18% on EMD	Not quantified	NIL
23	Interest 18% on Tender form cost	Not quantified	NIL
24	Interest 18% on BG	21,44,600.00	NIL
25	Damages for anticipated profit 5% on total contract value	65,02,917.00	13,00,583.00
26	Pre-Arbitration, Pendente lite & Post Award Interest	Not quantified	NIL
27	Cost of arbitration, Counsel's fee etc.	Not quantified	50,000.00
28	Final bill and SD recovered	To be quant.	1,68,807.00
	Total Claims	1,29,85,834.00 + unquantified amount	31,13,815.00



Arb.O.P.(Com.Div) No.582 of 2022

3. Aggrieved by the award passed in respect of Claim Nos.3, 5, 13

to 16 and 24 to 26, referred to supra, the petitioner has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996. The petitioner has challenged the impugned Arbitral Award on the ground that the impugned Arbitral Award pertaining to Claim Nos.3, 5, 13-16 and 24-26 is a non-speaking award as according to him, no reasons have been given for rejecting those claims made by the petitioner. According to the petitioner, since no reasoning has been given by the Arbitrator for rejecting the aforementioned claims, the grounds raised by the petitioner will fall within the purview of Section 34 of the Arbitration and Conciliation Act, 1996.

4. Heard Mr. Sricharan Rangarajan, learned Senior Counsel for Mr. Athiban Vijay A.K., learned counsel for the petitioner and Mr. R. Rajesh Vivekananthan, learned Deputy Solicitor General of India appearing for the respondent.

5. Learned Senior Counsel appearing for the petitioner would submit that even though some of the claims of the petitioner have been



Arb.O.P.(Com.Div) No.582 of 2022

partly allowed by the Arbitrator, the petitioner is willing to go for fresh arbitration in view of the fact that the remaining claims made by the petitioner has not been awarded by the Arbitrator and the Arbitral Award in entirety is a non-speaking award, which is based on conjectures and surmises.

6.Learned Senior Counsel appearing for the petitioner drew the attention of this Court to the impugned Award and in particular, he referred to the discussion and findings of the Arbitrator with regard to the claims made by the petitioner in the impugned Arbitral Award and would submit that arbitrarily, by a non-speaking award, certain claims of the petitioner have been disallowed by the Arbitrator, without assigning any reason despite the fact that the Arbitrator has rendered a categorical finding that the petitioner was not at fault and did not commit any breach of contract and it was only the respondent, who prevented the petitioner from proceeding with the work, as per the contract, on account of the fact that the respondent did not hand over the site to the petitioner. Learned Senior Counsel for the petitioner referred to various claims made by the petitioner before the Arbitrator and pointed out the findings of the



Arb.O.P.(Com.Div) No.582 of 2022

Arbitrator with regard to those claims and submitted that without any reason, certain claims of the petitioner have been rejected/partly allowed arbitrarily under the Arbitral Award.

7.On the other hand, the learned Deputy Solicitor General appearing for the respondent would submit that the impugned Arbitral Award is a reasoned award. Learned Deputy Solicitor General appearing for the respondent would submit that in so far as claim Nos. 3, 5, 13-16 and 24-26, which the petitioner is aggrieved in this petition, filed under Section 34 of the Arbitration and Conciliation Act, is concerned, since sufficient reasons have been given by the Arbitrator, the question of interference with the impugned Arbitral award does not arise. He would submit that only based on the evidence placed on record, the Arbitrator has passed the impugned Arbitral Award and therefore, there is no scope for interference by this Court under Section 34 of the Arbitration and Conciliation Act. According to him, the Arbitral Award has been passed only in accordance with the Terms and Conditions of the Contract and this Court cannot override the views of the Arbitral Tribunal by re-examining or re-appreciating the evidence. In support of his contention,



Arb.O.P.(Com.Div) No.582 of 2022

he drew the attention of this Court to the following authorities:

WEB COPY a)Laxmi Mathur vs. Chief General Manager reported in 2000 (3)

Mh.L.J.;

b)Project Director, National Highways Authority of India vs.

M.Hakeem and another reported in 2021 (9) SCC 1; and

c)MMTC Limited vs. Vedanta Limited reported in 2019 (4) SCC

163.

Discussion:

8.A categorical finding has been rendered by the Arbitrator in the impugned Arbitral award that the petitioner has not committed any breach of Contract. The findings of the Arbitrator are reproduced hereunder:

'10.1 AT has examined the statements given by both parties. It is noted that the Claimant on receipt of the Advance letter of Acceptance, immediately stated taking action as per the conditions of the Contract. He employed technically qualified staff, took appropriate action for preparing drawing, design and design mix and get all certifications as required from the relevant authorities. He mobilized and deployed required resources at a substantial cost. He also requested



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Arb.O.P.(Com.Div) No.582 of 2022

continuously respondent, to hand over the site of work, so work could be started. However, the site could not be handed over and this lead to idling of all his men, material and establishment etc. Therefore the Claimant cannot be said to have defaulted anywhere. In accomplishing and fulfilling tender conditions, for which he has incurred certain expenditure which he is demanding to be paid.

10.2 AT also observes, that Respondent although at the very outset of their SOD has denied the Claims made by the Claimant, but in Respondent's submission on the progress of work and explaining the series of events, hurdles encountered for execution of work etc. are in consonance with the statements made by the Claimant.

10.3 AT therefore concludes that the Claimant has not defaulted anywhere and he has undertaken several basic works required to be completed before the execution of work could be started. Respondent could not handover site of work, because of several reasons attributable to the Respondent's liasioning with the State Government and probably because of Land acquisition issues. But the fact remains that the Claimant was getting instructions from the Respondent and was taking actions accordingly and also exercising due diligence in performance of his obligations as per the contract. Thus he was incurring expenditure which need to be compensated to the Claimant. There was no specific instance which was pointed out by the Respondent wherein the



Arb.O.P.(Com.Div) No.582 of 2022

Claimant could be faulted for any act of omission or commission.'

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9.Despite giving a categorical finding that the petitioner has not defaulted and that they had undertaken several basic works required to be completed before the execution of work could be started, the Arbitrator has rejected/reduced claim Nos.3, 5, 13-16 and 24-26 in respect of claim Nos.3, 5, 13-16 and 24-26 made by the petitioner. This Court finds from the impugned Arbitral Award that no reasons have been given for rejection/reduction of the claim by the Arbitrator for the aforementioned claims, even though documents were produced by the petitioner, which were marked as exhibits to substantiate the claim of the petitioner. The said documents have not been considered by the Arbitrator while rejecting/reducing the claim amounts made by the petitioner. In respect of claim Nos.3, 5, 13-16 and 24-26, the reasons given by the Arbitrator are whimsical and arbitrary and are based on conjectures and surmises, which are not supported by any evidence and the reasons given by the Arbitrator for the above mentioned claims under the impugned Arbitral Award are reproduced hereunder:



Arb.O.P.(Com.Div) No.582 of 2022

'Claim No.3: Site Testing Lab tools - Rs. 70,000/-

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The Claimant has elaborated item wise costing/ expenditure incurred on the various apparatus and tools. Due to failure of Respondent site lab equipment purchased were not used and were idling for approx. 5 years, while the Respondent argued that the equipment can be used by the Claimant Contractor for any other new work, the Claimant offered to surrender the equipment to the Railways against reimbursement of the cost. Considering the arguments, the AT Awards 75% of the claim i.e., Rs.52,500/- against this claim.

Award: AT Awards 75% of the claim ie. Rs.52,500/-.

Claim No.5: Materials purchased for Site Office, Site Lab and Site Labour accommodation - Rs.1,06,525/-: there would not be much salvage value for the site shed hence the AT award an ad hoc 75% of the claimed cost or say Rs.80,000/- against this claim.

Award: Rs.80,000/-

Claims 13, 14, 15, 16-are clubbed together for discussion

*Claim No.13: Site Watchman Salary - Rs.9,64,000/-
(Period of Employment from 01.09.2016 to 05.05.2019 =*



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Arb.O.P.(Com.Div) No.582 of 2022

964 days/2 Nos. (Exhibit CD 37) @ Rs.500/- per day
 $2 \times 964 \times 500 = 9,64,000/-$

Claim No.14: Site Supervisor Salary - Rs.6,00,000/-
(Period of employment from 09.09.2016 to 07.03.2019 =
30 Months - 2 Nos. Wages paid - Rs.10,000/- pm
 $2 \times 30 \times 10000 = 6,00,000/-$

Claim No.15: Site Engineer Salary - Rs.12,30,000/-
(Degree/Diploma holder Engineers - 4 Nos.) (Period of
Employment 09.09.2016 to 14.05.2019 - 32.33 Months - 1
No. (Exhibit CD 39) Wages paid - Rs.38,000/-pm
 $1 \times 32.33 \times 38000 = 12,30,000/-$

Claim No.16: Site Store Maintainer Salary-Rs.3,60,000/-
Period of employment 09.09.2016 to 28.02.2019 = 30
months 1 No. (Exhibit CD 40)
Wages Paid - Rs.12000/- per month - $1 \times 30 \times 12000 =$
3,60,000/-

Discussion on Claims 13, 14, 15 & 16:

The Claimant emphasized that there were certain Contractual provisions obliging him to keep some personnel like Site Engineer at the pain of suffering substantial financial penalty for default. Some payments like for store keeper or site watchman are inevitable



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Arb.O.P.(Com.Div) No.582 of 2022

because of the creation of the site office and labour camp.

That the Claimant had engaged a Site Engineer and informed the Respondent of the same including his name is undisputed. Similarly he also employed other staff for safety of his site and equipment. In this regard, AT feels that in actual practice since the works were not ongoing, it is unlikely that the personnel would be continued to be engaged purely at site for all of 3.5 years. It is also plausible that a single watchman may have been kept and staying at site to watch over the office and labour camp. Hence considering the practical aspects of the site conditions, the AT feels that although Claimant has incurred expenditure, on items as claimed, but considering that not major work was taking place, therefore the engagement of the Engineer/Supervisor etc., may have been for lesser period. AT therefore considers to Awards a lump sum amount of Rs.6,00,000/- against consolidated claims covered under Claim Nos.13, 14, 15 & 16 to cover cost of Site Engineer and other staff for some period and a single site watchman for the full period of 3.5 years

Award: Rs.6,00,000/-

Claim No.24: Performance Guarantee interest - Rs.21,44,600/- @ of 18% on BG Amount of



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Arb.O.P.(Com.Div) No.582 of 2022

Rs.21,67,639/- (for retention of SD for 3 years 5 months and 20 days, without execution of work)

AT observes that the Claimant had submitted a Bank Guarantee amounting to Rs.21,67,939/- vide bank guarantee No.01/2016-17 dated 01.10.2016 being 5% of total contract value, which was available with the respondent and was released back to Claimant on 21.03.2020. In their final submissions the Claimant has made out a case for payment of interest @ 19% per annum on the BG amount. They have submitted a bank statement of their Over Draft Account with the bank which does support their contention that their OD borrowing from the bank was at an interest rate of 19%. But nowhere is there any suggestion that the contractor would pay or had paid interest @ 19% on the BG amount. Since on issue of BG against collateral, quite apparently there is no interest charges, but there are charges for issue and extension of BG's, which have already been considered and Awarded by the AT under Claim No.21. AT therefore considers that the compensation of the Banks charges for issue of BG and its extension would be sufficient compensation against this claim which have been separately awarded.

Hence amount awarded against this claim is nil.

Award: NIL



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Arb.O.P.(Com.Div) No.582 of 2022

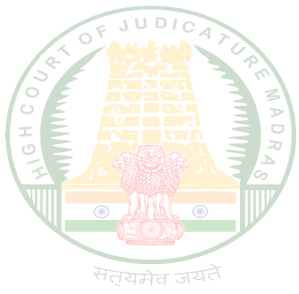
Claim No.25 Damages for anticipated profit on the unexecuted value of work @ 5% Rs.21,67,639/- Anticipated profit percentage modified as 15% and amount modified as Rs.65,02,917/-

AT opines, that no business can lead to assured profit, hence this claim is prima facie weak. However the AT does appreciate that the Claimant must have reserved some budgetary resources for this work, as also allocated some financial resources aside for this work thereby affecting his company's revenues and profit. However these profits are difficult to quantify. But considering the fact that since the contractor has bid and obtained a substantially major work and effectively nothing could be done for 3.5 years for no fault of his, the AT feels that 3% of the contract value is just and sufficient compensation. Hence amount awarded against his claim is Rs.13,00,583/-

Award: AT awards an amount of Rs.13,00,583/-.

Claim No.26: Pre-Arbitration, pendente lite and post Award Interest - Amount not Quantified.

The AT opines that they have given adequate relief to the Claimant against his various claims and there is no



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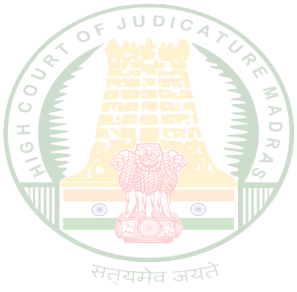


Arb.O.P.(Com.Div) No.582 of 2022

further merit of awarding Pre-Arbitration or pendentlite interest. However the matter of Post award interest is discussed in the concluding paragraphs to this award.

Award: NIL'

10.In support of claim Nos.3, 5, 13-16 and 24-26, the petitioner has filed documents, which were marked as documents CD 32 - CD 35. However, while giving a finding with regard to those claims, CD 32 - CD 35 (exhibits marked on the side of the petitioner) have not been considered. In support of claim Nos.3, 5, 13-16 and 24-26 made by the petitioner are concerned, CD 32 - CD 35 were marked as exhibits in respect of the costs incurred by the petitioner in relation to salaries for staff that were engaged by the petitioner in furtherance of the Contract. Even though the Arbitrator in the impugned Arbitral Award has arrived at a finding that the petitioner has incurred expenditure in relation to the claims made in claim Nos.13-16, the Arbitrator has arrived at a conclusion that the engagement of such personnel may have been for a lesser period. No reasons have been given by the Arbitrator as to how such a conclusion was arrived at. Only based on assumptions, which are not supported by any evidence, the Arbitrator has come to such a conclusion.



Arb.O.P.(Com.Div) No.582 of 2022

11.Claim No.24 is in respect of the claim made by the petitioner in

relation to the interest of 18% claimed on the Bank Guarantee amount that was submitted and extended from time to time. The said claim has been dismissed by the Arbitrator, without assigning any reasons despite the fact that the Bank Guarantee has remained with the respondent for a period of 3 years 5 months and 20 days.

12.The contention of the petitioner with regard to the claim of interest of 18% claimed by the petitioner on the bank guarantee amount that was submitted and extended from time to time has not been considered, but instead, the claim has been rejected by the Arbitrator summarily. The petitioner had made a claim for payment of interest on the bank guarantee amount through claim No.24 on the ground that the amount could not be utilized gainfully, due to the inordinate delay in returning the bank guarantee. As seen from the impugned award, the said contention has not been considered by the Arbitrator.

13.Similarly, insofar as claim No.25 made by the petitioner, which pertains to loss of anticipated profit on the unexecuted work at 15%

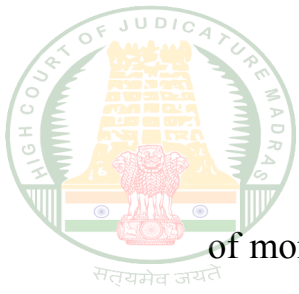


Arb.O.P.(Com.Div) No.582 of 2022

amounting to Rs.65,02,917/- is concerned, the Arbitrator, under the impugned award, has arbitrarily awarded only 3% without assigning any reason.

14. Similarly, insofar as claim No.26 made by the petitioner in respect of interest for pre-reference and pendentlite period is concerned, no reason has been given by the Arbitrator as to why he has rejected the said claim. Even though the learned Deputy Solicitor General of India appearing for the respondent would contend that the contract entered into between the parties makes it clear that the petitioner is not entitled to claim interest for pre-reference and pendentlite period, the impugned Arbitral Award does not refer to the clause relied upon by the learned Deputy Solicitor General of India, during the course of his submissions. Therefore, it can be construed that the rejection of interest for pre-reference and pendent lite period by the Arbitrator is also not supported by any reasons.

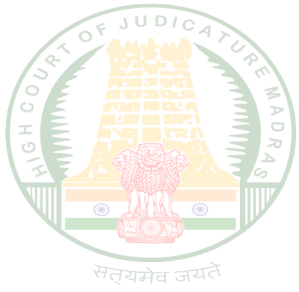
15. Section 31(7) also makes it clear that unless otherwise agreed by the parties, where and insofar as an arbitral claim is for the payment



Arb.O.P.(Com.Div) No.582 of 2022

of money, the arbitral award may include in the sum for which the award is made and the interest, at such a rate as it deems reasonable, on the whole or any part of the money, on the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

16. Section 31(3) of the Arbitration and Conciliation Act makes it clear that any Arbitral Award shall state the reasons upon which it is based. Section 31(3) of the Act is not merely an empty formality, which ensures that the Arbitral Tribunal fairly and legitimately deals with the issues presented by the parties. The Hon'ble Supreme Court in **Dyna Technologies Private Limited vs. Crompton Greaves Ltd.** reported in AIR Online 2019 SC 1928 has held that a reasoned award has three characteristics i.e., proper, intelligible and adequate. In the case on hand, the award passed by the Arbitrator is bereft of reasons and in respect of claim Nos.3, 5, 13-16 and 24-26, the Arbitrator has arbitrarily and whimsically passed the impugned arbitral award based on surmises and conjectures.



Arb.O.P.(Com.Div) No.582 of 2022

17.The decisions relied upon by the learned Deputy Solicitor

General of India has no relevance to the facts of the instant case. In the instant case, there is absolutely no discussion made by the Arbitrator as to why the interest claim made by the petitioner has been rejected. Even though the learned Deputy Solicitor General of India referred to a clause in the contract, which stipulates the non-payment of interest, the Arbitrator, while rejecting the claim for interest, has not relied upon the said clause but has rejected the claim for interest arbitrarily. While rejecting the claim of interest for pre-reference and the pendent lite period, no reasons have been given by the Arbitrator as to why Section 31(7) of the Arbitration and Conciliation Act is not applicable for the claim of interest made by the petitioner.

18.In the decisions relied upon by the learned Deputy Solicitor General of India, the award passed by the Arbitrator in those cases were supported by reasons, which are also plausible reasons. However, in the case on hand, only based on surmises and conjectures, the Arbitrator has arbitrarily rejected/reduced the claim of the petitioner in respect of claim Nos.3, 5, 13-16 and 24-26.



Arb.O.P.(Com.Div) No.582 of 2022

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19. Being an Arbitral Award which is unintelligible and not supported by reasons to satisfy the requirement of Section 31(3) of the Arbitration and Conciliation Act, this Court will have to necessarily set aside the same in entirety by granting liberty to the parties to initiate fresh arbitration as per the arbitration clause contained in the contract in accordance with law.

20. Learned Senior Counsel for the petitioner submitted on instructions that even though the petitioner has challenged the impugned arbitral award in this petition only insofar as claim Nos.3, 5, 13-16 and 24-26, the petitioner will be satisfied if the entire arbitral award is set aside by this Court and liberty is granted to the petitioner to initiate fresh arbitration against the respondent in accordance with law.

21. Since the petitioner has spent time both before the Arbitrator as well as this Court for prosecuting his claim against the respondent in good faith, this Court is of the considered view that the petitioner has bonafidely prosecuted his claim and the period spent by the petitioner both before the Arbitrator as well as this Court will have to be excluded



Arb.O.P.(Com.Div) No.582 of 2022

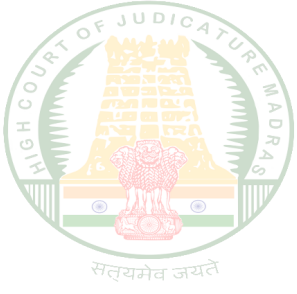
for the purpose of saving limitation, as and when the petitioner initiates fresh arbitration against the respondent in accordance with law.

22.Since the impugned Arbitral Award is not supported by reasons for arriving at the conclusion in respect of the claims made by the petitioner, the same will have to be set aside by this Court as the impugned Arbitral Award is unintelligible and patently illegal.

23.For the foregoing reasons, the impugned arbitral award dated 24.01.2022 is hereby set aside and this petition is allowed by granting liberty to the petitioner to initiate fresh arbitration as per the arbitration clause contained in the contract entered into with the respondent in accordance with law. Time spent by the petitioner both before the Arbitrator as well as this Court shall stand excluded for the purpose of saving limitation as per Section 14 of the Limitation Act. No costs.

10.03.2025

Index: Yes/ No
Speaking order / Non speaking order
Neutral citation : Yes/No
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Arb.O.P.(Com.Div) No.582 of 2022

ABDUL QUDDHOSE, J.

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To

Union of India,
rep. through Deputy Chief Engineer/
MTP(R)/Southern Railway,
Mylapore, Chennai 600 004.

Pre-delivery order in

Arb.O.P.(Com.Div) No.582 of 2022

10.03.2025