



Application No. 6461 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2025

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THE HONOURABLE Mr. JUSTICE ABDUL QUDDHOSE

Application No. 6461 of 2023

and

Arb O.P.[Com.Div.] No.567 of 2023

1.M/s.Best Medi Scans

Represented by its Partners

No.729/1, Thiruvottiyur High Road

New Washermanpet, Chennai-600081.

2.Dr.Arockia Jai

3.Dr.J.Leena

... Applicants

Vs.

1.Medall Scans and Labs Private Limited

No.67, 2nd Floor, TNPL Building

Anna Salai, Guindy, Chennai-600032.

2.S.Ganesh Moorthy

3.B.Ezhilan

... Respondents

Prayer: Application filed under Order XIV Rule 8 Original Side Rules read with Section 36(2) of the Arbitration and Conciliation Act, 1996, praying to grant an order of stay in the operations of the final award dated 15.11.2022 passed in Arbitration Case No.2 of 2020 passed by the Sole Arbitrator, Mr.Sharath Chandran be not passed.



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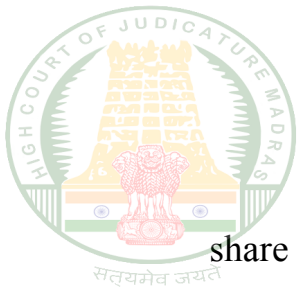
For Applicants : Mr.M.A.Gouthaman

For Respondents : Ms.R.Aparna
For M/s.Vijay Anand Associates (R1)

ORDER

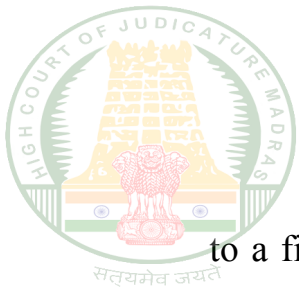
This application has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the impugned arbitral award (final award) dated 15.11.2022 passed in favour of the respondents against the petitioners in Arbitration Case No. 2 of 2020.

2. The petitioners have challenged only the impugned arbitral award (final award) dated 15.11.2022. Under the interim arbitral award dated 11.04.2022, the petitioners have been directed to pay the respondents jointly and severally a sum of Rs.72,02,253/- together with interest at the rate of 12% per annum from 04.05.2019 till the date of realization. Issues were framed by the arbitrator prior to the passing of the interim arbitral award referred to supra and one of the issues framed by the arbitrator was whether the claimant is entitled to an audit of diagnostic test conducted by the respondents between the period from 07.11.2018 till 02.03.2020 and consequently, is the claimant entitled to



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share the revenue for the said period. The claimants in Arbitration Case No. 2 of 2020 are the respondents in this petition and the respondents in Arbitration Case No. 2 of 2020 are the petitioners herein. Since the arbitrator was unable to come to a conclusion with regard to the aforementioned issue alone, the arbitrator after passing the interim arbitral award dated 11.04.2022, appointed M/s.Sudhindran and Co., Auditor and Chartered Accounts for the purpose of examining the books of accounts and the other connected documents of the petitioners firm for the determination of the revenue share payable by the petitioners for the period from 07.11.2018 to 02.03.2020. Insofar as the remaining issues framed by the arbitrator which are reflected in the interim arbitral award, viz., issue no.1, 2 and 3 are concerned, the arbitrator under the interim arbitral award has rendered conclusive findings and only thereafter, he has come to the conclusion that the petitioners are liable to pay the respondents jointly and severally a sum of Rs.72,02,253/- together with interest at the rate of 12% per annum from 04.05.2019 till the date of realization. As stated supra, only with regard to the issue No.3A framed by the arbitrator referred to supra, since the arbitrator was unable to come



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to a final conclusion, he has appointed an auditor to examine the books of accounts and connected documents of the petitioners firm.

3. Admittedly, the petitioners did not challenge the interim arbitral award dated 11.04.2022. Subsequently, the interim arbitral award was amended on account of some typographical mistake by the arbitrator on 06.06.2022, but the operative portion of the interim arbitral award dated 11.04.2022 was not altered. Admittedly, the interim arbitral award was not challenged by the petitioners by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996. As per the definition of award under the provisions of the Arbitration and Conciliation Act, 1996, "award includes interim award". Thereafter, the Chartered Accountant appointed by the arbitrator through his interim arbitral award had also examined the accounts of the petitioners firm and the report of the Chartered Account was also marked as an exhibit before the arbitrator. The petitioners had also filed objections to the same. As seen from the final award which is the subject matter of the challenge in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, the



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petitioners had raised objections to the Chartered Accountant's reports and only after giving due consideration to the same, the final arbitral award has been passed by the arbitrator. In the final arbitral award, which is the subject matter of challenge in this petition, the arbitrator has not disturbed the findings rendered by him in the interim arbitral award which was never challenged by the petitioners by filing an application under Section 34 of the Arbitration and Conciliation Act, 1996. Only in addition to the sum of Rs. 72,02,253/-, which was awarded under the interim arbitral award, the petitioners were ordered to pay additionally a sum of Rs.3,08,819/- along with 12% interest from 18.06.2019 till the date of realization in the final arbitral award. The findings of the arbitrator under the interim arbitral award has not been altered in the final arbitral award, which is the subject matter of challenge in this petition. Only after giving due consideration to the Chartered Account's report pursuant to the directions issued by the arbitrator in the interim arbitral award, the arbitrator has awarded in addition to the sum of Rs.72,02,253/-, a sum of Rs.3,08,819/- in favour of the respondents against the petitioners.



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4. The learned counsel for the petitioners would submit that the interim arbitral award has got merged with the final arbitral award and therefore, this petition is maintainable eventhough the petitioners did not challenge the interim arbitral award. In support of the said contention, the learned counsel for the petitioners drew the attention of this Court to the following authorities:-

- (i) a decision of the Hon'ble Supreme Court of India in ***Satwant Singh Sodhi -vs- State of Punjab*** reported in ***(1999) 3 SCC 487***;
- (ii) a decision of the Hon'ble Karnataka High Court in ***Union of India -vs- M/s.Best Cast Construction Pvt.Ltd.*** reported in ***ILR 2014 KAR 6002***;
- (iii) a decision of the Hon'ble Bombay High Court in ***Big V Telecom Private Limited -vs- Aadya Business Solutions*** made in ***Contempt Petition No. 66 of 2018***;

Relying upon the aforesaid authorities, the learned counsel for the petitioners would submit as follows:-

- (i) Interim award is final to the extent it goes or only till the



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final award is delivered;

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(ii) If the interim award is intended to have the effect only as long as final award is not passed, it will have the force of interim award and it will cease to have effect after the final award is made or in other words, interim award would get merged with the final award or final award would eclipse the interim award.

Therefore, he would submit that there is no necessity for the petitioners to challenge the interim arbitral award since the interim arbitral award has got merged with the final arbitral award, which is the subject matter of challenge in this petition.

5. On the other hand, the learned counsel for the respondents would reiterate that having not challenged the interim arbitral award, the petitioners cannot challenge the findings rendered in the interim arbitral award through this application filed under Section 34 of the Arbitration and Conciliation Act, 1996, wherein the petitioners have challenged the final arbitral award. She would also submit that the findings rendered by



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the arbitrator under the interim arbitral award have not been disturbed in the final arbitral award. She would also submit that only based on the evidence available on record, both the interim arbitral award as well as the final arbitral award have been passed. She would submit that the objections raised by the petitioners with regard to the Chartered Accountant's report has also been considered by the arbitrator under the impugned arbitral award.

6. Admittedly, the petitioners have not challenged the interim arbitral award. In the interim arbitral award dated 11.04.2022, the petitioners have been directed to pay the respondents jointly and severally a sum of Rs.72,02,253/- together with interest at the rate of 12% from 04.05.2019 till the date of realization. Excepting for issue No.3A framed by the arbitrator, the other issues have been conclusively determined by the arbitrator in the interim arbitral award. The findings rendered in the interim arbitral award have also not been disturbed by the arbitrator in the final arbitral award. Only to decide the issue No.3A, viz.,

“3A. Whether the Claimant is entitled to an audit

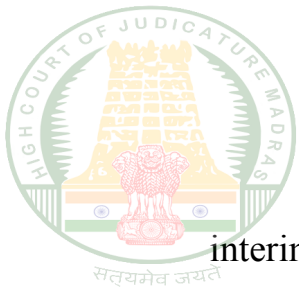


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*of the diagnostics tests conducted by the respondent
between 07.11.2018 to 02.03.2020, consequently is the
Claimant entitled to a share in the revenue for the said
period?"*

the arbitrator in the interim arbitral award had appointed a Chartered Accountant to examine the accounts of the petitioners firm and submit a report for the said period. The Chartered Accountant has also submitted a report in terms of the directions given by the arbitrator in the interim arbitral award. The Chartered Accountant's report was also marked as an exhibit before the arbitrator. Objections were also raised by the petitioners firm for the said report. As seen from the impugned arbitral award (final award), the objections raised by the petitioners were considered by the arbitrator and only thereafter, an additional sum of Rs.3,08,819/- was awarded together with interest at the rate of 12% per annum from 18.06.2019 to the respondents jointly and severally in the final arbitral award. The said amount was in addition to the sum of Rs.72,02,253/- together with interest at the rate of 12% per annum from 04.05.2019, which was awarded in favour of the respondents in the



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interim arbitral award dated 11.04.2022. The arbitral award has been defined under Section 2(1)(c) of the Arbitration and Conciliation Act, 1996. As seen from the said definition, arbitral award 'includes an interim award'. Therefore, if aggrieved by the interim arbitral award, the petitioners ought to have filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the said interim arbitral award, which they have failed to do so.

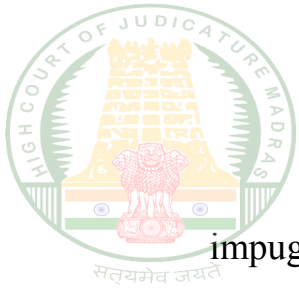
7. In the instant case, the petitioners have chosen not to challenge the same by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996. Having not challenged the same, the findings rendered by the arbitrator in the interim arbitral award have now attained finality. Therefore, insofar as the sum of Rs.72,02,253/- together with interest at the rate of 12%, the petitioners are liable to pay the same to the respondents jointly and severally as determined by the arbitrator.

8. The learned counsel for the petitioners during the course of the submissions had submitted that the interim arbitral award has got merged



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with the final arbitral award dated 15.11.2022. In support of his submissions, he also relied upon authorities. However, even in those authorities relied upon by the petitioners referred to supra, it has been made clear that if the interim arbitral award have now determined the right of the parties, it will have the force of complete award. In the case on hand, the interim arbitral award passed in favour of the petitioners has finally determined the rights of the parties by holding that the petitioners are jointly and severally liable to pay the respondents a sum of Rs.72,02,253/- along with interest at the rate of of 12% from 04.05.2019 till the date of realization. The findings rendered in the said interim arbitral award has also not been disturbed in the final arbitral award, which is the subject matter of challenge in this petition. The same has also not been disputed by the learned counsel for the petitioners during the course of his submissions. Though the interim arbitral award would have got merged with the final arbitral award which is the subject matter of challenge in this petition, it is an undisputed fact that the findings rendered in the interim arbitral award which were not challenged by the petitioners have now attained finality. Even as seen from the



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impugned arbitral award (final award), which makes it clear that the

conclusions arrived by the arbitrator in the interim arbitral award have not been disturbed. Just because the respondents did not execute the interim arbitral award, the petitioners cannot now contend that the interim arbitral award has got merged with the final arbitral award and the findings rendered by the arbitrator in the interim arbitral award are not final. Since the definition of award under the Arbitration and Conciliation Act, 1996 makes it clear that the award includes interim award as well, the contentions raised by the petitioners that since the interim arbitral award has got merged with the final arbitral award, there is no necessity for the petitioners to challenge the interim arbitral award has to be rejected by this Court. The authorities referred by the learned counsel for the petitioners before this Court does not deal with a case where the petitioners have not challenged the interim arbitral award in which the rights of the parties have been finally determined by the arbitrator, but have challenged only the final arbitral award. When the petitioners have not challenged the interim arbitral award, wherein the rights of the parties have been finally determined and the arbitrator



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comes to the conclusion that a sum of Rs.72,02,253/- together with interest at the rate of 12% from 04.05.2019 till the date of realization is due and payable by the petitioners jointly and severally, the question of re-agitating the issues once again through this petition under Section 34 of the Arbitration and Conciliation Act, 1996 without challenging the interim arbitral award within the stipulated time as prescribed under the provisions of the Arbitration and Conciliation Act, 1996 does not arise and it has to be rejected. If at all, the petitioners can only challenge the amount of Rs.3,08,819/- together with interest at the rate of 12% per annum from 18.06.2019 till the date of realization awarded by the arbitrator in the final arbitral award in addition to the sum of Rs.72,02,253/- together with interest at the rate of 12% from 04.05.2019 till the date of realization. Even the said challenge has to be rejected by this Court as it is only based on the evidence available on record, viz., Chartered Accountant's report, for which the arbitrator had also granted opportunity to raise objections and only after considering the said objections, the arbitrator has come to the conclusion that in addition to the amounts payable under the interim arbitral award, the sum of



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Rs.3,08,819/- together with interest at the rate of 12% per annum from 18.06.2019 till the date of realization is due and payable by the petitioners to the respondents jointly and severally.

9. The scope of challenge under Section 34 of the Arbitration and Conciliation Act, 1996 is very limited. Since the arbitrator has passed award only based on the evidence available on record, this Court is not interfering with the awards passed by the arbitrator, i.e., both the interim arbitral award and the final arbitral award, which is the subject matter of challenge in this petition. This Court does not find any merit in this petition.

10. Accordingly, this application is dismissed. No costs.

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ABDUL QUDDHOSE, J.

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