



O.P.No.906 of 2016

In the High Court of Judicature at Madras

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Reserved on
17.9.2025

Delivered on :
24.9.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Petition No.906 of 2016

M/s.Y.Chinna Reddy, rep.by its
Managing Partner Mr.Y.Chinna
Reddy, door No.27/2/1846,
8th Street, Ramji Nagar,
Near Children's Park, Nellore,
Andhra Pradesh-524002.

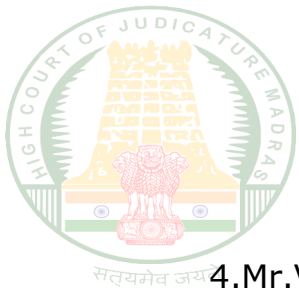
...Petitioner

Vs

1.The Union of India, rep.by
the General Manager,
Southern Railway,
Park Town, Chennai-3.

2.The Chief Administrative
Officer (Construction),
Southern Railway,
Construction Office,
Egmore, Chennai-8.

3.Mr.K.Raveendrababu
(Presiding Arbitrator),
Chief Engineer (Construction
- South), Southern Railway,
Egmore, Chennai-8.



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4.Mr.V.V.Reddy (Arbitrator),
Chief Materials Manager
(Construction), New Joint
Office, Southern Railway,
Ayanavaram, Chennai-23.

5.Mrs.M.R.Viji (Arbitrator),
Deputy Financial Adviser &
Chief Accounts Officer
(Construction), Southern
Railway, Construction
Organization, Egmore,
Chennai-8.

...Respondents

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 29.8.2016 passed by the Arbitrators and to pass a fresh award allowing all the claims of the petitioner.

For Petitioner : Mr.Amalraj S.Penikilapatti
For Respondents : Mr.P.T.Ramkumar

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the Act) against the award dated 29.8.2016 passed by the Arbitral Tribunal.



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2. Heard both.

3. The case of the petitioner is as follows :

(i) The respondent - Southern Railway called for tenders for modernisation of Perambur Loco Works - proposed construction of bogie repair shop, air brake and miscellaneous shed, service building and allied works. The petitioner participated in the tender and their tender was accepted vide letter of acceptance dated 21.3.2014, pursuant to which, an agreement was executed between the petitioner and the Southern Railway on 12.6.2014 for a total sum of Rs.10.72 Crores with the date of completion as 20.3.2015.

(ii) The petitioner started the work after taking necessary clearance from the workshop authorities. Some new items connected with earth work were also executed by the petitioner though they were not a part of the agreement and it was done purely on the request made by the Southern Railway. Later, the Southern Railway could not pay the money for the work that was done by the petitioner for want of funds. Even though the petitioner repeatedly requested the Southern Railway to arrange for funds and make payment, the same was not done.



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(iii) Since this issue was not resolved by the Southern Railway, the petitioner stopped the work and requested the Southern Railway to foreclose the contract and compensate for the losses suffered by the petitioner. Since the Southern Railway denied the claims, the petitioner filed a petition in O.P.No. 809 of 2014 before this Court. Subsequently, the contract was also terminated by the Southern Railway on 24.1.2015 since the petitioner did not restart the work. On 10.4.2015, the said petition was allowed by this Court, pursuant to which, the Arbitral Tribunal was constituted.

(iv) The petitioner made the following claims before the Arbitral Tribunal :

S.No.	Description of Claim
<i>Claim 1</i>	<i>Declaration that the railway had called for Tenders and awarded the instant contract without ensuring the specific allotment and availability of funds</i>
<i>Claim 2</i>	<i>Declaration that the claimant was prevented from executing and completing the contract works due to the railway's inability to pay for the work done.</i>
<i>Claim 3</i>	<i>Declaration that the contract must be finalised without any liability (like LD, penalty, forfeiture of SD. Performance Guarantee etc) on the claimant</i>
<i>Claim 4</i>	<i>Damages for the loss in anticipated profits @ 15% of the value of unexecuted work (as per Sec-73 of the Indian Contract Act) due to failure of the project on account of railway's latches and failures. (i.e. 15% of unexecuted work for Rs.10,52,00,000/-)</i>



S.No.	Description of Claim
<i>Claim 5</i>	<i>Damages for loss in turnover and good-will (@5% of the unexecuted contract value).</i>
<i>Claim 6</i>	<i>Payment of the bill amount under CC-I & Part.</i>
<i>Claim 7</i>	<i>Payment of Final Bill for earthwork with lead and other works (but measurements yet to be recorded).</i>
<i>Claim 8</i>	<i>Refund of the Performance Guarantee.</i>
<i>Claim 9</i>	<i>Refund of the EMD</i>
<i>Claim 10</i>	<i>Payment for the cost of Drawing, Designing, Planning, etc preparation and proof checking as per conditions of the Agreement.</i>
<i>Claim 11</i>	<i>Lab Testing charges Aggregate, Cement, RMC Design-Mix etc.</i>
<i>Claim 12</i>	<i>Idle payment for the following: (1) Site Engineer (1 No. per month Rs.30,000/- for six months) (2) Site in charge (1 No. per month Rs.25,000/- for 6 months) (3) Supervisor (1 No. per month Rs. 15,000/- for 6 months)</i>
<i>Claim 13</i>	<i>Idling of workmen - skilled labour for upkeep heavy pile machineries Rs.5000 per day for 2½ months</i>
<i>Claim 14</i>	<i>Idle payment for machinery - Pile machine 2 sets Rs.5,00,000/- per month for 2½ month</i>
<i>Claim 15</i>	<i>Idling of Labour for earthwork & concrete (helpers) 10 Nos Rs.350 per day each for 2½ months</i>
<i>Claim 16</i>	<i>Idling of Bar bending labour</i>
<i>Claim 17</i>	<i>Construction of site-office, cement shed etc.</i>
<i>Claim 18</i>	<i>Construction of labour huts etc.</i>
<i>Claim 19</i>	<i>Payment for the 3 Phase power, Power cables, electrical consumption charges etc.,</i>
<i>Claim 20</i>	<i>Payment for Digging of bore wells (2 Nos) etc</i>



S.No.	Description of Claim
<i>Claim 21</i>	<i>Transport of machinery (like props, mixers, way batches, centering materials etc.,) from our godown at Nellore, AP, to the worksite.</i>
<i>Claim 22</i>	<i>Bank commission to obtain P.G at 2.8% per Lakh for Rs.54,00,000/- etc</i>
<i>Claim 23</i>	<i>Payment of Interest at 24% P.A. on all the claims amounts.</i>
<i>Claim 24</i>	<i>Value of materials lying at worksite like Cement, TMT REBARS, Sand, Metal etc.,</i>
<i>Claim 25</i>	<i>Refund of the SD recovered from the first & Part Bill</i>

(v) Before the Arbitral Tribunal, the Southern Railway took a stand that sufficient funds were available while calling for the tenders in November 2013 for the year 2013-14. The petitioner did not arrange for sufficient men, materials, infrastructure and establishment to commensurate with the programme of work submitted by them. While the funds flow required was as per the programme of works and the petitioner's progress in work was under consideration, the petitioner sought for foreclosure of the work vide communication dated 21.10.2014. Further, the petitioner filed O.P.No.809 of 2014 before this Court seeking to appoint an arbitrator to adjudicate the disputes.

(vi) Before the Arbitral Tribunal, the the Southern Railway also took a stand that since the petitioner did not show sufficient progress in work as per the terms of contract, a seven days' notice dated



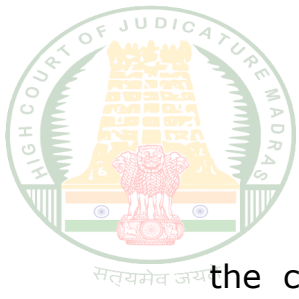
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03.12.2014 was issued to them. Despite receiving the said notice, the petitioner did not commence the work and therefore, a 48 hours' notice dated 21.1.2015 was issued advising the petitioner that the progress was not satisfactory and that the Southern Railway reserved their right to terminate the contract and get the balance work completed through another agency. Even thereafter, the petitioner did not show any progress and therefore, the contract was terminated on 24.1.2015 as per Clause 62 of the General Conditions of Contract (GCC). The Southern Railway justified the termination of contract and took a further stand that the petitioner was not entitled to the claims made by them.

(vii) Ultimately, the Arbitral Tribunal considered each of the claims and except for claim Nos.7, 8 and 25, all the other claims made by the petitioner were rejected. Aggrieved by that, the above original petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that the Arbitral Tribunal deliberately did not consider the vital and clinching evidence, that the award suffers from acute perversity due to non consideration of both the claims made in the claim petition as well as



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the clinching evidence and that the non consideration falls foul of Section 34(2)(b)(ii) and Section 34(2A) of the Act.

5. Per contra, the learned Standing Counsel appearing for the respondent - Southern Railway submitted that the Arbitral Tribunal had considered each and every claim and given sufficient reasons wherever the claims were rejected and wherever the claims were allowed and that the Award does not require the interference of this Court.

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned award.

7. The claims that were made by the petitioner, the defences that were raised by the respondent - Southern Railway and the award that was passed by the Arbitral Tribunal against each of the claims are tabulated as hereunder:



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S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
Claim 1	Declaration that the railway had called for Tenders and awarded the instant contract without ensuring the specific allotment and availability of funds	Unless the Respondents determined the location of the contractual service building, no contractor could have commenced construction. The Claimant, however, at the Engineers' request, cleared site hindrances and executed both stipulated excavation and additional new-item works. The Claimant's bills were repeatedly returned by the Finance Branch for want of funds, exposing the Respondents' incapacity to execute the contract. The record establishes that tenders were invited and the contract awarded in breach of Railway Board circulars, codal provisions, and mandatory rules requiring prior sanction and specific fund allotment.	The Arbitral Tribunal found that sufficient funds of Rs.7.43 Crores were available when the tenders were called and the contract awarded, and accordingly rejected the Claimant's request for a declaration that the Railway acted without ensuring fund allotment	The Tribunal held that the Respondents called tenders and awarded the contract with sufficient funds of Rs.7.43 Crores available, and accordingly rejected Claim No.1.
Claim 2	Declaration that the claimant was prevented from executing and completing the contract works due to the railway's inability to pay for the work done.	Though its partners had approached the then Chief Administrative Officer (Construction) in August 2014 seeking allocation of funds, they were instructed not to proceed with the work as no funds were available; nevertheless, the respondents went ahead and called for tenders in violation of Railway Board's mandatory rules and guidelines requiring prior availability of funds and site investigation before award of contracts.		The Tribunal found that while there was a delay in part payment of Rs.8,88,322/-, the amount was less than 1% of the contract value. The Claimant discontinued work despite assurances from the Respondent and did not demonstrate earnestness. Consequently, the contract collapsed due to actions of both parties, and neither can be solely held responsible.
Claim 3	Declaration that the contract must be finalised without any liability (like LD, penalty, forfeiture of SD. Performance Guarantee, etc) on the claimant	The Southern Railway was not even able to make the payment for the work done. The funds were not able to be arranged and therefore, the work was stopped from August 2014. Only because of the funds position of the	The work was stopped abruptly during August 2014 by the petitioner. The Southern Railway had, in fact, arranged for the	The Arbitral Tribunal, on considering the evidence available, came to the conclusion that the petitioner had undertaken a very



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S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
		Southern Railway, the petitioner was not able to continue the work. In view of the same, the petitioner sought for a declaration that the contract must be finalised without any liability.	payment and called the petitioner for a meeting with the Chief Engineer. However, the petitioner was unwilling to meet the Chief Engineer for any discussion pertaining to execution of the contract work. The fault was on the petitioner for having stopped the work abruptly and therefore, the Southern Railway has the right to terminate the contract and encash the bank guarantee, forfeit the security deposit, etc.	small fraction of work and insisted for cancellation of the contract citing non availability of funds and on the presumption that the Southern Railway will not be able to make payments.
Claim 4	Damages for the loss in anticipated profits @ 15% of the value of unexecuted work (as per Sec-73 of the Indian Contract Act) due to failure of the project on account of railway's latches and failures. (i.e. 15% of unexecuted work for Rs.10,52,00,000/-)	The Claimant submits that the unexecuted contract works are valued at Rs.10,52,00,000/-, and claims Rs.1,57,80,000/- as damages towards loss of anticipated profits, being 15% of the said value, relying on Railway Board directions which mandate inclusion of a minimum 10% contractor's profit in tender estimates.		The Tribunal held that, since Claim No.3 already absolved the Claimant of liability and the Claimant themselves requested contract closure and stopped work, no damages are warranted, and the claim is rejected.
Claim 5	Damages for loss in turnover and goodwill (@5% of the unexecuted contract value).	The Claimant avers that it had arranged a Term Loan of Rs.2.75 crores by mortgaging immovable properties exclusively for executing the instant contract, but due to the Respondents' failure to allocate funds, the loan could not be effectively utilized, causing a heavy interest burden. Further, as its infrastructure and resources were earmarked for this project, the Claimant could not take up other tenders or projects, resulting in loss of		The Tribunal held that the Claimant stopped work in August 2014 and refused to meet the Chief Engineer to discuss resumption. As the termination delay was minimal, no separate relief is warranted, with sufficient remedy already addressed under Claim No.3.



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S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
		turnover, goodwill, and professional opportunities. The Claimant, therefore, claims Rs.52,60,000/- as damages, being 5% of the unexecuted contract value, towards loss of turnover and opportunity.		
Claim 6	Payment of the bill amount under CC-I & Part.	Received payment of final bill - Withdrawn		As the Respondent admitted, NIL amount was awarded
Claim 7	Payment of Final Bill for earthwork with lead and other works (but measurements yet to be recorded).	It is evident that, while the Agreement under Annexure-A, Item No.1 provided only for excavation, the Claimant executed not merely excavation but also the lifting, loading, and leading of the excavated earth. The records further establish that, though 6,630 CUM of excavation was measured, payment was restricted to 5,649 CUM, leaving a balance of Rs.1,54,304/-. In addition, 1,200 CUM of unmeasured excavation valued at Rs.1,85,050/-, together with Rs.3,60,646/- actually incurred for lifting and leading 7,830 CUM, remains unpaid. On a cumulative basis, the Claimant has sought for an entitlement of Rs.7,00,000/-, from the Respondents	The Claimant initiated arbitration on 31.10.2014, leading to the constitution of the Arbitral Tribunal as directed by this Court. Upon conclusion of proceedings, the Tribunal, by award dated 29.08.2016, directed the Respondents to pay Rs.4,42,647/- towards Claim No. 7.	The Tribunal awarded Rs.4,42,647/- as agreed by the Claimant.
Claim 8	Refund of the Performance Guarantee.	The Claimant furnished a Performance Bank Guarantee of Rs.53,62,351/-, being 5% of the contract value, through Indian Bank, Nellore, initially valid up to 16/07/2015 and extended to 16/07/2016. As the Agreement was mismanaged by the Respondents and the contract could not be executed as intended, the Claimant has established entitlement to discharge and return of the said Bank Guarantee.	The Arbitral Tribunal, in Claims Nos.8 to 25, directed the Respondents to refund the Performance Guarantee and Security Deposit, holding that the contract collapsed due to actions of both parties, and the agreement should be finalized without liability on either side.	The Tribunal directed refund of the Performance Guarantee in view of Claim No.3.
Claim	Refund of the EMD.	The Claimant remitted		The Tribunal



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S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
9		Rs.6,11,560/- towards EMD through FDR dated 16/12/2013 issued by Karnataka Bank Ltd., Hyderabad in compliance with the tender conditions. As the contract was mismanaged and illegally terminated by the Respondents, the Claimant has sought for discharge and return of the said FDR.		directed forfeiture of EMD in view of Claim No.3.
Claim 10	Payment for the cost of Drawing, Designing, Planning, etc preparation and proof checking as per conditions of the Agreement.	The Claimant submitted all requisite designs and drawings, including those for pile foundation, columns, roof structure, structural steel building, and PEB arrangements, duly proof-checked by Anna University. Upon the Respondents' directions, corrections were incorporated and resubmitted, following which the Respondents approved the revised designs. Under Items 22 and 23 of Annexure-B of the Contract, 50% of the cost was payable upon submission and the balance upon approval. Accordingly, the Claimant has sought for Rs.5,00,000/- towards the cost of designs, plans, and drawings from the Respondents		The Tribunal rejected the claim for lack of supporting documents, as argued by the Respondent.
Claim 11	Lab Testing charges Aggregate, Cement, RMC Design-Mix etc.	The Claimant, in compliance with the contract conditions, submitted samples of aggregate, cement, RMC, and design-mix, which the Respondents forwarded to the MSME Testing Centre for requisite tests. However, since the contract was mismanaged and illegally terminated by the Respondents, the Claimant has sought for Rs.75,000/- from the Respondents		The claim is rejected, as lab testing is covered under the agreement conditions.
Claim 12	Idle payment for the following: (1). Site Engineer (1 Nos per month Rs.30,000/- for	The Claimant, in order to complete the work within the stipulated period, engaged technical personnel immediately after award of		The claim is rejected, as Claim No.3 already provided relief finalizing the



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S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
	six months) (2). Site in charge (1 Nos per month Rs.25,000/- for 6 months) (3) Supervisor (1 Nos per month Rs. 15,000/- for 6 months).	the contract. However, delay by the Respondents in re-routing the HT underground cable obstructed progress, leaving the Claimant to execute only a small portion of work over six months. Consequently, the Claimant was compelled to keep its organisation idle and pay wages to its staff, namely Rs.1,80,000/- to the Site Engineer, Rs.1,50,000/- to the Site-in-Charge, and Rs.90,000/- to the Supervisor.		agreement without liability on either side.
Claim 13	Idling of workmen - skilled labour for upkeep heavy pile machineries Rs.5000 per day for 2½ months.	The Claimant deployed two high-cost pile machines and skilled workmen to expedite the contract works, bearing the cost of their continuous guarding and handling. Due to delay by the Respondents in re-routing the HT underground cable, the work could not be fully executed, compelling the Claimant to pay idle wages of Rs.5,000/- per day for 2½ months, totaling Rs.3,75,000/-. The Claimant has sought for Rs.3,75,000/- from the Respondents.		The claim is rejected, as Claim No.3 already provided relief finalizing the agreement without liability on either side.
Claim 14	Idle payment for machinery - Pile machine 2 sets Rs.5,00,000/- per month for 2½ month.	Item No.19 of Annexure-B required the Claimant to use a hydraulic rotary drilling machine, but site constraints made it impossible to deploy the machine. With the Respondents' officials' permission, the Claimant instead arranged Pile Machines ('Rig Machines'). However, work could not commence for 2½ months due to pipelines and electrical wires obstructing the Work-site, for which the Respondents caused delay. During this period, the Claimant incurred idle expenditure of Rs.25,00,000/- for the Pile Machines. The Claimant has sought for Rs.25,00,000/- from the Respondents for the		The claim is rejected, as Claim No.3 already provided relief finalizing the agreement without liability on either side.



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S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
		infructuous expenditure caused by their inability to clear the site.		
Claim 15	Idling of Labour for earthwork & concrete (helpers) 10 Nos Rs.350 per day each for 2½ months.	The Claimant submits that due to the Respondents' failure to clear pipelines and electrical wires at the Work-site, labour for earthwork and concrete helpers (10 persons) remained idle for 2½ months, for which wages of Rs.350/- per day per worker were paid, totaling Rs.2,62,000/-. The Claimant has sought for Rs.2,62,000/- from the Respondents.		The claim is rejected, as Claim No.3 already provided relief finalizing the agreement without liability on either side.
Claim 16	Idling of Bar bending labour.	The Claimant engaged specialised bar benders at high wages to handle heavy-diameter steel for the work. However, due to the Respondents' failure to clear pipelines and electrical wires at the Work-site, the bar benders could not be utilised and were paid idle wages for 2½ months, totaling Rs.1,00,000/-. Hence, the Claimant has sought for Rs.1,00,000/- from the Respondents.		
Claim 17	Construction of site-office, cement shed etc.	The Claimant constructed the site office and cement sheds, and due to the Respondents' illegal termination of the contract the Claimant has sought for the reimbursement of Rs.4,50,000/- from the Respondents for the unrecovered expenditure.		The claim is rejected, as Claim No.3 already provided relief finalizing the agreement without liability on either side.
Claim 18	Construction of labour huts etc.	The Claimant erected labour huts for workmen and, due to the Respondents' illegal termination of the contract, seeks reimbursement of Rs.50,000/- for the unrecovered expenditure from the Respondents		
Claim 19	Payment for the 3 Phase power, Power cables, electrical consumption charges etc.,	The Claimant requested and obtained 3-phase power for operating machinery, paying Rs.55,600/- as required, and additionally procured power		The Tribunal directs the Claimant to recover the deposit from the Electrical Department using



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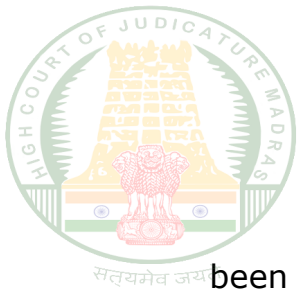
S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
		cables and met electricity charges. Due to the Respondents' illegal and abrupt termination of the contract, these expenditures of Rs.1,00,000/- could not be recovered. Therefore, the Claimant has sought for the reimbursement of Rs.1,00,000/- from the Respondents.		the finalized agreement.
Claim 20	Payment for Digging of bore wells (2 Nos) etc	The Claimant dug bore wells at the Work-site for use by workmen and field staff, incurring an expenditure of Rs.93,800/-. Due to the Respondents' illegal and abrupt termination of the contract, these expenses could not be recovered. The Claimant is therefore entitled to reimbursement of Rs.90,223/- from the Respondents.		The Tribunal rejected the claim, as water arrangement is covered under the agreement.
Claim 21	Transport of machinery (like props, mixers, way batches, centering materials etc.,) from our godown at Nellore, AP, to the worksite.	The Claimant transported machinery and materials, including props, mixers, way batches, and centering materials, from Nellore to the Work-site for the contract. Due to the Respondents' illegal and abrupt termination of the contract, the expenditure of Rs.1,50,000/- could not be recovered. Hence, the Claimant has sought for Rs.1,50,000/- from the Respondents.		The Tribunal rejected the claim, as per the Respondent's arguments.
Claim 22	Bank commission to obtain P.G at 2.8% per Lakh for Rs.54,00,000/- etc	The Claimant obtained a Bank Guarantee of Rs.54,00,000/- by paying commission and processing fees of Rs.1,51,200/-, and incurred additional costs for extending it upon the Respondents' repeated requests. Due to the Respondents' mismanagement and illegal termination of the contract, the Claimant is entitled to reimbursement of Rs.1,51,200/- for these wasteful expenses.		The Tribunal rejected the claim, as per the Respondent's General Conditions of Contract.



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S.No.	Description of Claim	Substantiation made by the claimant	Defence raised by the respondent	Findings rendered in arbitral award
Claim 23	Payment of Interest at 24% P.A. on all the claims amounts.	The Claimant contends that the Respondents' illegal retention of monies deprived it of rightful use of funds. Accordingly, the Claimant is entitled to interest at 24% P.A. on all claim amounts until payment, as well as compensation for costs incurred in pursuing arbitration and legal proceedings, which arose solely due to the Respondents' mismanagement and illegal actions.		The Tribunal rejected the claim, as per the Respondent's General Conditions of Contract.
Claim 24	Value of materials lying at worksite like Cement, TMT REBARS, Sand, Metal etc.,	The Claimant procured and stocked materials, including cement, TMT rebars, sand, and metal, exclusively for the contract, which could not be used for other projects. Due to the Respondents' mismanagement and illegal termination of the contract, the Claimant has sought for the reimbursement of Rs.4,50,000/- for these materials.		The Tribunal rejected the claim, since the Claimant is allowed to take back the unused materials.
Claim 25	Refund of the SD recovered from the first & Part Bill	The Claimant's security deposit of Rs.53,62,351/- was to be recovered at 10% from running bills, with Rs.6,11,560/- adjusted from the EMD. The Respondents recovered Rs.88,832/- from the 1st and Part Bill. Due to the Respondents' mismanagement and illegal termination of the contract, the Claimant has sought for a refund of Rs.88,832/-.		The Tribunal directs refund of the SD, as Claim No.3 finalized the agreement without liability on either side.

8. In the instant case, the work was awarded to the petitioner on 21.3.2014 and the agreement was executed on 12.6.2014. The entire contract came to a grinding halt on 21.10.2014 when the petitioner sought for foreclosure of the contract. Even though 25 claims have



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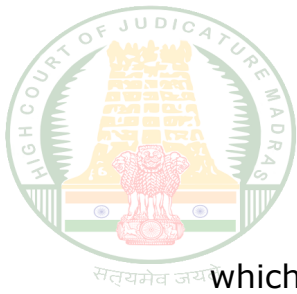
been made by the petitioner, all those claims revolved only around what actually happened during the short period from June to October 2014.

9. The petitioner was awarded the contract for modernisation of Perambur Loco Works - proposed construction of bogie repair shop, air brake and miscellaneous shed, service building and allied works for a total value of Rs.10,72,47,011/-.

10. The learned counsel for the petitioner submitted as follows :

(i) The contract itself stipulated nine milestones totally to be achieved by 20.3.2015. The letter of acceptance was issued on 21.3.2014. On receipt of the said letter of acceptance, detailed discussions were held with the Engineers of the Southern Railway and a programme of works was prepared and the petitioner also furnished the bank guarantee for Rs.53,62,351/- towards performance guarantee. The petitioner deployed all the resources namely men, materials, etc., required for the execution of the works and also completed all the preliminary works.

(ii) The site contained piles of waste and a huge earth-bund,



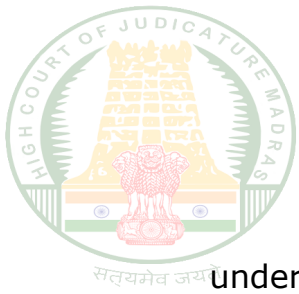
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which was also cleared. The contract did not contain the work item 'lifting and leading of earth'. The petitioner requested the Southern Railway to clear the site. But, the Southern Railway, in turn, requested the petitioner to clear the work site. Hence, the petitioner completed the work item 'lifting and leading the earth'. The petitioner also prepared and submitted all the mandatory designs, drawings and reports. Thus, the petitioner completed various activities that were envisaged under the first milestone.

(iii) The primary grievance expressed by the petitioner is that the Southern Railway was lackadaisical in even determining the location of the contracted service building. Therefore, the work was not able to be commenced. As a result, the works earmarked for the second milestone were not able to be commenced.

(iv) It came to light that the Southern Railway was lacking funds to execute any further work under the contract. This is in view of the fact that the bills that were raised by the petitioner were repeatedly returned due to insufficient funds in the Engineering Branch. Thus, the work was started without proper allocation of funds. In fact, the petitioner was informed by the Chief Administrative Officer of the Construction Branch that the petitioner should not execute any works



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under the contract as there were no funds.

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11. The above grounds raised by the petitioner were considered by the Arbitral Tribunal while taking up claim Nos.1 and 2 for consideration. The Arbitral Tribunal came to the conclusion that when the tender was awarded, sufficient allotment of funds was made to the tune of Rs.7.43 Crores. This finding was rendered on considering the fact that the funds position during November 2013 was Rs.7.43 Crores for the year 2013-14, that in the interim budget for the year 2014-15, a sum of Rs.2.73 Crores was allotted and that in the regular budget, the fund provision of Rs.1.10 Crores for the year 2014-15 was made during July 2014.

12. The trigger for the petitioner to get an impression that sufficient funds were not allocated for the project was just because of the fact that there was a delay in settling the first bill raised by the petitioner. The bill was raised during August 2014 and a sum of Rs.8,88,322/- was paid in October 2014.

13. The Arbitral Tribunal took into consideration the fact that



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there were a lot of correspondences between the parties and that the work was discontinued from October 2014 onwards on the ground of delay in payment and poor funds' position.

14. The petitioner had shown undue haste in concluding that the Southern Railway did not have sufficient funds to go ahead with the project. This was mostly due to the fact that even the first bill was settled after taking tremendous efforts by the petitioner. By the time the first payment of Rs.8,88,332/- was made to the petitioner, they had come to the conclusion that there were no sufficient funds to proceed further with the contract and that therefore, the contract itself got frustrated and collapsed. In view of the above, the Arbitral Tribunal came to the conclusion that both the petitioner as well as the Southern Railway were responsible for the collapse of the contract and that the blame could not be put only as against the Southern Railway.

15. The above reasoning given by the Arbitral Tribunal is a possible view since the Southern Railway was also delaying the first payment, that though the petitioner had made some arrangements, they were not convinced with the attitude of the Southern Railway and



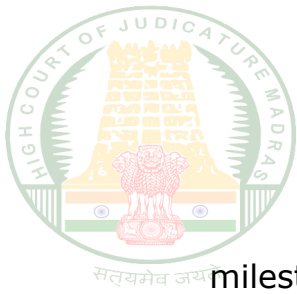
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that the petitioner virtually foreclosed the contract within a couple of months. Thereafter, the petitioner was not willing to proceed further with the contract in spite of issuing notice by the Southern Railway.

16. It was submitted on the side of the Southern Railway that time was the essence of the contract since the letter of acceptance stipulated that the work should be completed within 12 months.

17. However, a period of nearly eight months was wasted. Since the Southern Railway was not able to determine the location of the contracted service building and there were insufficient funds to execute any further work, the petitioner was asked to stop executing any work under the contract by the Chief Administrative Officer.

18. It is seen from the records that there was definitely some fault on the part of the Southern Railway in terms of settling the bills of the petitioner. However, in a contract of this nature and more particularly when an establishment like the Southern Railway is involved, some amount of patience is required for proceeding with the contract. If really there was a delay in the completion of the



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milestones, the petitioner could have waited for the entire tenure of 12 months to be completed and if the Southern Railway had not granted any extension or if there was absolutely no improvement in the situation, there will be a justification on the part of the petitioner that sufficient time was given to the Southern Railway to pull their socks. However, everything collapsed in this case hardly within four months. Therefore, the finding rendered for claim Nos.1 and 2 does not suffer from any perversity.

19. In so far as the third claim is concerned, the petitioner sought for a declaration that the contract must be finalised without any liability like liquidated damages, penalty, forfeiture of security deposit, etc.

20. It is important to deal with this claim with more focus since the finding of the Arbitral Tribunal, for this claim, has been referred to justify rejection of the claims made in Claim Nos.4, 9 & 12 to 18. The Arbitral Tribunal also relied upon the finding given for claim No.3 while awarding the claims with respect to claim Nos.8 & 25.

21. The petitioner took a stand that the Southern Railway was



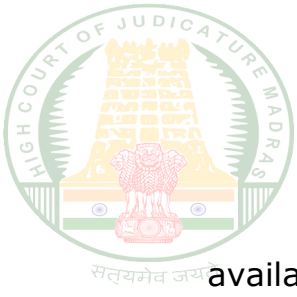
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not even able to make payment for the work done, that the funds were not able to be arranged, that therefore, the work was stopped from August 2014, that only because of the funds position of the Southern Railway, the petitioner was not able to continue the work and that in view of the same, the petitioner sought for a declaration that the contract must be finalised without any liability.

22. The Southern Railway took a defence that the work was stopped abruptly during August 2014 by the petitioner, that the Southern Railway had, in fact, arranged for the payment and called the petitioner for a meeting with the Chief Engineer, that however, the petitioner was unwilling to meet the Chief Engineer for any discussion pertaining to execution of the contract work, that the fault was on the petitioner for having stopped the work abruptly and that therefore, the Southern Railway has the right to terminate the contract and encash the bank guarantee, forfeit the security deposit, etc.

23. The Arbitral Tribunal, on considering the evidence available, came to the conclusion that the petitioner had undertaken a very small fraction of work and insisted for cancellation of the contract citing non



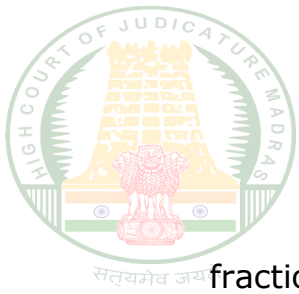
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availability of funds and on the presumption that the Southern Railway will not be able to make payments.

24. The bill was raised in August 2014 and the work was also discontinued in the very same month. This was done in spite of the fact that the Southern Railway was assuring the payments for the work done by the petitioner. The petitioner was also not cooperating for the execution of the contract work. In the light of this finding, the Arbitral Tribunal came to the conclusion that the EMD must be forfeited. The Arbitral Tribunal also came to the conclusion that the entire contract work failed/collapsed since the petitioner abruptly stopped the work from August 2014. However, the Arbitral Tribunal found that to an extent, there were failures on account of the conduct of both parties and therefore, the Southern Railway cannot withhold the security deposit, performance guarantee or any alternate cost of risk and cost of tenders.

25. The above finding of the Arbitral Tribunal does not suffer from any perversity or manifest illegality. The Arbitral Tribunal was dealing with the case where the petitioner had undertaken only a small



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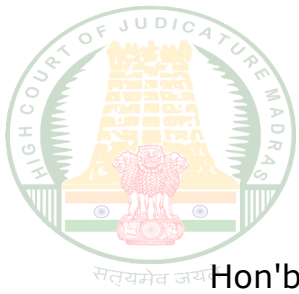
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fraction of work hardly for a couple of months and it stopped executing the work from August 2014. Therefore, considering the fact that there was also a fault on the part of the claimant in abruptly stopping the work without even waiting for the entire period of contract to come to an end, the Arbitral Tribunal held that only the EMD should be forfeited and all the other heads like security deposit, performance guarantee, etc., could not be withheld.

26. The finding that was rendered by the Arbitral Tribunal for claim No.3 had a bearing even while dealing with certain claims, for which, the same reasoning will apply either to accept certain claims or while rejecting all the other claims.

27. In so far as the fourth claim that was made by the petitioner towards damages for the loss in anticipated profits and the fifth claim made towards damages for loss in turnover and goodwill are concerned, there was absolutely no evidence or materials available for the Arbitral Tribunal to award any compensation under these heads.

28. It is now too well settled pursuant to the judgment of the



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Hon'ble Apex Court in ***Unibros Vs. All India Radio [reported in 2023 SCC OnLine SC 1366]*** wherein it was held that for claiming loss in anticipated profits or loss in turnover or goodwill, Hudson's formula or any other method cannot be applied in a vacuum and that there must be some credible evidence available for determining the compensation under these heads. For proper appreciation, paragraphs 16 to 18 of this judgment read thus :

"16. To support a claim for loss of profit arising from a delayed contract or missed opportunities from other available contracts that the appellant could have earned elsewhere by taking up any, it becomes imperative for the claimant to substantiate the presence of a viable opportunity through compelling evidence. This evidence should convincingly demonstrate that had the contract been executed promptly, the contractor could have secured supplementary profits utilizing its existing resources elsewhere.

17. One might ask, what would be the nature and quality of such evidence? In our opinion, it will be contingent upon the facts and circumstances of each case. However, it may generally include independent contemporaneous evidence such as other potential projects that the contractor had in the pipeline that could have been



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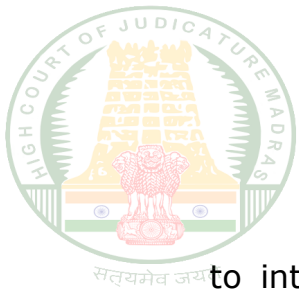


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undertaken if not for the delays, the total number of tendering opportunities that the contractor received and declined owing to the prolongation of the contract, financial statements, or any clauses in the contract related to delays, extensions of time, and compensation for loss of profit. While this list is not exhaustive and may include any other piece of evidence that the court may find relevant, what is cut and dried is that in adjudging a claim towards loss of profits, the court may not make a guess in the dark; the credibility of the evidence, therefore, is the evidence of the credibility of such claim.

18. Hudson's formula, while attained acceptability and is well understood in trade, does not, however, apply in a vacuum. Hudson's formula, as well as other methods used to calculate claims for loss of off-site overheads and profit, do not directly measure the contractor's exact costs. Instead, they provide an estimate of the losses the contractor may have suffered. While these formulae are helpful when needed, they alone cannot prove the contractor's loss of profit. They are useful in assessing losses, but only if the contractor has shown with evidence the loss of profits and opportunities it suffered owing to the prolongation."

29. In the light of the above, this Court does not find any ground

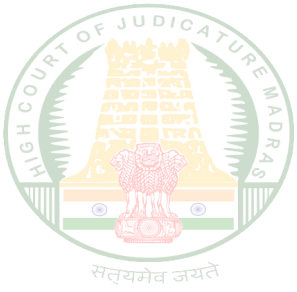


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to interfere with the finding of the Arbitral Tribunal with respect to rejection of claim Nos.4 and 5.

30. Claim Nos.7 and 8 were awarded in favour of the petitioner/claimant.

31. In so far as the 9th claim is concerned, which pertained to refund of earnest money deposit (EMD), the Arbitral Tribunal came to the conclusion that since the termination took place due to the refusal on the part of the petitioner to carry out the work, there was justification on the part of the Southern Railway to forfeit the EMD. In the case in hand, the contract was terminated on 24.1.2015. However for some strange reasons, the petitioner has not even challenged the cancellation of contract. Hence, the cancellation of contract will automatically result in forfeiture of the EMD and hence, the finding rendered by the Arbitral Tribunal in this regard cannot be held to be perverse.



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32. In so far as claim Nos.10 and 11 are concerned, they pertained to payment of drawing, designing and planning, etc., and the lab charges. The reasoning that has been given by the Arbitral Tribunal is a possible view, which does not require the interference of this Court.

33. In so far as claim Nos.12 and 13 are concerned, they came to be rejected and the decision of the Arbitral Tribunal does not suffer from any perversity since it is a possible view. Just because this Court can come to a different view, the decision cannot be interfered with.

34. In so far as claim No.14 pertaining to idle payment for machinery, etc., is concerned, the same was rejected by the Arbitral Tribunal for the reasoning given for claim No.3 and it will sufficiently cover this claim also. Such finding does not suffer from any perversity.

35. In so far as claim Nos.15 to 24 are concerned, the reasoning given by the Arbitral Tribunal does not suffer from any perversity since a possible view has been taken based on the materials available.



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36. In the considered view of this Court, in this case, the petitioner has attempted to make a mountain out of a molehill in a contract, which had short-lived for only four months. The petitioner probably made arrangements to go ahead with the contract. However, things did not happen in the way the petitioner wanted and hence, the petitioner stopped the work from October 2014. Whatever reasonable amounts that were to be paid to the petitioner under certain heads have been granted by the Arbitral Tribunal.

37. In terms of judicial approach under Section 34 of the Act, while dealing with an award, this Court must bear in mind the judgment of the Hon'ble Apex Court in the case of ***UHL Power Company Ltd. Vs. State of Himachal Pradesh [reported in 2022 (4) SCC 116]***, the relevant portions of which are extracted as hereunder :

“19. In Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , adverting to the previous decisions of this Court in McDermott International Inc. v. Burn Standard Co. Ltd. [McDermott



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International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306] , wherein it has been observed that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if a term of the contract has been construed in a reasonable manner, then the award ought not to be set aside on this ground, it has been held thus : (Parsa Kente Collieries case [Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd., (2019) 7 SCC 236 : (2019) 3 SCC (Civ) 552] , SCC pp. 244-45, para 9)

‘9.1. ... It is further observed and held that 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. It is further observed by this Court in the aforesaid decision in para 33 that when a court is applying the “public policy” test to an arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon



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when he delivers his arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

9.2. Similar is the view taken by this Court in NHAI v. ITD Cementation India Ltd. [NHAI v. ITD Cementation India Ltd., (2015) 14 SCC 21 : (2016) 2 SCC (Civ) 716] , SCC para 25 and SAIL v. Gupta Brother Steel Tubes Ltd. [SAIL v. Gupta Brother Steel Tubes Ltd., (2009) 10 SCC 63 : (2009) 4 SCC (Civ) 16] , SCC para 29.'

20. In Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] , the view taken above has been reiterated in the following words : (SCC p. 12, para 25)

'25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.'

21. An identical line of reasoning has been adopted in South East Asia Marine Engg. &



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Constructions Ltd. (SEAMEC Ltd.) v. Oil India Ltd. [South East Asia Marine Engg. & Constructions Ltd. (SEAMEC Ltd.) v. Oil India Ltd., (2020) 5 SCC 164 : (2020) 3 SCC (Civ) 1] and it has been held as follows : (SCC p. 172, paras 12-13)

‘12. It is a settled position that a court can set aside the award only on the grounds as provided in the Arbitration Act as interpreted by the courts. Recently, this Court in Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd. [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] laid down the scope of such interference. This Court observed as follows : (SCC p. 12, para 24)

‘24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award



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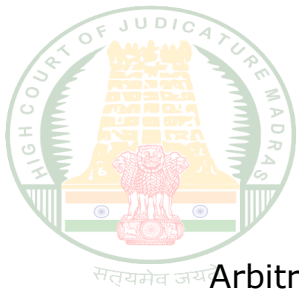
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and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.'

13. It is also settled law that where two views are possible, the Court cannot interfere in the plausible view taken by the arbitrator supported by reasoning. This Court in Dyna Technologies [Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1] observed as under : (SCC p. 12, para 25)

'25. Moreover, umpteen number of judgments of this Court have categorically held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act'."

38. It is clear from the above judgment of the Hon'ble Apex Court that the Court must only see if the finding rendered by the



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Arbitrator is a possible and plausible view and that if an alternative view is also possible for the Court, that cannot be a ground for the Court to interfere with the award.

39. Even applying the principles in the judgment of the Hon'ble Apex Court in ***M/s.Dyna Technologies Private Ltd. Vs. Crompton Greaves Ltd. [reported in 2019 (1) SCC 1]***, the Court, while testing the award under Section 31(3) of the Act, must see if the award suffers from any of the three facets namely it is unintelligible or it suffers from inadequacy or it suffers from impropriety.

40. In so far as the ground of impropriety is concerned, the Court must see as to whether it falls within the four corners of Section 34 of the Act. For the ground of inadequacy, it is a matter to be determined on a case to case basis. In so far as the ground of unintelligibility is concerned, the Court must read the reasons assigned by the Arbitral Tribunal and see if the decision arrived does not have nexus with the reasoning.



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41. The Hon'ble Apex Court even cautioned that where there are gaps in reasoning for the conclusions reached by the Arbitral Tribunal, the Court needs to have regard to the documents submitted by the parties and the contentions raised before the Arbitral Tribunal, so that the awards with inadequate reasons are not set aside in a casual and cavalier manner and that the Court must be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.

42. In the case in hand, the award passed by the Arbitral Tribunal does not suffer from any one of the three facets explained supra.

43. The learned counsel for the petitioner, in the course of arguments, questioned the constitution of the Arbitral Tribunal and the mandate having expired after six months.

44. This submission does not hold water since, in the constitution of the Arbitral Tribunal by this Court, the candidate suggested/named by the petitioner was also included in the panel. That apart, the



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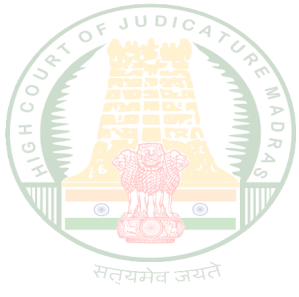
petitioner, having participated during the proceedings without any demur, cannot be permitted to turn around and the question the award on the ground that it was passed beyond the time frame. The petitioner is estopped from taking such a ground.

45. In the light of the above discussions, this Court does not find any ground to interfere with the award passed by the Arbitral Tribunal.

46. Accordingly, the above original petition stands dismissed.

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