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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-10-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 202 of 2023

Arif and Sons India Limited
Rep.by its Authorised Signatory,
Mr.Altaf Ahmed,
Export Manager,
Having its Registered Office at 490/1,
Inner Ring Road
Madhavaram, Chennai- 600 060.

Petitioner(s)

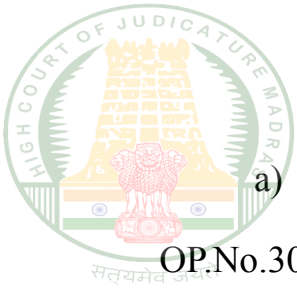
.Vs.

Intense Impex International Private
Ltd., Rep.by its Managing Director,
Mr.Sushil Kumar,
No.10/14, Police Manickam Street
Ayanavaram
Chennai- 600 023.

Respondent(s)

PRAYER

Arbitration Original Petition filed under Section 34(2) of the Arbitration
and Conciliation Act, 1996.



a) To set aside the Arbitral Award dated 20.01.2023 bearing Arbitration
OP.No.303/2022 passed by the Arbitral Tribunal ;

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b) To direct the Respondent to pay the costs.

For Petitioner(s): Mr.B. Arvind Srevatsa

For Respondent(s): Mr/ P.Sidharthan,

ORDER

This Arbitration Original Petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter referred to as ' the Act') against the Arbitral Award dated 20.01.2023, passed by the sole Arbitrator.

2.The respondent/claimant filed the claim petition before the sole Arbitrator stating that the claimant is involved in the business of merchant export and trading. The claimant entered into a sale contract with the petitioner which was reduced into writing under a sales contract agreement dated 18.01.2019. Under this agreement, the claimant had made payments to the tune



of Rs.4,31,00,000/- from 11.02.2019 till 20.08.2019 and which was also received by the petitioner. The petitioner had supplied materials only to the tune of Rs.2,25,59,598/- as on 15.03.2019. For the balance payment, the goods were never supplied. The claimant was seeking for repayment of the amount and a cheque was issued to the tune of Rs.70,00,000/- out of the total dues of Rs.2,05,40,401/-. When this cheque was deposited, it was dishonoured and hence proceedings were initiated under Section 138 of Negotiable Instruments Act, 1881 against the petitioner.

3.The further case of the claimant is that due to the attitude of the petitioner, the claimant also suffered business loss to the tune of Rs.50,00,000/-. Since the dispute had arisen, based on the arbitration Clause available under the agreement, the trigger notice under Section 21 of the Act, was issued on 09.04.2022. In spite of the receipt of the notice, no steps were taken by the petitioner to accept for the appointment of an Arbitrator. Hence, a petition came to be filed before this Court in OP.No.303 of 2022, for appointment of an Arbitrator and this petition was allowed by an order dated 27.7.2022 and a sole Arbitrator was appointed.



4.The respondent/claimant filed the claim petition before the sole Arbitrator. The petitioner did not file any defence statement and hence, the learned Arbitrator during the proceedings held on 23.12.2022 recorded that the petitioner was only orally representing and seeking for further extension and the learned Arbitrator was not inclined to grant any further extension and proceeded to hear the claim petition on merits.

5.Exs.C1 to C12 was marked on the side of the claimant.

6.The learned Arbitrator on considering the materials placed before the Tribunal, held that the claimant is entitled for a sum of Rs.3,75,56,535/- along with interest and also a sum of Rs.50,00,000/- towards business loss. Aggrieved by the same, the present Arbitration Original Petition has been filed before this Court.

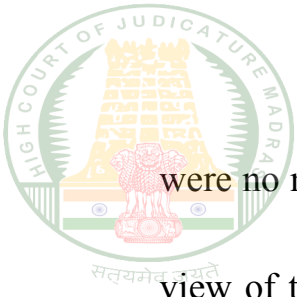
7.Heard the learned counsel for the petitioner and the learned counsel for the respondent.



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8.The learned counsel for the petitioner submitted that the agreement dated 18.01.2019 involved three parties. Nabil Mohsen Saleh AI Rashidi Trading Co, Saudi Arabia Corporation was the importer and there were interse obligations between the parties which was not fulfilled and the importer was also not made a party in the arbitration proceedings. The learned counsel submitted that Article 3 provided for the payment terms and under Article 3.2, it was made clear that after the seller dispatches the goods, the importer should release balance 50% payment to the seller by telegraphic transfer within four days and upon releasing the payment, the importer has a responsibility to send the remittance statement. The learned counsel submitted that the agreement as such did not provide for any time frame for the petitioner who is the seller to dispatch the goods. The petitioner was not in a position to dispatch the goods since the mutual obligation was not fulfilled by the importer. Under such circumstances, the learned Arbitrator ought not to have awarded Claim No.1 in favour of the respondent.

9.The learned counsel for the petitioner further submitted that the learned Arbitrator has awarded a sum of Rs.50,00,000/- towards business loss and there



were no materials to show that the claimant actually incurred any such loss. In

view of the same, the learned counsel submitted that the award passed by the

learned Arbitrator is liable to be interfered under Section 34(2) (b) (ii) and
Section 34 (2A).

10.The learned counsel for the petitioner further submitted that the
petitioner was not given an opportunity to defend themselves in the claim
petition and therefore the award is also liable to be interfered under Section
34(2)(a)(ii) and 34 (2)(a) (iii).

11.Per contra, the learned counsel appearing on behalf of the respondent
submitted that the learned Arbitrator has given sufficient reasons for awarding
Claim No.1 in favour of the respondent based on the documents that were
marked on the side of the respondent. Hence, the compensation awarded for
Claim No.1 does not suffer from any patent illegality or perversity.

12.Insofar as the business loss that was awarded in favour of the
respondent, it was a notional loss that was taken into consideration by the



learned Arbitrator. The learned counsel submitted that insofar as loss of profit is concerned, some amount of guesswork is permissible and the view that has been taken by the learned Arbitrator is a probable view and this Court cannot sit on appeal and interfere with the same.

13.Insofar as the ground taken by the petitioner that they were not provided with any opportunity to defend themselves, the learned counsel submitted that sufficient opportunity was given to the petitioner and the petitioner did not even chose to file a defence statement and therefore the learned Arbitrator was perfectly right in striking the defence and proceeding further with the claim filed by the petitioner.

14.This Court has carefully considered the submissions made on either side and the materials available on record.

15.Insofar as the first claim that was awarded by the learned Arbitrator, the discussion is found at paragraph No.9 of the award. The learned Arbitrator found that a total sum of Rs.4,31,00,000/- was transferred to the petitioner



which was evident from Exs.C4 and C5. Out of this total amount, the materials that were supplied was only to the tune of Rs.2,25,15,598/- and the same was evident from the invoice and the ledger entry marked as Exs.C3 and C4. The learned Arbitrator also took into consideration Ex.C8 where the claimant was requesting the petitioner for supply of materials or to return back the balance amount. Under such circumstances, the learned Arbitrator came to a conclusion that the amount was retained by the petitioner and the goods were not supplied and therefore had proceeded to award Claim No.1 made by the respondent.

16.The above findings rendered by the learned Arbitrator does not suffer from any perversity or manifest illegality warring the interference of this Court.

17.Insofar as the issue raised on the side of the petitioner that the petitioner was not given sufficient opportunity to defend themselves, it is seen that the learned Arbitrator had provided opportunity to enable the petitioner to file defence statement. The petitioner was repeatedly seeking for time and therefore at one stage, the learned Arbitrator refused to grant time and proceeded to deal with the claim. This is a case where the petitioner was not vigilant and did not



choose to effectively defend themselves and therefore they cannot turn around and plead before this Court that the learned Arbitrator did not provide an opportunity to defend themselves in the case. Hence, this ground raised on the side of the petitioner also stands rejected.

18.The last issue to be considered by this Court is with respect to the sum of Rs.50,00,000/- that was awarded towards business loss. On carefully reading the award, the learned Arbitrator has not assigned any reasons for awarding a sum of Rs.50,00,000/- in favour of the respondent. The learned Arbitrator has not even stated as to whether this amount is awarded towards loss of profit or towards loss of profitability. The learned Arbitrator has not even stated as to whether any percentage is applied for determining the business loss. Under such circumstances, this Court holds that the award of Rs.50,00,000/- towards business loss is based on no evidence and it has been awarded without assigning any reasons. Therefore, it suffers from patent illegality. The judgement of the Apex Court in ***OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd., and Another*** reported in (2025) 2 SCC 417 can be relied upon to buttress this finding.



19.The transaction between the parties is a commercial transaction and therefore the learned Arbitrator has rightly awarded interest at the rate of 18% p.a., and the same does not warrant the interference of this Court.

20.In the light of the above discussion, the award of Rs.50,00,000/- under the head of business loss is interfered and the same is hereby set aside. Insofar as the award towards Claim No.1 and the interest that was awarded by the learned Arbitrator, the same is hereby sustained. Accordingly, this Arbitration Original Petition is partly allowed. Considering the facts and circumstances of the case, there shall be no order as to costs.

09-10-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

Intense Impex International Private Ltd.,
Rep.by its Managing Director,
Mr.Sushil Kumar,
No.10/14, Police Manickam Street,
Ayanavaram, Chennai- 600 023.



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N.ANAND VENKATESH J.

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