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Arb.O.P.(Com.Div.) No.348 of 2023

In the High Court of Judicature at Madras

Reserved on
06.11.2025

Delivered on :
19.11.2025

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.348 of 2023

M/s.Artzsource Technology
Service Pvt Ltd. rep.by its
Managing Director
Mr.J.Aneesh Kumar

...Petitioner

Vs

M/s.Bharti Airtel Ltd.

...Respondent

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the arbitral award dated 25.10.2017 passed by the sole Arbitrator.

For Petitioner : Mr.E.K.Amalnath
For Respondent : Mr.P.J.Rishikesh

ORDER

This is a petition filed by the petitioner under Section 34 of the



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Arbitration and Conciliation Act, 1996 (for short, the Act) seeking to set aside the award dated 25.10.2017 passed by the sole Arbitrator.

2. Heard both.

3. The case of the petitioner is as follows:

(i) The petitioner and the respondent entered into a value added service agreement dated 30.7.2013 for the purpose of availing messaging services from the respondent. The petitioner issued a purchase order dated 21.12.2013 with reference to message mate services provided by the respondent for a monthly minimum SMS of 3 Crores and for a monthly payment of Rs.27,75,000/-.

(ii) From the inception, there were several technical issues faced by the petitioner and it was communicated to the respondent from time to time. However, the technical issues continued and kept growing and at one stage, the petitioner was no longer able to use the services of the respondent and rather stopped using the services from 18.2.2014. This was also informed by the petitioner to the respondent. In spite of the same, the respondent deposited the security cheque without informing the petitioner and the cheque was returned with an



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endorsement 'insufficient funds'.

(iii) After the security cheque was returned, the respondent issued three invoices all dated 25.2.2014

(a) for a sum of Rs.7,04,062/- for the period from 25.1.2014 to 31.1.2014;

(b) for a sum of Rs.31,17,990/- for the period from 01.2.2014 to 28.2.2014; and

(c) for another sum of Rs.31,17,990/- for the period from 01.3.2014 to 31.3.2014.

The invoices have been raised towards the minimum guarantee amount that has to be paid for the period agreed to between the parties for guaranteeing 3 Crores SMS messages per month that had to be provided by the respondent.

(iv) Subsequently, the respondent issued a legal notice dated 25.6.2014 claiming for a total sum of Rs.69,40,042/- along with interest, for which, the petitioner issued a reply notice dated 07.7.2014 stating that the petitioner was not liable to pay the said sum since the quality of services provided by the respondent was not upto the standards. Later, the respondent, based on the arbitration



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clause available under the agreement dated 30.7.2013, appointed the sole Arbitrator.

(v) Before the sole Arbitrator, the respondent filed a statement of claim and sought for a direction to the petitioner to pay a sum of Rs.81,37,912/-, which included the principal amount of Rs.69,40,042/- and interest and for payment of future interest from the date of claim petition till the date of realization.

(vi) Before the sole Arbitrator, the petitioner filed a statement of defence by denying the claim made by the respondent and explaining the deficiency in the services on the part of the respondent. The petitioner also took a stand that the services were stopped after 18.2.2014. However, the respondent had raised invoices for the subsequent period also upto the end of March 2014 and it was unsustainable. The petitioner raised a further stand that the respondent fraudulently raised invoices by pre-dating the same without rendering any services for a portion of the month of February 2014 and for the entire period of March 2014. Ultimately, the petitioner sought for dismissal of the claim petition.

(vii) Before the sole Arbitrator, the respondent examined C.W.1



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besides marking documents as Ex.C.1 to Ex.C.23. In turn, the petitioner examined R.W.1 and marked documents as Ex.R1 to Ex.R.13.

(viii) The sole Arbitrator, on considering the pleadings, framed the following issues :

"(1) Who has committed a breach of the agreement dated 30.7.2013 ?

(2) Whether the claimant is entitled to claim the sum of Rs.69,40,042/- @ 18% per annum as claimed in the claim statement based on the invoices raised on the various dates till the date of realization in full ? and

(3) To what other reliefs are the parties entitled for ?"

(ix) On considering the facts and circumstances of the case and the evidence let in by both sides, the sole Arbitrator was pleased to pass the following award :

"(a) The respondent is directed to pay a sum of Rs.81,37,912/- (Rupees eighty one lakh thirty seven thousand nine hundred and twelve only) as claimed by the claimant in the claim statement for the three invoices raised by them for providing services to the respondent along with interest @



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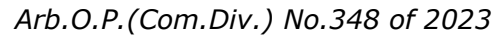
15% p.a. from the date of claim statement, within one month from the date of receipt of the award, failing which, the claimant will be entitled to interest @ 18% p.a. on the above said claim, from the date of the claim statement till the date of realization.

(b) The respondent, in addition to the above, shall pay the claimant towards cost, as per the memo dated 03.10.2017 filed before the Arbitral Tribunal, which includes the fees paid to the Arbitral Tribunal for the sittings held, expenses incurred for conducting arbitral proceedings on various dates and also the fees paid to the counsel for the claimant, in all amounting to Rs.4,13,425/."

(x) Aggrieved by the award passed by the sole Arbitrator, the above original petition has been filed before this Court.

4. The learned counsel for the petitioner primarily raised the following issues for consideration:

(a) There was unilateral appointment of the sole Arbitrator by the respondent without the consent of the petitioner. By the time the final award was passed on 25.10.2017, the Amendment Act had come into force on 23.10.2015. Hence, the sole Arbitrator ought not to have



(b) Clause 26 of the agreement dated 30.7.2013 makes it very clear that the arbitration proceedings would be in accordance with the terms and conditions of the Act or any amendment thereof. Therefore, the parties had agreed to adopt any amendment to the Act. Hence, the sole Arbitrator should have submitted the disclosure under Section 12(5) of the Act and passed the final award within the time frame fixed under the Act.

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contrary to the evidence that was tendered on the side of the petitioner.

(d) The petitioner had issued three cheques each for a sum of Rs.27,75,000/- to the respondent for security purposes and later, the petitioner had informed the respondent that they did not want the respondent to continue their services with the petitioner. In spite of the same, the respondent, without prior initiation, deposited the cheques for encashment without even raising any invoices. Only thereafter, three invoices were raised by pre-dating them for the period when no services were rendered. These vital issues were not considered by the sole Arbitrator. In view of the same, the findings recorded by the sole Arbitrator suffer from perversity and patent illegality.

5. Per contra, the learned counsel appearing for the respondent made the following submissions:

(a) The date of agreement was 30.7.2013 and the services commenced from 21.12.2013. The trigger notice under Section 21 of the Act was issued on 05.8.2014 and the notice dated 03.12.2014 was



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issued by the sole Arbitrator commencing the proceedings. The petitioner was initially set ex parte and thereafter, the ex parte order was set aside by the sole Arbitrator on 18.4.2015. The pleadings were complete even before the Amendment Act came into force on 23.10.2015. Therefore, the Amended Act cannot have any retrospective effect and the unilateral appointment of the sole Arbitrator cannot be considered to be illegal.

(b) A joint memo was filed by both the parties after agreeing to have the venue of the Tribunal at Chennai on 14.6.2017 and hence, the petitioner cannot complain about the unilateral appointment of the sole Arbitrator after having agreed to conduct the proceedings at Chennai.

(c) The petitioner did not even raise it as a jurisdictional issue under Section 16 of the Act and that issue cannot be decided at the stage of filing the petition filed under Section 34 of the Act.

(d) To substantiate the above contentions, he relied upon the following judgments :

(i) of the Hon'ble Apex Court in ***Central Organisation for Railway Electrification***



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Vs. ECI SPIC SMO MCML (JV) [reported in 2025 (4) SCC 641];

(ii) of the First Bench of this Court in ***VR Dakshin (P) Ltd. Vs. SCM Silks (P) Ltd. [reported in 2024 SCC OnLine Madras 6761];***

(iii) of the Hon'ble Apex Court in ***Quippo Construction Equipment Ltd. Vs. Janardan Nirman (P) Ltd. [reported in 2020 (18) SCC 277];*** and

(iv) of the Hon'ble Apex Court in ***AC Chokshi Share Broker (P) Ltd. Vs. Jatin Pratap Desai [reported in 2025 (5) SCC 321].***

(e) The issues that were raised by the petitioner on the merits of the case were rightly dealt with by the sole Arbitrator after taking into consideration the evidence let in by both sides and the view that has been taken by the sole Arbitrator does not suffer from perversity or patent illegality warranting the interference of this Court.



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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 first issue that was raised by the learned counsel for the petitioner touches upon the unilateral appointment of the sole Arbitrator and the non furnishing of the disclosure under Section 12(5) of the Act.



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8. In this case, the arbitration proceedings had commenced much before the coming into force of the Amendment Act on 23.10.2015. Section 87 of the Act makes it abundantly clear that unless the parties otherwise agree, the amendment made to the Act will not apply to the arbitral proceedings commenced before 23.10.2015 and it will apply to the arbitral proceedings commenced only on or after the said date. The above provision is a legal mandate that has been provided under the Act and therefore, just because the arbitral proceedings were pending as on the date of coming into force of the Amendment Act on 23.10.2015, that does not automatically subject the arbitral proceedings to the amended provisions.

9. Clause 26 of the agreement talks about conducting the arbitral proceedings in accordance with the Act namely the Arbitration and Conciliation Act, 1996 or any amendment thereof. That does not mean that any amendment, which comes into force after the commencement of the arbitration proceedings, will automatically start applying to the pending proceedings.



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10. Even in the judgment in ***Central Organisation for Railway Electrification***, it was made clear that the law laid down by the Larger Bench of the Hon'ble Apex Court would only apply prospectively to arbitrator appointments that are going to be made after the date of that judgment.

11. In the present case, the parties had earlier chosen the venue as New Delhi under the agreement. However, they filed a joint memo before the sole Arbitrator and agreed for holding the sittings at Chennai. When that is the case, it is too late in the day for the petitioner to raise the issue of unilateral appointment of the arbitrator at the stage of filing the petition filed under 34 of the Act.

12. In so far as the issue regarding non disclosure under Section 12(5) of the Act is concerned, this ground has been raised for the first time before this Court while filing the petition under Section 34 of the Act. This ground touches upon the very jurisdiction of the sole Arbitrator to conduct the proceedings. Hence, this ground should have been raised under Section 16 of the Act and admittedly, the same was



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not done by the petitioner.

13. It will be relevant to take note of the judgment of the Hon'ble Apex Court in **AC Chokshi Share Broker (P) Ltd.**, wherein paragraph 28 reads thus :

"28. This Court has held, in several judgments, that when the jurisdictional issue has not been raised in accordance with Section 16, it is deemed that the objecting party has waived his right, in terms of Section 4 of the Act

*[Section 4 of the Act reads: '**4. Waiver of right to object.**—A party who knows that—(a) any provision of this Part from which the parties may derogate, or (b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.']*

to raise the same at a later stage. [Union of India v. Pam Development (P) Ltd., (2014) 11 SCC 366, para 17 : (2014) 4 SCC (Civ) 117]. Such objection cannot be raised for the first time when the party is challenging the award under



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Section 34. [Id, para 18; *GAIL v. Ketī Construction (I) Ltd.*, (2007) 5 SCC 38, para 25; *MSP Infrastructure Ltd. v. M.P. Road Development Corpn. Ltd.*, (2015) 13 SCC 713, paras 13-16 : (2016) 1 SCC (Civ) 810; *M.P. Rural Road Development Authority v. L.G. Chaudhary Engineers & Contractors*, (2018) 10 SCC 826, para 19 : (2019) 1 SCC (Civ) 97; as clarified in *Sweta Construction v. Chhattisgarh State Power Generation Co. Ltd.*, (2024) 4 SCC 722, paras 13-17 : (2024) 2 SCC (Civ) 727.] Here, Respondent 1 not only filed his statement of defence and participated in the arbitral proceedings but also filed a counterclaim, thereby submitting to the Arbitral Tribunal's jurisdiction. [See *Govind Rubber Ltd. v. Louids Dreyfus Commodities Asia (P) Ltd.*, (2015) 13 SCC 477, para 21 : (2016) 1 SCC (Civ) 733; *State of W.B. v. Sarkar & Sarkar*, (2018) 12 SCC 736, para 11 : (2018) 5 SCC (Civ) 509]. Hence, any jurisdictional objection must be rejected on this ground as well."

14. As stated supra, the parties had filed a joint memo dated 14.6.2017 to conduct the arbitral proceedings at Chennai and this will also act as an estoppel/waiver of a right of the petitioner.



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15. Useful reference can be made to the judgment of the First Bench of this Court in **VR Dakshin (P) Ltd.**, wherein the relevant portions read thus :

"28. As the law stood at the time of initiation of the arbitration proceedings, there was no bar on the learned arbitrator having been appointed in the present case to adjudicate the disputes between the parties. If, according to respondents, Perkins Eastman Architects DPC case [reported in (2020) 20 SCC 760] came later, respondents were duty-bound to raise an objection, as was done in Bharat Broadband Network Ltd. Case [reported in (2019) 5 SCC 755 : (2019) 3 SCC (Civ) 1]. Moreover, the learned Single Judge, by appointing a new arbitrator, has exceeded the jurisdiction under Section 34 of the Act.

29. The basis of any arbitration is the freedom of the parties to agree to submit their disputes to an individual or to a panel of individuals whose judgment they are prepared to trust and obey. Party autonomy has been described in various judgments as a brooding and guiding spirit



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Bharat Aluminium Co. Vs. Kaiser Aluminium Technical Services Inc. [reported in (2016) 4 SCC 126 : (2016) 2 SCC (Civ) 580] and backbone Centrotech Minerals and Metals Inc. Vs. Hindustan Copper Ltd. [reported in (2017) 2 SCC 228 : (2017) 1 SCC (Civ) 593]. The principle of minimum judicial interference supplements the autonomy of parties by prohibiting courts from interfering in arbitral proceedings unless mandated by law (Section 5 of the Act). This principle respects the autonomy of the parties to mutually chart the course of the arbitral proceedings. Sections 3, 11, 14, 15, 20 and 21, etc. of the Act recognise the autonomy of parties to determine the arbitral proceedings.

30. *As held in General Manager case [reported in 2021 SCC OnLine Mad. 2892] the proviso to Section 12(5) of the Act allow parties to waive the applicability of that provision after the dispute has arisen and thereby secures the real and genuine party autonomy by allowing parties to waive the applicability of Section 12(5) of the Act. It is also held that only when it is established that an arbitrator falls under any of the categories mentioned in the Seventh Schedule, they are automatically disqualified without any investigation*



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into whether or not there is any real likelihood of bias. The court held that since the ineligibility envisaged under Section 12(5) of the Act goes to the root of the appointment, an application may be filed under Section 14(2) of the Act to decide on the termination of the arbitrator's mandate.

31. *In General Manager case [reported in 2021 SCC OnLine Mad. 2892], it was further held that the arbitrator will not be automatically disqualified in situations where the relationship of an arbitrator with parties does not fall under the categories mentioned under the Seventh Schedule of the Act. Yet, either of the parties may have justifiable doubts about the independence or impartiality of the arbitrator. The Supreme Court has held the party challenging the appointment of an arbitrator does not need to demonstrate that the arbitrator lacks independence or impartiality and it only needs to show that there are possible doubts as to an arbitrator's independence or impartiality. But, in the case at hand, the admitted position is the arbitrator does not fall into any of the disqualifications described in the Seventh Schedule and never did respondents, until the petitions under Section 34 were filed, raise any possible doubt as to the arbitrator's independence or impartiality. In fact, Shri Krishnan stated that*



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they do not doubt the arbitrator's independence or impartiality."

16. A reference can also be made to the judgment of the Hon'ble Apex Court in **Quippo Construction Equipment Ltd.**, wherein the relevant portion is extracted as hereunder :

"24. It was possible for the respondent to raise submissions that arbitration pertaining to each of the agreements be considered and dealt with separately. It was also possible for him to contend that in respect of the agreement where the venue was agreed to be at Kolkata, the arbitration proceedings be conducted accordingly. Considering the facts that the respondent failed to participate in the proceedings before the arbitrator and did not raise any submission that the arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the respondent must be deemed to have waived all such objections."

17. In so far as the merits of the case are concerned, the petitioner raised three other issues before the sole Arbitrator.



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18. According to the petitioner, the agreement was not signed by the authorized signatory representing the respondent and hence, the agreement is not binding on the petitioner. Further, due to deficiency in the services, the petitioner had stopped utilizing the services from 18.2.2014 and in spite of the it, the invoices were raised upto the end of March 2014.



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19. In so far as the issue of not putting signature in the agreement by the authorized signatory is concerned, the sole Arbitrator took into consideration the fact that the agreement between the parties was dated 30.7.2013 and the purchase order was placed by the petitioner on 21.12.2013 and thereby, the petitioner had acted upon the agreement and also availed the services mentioned in the agreement. Therefore, the petitioner cannot raise a ground that the agreement was not signed by the authorized signatory or that the agreement was not binding on the petitioner.

20. In fact, the attempt made by the petitioner to deny the agreement was done for the first time before the sole Arbitrator. Hence, the sole Arbitrator rejected the ground raised by the petitioner by assigning sufficient reason running to nearly six pages (inner pages 13 to 18). The reasons that have been assigned by the sole Arbitrator are based on evidence and they do not suffer from any perversity or patent illegality. This Court cannot sit on appeal over the findings rendered by the sole Arbitrator.



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21. The next issue pertains to the invoices that were raised by the respondent.

22. The sole Arbitrator took into consideration the ground of fraud that was raised by the petitioner stating that the invoices were raised by the respondent even for the period when the services of the respondent were not availed. The sole Arbitrator rendered a finding that in so far as the ground of fraud is concerned, it has to be pleaded by assigning sufficient details and proved. Since the petitioner had failed to provide necessary details as to how they were deceived by fraud, the sole Arbitrator rejected this ground.

23. Apart from that, the sole Arbitrator has taken into consideration the fact that initially, the petitioner placed a purchase order dated 26.7.2013, pursuant to which, the commissioning was done on 31.8.2013. Thereafter, yet another purchase order was placed on 21.12.2013 marked as Ex.C.4 and once again the commissioning was done on 25.1.2014. This commissioning was for the period from 25.1.2014 to 31.3.2014. Pursuant to the second purchase order, the



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services that were agreed to be provided by the respondent were availed by the petitioner.

24. The sole Arbitrator thereafter went into the issue of deficiency in the services that were complained by the petitioner.

25. While dealing with the evidence, the sole Arbitrator found that most of the e-mail communications were for the period from 10.1.2014 to 24.1.2014, which were much before the actual date of commissioning on 25.1.2014. The balance e-mail communications pertain to certain defects pointed out by the petitioner, which were rectified and this was evident from the trailing e-mails.

26. The sole Arbitrator also took into consideration the statement of defence and also the letter dated 04.3.2014 marked as Ex.R.3 whereby the petitioner had stated that they were discontinuing the services of the respondent. However, the respondent did not stop providing the services till 31.3.2014. Hence, the sole Arbitrator, as a matter of evidence, came to the conclusion that the petitioner had



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availed the services of the respondent till 31.3.2014 and accordingly the respondent raised three invoices marked as Ex.C.8 to Ex.C.10.

27. Clause 3.2 of the agreement provides that the petitioner has to pay the invoice amount within 30 days from the date of receipt of the invoices. Admittedly, the amounts were not paid by the petitioner and thereby, the petitioner had committed breach of the agreement. In view of the same, the sole Arbitrator came to the conclusion that it was the petitioner, which had committed breach of the agreement and that the respondent would be entitled to claim the amount raised through the three invoices and for payment of interest on the invoice amount.

28. The above findings rendered by the sole Arbitrator were based on appreciation of evidence. While dealing with the petition under Section 34 of the Act, this Court cannot deal with the same like a regular appeal filed under Section 96 read with Order XLI of the Civil Procedure Code. Such re-appreciation of evidence is not permissible and this Court, exercising its jurisdiction under Section 34 of the Act, is ring fenced within the four corners of Section 34 of the Act.



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29. The grounds raised by the petitioner do not fall within any of the pigeon holes that were identified by the Hon'ble Apex Court in ***Ssangyong Engineering & Construction Co. Ltd. Vs. NHAI*** ***[reported in 2019 (15) SCC 131]***.

30. In the light of the above discussions, the petitioner has not made out any ground to interfere with the award passed by the sole Arbitrator.

31. Accordingly, the above original petition stands dismissed with costs of ***Rs.1,50,000/- (Rupees one lakh and fifty thousand only)*** payable by the petitioner to the respondent.

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