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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.11.2024
Pronounced on	29.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) Nos.229, 230, 231 and 232 of 2021

and

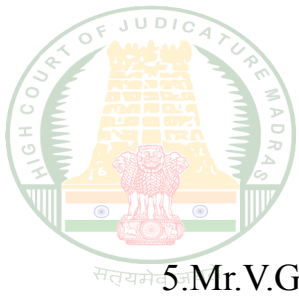
O.P.(Com.Div.) Nos.310, 311, 312 and 313 of 2021

and

A.Nos.1586, 1587, 1589 and 1590 of 2021

Arb.O.P.(Com.Div.) No.229 of 2021

- 1.M/s.V.G.Panneerdas and Company,
Represented by its Partner V.G.P.Ravidas
- 2.Mr.V.G.Santhosam,
S/o. Late Mr.V.Gnanathiraviam Nadar,
Partner of M/s.V.G.Panneerdas and Company
- 3.Mr.V.G.P.Ravidas,
S/o. Late Mr.V.G.Panneerdas,
Partner of M/s.V.G.Panneerdas and Company
- 4.Mr.Rajadas,
S/o.Late Mr.V.G.Panneerdas,
Partner of M/s.V.G.Panneerdas and Company



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

5.Mr.V.G.P.Babudas,

S/o.Late Mr.V.G.Panneerdas,

Partner of M/s.V.G.Panneerdas and Company

All having Office at V.G.P. Square,

No.6, Dharmarajakoil Street,

Saidapet, Chennai – 600 015.

... Petitioners

.Vs.

1.Mr.V.G.S.Vinodh Raj,

Partner of M/s.V.G.Panneerdas and Company

2.Mr.V.G.Selvaraj,

Partner of M/s.V.G.Panneerdas and Company

3.Mr.V.G.S.Rajesh Alias Amaladas Rajesh,

Partner of M/s.V.G.Panneerdas and Company

4.Mr.V.G.P.Prasad Das,

S/o.Late Mr.V.G.Panneerdas,

Partner of M/s.V.G.Panneerdas and Company

5.Mr.V.G.P.Murphy Das,

S/o.Late Mr.V.G.Panneerdas,

Partner of M/s.V.G.Panneerdas and Company

R4 and R5 having Office at V.G.P. Square,

No.6, Dharmarajakoil Street,

Saidapet, Chennai – 600 015.

... Respondents

Prayer in Arb.O.P.(Com.Div.) No.229 of 2021: Original Petition is filed under Section 15 read with Section 11(6) of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the Learned Sole Arbitrator Retired Justice K.Kannan and appoint a Retired High Court Judge to continue the arbitration process, subject to the result of O.P.Nos.310 to 313 of 2021.



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

In all Arb.O.Ps and O.Ps

For Petitioners : Mr.S.R.Rajagopal
Senior Counsel
for Ms.N.Madhushruthi
For Respondents :
For R1 and R2 : Mr.H.Karthik Seshadri
for M/s.Iyer and Thomas
For R3 : Mr.R.Saravanakumar
For R4 and R5 : Mrs.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran

COMMON ORDER

In O.P.Nos.310 to 313 of 2021, the petitioners have challenged the impugned preliminary award dated 18.03.2021 passed by the Arbitral Tribunal under Section 34(2)(a)(iv), Section 34(2)(b)(ii) and Section 34(2-A) of the Arbitration and Conciliation Act, 1996.

2. In Arb.O.P.(Com.Div.) Nos.229 to 232 of 2021, the petitioners have prayed for termination of the mandate of the Arbitral Tribunal presided over by the Hon'ble Mr.Justice K.Kannan, Retired High Court Judge, from continuing with the arbitral proceedings who passed the impugned preliminary award dated 18.03.2021.



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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3. The impugned preliminary award dated 18.03.2021 passed by the Arbitral Tribunal addresses disputes arising from 7 different claim petitions filed by the partners (family members of Late Mr.V.G.Panneerdas) of the three Partnership Firms carried on by them viz., M/s.V.G.Panneerdas & Company, M/s.V.G.P. Investments and M/s.V.G.P. Beach Housing. Details of the Original Petitions challenging the impugned preliminary award dated 18.03.2021 passed in the 7 claim petitions are as under:-

Claim No.1 of 2019	Claim Nos. 2 to 4 of 2019	Provision
Arb.O.P. (Com.Div.) No.232 of 2021	Arb.O.P. (Com.Div.) Nos.229 to 231 of 2021	Section 15 of the Arbitration and Conciliation Act, 1996
O.P.No.313 of 2021	O.P.Nos.310 to 312 of 2021	Section 34 of the Arbitration and Conciliation Act, 1996

4. In Arb.O.P.(Com.Div.) Nos.229 to 231 of 2021 and in O.P.Nos.310 to 312 of 2021, the three Partnership Firms viz., M/s.V.G.Panneerdas & Company, M/s.V.G.P. Investments and M/s.V.G.P. Beach Housing are the Petitioner No.1. The four of the partners of these three partnership firms namely Mr.V.G.Santhosam (Brother of Late Mr.V.G.Panneerdas), Mr.V.G.P.Ravidas, Mr.V.G.P.Rajadas and Mr.V.G.P.Babudas (sons of Mr.V.G.Panneerdas) are the Petitioner Nos.2 to 5 respectively.



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5. In Arb.O.P.(Com.Div.) No.232 of 2021 and in O.P.No.313 of 2021, four of the partners of these Partnership Firms namely Mr.V.G.Santhosam, Mr.V.G.P.Ravidas, Mr.V.G.P.Rajadas and Mr.V.G.P.Babudas are the Petitioner Nos.1 to 4.

6. For the sake of clarity, the ranks of the respective parties referred to in this order are to the rank of the parties as arrayed in Arb.O.P.(Com.Div.) Nos.229 to 231 of 2021 and in O.P.Nos.310 to 312 of 2021.

7. The disputes among the partners of the Partnership Firms carried on by them were referred to arbitration by this Court pursuant to an Order dated 19.06.2019 in O.P.Nos.577 to 579 of 2018 filed by the petitioners herein, along with respondent Nos.4 and 5 namely Mr.V.G.P.Prasaddas and Mr.V.G.P.Murphydas, to appoint and constitute an Arbitral Tribunal to resolve the dispute. By an Order dated 19.06.2019 in O.P.Nos.577 to 579 of 2018, this Court appointed Hon'ble Mr.Justice K.Kannan, Retired Judge of Punjab and Haryana High Court who was formerly a Judge of this High Court as the Arbitrator.



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8. The Hon'ble Arbitrator received the Appointment Order on 07.07.2019 and issued Notices to the parties on the same day and thus entered upon the reference on 08.07.2019.

9. By the impugned preliminary award dated 18.03.2021, the Arbitral Tribunal has allowed the prayer sought by the claimants in Claim No.1 of 2019 (respondent Nos.1 and 2 herein namely V.G.S Vinoth Raj and V.G.S.Selvaraj, the son and father) for dissolution of the Partnership Firms.

10. The Arbitral Tribunal has declined the reliefs sought by the petitioners herein in Claim Nos.2 to 4 for the valuation of Firms and permission to continue the Firms with exit directions for certain respondents.

11. Claim Nos.5 to 7 filed by the respondent No.3 namely V.G.S.Rajesh Alias Amaladas Rajesh herein was struck-off by the Arbitral Tribunal. However, it directed that the dissolution ordered under Claim No.1 of 2019 would govern the rights and obligations of all parties, including the Respondent No.3 herein, despite the striking off of his claims and defense.

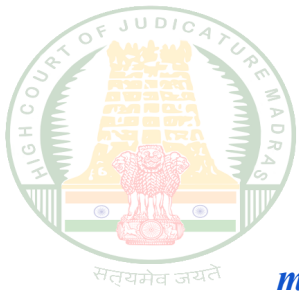


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12. Operative portion of the impugned preliminary award dated 18.03.2021

of the Arbitral Tribunal reads as under:-

“156.The partnership assets consist essentially of real estate all across Tamil Nadu and Bangalore. Their existence shall require verification of purchase instruments, like, registered sale deeds, agreements of purchase and deeds of power of attorney and cross verified through accounts entered in the books of accounts, either in physical format or in digitized format or both. Income by way of rentals from several buildings have to be collected. It is an admitted fact that the incomes are being hitherto collected by respondents 2 to 4 only and not shared with others. The rentals shall be collected by an independent agency. Taxes have to be paid and it shall be necessary to examine if there are cash available with banks. All the stocks in trade must be inventoried and valuations done through approved valuers and offered for sale or apportioned amongst the partners, after allowing for due credits and debits to the extent of each partner's share. I have found that the respondents 1 to 4# have full control over all the resources which they enjoy without sharing with others. They have falsely denied all the books of accounts as having been lost and the data in computers corrupted. **They cannot be trusted with management of properties during the process of liquidation of assets and before distribution. There is a strong case for appointment of a receiver, who shall take possession of hitherto admitted assets of partnerships, obtain fresh documents of lease wherever they are in the possession of persons other than the partners. I appoint Mr. P. Rajagopal, Advocate, 155, 1^a Main Road, Gandhi Nagar, Adyar, Chennai 600 020, Mobile No. 9840330182, email id rajagopalp85@gmail.com, as the Receiver. In respect of assets standing in the name of group companies specified in para 116, the properties shall be inventoried and status quo regarding possession***



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maybe ascertained and shall be made ready for sales in final award proceedings. The possession of buildings in the hands of the partners shall be allowed to be continued and written acknowledgments must be taken. The receiver shall take the assistance of the staff already in employment with the firms or appoint any person(s) at amount(s) not more than the minimum wages applicable for the category of employment. The Receiver shall engage the services also of a renowned auditing firm who are adept and having experience in conducting due diligence audits and who in the past have done at least 5 due diligence audits of firms or companies whose turnover is not less than Rs.100 crores a year. The cost of audit and administration shall come from the estate of partnerships. The Receiver shall be paid Rs. 2 lacs as remuneration per month. ***There shall be a preliminary award in the nature of preliminary decree for dissolution of partnerships and for accounts and any party may apply to the arbitral tribunal for appropriate orders to take stock of the work done and for nature of reliefs to be granted for the purpose of dissolution and distribution of proceeds.***

(* Petitioner Nos.3 to 5 herein)

(# Petitioner No. 2 to 5 herein)

XV. H. Costs

157. In the dispensation I have made, I have allowed for the relief of dissolution as sought by the claimants*. I have held that the prayer for continuance of partnership as sought by respondents 1 to 4# cannot be acceded to. The costs of arbitration consist of arbitrator's fees and counsel's fees, other than incidentals, like venue hire charges. The respondents 1 to 4# shall bear their own expenses and bear the costs of the claimants. The respondents 5 to 7** shall also bear their own expenses. The claimants shall file the bill of costs with



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

copy served to the respondents 1 to 4 within 3 days after the pronouncement of the order.

*(*Respondent No.1 and 2 herein)*

(# Petitioner No. 2 to 5 herein)

(Respondent No.4,5 and 3 herein)

158. Reliefs:

In the light of the discussion and the findings rendered in the above paragraphs,

- 1. The prayer sought by the claimants in claim no 1 of 2019* for dissolution of partnerships is granted;*
- 2. There shall be preliminary award for accounting in respect of all transactions of sales dealt with by partners from the year 1 January 2013 to 30.6.2017, verify if they are brought to books of accounts and if they are, no further remains to be done; If they are not brought to account books, the market value as stated in the deed shall be debited to the alienating partner.*
- 3. The prayer contained in claim nos. 2 to 4 for valuation of firms and for permission to continue the firms with exit directions to respondents (claimants 1 and 2* and respondent 7#) is declined;*
- 4. Even as the 7th respondent's# the right to prosecute the claims against him and his defence ordered to be struck off, the dissolution of partnerships ordered in claim no 1 will govern the rights and obligations of every other party including the 7th respondent#. Claim no's 5 to 7 are ordered accordingly.*



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

5. *In respect of sales by partners after 1.7.2017, the year when Selvaraj had left the management of the partnerships and when the control of partnerships came to respondents 2 to 4, verification for entries into books of accounts of the partnerships shall be made and scrutinized to see if the sale consideration equals the market value is entered and if they do, no further remains to be done; but if the consideration falls short of market value as set in the sale deeds, the amount in excess over sale consideration shall be debited to the alienating partner and appropriate reversal of entries shall be made in the accounts;*
6. *In respect of sales made after 31 July 2018, i.e., after the restraint of alienation was made, all of them are invalid but the title shall not revert to the partnership but only the market value brought back to the respective firm's accounts and the alienating partners shall be debited in the market values recited in the respective documents,*
7. *All the assets of the three partnerships, viz., VGPannerdas & Co, VGP Beach Housing Co and VGP Investments, including the assets of the VGP Group Companies, set out in para 116 shall be inventoried and the suitability for sales or distribution among the partners towards the share of entitlement of each partner shall be suggested.*
8. *Where the assets stand in the name of the Group Companies as referred to above and it is not possible to identify the source to any one of the three partnerships, the credits shall be marked in a separate account and dealt with for distribution in specie or in*



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

cash depending on the nature of liquidation of the particular assets.

9. No one partner shall commence any business with the name of any of the partnerships or group companies till the affairs of winding up of the partnerships are completed or till 5 years after the commencement of dissolution process, whichever is later.

10. Time for submission of preliminary report after accounts and suggestion for distribution among partners of net assets after meeting with all existing liabilities and provision for taxes-3 months.

11. Costs shall be taxed in the manner referred in the paragraph 157 above.

*(*Respondent No.1 and 2 herein)*

(#Respondent No.3 herein)

13. Paragraph No.116 of the impugned preliminary award dated

18.03.2021 of the Arbitral Tribunal reads as under:-

“116. As already observed, the acquisitions have three characteristics - current assets, investments and stocks in trade. If the properties stand in the name of any of the partnerships, there can be no doubt regarding their character. Much of the disputes was on the nature of acquisitions in the names of companies. Out of 15 companies that formed part of VGP Group, the majority of them have become defunct. The 2nd Claimant has admitted that only four limited companies are currently in operation:

1. VGP Golden Beach Resorts Limited;



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

2. *VGP Agro Farms Private Limited;*
3. *VG Paneerdas and Company Private Limited and*
4. *VGP Housing Private Limited.*
- One more company is
5. *VGP Marine Kingdom Private limited.*

There are two other companies which hold assets, both of which are under the management of the 4th Respondent, Mr.Babu Das. The contention of the Claimants 1 and 2 as well as the 7th Respondent is that the companies formed by the 4th Respondent have been out of resources of the partnership assets. It is averred in para 5(x), Respondents 2 to 4 have slowly started diverting assets and businesses by floating concerns of their own without reference to the family business and the 4th Respondent had surreptitiously formed a Private Limited Company, known as 'Vee Three Entertainment Private Limited', in which the 4th Respondent has been shown as a shareholder holding 96.25%.

14. The Arbitral Tribunal has directed accounting of all transactions of sales by all the partners of the three Partnerships Firms from 1st January 2013 to 30th June 2017, with an instructions to the receiver, Mr.P.Rajagopal, an Advocate verify to whether these transactions were brought into the Books of Accounts. If accounted, no further action was required; if not, the market value as per the Sale Deeds were to be debited to the alienating partner's account.

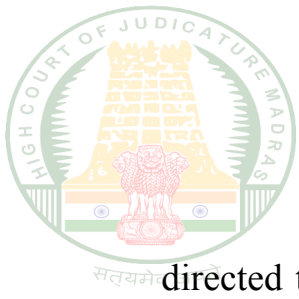


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15. Regarding sales made by the partners after 1st July 2017, the Arbitral Tribunal ordered scrutiny to verify whether the sale consideration matched the market value in the Sale Deeds and if the entries matched, no further action was required, but if they fell short, the difference was to be debited to the alienating partner's account.

16. For sales made after 31st July 2018, which were purportedly made in violation of the restraint orders on alienation, the Arbitral Tribunal declared such sales invalid but directed that the market value of these transactions be brought back into the partnership accounts, debiting the alienating partner's account accordingly. It appears that the Respondent No.3 had breached the Restraint Order and therefore the Claim Nos.5 to 7 of 2019 filed by the respondent No.3 were struck off by the Arbitral Tribunal.

17. The Arbitral Tribunal also directed the preparation of an inventory of all partnership assets by the Receiver namely Mr.P.Rajagopal, Advocate including the assets of the V.G.P. Group Companies, to determine the suitability for sale or distribution among the partners of the Partnership Firms. It further



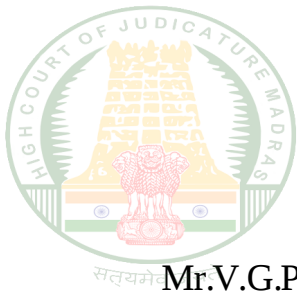
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directed that where the asset stood in the name of group Companies and their source could not be traced to any specific Partnership Firm, the credits were to be marked in a separate account for distribution in cash or kind, based on the nature of the asset.

18. Furthermore, the Arbitral Tribunal restrained the partner from commencing business using the names of the partnerships of group Companies until the affairs of winding up were completed or five years after the dissolution process commenced, whichever is later.

19. The Arbitral Tribunal has directed a submission of a Preliminary Report by the said Receiver within three months on the accounts and distribution of net assets after meeting liabilities and tax provisions. The costs of the proceedings were ordered to be taxed in terms of the Award.

20. Claim No.1 of 2019 was filed before the Arbitral Tribunal by the respondent Nos.1 & 2 herein namely Mr.V.G.S.Vinodhraj and Mr.V.G.Selvaraj (the Son and Father) against the petitioner Nos. 2 to 5 herein namely Mr.V.G.Santhosam, Mr.V.G.P.Ravidas, Mr.V.G.P.Rajadas and



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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Mr.V.G.P.Babudas, respondent Nos.3, 4 and 5 herein namely Mr.V.G.S.Rajesh

Alias Amaladas Rajesh, Mr.V.G.P.Prasaddas and Mr.V.G.P.Murpydas was for

the following reliefs:-

	Claim No.1 of 2019 [Impugned in O.P.No.313 of 2021]
	a)An award declaring that M/s.V.G.Panneerdas and Company do and hereby stand dissolved as on 17.01.2018. b)Alternatively pass an Award directing the dissolution of M/s.V.G.Panneerdas and Company. c)An Award declaring that M/s.V.G.P. Investments do and hereby stand dissolved as on 17.01.2018. d)Alternatively pass an Award directing the dissolution of V.G.P.Investments. e)An Award be passed directing the dissolution of V.G.P.Beach Housing. f)Consequent upon such dissolution direct the division of all the existing assets of the three Firms V.G.Panneerdas & Co., V.G.P.Investments, V.G.P.Beach Housing to be divided and allotted equitably in the ratio of 1/3rd to the Claimants. g)Direct the Respondents 2 to 4 to provide true and fair accounts of V.G.Panneerdas and Company, V.G.P.Investments and V.G.P.Beach Housing from 01.01.2017 or such other date as this Hon'ble Tribunal deems fit and consequential order to the Respondents 2 to 4 to make good the losses / diversions effected by their unlawful action and pay over the respective share to the Claimants in the ratio of 1/3rd to the Claimants. h)Direct a fair and amicable division of the brand VGP amongst the partners consisting of the three groups. i)Costs of the proceedings. j)Such other reliefs in the interest of Justice.



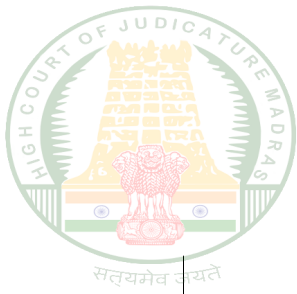
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21. Claim Nos.2 to 4 of 2019 originally filed by the petitioners herein along with respondent Nos.4 and 5 namely Mr.V.G.P.Prasadas and Mr.V.G.P.Murphydas were for the following reliefs against the respondent Nos.1, 2 and 3 respectively.

	<i>Impugned in O.P.Nos.310 312 of 2021</i>		
	Claim No.2 of 2019	Claim No.3 of 2019	Claim No.4 of 2019
Claimants	1.M/s.V.G. Panneerdas and Company	1.M/s.V.G.P. Beach Housing	1.M/s.V.G.P. Investments
	2.Mr.V.G.Santhosam 3.Mr.V.G.Ravidas 4.Mr.Rajdas 5.Mr.V.G.P.Babudas 6.Mr.V.G.P.Prasad Dass 7.Mr.V.G.P.Murphy Dass		
Respondents	1.Mr.V.G.S.Vinodh Raj 2.Mr.V.G.Selvaraj 3.Mr.V.G.S.Rajesh Alias Amaladas Rajesh		
Prayer	A)Directing the 1 st Respondent to be valued at of Rs.15,81,60,075/- (Rupees Fifteen Crores Eighty One Lakh Sixty Thousand Seventy Five only)	F)Directing the 1 st Respondent to repay a sum of Rs.1,13,05,000/- (Rupees One Crore Thirteen Lakhs Five Thousand only) to the Firm and to subsequently	K)Directing the 1 st Respondent to be valued at of Rs.1,54,07,930/- (Rupees One Crore Fifty Four Lakhs Seven Thousand and Nine Hundred and Thirty only)



towards his 1/9th share and to immediately resign from the firm. B)Directing the 2nd Respondent to be valued at of Rs.5,62,47,553/- (Rupees Five Crores Sixty Two Lakhs Forty Seven Thousand Five Hundred and Fifty Three only) towards his 1/9th share and to immediately resign from the Firm. C)Directing the 3rd respondent to compensate a sum of Rs.15,76,99,349/- (Rupees Fifteen Crores Seventy Six Lakhs Ninety Nine Thousand Three Hundred and Forty Nine only) to the Firm and to subsequently relinquish his 1/9th share and resign from the Firm with immediate effect. D)Directing all the three Respondents to take sufficient steps to indemnify the	relinquish his 1/9th share and resign from the Firm with immediate effect. G)Directing the 2nd Respondent to be valued at of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) towards his 1/9th share and to immediately resign from the Firm. H)Directing the 3rd Respondent to be valued at of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs only) towards his 1/9th share and to immediately resign from the Firm. I)Directing all the three Respondents to take sufficient steps to indemnify the Claimants for all losses and damages incurred that due to the actions of the Respondents. J)Any other order(s) that may be in interest of Justice for which the Claimants may be dutifully bound.	towards his 1/9th share and to immediately resign from the Firm. L)Directing the 2nd Respondent to compensate a sum of Rs.25,77,71,881/- (Rupees Twenty Five Crores Seventy Seven Lakhs Seventy One Thousand Eight Hundred and Eighty one only) to the Firm and to subsequently relinquish his 1/9th share and resign from the Firm with immediate effect. M)Directing the 3rd Respondent to compensate a sum of Rs.33,21,02,570/- (Rupees Thirty Three Crores Twenty One Lakh Two Thousand Five Hundred and Seventy only) to the Firm and to subsequently relinquish his 1/9th share and resign from the Firm with immediate effect.
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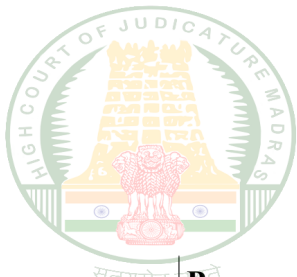


Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

	claimants for all losses and damages incurred that due to the actions of the Respondents. E)Any other order (s) that may be in interest of Justice for which the Claimants may be dutifully bound.		
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22. Claim Nos.5 to 7 Respondent No.3 filed against the petitioners herein, Respondent Nos.4, 5, 1 and 2 respectively were for the following reliefs:-

	Claim No.5 of 2019	Claim No.6 of 2019	Claim No.7 of 2019
Claimant	Mr.V.G.S.Rajesh Alias Amaladas Rajesh		
	1.M/s.V.G.-Panneerdas & Company	1.M/s.V.G.P.Beach Housing	1.M/s.V.G.P. Investments
Respondents	2.Mr.V.G.Santhosam 3.Mr.V.G.Ravidas 4.Mr.Rajdas 5.Mr.V.G.P.Babudas 6.Mr.V.G.P.Prasad Dass 7.Mr.V.G.P.Murphy Dass 8.Mr.V.G.S.Vinodh Raj 9.Mr.V.G.Selvaraj		



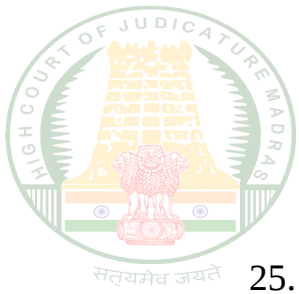
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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	For a directions to respondents 3 to 5, who are claimants to 2 to 4 in Claim petitions 2 to 4 to disclose the assets, land stocks and provide proper account for the sale transactions of V.G.P.Paneerdas & Company from 1.1.2013 and make good the losses/diversions effected by sale of the assets and pay over 1/9 share to the claimant, direct dissolution of the firm and direct a fair and amicable division of the brand VGP amongst the partners consisting of three groups.	For disclosure of all assets of the partnership, account for sale transactions from 1.1.2013 and make good the loss/diversion effected by sale of the properties, dissolution of the firm BEACH HOUSING and division of the brand VGP.	For disclosure of assets and account for sale of assets, make good the loss/diversions, direct dissolution of partnership of INVESTMENTS and make a division of the brand VGP.
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23. The disputes pertain to three Partnership Firms viz., **V.G.Panneerdas & Company**, **V.G.P.Investments**, and **V.G.P. Beach Housing** [the first petitioner in Arb.O.P.(Com.Div.) Nos.229 to 231 of 2021, and O.P.Nos.310 to 312 of 2021].

24. These Partnership Firms are governed by two Partnership Deeds both dated 25.08.1993 and one Partnership Deed dated 27.08.1993 respectively.

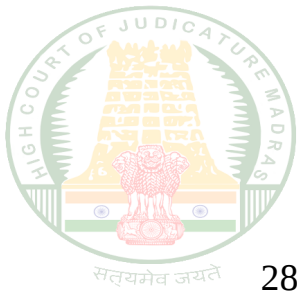


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25. The parties to the disputes before the Arbitral Tribunal were divided into three factions. The first faction comprised Mr.V.G.Selvaraj and his son, V.G.S.Vinothraj the Respondent No.1 and 2 herein [the Claimant in Claim No.1 of 2019] who wanted to dissolve the three Partnership Firms viz., **V.G.Panneerdas & Company, V.G.P. Investments, and V.G.P. Beach Housing** and for consequential division of all the assets and for a direction to the petitioners herein [respondent Nos.2 to 4 therein] in the three Partnership Firms to render true and proper accounts.

26. The second faction included the petitioner Nos.2 to 5 herein namely Mr.V.G.Santhosam, Mr.V.G.P.Ravidas, Mr.V.G.P.Rajadas and Mr.V.G.P.Babudas [the Claimants in Claim No.2 to 4 of 2019] which claim has been rejected.

27. The third faction consisted of the Respondent No.3 herein namely Mr.V.G.S.Amaladas Rajesh, [the Claimant in Claim Nos.5 to 7 of 2019] who, in the perception of the second faction, was aligned with the first faction. Incidentally, Mr.V.G.S.Amaladas Rajesh is the Son of Mr.V.G.Santhosam from the second faction.



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28. Mr.V.G.P.Prasaddas and Mr.V.G.P.Murphydas, the Respondent Nos.4 and 5 herein were initially claimants along with their brothers viz., Mr.V.G.P.Ravidas, Mr.V.G.P.Rajadas and Mr.V.G.P.Babudas, along with their paternal uncle namely Mr.V.G.Santhosam, [the petitioner No.2 to 5 herein]. However, they remained spectators before the Arbitral Tribunal. They neither filed any independent claims nor filed counter-statements against the respective claims filed by other parties.

29. Respondent Nos.4 & 5 were thus transposed as respondent Nos.4 and 5 in Claim Nos.2 to 4 of 2019 filed by the petitioners herein by the Arbitral Tribunal in the Arbitral Proceedings as their Counsel reported no instructions.

30. Thus Respondent Nos.4 & 5 were fence sitters in the Arbitral Proceedings. They remained unrepresented in the Arbitral Proceedings.

31. Following issues were framed by the Arbitral Tribunal in respect of Claim No.1 of 2019 filed by the respondent Nos.1 and 2 herein [Mr.V.G.Selvaraj and his son Mr.V.G.S.Vinothraj] against the petitioner Nos.2 to 5 herein:-



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

Issues framed in Claim No.1:

- 1.Whether respondents 2 to 4 diverted partnership funds to M/s.Vee Three, a Private Limited Company and hence accountable to the claimants? (Onus of Proof on Claimants, OPC, for short).*
- 2.Whether the sales effected by the firm represented by V.G. Santhosam after the order of status quo issued in O.A.81 to 84 of 2018 not valid being in violation of court order and hence accountable to the claimants? (OPC)*
- 3.Whether the sales effected by respondents 1 to 4 of the properties of the firm in which the claimants are also partners in the year 2019 not bona fide actions, being not beneficial to partnership and sold at alleged under valuation? (OPC)*
- 4.Whether the respondents 2 to 4 and 7 have diverted sums in excess of Rs.13,29,23,932/- as alleged and liable to be accounted for to the claimants? (OPC)*
- 5.Whether there is a complete lack of trust and confidence among the partners and hence the firms are liable to be dissolved? (OPC)*
- 6.Whether in any event the partnerships are liable to be wound up on just and equitable grounds? (OPC)*
- 7.Whether the claimants are entitled to rendition of accounts against respondents 2 to 4 from 1.1.2017 or from any other date as determined by the Arbitrator? (OPC)*
- 8.Whether respondents 2 to 4 are liable to make good the alleged losses and diversion of partnership assets/funds and if so, to what extent? (OPC)*

32. Following issues were framed by the Arbitral Tribunal in respect of Claim Nos.2 to 4 of 2019 filed by petitioners herein against V.G.S.Vinothraj, V.G.Selvaraj and V.G.S.Amaladas Rajesh [respondent Nos.1,2 and 3 herein].



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

Issues framed in Claim No.2

1.Whether the business of the firms ought to be retained as partnership assets and continued as such without partition, as contented by the claimants? (OPC)

2.Whether the respective values of the assets and the stocks of VG Paneerdas & Company correct, as set forth in the Claim statement and if not, what are the correct values thereof? (OPC)

3.Whether the respondents 1 & 2 have sold the stocks/assets of partnership without adequate reasons and hence accountable to the claimants as contended by them? (OPC)

4.Whether the respondent have their alleged misconduct disentitled themselves for obtaining valuation of the firms and for their dissolution? (OPC)

5.Whether the 1st respondent is entitled merely to a valuation which is a sum of Rs.15,81,60,075/- or such sum as may be determined, subject to tax, penalty, interest etc as contended by the claimants? (OPC)

6.Whether the 2nd respondent is entitled only to a valuation of a sum of Rs.5,62,47,553/- or such sum as may be determined, subject to tax, penalty and interest etc as contended by the claimants? (OPC)

7.Whether the 3rd respondent is liable to compensate after deducting the sale proceeds from the higher market value of the sold properties, exclusive of liability for taxes, penalty, interest etc, as contended by the claimants? (OPC)

8.Whether the respondents 1 to 3 are liable to relinquish their respective shares in partnership and ordered to be resigned from the partnership? (OPC)

9.Whether the claimants are entitled to be indemnify for alleged losses caused by the acts of respondents 1 to 3? (OPC)



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

10. Whether the values of the lands as sold by V.G. Selvaraj true as described by ostensible consideration? (OPR)

33. Following issues were framed by the Arbitral Tribunal in respect of Claim No.5 to 7 of 2019 filed by V.G.S.Amaladas Rajesh [Respondent No.3 herein] against the petitioners herein, respondent Nos.2 and 2 herein.

Issues framed in Claim No.3

- 1. Whether the sale by the 2nd respondent to his son, namely 1st respondent was for proper value and if not, whether the difference was to the tune of Rs.4,63,05,000/- as contended by the claimants and liable to be accounted for? (OPC)*
- 2. Whether the respondent no.1 has disentitled himself to any share in the assets of partnership firm, being themselves liable to compensate to an extent of Rs.1,13,05,000/- being the amount of deduction of the market value against known illegal sales but still exclusive of liability for tax, penalty and interest? (OPC)*
- 3. Whether the 2nd respondent is entitled merely to a valuation of Rs.3,50,00,000/- subject to liability for tax, penalty and interest as may be found due? (OPC)*
- 4. Whether the 3rd respondent is entitled merely to a valuation of Rs.3,50,00,000/- subject to liability for tax, penalty and interest as may be found due? (OPC)*

Issues framed in Claim No.4

- 5. Whether the sales effected respectively by respondents 2 and 3 deliberately under-valued to the market valuation and hence liable to account for the*



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

*excess amounts received by them to the claimants?
(OPC)*

6.Whether the 1st respondent is entitled merely to the valuation of Rs.1,54,07,930/- or any other sum as determined representing his share in order to be resigned from partnership? (OPC)

7.Whether the 2nd respondent is liable to compensate the firm to the extent of Rs.25,77,71,881/- or any other sum as determined against sales done by him, even apart from statutory dues that include tax, penalty and interest? (OPC)

8.Whether the 3rd respondent is liable to compensate the firm to the extent of Rs.33,21,02,570/- or any other sum as determined against sales done by him even apart from statutory dues that include tax, penalty and interest? (OPC)

Issues framed in Claim No. 5

9.Whether the accounts of the partnership have not been rendered to the claimant at all and hence the respondents are liable to account for the same to the claimant? (OPC)

10.Whether the rental income for the partnership business has been denied to the claimant and if so, the amount liable to be paid to the claimant for the respective limits of liability of the respondents? (OPC)

11.

Issues framed in Claim No.6

*12.Whether the partnership is liable to be dissolved?
(OPC)*

13.Whether the claimant is entitled to accounting and if so, the extent of his entitlement and respective parties liable? (OPC)



Issues framed in Claim No.7

*14. Whether the partnership is liable for dissolution?
(OPC)*

*15. Whether respondents 3 to 5 are liable to account for
sale proceeds, profits etc of the firm and if so, from
what date? (OPC)*

34. In Paragraph Nos.86 & 87 of the impugned preliminary award dated 18.03.2021, the Arbitral Tribunal has attempted to simplify the above issues with the following observations:-

V. From cluster of issues to discernible classification of issues

86. Issues have been framed in every claim petition. They pose questions of mutual obligations to account for sales, realisation of profits, acquisition of assets, ascertainment of partnership assets) etc. It will serve our interest to club issues depending on their genres and similarities of points for consideration. I will therefore take the issues from claim statements 1 to 7 and indicate them with reference to the case number within brackets and look for areas of congruence or nearly so, for the sake of collation of evidence and making discernible inferences by bracketing them together. To this purpose, I shall identify the issues with the following notations: The first number shall indicate the issue number and number following within brackets will indicate the case number. For example, 1(1) is issue 1 in claim petition 1/2019. Now, to the categories that the issues fall into:*

Issue 2(1) relates to the effect of sale made during the subsistence of the order of status quo issued by the High Court, a prelude to these proceedings.



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

Issue 3 (1) relates to sales effected by respondents 1 to 4 after 2019 and relevant to the accounting reliefs.

Issue 4(2) relates to sales effected by respondents 1 and 2, its binding nature on the partnership or liability to account.

Issue 10(2) and 11(2) seek answers to the queries if the market value of lands sold by claimant 1 were more than the ostensible consideration and hence liable to account.

Issue 1(3) requires enquiry into the imputation that the sale of properties by 2nd claimant to 1 claimant is deliberately undervalued and the difference with the actual value is bound to be accounted for by the 2nd claimant.

Issue 1(4) is to direct an enquiry into whether the sales effected by claimant 2 and respondent 7 are deliberately undervalued and liable to account.

Issue 4(1) relates to alleged diversion of funds and accounting to the tune of Rs13.29 cr.

Issue 1(1) queries if the partnership funds are utilised for starting M/s V3, a company floated by respondents 2 to 4.

Issue 7 (1) seeks answer for rendition of accounts.

Issue 4(2) inverts this issue to examine whether the claimants 1 and 2 have, by their misconduct barred from obtaining valuation of the firms and their dissolution.

Issues 1(5), 2(6) and 1(7) will query on the liability or otherwise of the respondents 1 to 4 to account for the share of the 7th respondent in all the partnerships.

Issue 2(5) queries if the rental incomes from the partnership business in VGP is completely denied to 7th respondent.



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

Issue 14(2) posits that the sales effected by respondents 1 to 4 are deliberately undervalued and hence liable to account.

Issue 7(2) requires enquiry into the conduct of 7th respondent whether there is a liability on him to account for the excess of consideration retained by him after setting out lower sale considerations in the sales effected by him.

Issue 2(7) seeks an answer to whether respondents 2 to 4 are bound to account to the 7th respondent.

Issue 13(2) poses the question whether the amounts received from customers as advances are to be treated as liability or deposited in escrow account.

Issue 9(2) requires an answer whether claimants 1, 2 and 7th respondent are bound to indemnify the losses caused to respondents 1 to 4.

Issue 5 (1) relates to complete lack of trust and confidence and issue 6(1), 1(6) and 1(7) raise the question if the partnerships are liable to be wound up.

Issue 1(2) is its opposite that the partnerships shall not be wound up but must be allowed to be carried on by the respondents 1 to 4 by giving the exit valuation for claimants 1 and 2.

Issue 5(2) proposes a valuation for the share of 1st claimant and issue 6(2) proposes a valuation for 2nd claimant's share in VGP and seeks answer for their respective correct valuation.

Issue 8(2) queries whether claimants 1, 2 and 7th respondent shall merely take the valuation of their shares assessed and exit, Issue 1(2) proposes a value of VGP and seeks answer for ascertainment for the correct valuation of VGP.

Issue 2(2) queries on the value of assets and stocks of VGP.



Issue 2(3) will require us to examine if the 1st claimant is disentitled to any share, being himself liable to pay the partnership BEACH HOUSING a sum of Rs.1,13,05,000/- exclusive of taxes.

Issue 3(3) will seek an answer if 2nd claimant is entitled only to a valuation of Rs.3,50,00,000/- subject to liability for taxes, etc., for exit from BEACH HOUSING.

Issue 4(3) queries if the 7th respondent is only entitled to a valuation of Rs.3,50,00,000 for exit from BEACH HOUSING.

Issue 2(4) seeks an answer if 1 claimant is entitled to only a valuation of Rs.1,54,07,930/- as exit term from INVESTMENTS and issue 3(4) to assessment of a liability of 2nd claimant to Rs.25,77,71,881/- as an exit term from INVESTMENTS, Issue 4(4) requires assessing the correctness of the assertion if 7th respondent is liable to Rs.33,21,02,570/- and exit INVESTMENTS.

Issue 8 (1) poses the question if respondents are liable to make good the alleged losses and diversion of partnership assets/funds.

Issue 9(1) poses the question about the valuation of VGP brand.

**[Case No. = Claim No.]*

87. Having set out the categories of issues that fall for consideration, for easier comprehension, I shall commence the discourse with a brief outline of the partnership constitutions with reference to partnership deeds, the business done and then, devote the enquiry on the following heads and attempt to elicit answers:

A. Constitution of partnership and persons who have stakes;

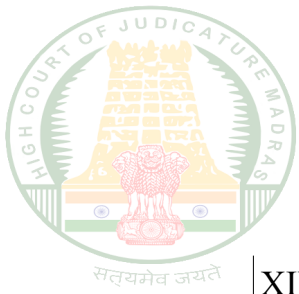
B. Effect of sales of various partners and duty to account;



- C. Character of acquisitions and ascertainment of partnership assets;***
- D. Dissolution or continuation of partnership;***
- E. Valuation of VGP brand dependent on decision of dissolution;***
- G. Effect of striking off the defence of R7 and termination of proceedings initiated by R 7;***
- H. Reliefs admissible to respondents 5 and 6 who have neither filed claim statements nor replies to claim statements and***
- I. Costs.***

35. These heads have been answered in the impugned preliminary award dated 18.03.2021 in the following Paragraphs:-

<i>Heads</i>	<i>Paragraphs in the Impugned Preliminary Award</i>
VI.A. Constitution of partnership business and the persons that have stakes involved	Paragraph Nos.88 to 97
VII.B. Effect of Sales by partners and duty to account	Paragraph Nos.98 to 111
VIII.C. Character of acquisitions and ascertainment of partnership assets	Paragraph Nos.112 to 124
X.D. Dissolution or continuation of partnership – the appropriateness of the choice	Paragraph Nos.125 to 149
XI.E. Valuation of VGP brand dependent on decision of dissolution	Paragraph No.150



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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XII.F. Effect of striking off the defence of R 7 and termination of proceedings initiated by R 7	Paragraph Nos.151 to 153
XIII.G. Reliefs admissible to respondents 5 and 6 who have neither filed claim statements nor replies to claim statements	Paragraph No.154
XIV. Order preparatory and in aid of dissolution	Paragraph No.155 and Paragraph No.156
XV. H. Costs	Paragraph No.157
Reliefs	Paragraph No.158

36. The Arbitral Tribunal had passed Interim Orders on 06.08.2020 in M.A.Nos.17 and 22 of 2020, on 07.08.2020 in M.A.Nos.23 and 24 of 2020 and on 11.08.2020 in M.A.Nos.25 and 26 of 2020 holding that the sales made by respondent No.3 viz., V.G.S.Amaladas Rajesh were not justified and had directed him to deposit in escrow the ostensible consideration mentioned in the Sales Deeds that he had with third parties. However, respondent No.3 failed to comply with the Interim Orders of the Arbitral Tribunal. Therefore, the Arbitral Tribunal thus struck off the claims viz., Claim Nos.5 to 7 of 2019 and defenses of respondent No.3 on account of his failure to comply with the Interim Orders.



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37. Relevant portion of the impugned preliminary award dated 18.03.2021 dealing with the effect of striking off the defence and termination of proceedings initiated by the respondent No.3 herein viz., Mr.V.G.S.Amaladas Rajesh reads as under:-

XII. F. Effect of striking off the defence of R 7 and termination of proceedings initiated by R 7

151. The 7th Respondent failed to comply with the directions given by me under 23 & 24 of 2020 for deposit of sale considerations in respect of the transactions that he had with third parties. On an application moved by the Respondent 1 to 4 for striking of the defence for failure to comply, I provided for some time for making good the loss. He did not still comply with the directions and I struck off the defense even as the evidence by cross-examination was under way. He did not later participate in the proceedings for cross-examination of RW2.
52. The effect of striking of defense and disallowing the 7th respondent to prosecute his claims under Claims Statement 5 to 7 cannot be a dismissal of the claims and allowing the Claims Statement filed against him. It should only be construed as though no further evidence was placed by him. His chief examination in support of his Claims 5 to 7 can be used to the extent they constitute admission against the respondents 1 to 4 and the claimants. As regards, Claims Statements in which he is the Respondent, viz., in Claim Petitions 1 to 4, the proof of contentions will require to be established respectively by the Claimants, no matter that the 7th respondent defense has been struck off. So considered, the Claims Statement 1 to 4 will be



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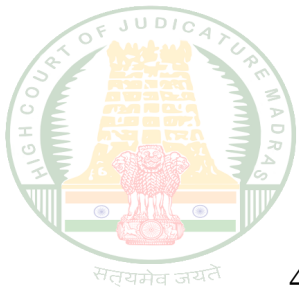
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

examined on their own merit. As regards Claims 5 to 7, the admitted position that he is a partner will require valuation of share in the partnership.”

38. In these Original Petitions, Court is not concerned with Claim Nos.5 to 7 of 2019 filed by the respondent No.3 herein as there is no challenge to the same by the respondent No.3 herein to the impugned preliminary award dated 18.03.2021. Court is concerned only with the challenge to the impugned preliminary award dated 18.03.2021 passed by the Arbitral Tribunal allowing Claim No.1 of 2019 and rejecting the Claim Nos.2 to 4 of 2019 filed by the petitioners herein.

39. O.P.Nos.310 to 312 of 2021 have been filed by the petitioners against the rejection of their claims viz., Claim Nos.2 to 4 of 2019 by the Arbitral Tribunal vide the impugned preliminary award dated 18.03.2021.

40. O.P.No.313 of 2021 has been filed by the petitioner Nos.2 to 5 herein against the impugned preliminary award dated 18.03.2021 allowing Claim No.1 filed by Mr.V.G.S.Vinodhraj and Mr.V.G.Selvaraj (the Son and Father).



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41. After these Original Petitions came to be filed challenging the impugned preliminary award dated 18.03.2021, the petitioners herein have compromised the case with Mr.V.G.S.Vinodhraj and Mr.V.G.Selvaraj, respondent Nos.1 and 2 herein (Claimant Nos.1 and 2 in Claim No.1 of 2019). It is therefore the case of the petitioners herein that since the dispute with respondent Nos.1 and 2 stood compromised, the continuance of the Arbitral Proceeding was unwarranted and the present Original Petitions have to be allowed. (A memo to that effect has also been filed by the respondent Nos.1 and 2).

42. The challenge to the impugned preliminary award dated 18.03.2021 by the petitioners herein as far as Claim No.1 is concerned is primarily on the ground that the respondent Nos.1 & 2 with whom the petitioners have now compromised is that these respondents could not have filed a single claim for dissolving the three Partnership Firms viz., **V.G.Panneerdas & Company, V.G.P. Investments** and **V.G.P. Beach Housing**.

43. It is submitted that the notice under Section 21 of the Arbitration and Conciliation Act, 1996 was issued by the respondent No.2 viz., V.G.S.Vinothraj



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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on 17.01.2018 and on 13.02.2018 only in respect of the two Partnership Firms viz., **V.G.Panneerdas and Company** and **V.G.P. Investments**. No notice was issued to dissolve the third Partnership Firm viz., **V.G.P. Beach Housing**. However, the respondent No.1 and respondent No.2 filed a Joint Claim Statement i.e., Claim No.1 of 2019 to dissolve all the three Partnership Firms viz., **V.G.Panneerdas & Company, V.G.P. Investments, and V.G.P. Beach Housing**.

44. It is submitted that a reference of the Arbitral Tribunal itself was contrary to Section 21 of the Arbitration and Conciliation Act, 1996. It is also further submitted that as far as reference for Claim Nos.2 to 4 of 2019 of the petitioners before the Arbitral Tribunal was concerned, it is pursuant to the petitioners letter dated 13.02.2018 issued under Section 21 of the Arbitration and Conciliation Act, 1996 and to that extent, the Arbitral Tribunal was well within its power to adjudicate the Claim Nos.2 to 4 of 2019 of the petitioners herein.

45. It is submitted that the Arbitral Tribunal has committed a grave error in rejecting the prayer in Claim Nos.2 to 4 of 2019 filed by the petitioners and



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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has passed the impugned preliminary award dated 18.03.2021 to dissolve the Partnership Firms on totally unjustifiable grounds.

46. It is further submitted that the mandate of Arbitral Tribunal also expired on **29.11.2020** after the pleadings were completed on **30.11.2019** for Claim No.1 of 2019 and on **19.11.2019** for Claim Nos.2 to 4 of 2019 filed by the petitioners herein. It is submitted that only the petitioners herein and the respondent Nos.1 to 3 had given a consent to the Arbitrator to proceed further whereas the respondent Nos.4 and 5 failed to consent to extend the mandate of the Arbitral Tribunal by six months under Sub Section 3 to 29-A of the Arbitration and Conciliation Act,1996.

47. Therefore, it is submitted that the impugned preliminary award passed by the learned Arbitrator on **18.03.2021** was illegal in the absence of the consent of the respondent Nos.4 and 5 for extending the mandate of the Arbitral Tribunal after the mandate expired on **29.11.2020** for Claim No.1 and after **19.11.2019** regarding Claim Nos.2 to 4 of the petitioner was illegal.

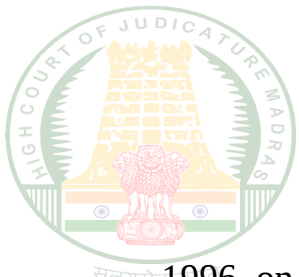


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48. Learned Senior Counsel for the petitioner further submitted that the petitioner Nos.3 to 5 and respondent Nos.4 and 5's sister namely Shanthi Gnanasekar had herself impleaded in Claim No.1 of 2019 pursuant to Order passed on 02.11.2019. However, her inclusion in the Arbitral Tribunal to dissolve and wind up all the group Companies in which the petitioners are directors/share holders and treat them as a single economic entity was subsequently interfered with by this Court on 24.02.2020 in C.M.A. Nos.4465, 4467 to 4469 of 2019. Consequently, Ms.Shanthi Gnanasekar's claim was deleted.

49. Despite the same, the Arbitral Tribunal exceeded its mandate by treating the three partnerships, along with all associated Companies, as a single economic entity without any pleadings or proof.

50. It is submitted that Claim No.1 of 2019 filed by the respondent Nos.1 and 2 could not have been proceeded. It is submitted that there is a patent illegality inasmuch as the Arbitral Tribunal has extended its mandate contrary to the terms of reference under Section 21 of the Arbitration and Conciliation Act,



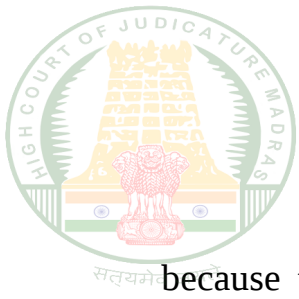
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

1996 on 17.01.2018 by the respondent No.2 herein and the petitioners on
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13.02.2018.

51. It is further submitted that the dispute between the contesting parties insofar as Claim No.1 of 2019 is concerned, which has been partly allowed by the impugned preliminary award dated 18.03.2021 has now been compromised.

52. It is therefore submitted that it is not open for the respondent Nos.4 and 5 [who were originally co-claimants along with the petitioners herein] in Claim Nos.2 to 4 of 2019 and were the respondent Nos.5 and 6 in Claim No.1 of 2019 filed by the respondent Nos.1 and 2 to insist on dissolution of partnership firms merely because they were subsequently transposed as the respondent Nos.4 and 5 in Arbitral Proceedings in claim No.2 to 4 of 2019 and object for setting aside of the impugned preliminary award dated 18.03.2021 in view of the subsequent development.

53. That apart, it is further submitted that the Arbitral Tribunal had exceeded the terms of reference by treating the Firm and the Companies a Single Economic Entity [SEE] without pleadings and without any proof, merely



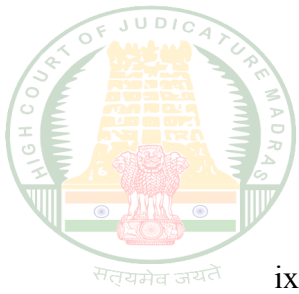
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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because the petitioner Nos.2 to 5 / respondent Nos.4 and 5's sister namely Santhi Gnanasekar was impleaded by the Arbitral Tribunal on 02.11.2019 which was ordered, though the said decision was ultimately set aside by this Court in C.M.A.Nos.4465 of 2019, 4467 to 4469 of 2019 on 24.02.2020.

54. The learned Senior counsel for the petitioners has relied on the following case laws:-

- i. **Duro Felguera S.A. Vs. Gangavaram Port Ltd.,** (2017) 9 SCC 729
- ii. **Srei Infrastructure Finance Ltd. Vs. Tuff Driling Pvt. Ltd.,** (2018) 11 SCC 470
- iii. **Harish Chandra & Company Vs. State of Uttar Pradesh,** 2016 (9) SCC 478
- iv. **Oil & Natural Gas Corporation Ltd. Vs. Saw Pipes Ltd.,** (2003) 5 SCC 705
- v. **McDermott International Inc. Vs. Burn Standard Co. Ltd. & others,** (2006) 11 SCC 181
- vi. **MSK Projects India (JV) Ltd Vs. State of Rajasthan and anr.,** (2011) 10 SCC 573
- vii. **Associate Builders Vs. Delhi Development Authority,** (2015) 3 SCC 49
- viii. **Ssanyong Engineering and Construction Company Ltd. Vs. National Highways Authority of India (NHAI),** (2019) 15 SCC 131



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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ix. **State of Jharkhand & ors Vs. HSS Integrated & anr.,** (2019) 9 SCC 798

x. **Patel Engineering Ltd. Vs. North Eastern Electric Power Corporation Ltd.,** (2020) 7 SCC 167

xi. **PSA SICAL Terminals Pvt. Ltd. Vs. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and ors.,** 2021 SCC OnLine SC 508

xii. **Alpine Housing Development corporation Vs. Ashok S Dhariwal and Ors,** 2023 SCC Online SC 55

xiii. **Canara Nidhi Limited Vs. M.Shashikala and Ors,** (2019) 9 SCC 462

xiv. **Fiza Developers and Inter trade Pvt Ltd. Vs. Amci Private Limited and Anr.,** (2009)17 SCC 796

xv. **Emkay Global Financial Services Limited Vs. Giridhar Sondhi,** (2018) 9 SCC 49

xvi. **Trojan and Company Vs. R M. N.N.Nagappa Chettiar,** (1953) 1 SCC 456

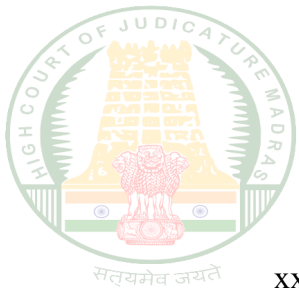
xvii. **Bharat Amratlal Kothari and Anr. Vs. Dosukhan Samadkhan Sindhi and Ors,** (2010) 1 SCC 234

xviii. **Mutha Construction Vs. Strategic Brand Solutions Pvt. Ltd,** SLP No. 1105/2022

xix. **Mahaveer Realities and Ors Vs. Shirish Jha,** 2023 : BHC-AS:21586

xx. **Indian Farmers Fertilizers Co-operative Ltd. Vs. MUS Manish Engineering Enterprises in Arb.Appeal w'sl1(4) No.5/2022**

xxi. **N.Sathyannarayana Murthy and Ors Vs. M.Venkatabala, [AIR 1989 AP 167]**



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xxii. **Hindustan Life Care Rep by its Partner Vs. Mr N.Ramesh**
Before Madras High Court, 2008 (5) CTC 481

55. The learned Senior Counsel for the respondent Nos.4 and 5 submitted in detail. Their submission is captured in their Written Submissions.

56. The learned Senior Counsel for the respondent Nos.4 and 5 submits that the pleadings were completed on **30.11.2019**. The one-year time period prescribed under the Arbitration and Conciliation Act, 1996, expired on **30.11.2020**. Letters for an extension were submitted by the Claimants between **20.10.2020** and **24.10.2020**. It is submitted that the Hon'ble Supreme Court extended the time limit periodically from **15.03.2020** to **28.02.2022** due to COVID-19 related constraints. Thus, it is submitted that the Award was delivered within the extended time frame.

57. It is further submitted that as per Section 34(2-A) of the Arbitration and Conciliation Act, 1996, as amended in 2015, it has been clarified that patent illegality does not include errors of law or re-appreciation of evidence. The learned Senior Counsel highlights that the arbitral award under challenge falls within this limitation and cannot be set aside merely on these grounds.



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58. Referring to Paragraphs 80 to 85 of the impugned preliminary award dated 18.03.2021, wherein the Arbitral Tribunal has addressed the objections raised during arguments, and it is submitted that the petitioner has failed to establish patent illegality in this regard, and therefore the Tribunal's decision should stand final.

59. It is submitted that Issues 5 and 6 were framed specifically to address whether dissolution was justified due to a lack of trust among partners or on just and equitable grounds. It is submitted that the petitioners had submitted to the jurisdiction of the Arbitral Tribunal. It is submitted that the decision in **V.H.Patel and Company and others Vs. Hirubai Himabai Patel and others**, 2004 (4) SCC 368 and in **Hindustan Life Care represented by partners and others Vs. N.Ramesh and 2 others**, 2008 (5) CTC 481 supports the Arbitral Tribunal's authority to order dissolution under Section 44(g) of the Indian Partnership Act, 1932 and that the relevant findings are detailed in Paragraphs 112, 113, 116 to 119, and 143 to 149 of the award.

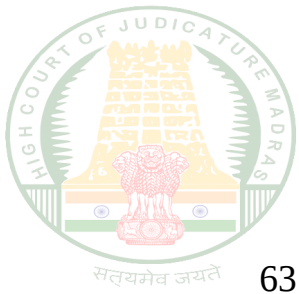


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60. It is further submitted that the funds of Partnership Firms were diverted to form Companies. The capitals of the Firms were treated as firm assets. Paragraphs 116 and 117 of the Award addresses this aspect. The learned Senior Counsel argues that the reliefs granted in Paragraph No.158 of the impugned preliminary award were confined to recovering firm assets and did not involve orders against the Companies.

61. It is submitted that no issue regarding the **V.G.P. Beach Firm's** dissolution was raised or framed before the Arbitral Tribunal. The parties participated in the proceedings without objections. Thus, the plea cannot be entertained in Section 34 proceedings.

62. The learned Senior Counsel submits that no memo evidencing a settlement was filed before this Court. Moreover, any settlement without the knowledge and consent of all partners, including respondent Nos.1 and 2 is invalid. It is submitted that the Arbitral Tribunal's reasoned Award dated 13.12.2023, rejecting such a memo, has not been challenged. It is submitted that Paragraph No.154 of the Award recognizes the respondents' 1/9th share, which remains unaffected by any private settlement.

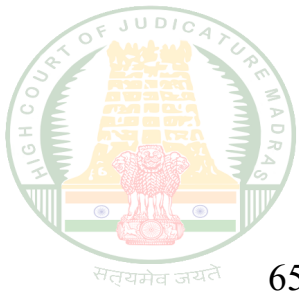


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63. Reliance is placed on precedents, including **1934 Law Weekly 521, 1960 SCC Online Raj 82, and 2021 SCC Online Kar 531**. The learned Senior Counsel for the respondent Nos.4 & 5 submits that the petitioner's actions, including financial settlements excluding other partners, justifies the impugned preliminary award for dissolution under Section 44(g) of the Indian Partnership Act, 1932. In light of the above, the learned Senior Counsel prays for the dismissal of the Original Petitions and for confirmation of the arbitral award.

64. The learned Senior Counsel for the respondent Nos.4 and 5 have also relied on the following decisions:-

- i. **Mathuralal Vs. Chiranji Lal, 1960 SCC Online Raj 82.**
- ii. **Seethai Achi Vs. Meyaappa Chetti & Ors, 1934 Law Weekly 521.**
- iii. **B.M.Devaiah Vs. C.P.Muthanna & ano, 2021 SCC Online Kar 531.**
- iv. **R.Rathanavel Chettiar & another Vs. V.Sivaraman & ors, (1999) 4 SCC 89.**
- v. **V.H. Patel & Co & Ors Vs. Hirubhai Himbhai Patel & ors, (2000) 4 SCC 368.**
- vi. **Yogendra N. Thakkar Vs. Vinay Balse, 2018 SCC Online Bom 1200.**



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65. Mr.Saravanakumar, learned counsel for the third respondent namely Mr.V.G.S.Rajesh (son of the second petitioner in O.P.Nos.310 to 312 of 2021 / first petitioner in O.P.No.313 of 2021) reiterates the submissions of the learned Senior Counsel for the Respondent No.4 and 5.

66. I have considered the arguments advanced by the learned Senior Counsel for the petitioners, the learned Counsel for the respondents No.1 and 2, learned counsel for the respondent No.3, and the learned Senior Counsel for the respondent Nos.4 and 5.

67. An award can be set aside if it is found to be contrary to the terms of the agreement or if the arbitrator acts beyond the scope of their authority. The scope of an arbitral tribunal's jurisdiction is confined to the terms of the arbitration agreement and the issues referred for arbitration.

68. An award that fails to consider the foundational principles of the contract or acts contrary to its terms amounts to a jurisdictional error can be set aside. Similarly, an awards that deal with matters not covered by the arbitration

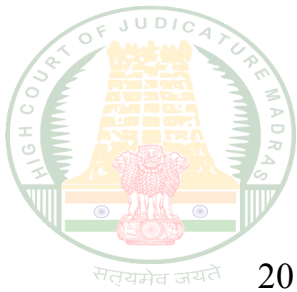


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agreement are patently illegal and are liable to be set aside under Section 34(2-A) of the Arbitration and Conciliation Act, 1996.

69. The point for consideration in these original petitions are as under:-

- a. Whether the Arbitral Tribunal was justified in passing the impugned preliminary Award dated 18.03.2021 by expanding the scope of reference contrary Section 21 Notices dated 17.01.2018 by accepting the prayer for dissolution of the 3rd Partnership Firm namely V.G.P.-Beach Housing in Claim No.1 of 2019 when the aforesaid notices were confined for dissolution V.G.Paneerdas and Company and V.G.P.Investments alone?
- b. Whether the Arbitral Tribunal was justified in passing the impugned preliminary Award dated 18.03.2021 by ordering winding up companies wherein the respondent partners were directors/shareholders by invoking doctrine of single economic entity?
- c. Whether the Arbitral Tribunal was justified in passing a composite impugned preliminary Award dated 18.03.2021 by ordering dissolution of the three partnership firm and companies in the facts and circumstances of the case.?
- d. Whether the Arbitral Tribunal was justified in passing the impugned preliminary award dated 18.03.2021 by rejecting the Claim Nos.2 to 4 of 2019 of the petitioners pursuant to Notices dated 13.02.2018 issued under Section 21 of the Arbitration and Conciliation Act, 1996 for valuation of the respective Firms and for a permission to continuance of the Firms and for exit of respondent Nos.1, 2 and 3 herein; and
- e. Whether the Arbitral Tribunal was justified in passing the impugned Preliminary Award in absence of consent of the respondent Nos.4 and 5 herein to continue with the Arbitral Proceedings to pass the Impugned Preliminary Award dated 18.03.2021 after the lapse of one year from the date of completion of pleading in Claim No.1 of



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2019 on 30.11.2019 and Claim Nos.2 to 4 of 2019 on 19.11.2019 in absence of consent by respondent Nos.4 and 5 herein?

- f. Whether the Arbitral Tribunal has the mandate to continue with the arbitral proceedings after passing the impugned preliminary award was passed in absence of the an application to extend its mandate?
- g. Whether the respondent Nos.4 &5 herein who have not participated in the Arbitral Proceedings can now oppose to the compromise between the petitioners and respondent Nos.1 and 2 in these Original Petitions?
- h. Whether the Arbitral Proceedings can continue without an application to extend its mandate?

70. This is a peculiar case where the Arbitral Tribunal has accepted the prayer for dissolution of the Partnership Firms [**Claim No.1 of 2019**] sought for by the respondent Nos.1 and 2 herein [the Claimants in [**Claim No.1 of 2019**]] even though it found fault with the petitioners and the respondent Nos.1,2 and 3 herein in their conduct of business of the three partnership.

71. **Claim No.1 of 2019** was filed for dissolution of the three Partnership Firms namely **V.G.Panneerdas & Company, V.G.P. Investments, and V.G.P.Beach Housing**. In the impugned preliminary award dated **18.03.2021**, the Arbitral Tribunal has also ordered for accounting of all transactions of sales by the partners of these firms:-



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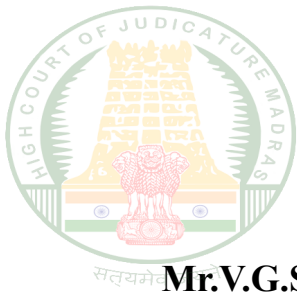
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

- i. between 01.01.2013 and 13.06.2017;
- ii. between 01.07.2017 to 30.07.2018 – being the date after the 2nd respondent exited from the Management of the three Partnership Firms; and
- iii. after 31.07.2018- being the date of restraint order of alienation of this Court.

72. In Paragraph 156 of the impugned preliminary award dated **18.03.2021**, the Arbitral Tribunal has therefore appointed **Mr.P.Rajagopal**, an Advocate, as a Receiver.

73. Arbitral Tribunal has passed the impugned preliminary award and has ordered dissolution of the above three Partnership Firms and the companies by invoking single economic entity doctrine / group of companies doctrine under just and equitable clause under Section 44(g) of the Indian Partnership Act, 1932.

74. After the impugned preliminary award dated **18.03.2021** was passed by the Arbitral Tribunal, the petitioners herein have compromised the dispute with respondent Nos.1 and 2, namely **Mr. V.G.S.Vinodhraj** and



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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Mr.V.G.Selvaraj (the Son and Father), who were the proponents of **Claim No.1 of 2019** for dissolution of the three Partnership Firms / concern.

75. To that effect, they have also filed a Memo of Compromise before the Arbitral Tribunal dated **23.11.2023**, stating that they have compromised the dispute and requested the Arbitral Tribunal to terminate its mandate.

76. The contesting respondents herein, i.e., respondent Nos.3, 4 and 5 herein (Mr.V.G.S.Rajesh Alias Amaladas, Mr.V.G.P.Prasaddas and Mr.V.G.P.Murphydas) have however raised their objections before the Arbitral Tribunal to reject the Memo of Compromise between the petitioners herein and respondents Nos.1 and 2 herein, namely Mr.V.G.S.Vinodhraj and Mr.V.G.Selvaraj (the Son and Father), who were the proponents of Claim No.1 of 2019.

77. After hearing the parties, an order came to be passed on **13.12.2023** by the Arbitral Tribunal. The disposition is recorded in Paragraph No.16 of the aforesaid Order dated **13.12.2023** of the Arbitral Tribunal which reads as under:-



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1. *The Memo of the Claimants requesting the arbitral proceeding to be terminated and the claim to be closed is taken on record;*
2. *The Claimants are taken as having abandoned their rights under the Award in lieu of private arrangement with Respondents No.1 to 4. This shall not foreclose the Respondents No.5 to 7* to work out their rights in accordance with law;*
3. *The Respondents No.5 and 6 may approach the High Court for directions for transposition as Claimants to pursue their rights;*
4. *The rights of the Respondent No.7 will abide similarly by directions of the High Court, when the rights of the partners who want to pursue remedies through Arbitral Tribunal/ High Court is considered.*
5. *The Receiver shall file appropriate Memo before the High Court that suggests that his mandate stands terminated, and the services may be revived if it is expedient in future.*

*[*Respondent Nos.3,4 and 5 herein i.e., Mr.V.G.S.Rajesh Alias Amaladas, Mr.V.G.P.Prasad Dass and Mr.V.G.P. Murpy Dass]*

78. A reading of the above disposition makes it clear that the Arbitral Tribunal has not decided to terminate its mandate. The Arbitral Tribunal has also stated that merely because Claimants, i.e., respondent Nos.1 and 2 herein, have abandoned their rights under the impugned preliminary award in lieu of a private arrangement with the petitioners herein, would not foreclose the rights of



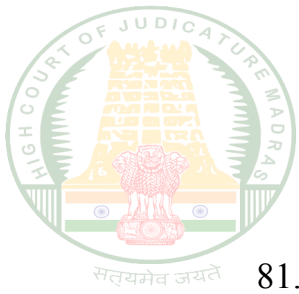
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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respondents Nos.3, 4 and 5 herein (respondent Nos.5 to 7 before the Arbitral Tribunal) to work out their rights in accordance with law.

79. The Arbitral Tribunal has further observed that respondent Nos.4 and 5 herein, who were respondent Nos.5 and 6 before the Arbitral Tribunal were to approach this Court for a direction for transposing themselves as Claimants to pursue their rights. However, respondent Nos.4 and 5 have not filed any application in that direction before this Court. Instead, they are opposing the prayer in these petitions.

80. Respondent Nos.4 and 5 herein were fence sitters before the Arbitral Tribunal passed the impugned preliminary award dated **18.03.2021**. They are fence sitters even after the Arbitral Tribunal passed its order dated **13.12.2023** pursuant to Memo of Compromise between the petitioners herein and respondents Nos.1 and 2 (the Claimants wanted dissolution of the three Partnership Firms in Claim No.1 of 2019). They are fence sitters even before this Court as they have not filed any application as directed by the Arbitral Tribunal.



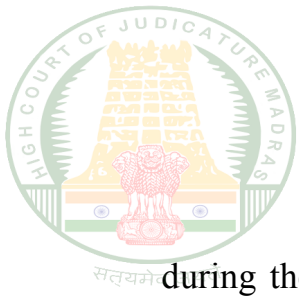
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81. Before proceeding further, it will be useful to answer a preliminary issue as to whether the impugned preliminary award is an “interim award” or an order passed under Section 17 of the Arbitration and Conciliation Act, 1996.

82. If the impugned preliminary award is an Order under Section 17 of the Arbitration and Conciliation Act, 1996 simplicitor as it has also appointed an receiver, remedy under Section 34 of the Arbitration and Conciliation Act, 1996 is not available to the petitioners.

83. Therefore, **Arb.O.P.(Com.Div.) Nos.310 to 313 of 2021** may have to be held not maintainable before this Court and the petitioners may have to be relegated to work out the present remedy before the Division Bench in terms of Rule 9(v) of the Madras High Court (Arbitration) Rules, 2020 under Section 37 of the Arbitration and Conciliation Act, 1996 insofar as challenge to the impugned preliminary award in **Arb.O.P.(Com.Div.) Nos.310 to 313 of 2021**.

84. However, it should be remembered that as per Section 31(6) of the Arbitration and Conciliation Act, 1996, an Arbitral Tribunal may, at any time,

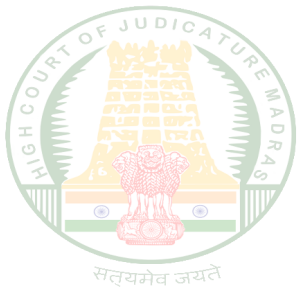


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during the Arbitral proceedings, make an “interim arbitral award” on any matter with respect to which it may make a “final arbitral award”.

85. The expression “interim award” has not been defined in Arbitration and Conciliation Act, 1996. However, as per Section 2(c) of the Arbitration and Conciliation Act, 1996, an “arbitral award” includes an “interim award”.

86. The impugned preliminary award ordering dissolution of three Partnership Firms is akin to a “preliminary decree” under Order 20 Rule 15 of the Code of Civil Procedure, 1908. Under Order 20 Rule 15 of the Code of Civil Procedure, 1908, in a suit for dissolution of a partnership firm or taking a partnership accounts, Court may before passing a final decree, pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or deemed to have been dissolved, and by directing such accounts to be taken, and other acts to be done as it thinks fit. A receiver has been appointed for preparing documents of the three Partnership Firms.

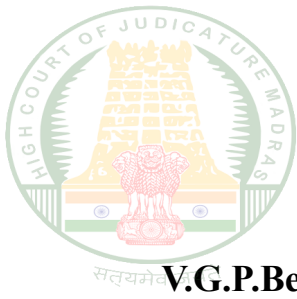


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87. The direction of the Arbitral Tribunal in the impugned preliminary award appointing a receiver, although was in the exercise of powers conferred 17 of the Arbitration and Conciliation Act, 1996, it is part of disposition in the impugned preliminary award as it has been passed before passing of the final award. The appointment of a receiver is not a stand alone order. Therefore, the impugned preliminary award is an “award” i.e., an “interim award” and for all practical purpose is amenable to a challenge under Section 34 of the Arbitration and Conciliation Act, 1996.

88. Therefore, it has to be held that the challenge to the impugned preliminary Award is maintainable before this Court under Section 34 of the Arbitration and Conciliation Act, 1996. Having answered the preliminary issue, I shall deal with rest of the issues.

89. A composite reference was made to the Arbitral Tribunal in **Claim No.1 of 2019** in respect of three distinct Partnership Agreement of the three Partnership entities viz., **V.G.Panneerdas & Company, V.G.P.Investments** and



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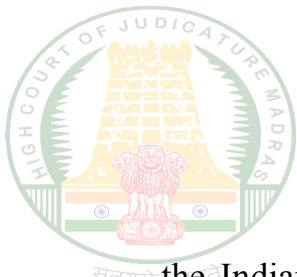
V.G.P.Beach Housing. These partnerships arise out of three separate Partnership Deeds and have resulted in independent relationships between its partners.

90. Before ordering dissolution of Partnership Firms, particularly under just and equitable clause under Section 44(g) of the Indian Partnership Act, 1932, the Courts / Arbitral Tribunals have to endeavor to see whether any alternative just relief without dissolving the firm could be granted to the plaintiffs / claimants as the case may be.

91. It has to be borne in mind that an Arbitral Tribunals derives its jurisdiction solely from the arbitration agreement. An Arbitral Tribunal cannot assume powers which were not granted to it by the parties.

92. The power to dissolve partnership concerns on just and equitable clause must be invoked only when supported by clear evidence that the firm's business cannot continue.

93. Further, the Arbitral Tribunal cannot dissolve partnerships in the absence of an explicit agreement clause permitting such dissolution under Section 44(g) of



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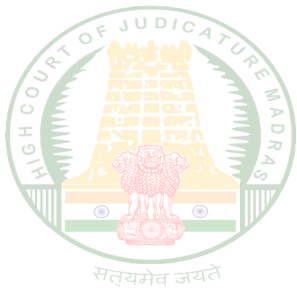
the Indian Partnership Act, 1932. That apart, the petitioners and the contesting respondent Nos.3 to 5 herein are members of the same Family.

94. This Court in **Hindustan Life Care represented by partners and others Vs. N.Ramesh and 2 others**, 2008 (5) CTC 481, held that it is for the Court to decide to dissolve the partnership on a just and equitable ground. The Court observed as under:-

*“51. Short of repetition, it must be noted that the **dissolution as per the terms of agreement could be brought forth only on the majority of the partners agreeing to do so.** By reason of the agreed terms binding on the parties and regulating the rights of the partners inter se, I do not agree with the submission of the learned counsel appearing for the first respondent that the learned Arbitrator has authority to order a dissolution by invoking the just and equitable clause. The clause on dissolution as already referred to reads as follows:*

“21. This partnership agreement will not be binding on any partner in the event of dissolution of the Company. The dissolution of the firm can be initiated only if the majority of the partners agree to do so. If any partner or two partners wish to leave the firm, they shall do so only by retiring from the partnership.”

“Clause 14: The provisions of the Partnership Act, 1932 shall apply in so far as other matters are concerned.



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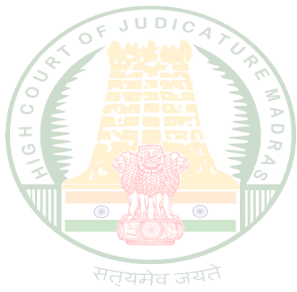
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

Clause 15: In the case of disputes among the partners the provisions of the Indian Arbitration Act, 1940 shall apply.”

52.

53. *Touching on the role of the Arbitrator vis-a-vis a Court's jurisdiction, in the decision reported in Markfed Vanaspati and Allied Industry v. Union of India, 2007 (7) SCC 679, the Supreme Court quoted with approval Russel on Arbitration as follows:*

“An Arbitrator is neither more or less than a private judge of a private Court (called an Arbitral Tribunal) who gives a private judgment (called an award). He is a judge in that a dispute is submitted to him : he is not a mere investigator but a person before whom material is placed by the parties, being either or both of evidence and submissions : he gives a decision in accordance with his duty to hold the scales fairly between the disputants in accordance with some recognized system of law and rules of natural justice. He is private in so far as (1) he is chosen and paid by the disputants (2) he does not sit in public (3) he acts in accordance with privately chosen procedure so far as that is not repugnant to public policy (4) so far as the law allows he is set up to the exclusion of the State Courts (5) his authority and powers are only whatsoever he is given by the disputants agreement (6) the effectiveness of his powers derives wholly from the private law of contract and accordingly the nature and exercise of those powers must not be contrary to the proper law of the contract or the public policy of England bearing in mind that the paramount public policy is that freedom of



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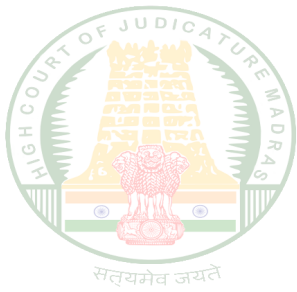
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

contract is not lightly to be inferred with. Whatever has been mentioned by Russell in this paragraph is equally true for Indian Arbitrators.”

95. There, the Court held that a Partnership Firm cannot be dissolved on just and equitable clause merely because some of the disgruntled partners wanted its distribution. That apart, it has also been held that the Arbitral Tribunal can act only within the confines of the Agreement. There, the Agreement did not confer the power to dissolve the Partnership Firm under just and equitable clause under Section 44(g) of the Indian Partnership Act, 1932.

96. In **N.Sathyannarayana Murthy and others Vs. M.Venkatabala** reported in **AIR 1989 AP 167**, the Andhra Pradesh High Court held as under:-

“20. In the light of the above discussion it must be held that the width of the words “just and equitable” in S.44(g) of the Act is of wide import, with unfettered discretion on the exercise of the power by the Court and it is incapable of precise definition. But itself is a limitation upon the court to exercise the discretion wisely taking into account not only the true intent and meaning of the articles of the partnership but also general interest of all the partners; the essential purpose for which the partnership has been formed and the detriment the partnership suffers from, while at the same time assuaging the rights of the aggrieved partners. The court would induct into all relevant consideration eschewing irrelevant or its



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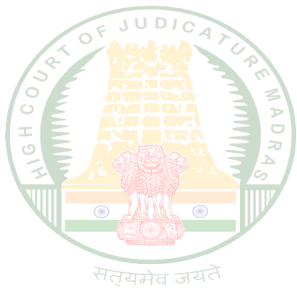
inclination to dissolve the firm keeping in mind that it operates harshly annihilating the on going business on profitable lines; it must find whether it is no longer reasonably possible to carry the business according to true interest and meaning of the articles of the partnership. Each case furnishes its own peculiar facts calling for applicable or non-applicable of CL (g). The court also must endeavour to see whether any alternative just relief without dissolving the firm could be granted to the plaintiff. On considering all the pros and cons if the court is of opinion that equity and justice demands dissolution, it is perfectly open to the Court to exercise the power under S. 44(g) of the Act. The cases dealt by the Privy Council, House of Lords and the Supreme Court are cases relate to the Company, but the meaning and purport is the same shedding illumination in its application to varied situations, though the partnership is founded on contract and not on status.

....

- 27.** *From the above discussion it is clear that though there is a wide power under S.44(g) of the Act while exercising equitable jurisdiction to dissolve a firm, the Court has to consider the circumstances whether it would warrant dissolution or without dissolution whether the firm can be allowed to subsist in the interest of the remaining partners without jeopardising the right of retiring a partner. The Court would be circumspect and take into account all the facts and circumstances and would mould the relief on the exigencies available on the facts in a given case.*

.....

- 28.** *The question, therefore is, whether the facts in this case, warrant dissolution. As already stated that the respondent is having only 1/5th share. It is an on-going firm earning profits and the assets were improved. The management is*



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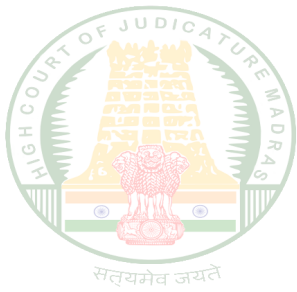


Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

on sound lines. None of the partners except the respondent had any grievance in the management by the 1st appellant. There is no detriment to the interest of any of the partners. Therefore, by the hammer of dissolving the firm not only the goodwill would be lost but also a harsh onslaught annihilating the existence of a firm which otherwise existed on sound lines, for over 27 years prior to the suit. Therefore, I have no hesitation to hold that the facts and circumstances do not warrant dissolution of the firm. It is next contended by Sri Suryanarayana Rao, that the trial Court exercised discretionary power and placing reliance on Rehamtunnissa Begum's case (AIR 1917 PC 116) (supra) argued that the appellate Court would not imperil the discretion exercised by the trial Court. If the contention is subscribed the co-extensive power of the appellate Court would be rendered fruitless. It is true that the Privy Council pointed out in that case thus:

“It cannot be said that the court acted capriciously or in disregard of any legal principles in exercise of its jurisdiction which can fairly be recorded as amply warrant for the purpose of court's discretion.”

In that case the defendant was doing his own business apart from the partnership business. Under those circumstances, dissolution was ordered by the trial Judge and confirmed by the Privy Council though interfered by the appellate Court. It must be remembered that if the broad contention receives credence then the very purpose of judicial review will be scuttled and the decree of the trial Court, though founded on untenable grounds, cannot be interfered with by the appellate court as a Court of equity and conscience. It may amount to mere thumb and a capricious decree of the Court below has to be affirmed. It may be made clear that before disturbing the decree of the trial Court all the facts and circumstances that weighed with the court below are to be given due credence and



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

after due consideration it is open to the appellate Court on the facts and circumstances in a given case either to affirm or reverse the decree. I accordingly hold that the appellate Court's discretion is not fettered to interfere with the decree of the trial Court."

97. As held above, dissolution of the Partnership Firm under just and equitable clause, has to be resorted sparingly. Merely because discord among the remaining members of the Partnership Firm *ipso facto* would not justify dissolution of the Partnership Firm when the Partnership Firm is / are having business / transactions and have taken up the responsibilities with third parties without selling the real estates or by developing the real estates for the third parties under the Construction Agreements.

98. The first option would have been to determine the accounts or to finalize the accounts and thereafter calling upon the persons and the management of the Partnership Firm to settle the payments and only in absence / failure to settle the payments and on account of the failure of the dominating partners to cooperate, the question of dissolution of the Partnership Firm would arise.

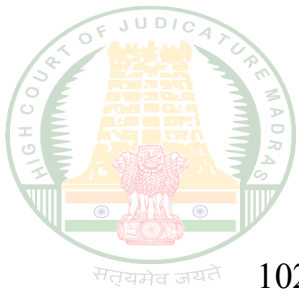


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99. The Arbitral Tribunal assumed that Mr.V.G.P.Selvaraj [Claimant No.2] faced only two options i.e., dissolution or exclusion without substantive evidence to support this binary choice. Such findings are speculative and lack evidentiary basis.

100. The Arbitral Tribunal's reliance on speculative reasoning violates the principle that arbitral awards must be based on evidence presented during the proceedings. The Hon'ble Supreme Court in **Associate Builders Vs. DDA, (2015) 3 SCC 49**, held that findings not backed by evidence constitute a violation of public policy and warrant interference under Section 34 of the Arbitration and Conciliation Act, 1996.

101. Dissolution of the three Partnership Firms, where the petitioners and respondent Nos.3 to 5 still remain partners after the exit of respondent Nos.1 and 2 (the proponents of **Claim No.1 of 2019**) therefore cannot be justified, especially when the majority of the partners of the three Partnership Firms wish to continue the business even after the exit of the respondent Nos.1 and 2 (the proponents of **Claim No.1 of 2019**).



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102. There is a scope for continuing the business between the remaining parties after the dispute with the respondent Nos.1 and 2 has been settled. The cause of action for dissolving the Partnership Firms has been removed with the exit of the respondent Nos.1 and 2.

103. It is for the remaining partners to either continue or exit and / or claim for valuation of their shares after the accounts were finalized. The remedy of dissolution should be a last resort when other alternative reliefs are not capable to be being ordered / decreed or awarded.

104. That apart, under Section 18 of the Indian Partnership Act, 1932, partners are agents of the Firm for the business of the Firm. The proponents of **Claim No.1 of 2019**, namely, respondents Nos.1 and 2, have decided to exit the partnership. Consequently, the cause of action to dissolve the partnership does not survive.

105. That apart, dissolution of the three Partnership Firms cannot be imposed particularly where an alternate reliefs could have been granted by the Arbitral Tribunal. Thus, the impugned preliminary award is liable to set aside.



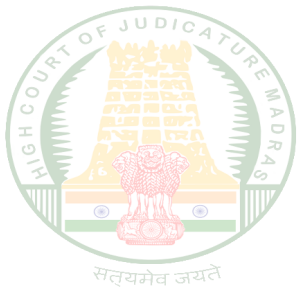
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106. Similarly, the contention of the petitioners regarding the maintainability of the composite reference to disputes relating to three distinct Partnership Firms also merits consideration.

107. In **Duro Felguera, S.A. Vs. Gangavaram Port Ltd., (2017) 9 SCC 729**, the Hon'ble Supreme Court categorically held that arbitration proceedings must be conducted independently when agreements are distinct and unrelated.

108. The Hon'ble Supreme Court emphasized that composite references are permissible only in cases where agreements are interconnected by their terms or form part of a single commercial transaction. The relevant paragraphs from the said Judgment reads as under:-

“42. The learned Senior Counsel for GPL relied upon Chloro Controls India (P) Ltd. [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689], to contend that where various agreements constitute a composite transaction, court can refer disputes to arbitration if all ancillary agreements are relatable to principal agreement and performance of one agreement is so intrinsically interlinked with other agreements. Even though Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] has considered the doctrine of “composite reference”,



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

“composite performance”, etc., ratio of Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689] may not be applicable to the case in hand. In Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689], the arbitration clause in the principal agreement i.e. Clause (30) required that any dispute or difference arising under or in connection with the principal (mother) agreement, which could not be settled by friendly negotiation and agreement between the parties, would be finally settled by arbitration conducted in accordance with Rules of ICC. The words thereon “under and in connection with” in the principal agreement was very wide to make it more comprehensive. In that background, the performance of all other agreements by respective parties including third parties/non-signatories had to fall in line with the principal agreement. In such factual background, it was held that all agreements pertaining to the entire disputes are to be settled by a “composite reference”. The case in hand stands entirely on different footing. As discussed earlier, all five different packages as well as the Corporate Guarantee have separate arbitration clauses and they do not depend on the terms and conditions of the Original Package No. 4 TD nor on the MoU, which is intended to have clarity in execution of the work.

.....

49.*On the facts of the instant case, there is no dispute that there are five distinct contracts pertaining to five different works. No doubt that all the works put together are for the expansion of facilities at Gangavaram Port. However, the parties took a conscious decision to split the works which led to five separate contracts and consequently an arbitration clause in each split contract was retained. The*



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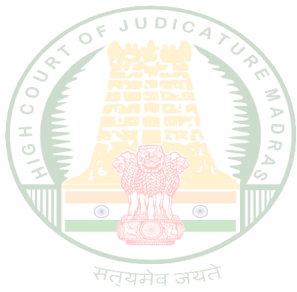
sixth one, namely, the Corporate Guarantee also contains an arbitration clause.

.....

50. The main thrust of the arguments of Mr Mukul Rohatgi, learned Senior Counsel, is that the memorandum of understanding (hereinafter referred to as “MoU”) has subsumed all the separate agreements and therefore and thereafter there can only be one agreement and, if so, only one Arbitral Tribunal for all the disputes emanating from the five different agreements and the Corporate Guarantee. This submission in our view is misconceived. The whole purpose of the MoU is evident from its text, the relevant portion of which has been extracted below:

“Whereas the parties have entered into different package contracts for execution of bulk material handling system under “Original Package No.4 tender document” covering ship unloaders, stackers, reclaimers, in-motion wagon loading system, conveyors, transfer towers, electrical and control works, civil works, etc. and in order to have more clarity on technical and execution related matters, the parties hereby agree that the works shall be carried out as per the following priority of documents;

1. Annexure I to the letter of award issued for Package 4 contract.
2. Annexure III to the Letter of Award issued for Packages 4, 6, 7, 8 and 9 contracts.
3. Clarifications/Addenda 1 to 4 (in the descending order) issued by the employer to the Original Package 4 tender document.



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

4. *The Original Package No. 4 tender document issued by the employer.*

5. *Financial technical bid submitted by the contractors in response to the Original Package No. 4 tender document.”*

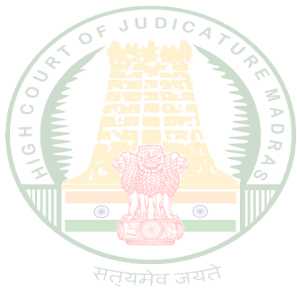
(emphasis supplied)

.....

51. *It is clear that there is no novation by substitution of all the five agreements nor is there a merger of all into one. The reference to Original Package No. 4 tender document is only for better clarity on technical and execution related matters.*

55. *The learned Senior Counsel also contended that for convenience, it is expedient that a single Arbitral Tribunal is constituted. We are afraid that this contention also cannot be appreciated. The parties are free to agree to anything for their convenience but once such terms are reduced to an agreement, they can resile from them only in accordance with law.*

60. *In the case at hand, there are six arbitrable agreements (five agreements for works and one Corporate Guarantee) and each agreement contains a provision for arbitration. Hence, there has to be an Arbitral Tribunal for the disputes pertaining to each agreement. While the arbitrators can be the same, there has to be six Tribunals — two for international commercial arbitration involving the Spanish Company M/s Duro Felguera, S.A. and four for the domestic.”*

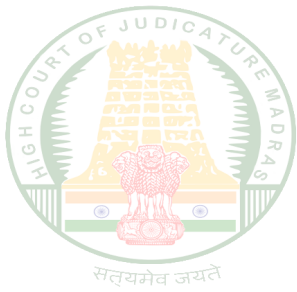


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109. The Arbitral Tribunal, in Paragraph 80 of the Impugned Award, has erroneously dismissed the petitioners preliminary objections regarding the maintainability of a composite reference to dispute relating to these three distinct entities without adequately discussing or applying the principles laid down by the Hon'ble Supreme Court in **Duro Felguera, S.A. Vs. Gangavaram Port Ltd., (2017) 9 SCC 729**, which emphasizes the necessity of independent arbitration proceedings when agreements are separate distinct and unrelated.

110. The Arbitral Tribunal failed to frame a distinct issue regarding the maintainability of a composite reference despite the petitioner's specific objections. Instead, it embedded the maintainability concerns within Issues 5 and 7, which primarily dealt with the liability for dissolution and entitlement to claims.

111. In the present case, the partnerships – **V.G.Panneerdas & Company, V.G.P.Investments**, and **V.G.P.Beach Housing** are governed by separate partnership deeds and operate independently, with distinct rights and obligations for the partners.



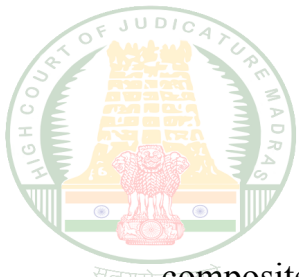
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112. The Arbitral Tribunal failed to note that the respondents No.1 and 2 had not established any legal or evidential basis for inviting a composite award under three different partnership agreements.

113. The Arbitral Tribunal ought to have ruled explicitly on its jurisdiction, including the maintainability of composite references in **Claim No.1 of 2019** for dissolution of three Partnership Firms under Section 16 of the Arbitration and Conciliation Act, 1996.

114. The Arbitral Tribunal's reliance on procedural provisions under the Code of Civil Procedure (Order 1 Rule 9 and Order 2 Rule 3) was also misplaced as Section 19 of the Arbitration and Conciliation Act, 1996 has displaced the strict procedural mandates of the Code of Civil Procedure.

115. Even otherwise under the principles of Code of Civil Procedure, joinder of causes of action and parties is permissible only when common questions of law or fact arise from the same transaction. In this case, the three partnership entities are distinct, with separate causes of action, and thereby rendering a



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116. The Arbitral Tribunal's failure to address the maintainability of the composite reference as a standalone issue disregard a binding precedent in ***Duro Felguera*** (*cited supra*), and the misapplication of procedural principles under the Code of Civil Procedure render the impugned award legally unsustainable.

117. The Arbitral Tribunal wrongly invoked the principle in ***Chloro Control Vs. Severn Trent Water Purification Inc., (2013) 1 SCC 641***, to justify the composite reference.

118. The Arbitral Tribunal's conclusion in Paragraph 120 of the impugned preliminary award that partnership assets include properties held by VGP Group companies was flawed. It extended its jurisdiction to adjudicate on the ownership of company assets, which falls within the exclusive domain of the company law forums such as the National Company Law Arbitral Tribunal (NCLT).



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119. The group company doctrine must be cautiously applied, ensuring that it aligns with the intent of the contracting parties. The Arbitral Tribunal cannot extend their jurisdiction under the guise of this doctrine, especially when dissolution of companies was not explicitly within the terms of reference before the Arbitral Tribunal. The doctrine of group companies is not a tool for disregarding corporate separateness unless absolutely necessary.

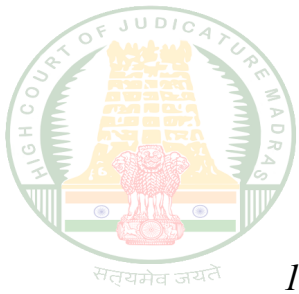
120. **Chloro Contro case** (*cited supra*) dealt with an exceptional circumstances where composite references were permitted involving signatories and non-signatories within a group of companies. The distinct rights to wind up the group Companies and liquidate the assets held by the group Companies would vest with the National Company Law Tribunal (NCLT) under the provisions of the Companies Act, 2013. Here, the Arbitral Tribunal failed to demonstrate any such exceptional interconnection or mutual performance of obligations among the three partnerships.

121. This issue was further elaborated by the Hon'ble Supreme Court in **Cox & Kings Ltd., Vs. SAP India (P) Ltd., (2022) 8 SCC 1**, where a reference



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larger bench of the Hon'ble Supreme Court answered as under:-

“152. In *Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689]*, this Court joined the non-signatory entities as parties to the arbitration agreement in their own rights on the basis that they were signatories to ancillary agreements which were closely interlinked with the performance of the principal agreement containing the arbitration agreement. This Court in *Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689]* reasoned that the non-signatory entities, being part of the same corporate group as the signatory parties, were subsidiaries in interest or subsidiary companies, and therefore were “claiming through or under” the signatory parties. As held above, the phrase “claiming through or under” only applies to entities acting in a derivative capacity and not with respect to joinder of parties in their own right. Therefore, we hold that the approach of this Court in *Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689]* to the extent that it traced the Group of Companies doctrine to the phrase “claiming through or under” is erroneous and against the well-established principles of contract and commercial law. As observed above, the existence of the Group of Companies doctrine is intrinsically found on the principle of the mutual intent of parties to a commercial bargain.



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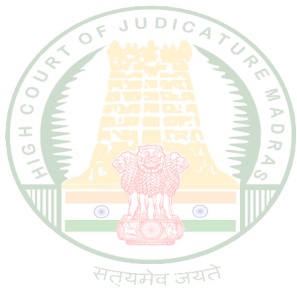


Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

153.N.V.Ramana, C.J. also sought our consideration on the question of whether the “Group of Companies doctrine” as expounded by *Chloro Controls [Chloro Controls India (P) Ltd. v. Severn Trent Water Purification Inc., (2013) 1 SCC 641 : (2013) 1 SCC (Civ) 689]* and subsequent judgments is valid in law. The Group of Companies doctrine has important utility in determining the mutual intention of the parties in the context of complex transactions involving multiple parties and multiple agreements. Moreover, the doctrine has been substantively entrenched in the Indian arbitration jurisprudence. We are aware of the fact that the Group of Companies doctrine has not found favour in some other jurisdictions, including in English law. However, we deem it appropriate to retain the doctrine which has held the field in Indian jurisprudence though by firmly establishing it within the realm of the mutual consent or the mutual intent of the parties to a commercial bargain. This will ensure on the one hand that Indian arbitration law retains a sense of dynamism so as to respond to contemporary challenges. At the same time, structuring the doctrine in the manner suggested so as to ground it in settled principles governing the elucidation of mutual intent is necessary. This will ensure that the doctrine has a jurisprudential foundation in party autonomy and consent to arbitrate.

.....

230.2.The Group of Companies doctrine [As delineated in para 40 of *ONGC Ltd. v. Discovery Enterprises (P) Ltd., (2022) 8 SCC 42, para 40 : (2022) 4 SCC (Civ) 80.*] is also premised on ascertaining the intention of the non-signatory to be party to an arbitration agreement. The doctrine requires the intention to be gathered from additional factors such as di-



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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

rect relationship with the signatory parties, commonality of subject-matter, composite nature of the transaction, and performance of the contract.”

122. Recently, in **Cox & Kings Ltd. Vs. SAP India (P) Ltd., (2024) 4**

SCC 1 : (2024) 251 Comp Cas 680, the Hon’ble Supreme Court held as

under:-

169. *In case of joinder of non-signatory parties to an arbitration agreement, the following two scenarios will prominently emerge : first, where a signatory party to an arbitration agreement seeks joinder of a non-signatory party to the arbitration agreement; and second, where a non-signatory party itself seeks invocation of an arbitration agreement. In both the scenarios, the referral court will be required to prima facie rule on the existence of the arbitration agreement and whether the non-signatory is a veritable party to the arbitration agreement. In view of the complexity of such a determination, the referral court should leave it for the Arbitral Tribunal to decide whether the non-signatory party is indeed a party to the arbitration agreement on the basis of the factual evidence and application of legal doctrine. **The Tribunal can delve into the factual, circumstantial, and legal aspects of the matter to decide whether its jurisdiction extends to the non-signatory party. In the process, the Tribunal should comply with the requirements of principles of natural justice such as giving opportunity to the non-signatory to raise objections with regard to the jurisdiction of the Arbitral Tribunal.** This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of determination of true parties to an arbitration agreement to be decided by the Arbitral Tribunal under Section 16.*



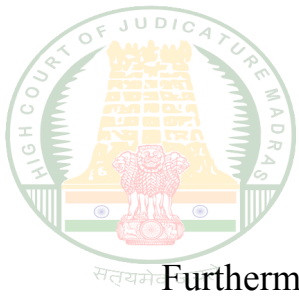
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123. The respondent No.3 is the son of the petitioner No.2. The respondent Nos.4 and 5 are the younger brothers / siblings of the petitioner Nos.2 to 5. Petitioner No.2 himself is the paternal uncle of the petitioner Nos.2 to 4 and respondent Nos.4 and 5. Thus, respondent No.3 is the 1st cousin of the petitioner Nos.3 to 5 and the respondent Nos.4 and 5.

124. The conduct of Respondent No.3 who is the son of the petitioner No.2 shows that he had indulged in several transactions contrary to the interest of the Partnership Firm and has not rendered proper accounts.

125. Therefore, the impugned preliminary award is liable to be set aside under Section 34(2)(a)(iv) of the Arbitration and Conciliation Act, 1996, for exceeding the scope of the Arbitral Tribunal's jurisdiction and for procedural irregularities undermining the arbitral process.

126. An independent assessment should have been conducted for each Partnership Firm. Even if winding up one partnership was inspired by just and equitable clause, it cannot be uniformly applied to all three Partnership Firms.



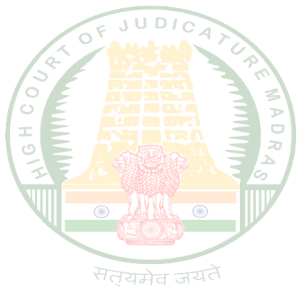
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Furthermore, as pointed out notices were served for only two of the Partnership Firms, i.e., **V.G.Panneerdas & Company** and **V.G.P.Investments**. Yet, the arbitration was conducted collectively for all three Partnership Firms. Thus, the Arbitral Tribunal, exceeded its jurisdiction contrary to the reference in **O.P.Nos.577 to 579 of 2018**.

127. The Arbitral Tribunal, being a creation of the agreements between the disputing parties, cannot expand its jurisdiction inherently, particularly when it concludes that the dissolution of the Partnership Firm is justified under Section 44(g) of the Indian Partnership Act, 1932.

128. In my view, the petitioner's challenge to the impugned preliminary award is well-founded as the findings of the Arbitral Tribunal in Paragraphs 95, 112, 119 (10) and 120 are speculative and lacked evidentiary support, and beyond the jurisdiction of the Tribunal.

129. Even if it appears some of the petitioners having not maintained proper accounts, it is for the respondent Nos.3, 4 and 5 to initiate appropriate proceedings as has been ordered in the disposition dated **13.12.2023** by the Arbitral Tribunal.

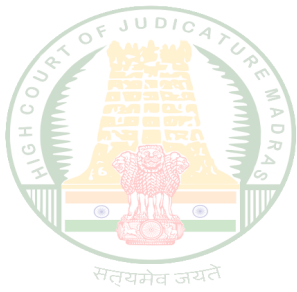


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130. In Paragraph No.95, the Arbitral Tribunal assumed that the dissolution of the partnership was warranted based on Respondent No.2's purported demand to include his son as a partner. This finding disregards the express provisions of the partnership deed, which does not permit the admission of any third party without the unanimous consent of all partners.

131. The Arbitral Tribunal acknowledged the explicit terms of the partnership agreement, which delineate the names of the partners and restrict the inclusion of new partners without unanimous consent. Nevertheless, the Arbitral Tribunal assumed that respondent No.2 herein could have dissolved the partnership or negotiated his second son namely V.G.S.Bharathraj's inclusion in the partnership despite the agreement expressly prohibiting such actions.

132. In Paragraph 112 of impugned preliminary award, the Arbitral Tribunal speculated that the list of partnership properties was incomplete without concrete evidence to support this assertion. It further assumed that assets held in the names of companies could potentially be partnership assets without definitive proof.



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133. Such assumptions disregard the principle that corporate entities have a distinct legal identity. The Hon'ble Supreme Court in **Vodafone International Holdings B.V. Vs. Union of India, (2012) 6 SCC 613**, reaffirmed the doctrine of corporate separateness, which cannot be casually overridden.

134. In Paragraph 119(10) of the impugned preliminary award, the Arbitral Tribunal inferred that the reference to partners as “members of VGP Group” implied a blending of partnership and company funds. This conclusion was speculative, as it was based solely on correspondence (Exhibit C39) without concrete financial evidence.

135. The finding contravenes the principles of evidence and statutory provisions under the Indian Partnership Act, 1932, which clearly delineate the scope of partnership property.

136. In my view, the Arbitral Tribunal exceeded the scope of its reference by including matters related to Company assets, which are distinct from partnership assets. The inclusion of the assets of Company in the impugned



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as highlighted in the decision of the Delhi High Court in **Sudhir Gopi Vs. Indira**

Gandhi National Open University (IGNOU) and another in

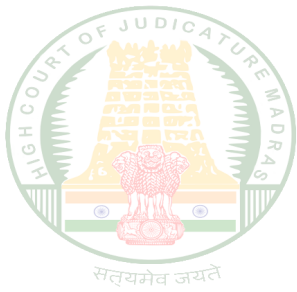
O.M.P.(Comm.) No.22 of 2016 dated 16.05.2017 reported in 2017 SCC

OnLine Del 8345. Relevant paragraph from the said Judgment reads as under:-

“15. The jurisdiction of the arbitrator is circumscribed by the agreement between the parties and it is obvious that such limited jurisdiction cannot be used to bring within its ambit, persons that are outside the circle of consent. The arbitral tribunal, being a creature of limited jurisdiction, has no power to extend the scope of the arbitral proceedings to include persons who have not consented to arbitrate. Thus, an arbitrator would not have the power to pierce the corporate veil so as to bind other parties who have not agreed to arbitrate.

16. There may be cases where courts can compel non signatory (ies) to arbitrate. These may be on grounds of (a) implied consent and/or (b) disregard of corporate personality. In cases of implied consent, the consent of non signatory (ies) to arbitrate is inferred from the conduct and intention of the parties. Thus, in cases where it is apparent that the non-signatory (ies) intended to be bound by the arbitration agreements, the courts have referred such non-signatories to arbitration.”

137. That apart, the Arbitral Tribunal had gone one step further by treating the group Companies of the partnership Firms as a Single Economic Entity [SEE] and calling for the dissolution of all the group Companies. The Arbitral Tribunal must confine their adjudication to matters strictly within their reference.



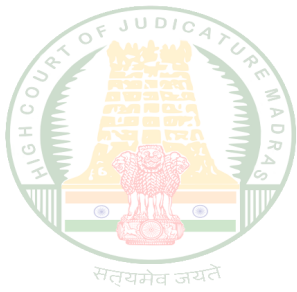
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138. This approach of the Arbitral Tribunal is clearly contrary to the terms of reference, and therefore, the impugned preliminary award passed by the Arbitral Tribunal must be held as patently illegal.

139. The concept of Single Economic Entity and Group Companies is generally invoked to bring all entities into proceedings, even if they are not directly signatories to the contracts containing the arbitration clause. The above principle is to be used in exceptional case and should not be misused to expand the jurisdiction of the Tribunal beyond the contractual limits.

140. This principle was established in **Chloro Controls Vs. Severn Trent Water Purification Inc, (2013) 1 SCC 641**. Relevant paragraphs from the Judgment read as under:-

“71.Though the scope of an arbitration agreement is limited to the parties who entered into it and those claiming under or through them, the courts under the English law have, in certain cases, also applied the “group of companies doctrine”. This doctrine has developed in the international context, whereby an arbitration agreement entered into by a company, being one within a group of companies, can bind its non-signatory affiliates or sister or parent concerns, if the circumstances demonstrate that the mutual intention of all the parties was to bind both the signatories



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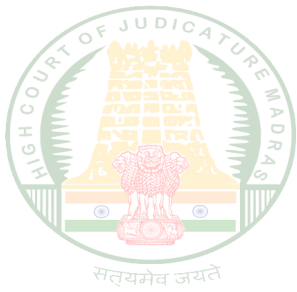


Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

and the non-signatory affiliates. This theory has been applied in a number of arbitrations so as to justify a tribunal taking jurisdiction over a party who is not a signatory to the contract containing the arbitration agreement. [Russell on Arbitration (23rd Edn.)]

72.This evolves the principle that a non-signatory party could be subjected to arbitration provided these transactions were with group of companies and there was a clear intention of the parties to bind both, the signatory as well as the non-signatory parties. In other words, “intention of the parties” is a very significant feature which must be established before the scope of arbitration can be said to include the signatory as well as the non-signatory parties.

73.A non-signatory or third party could be subjected to arbitration without their prior consent, but this would only be in exceptional cases. The court will examine these exceptions from the touchstone of direct relationship to the party signatory to the arbitration agreement, direct commonality of the subject-matter and the agreement between the parties being a composite transaction. The transaction should be of a composite nature where performance of the mother agreement may not be feasible without aid, execution and performance of the supplementary or ancillary agreements, for achieving the common object and collectively having bearing on the dispute. Besides all this, the court would have to examine whether a composite reference of such parties would serve the ends of justice. Once this exercise is completed and the court answers the same in the affirmative, the reference of even non-signatory parties would fall within the exception afore-discussed.”

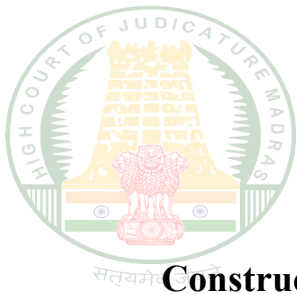


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141. Therefore, the impugned findings in Paragraphs 95, 112, 119(10) and 120 of the impugned preliminary award are based on speculative assumptions rather than substantive evidence. The Arbitral Tribunal's overreach in adjudicating issues involving company assets further contravenes its jurisdictional limits.

142. The impugned preliminary award dated **18.03.2021** also suffers from patent illegality as the Arbitral Tribunal's conclusions are perverse and not based on a possible or rational view. The findings of the Arbitral Tribunal disregards crucial evidence while considering irrelevant factors, thereby rendering the Award irrational. For instance, the Arbitral Tribunal ignored evidence of the intention of the partners to continue the partnerships post the demise of some partners, as outlined in the Partnership Deeds.

143. That apart, the Arbitral Tribunal has exceeded its jurisdiction by ordering the dissolution of Companies where the partners of the three Partnership Firms are also shareholders / directors. This action is clearly contrary to the decision of the Hon'ble Supreme Court in **Ssangyong Engineering and**



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Construction Company Ltd. Vs. National Highways Authority of India,

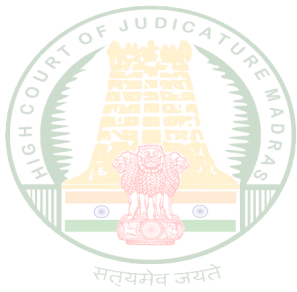
(2019) 15 SCC 131. The relevant Paragraphs of the Judgment are as under:-

“36.Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], or secondly, that such award is against basic notions of justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204]. Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12], as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204], and paras 28 and 29 in particular, is now done away with.

67.In State of Goa v. Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581] (Praveen Enterprises), this Court set out what is meant by “reference to arbitration” as follows : (SCC pp. 587-88, paras 10-11)

“10.“Reference to arbitration” describes various acts. Reference to arbitration can be by parties themselves or by an appointing authority named in the arbitration agreement or by a court on an application by a party to the arbitration agreement. We may elaborate:

(a) If an arbitration agreement provides that all disputes between the parties relating to the



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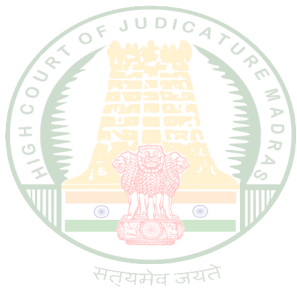
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

contract (some agreements may refer to some exceptions) shall be referred to arbitration and that the decision of the arbitrator shall be final and binding, the “reference” contemplated is the act of parties to the arbitration agreement, referring their disputes to an agreed arbitrator to settle the disputes.

(b) If an arbitration agreement provides that in the event of any dispute between the parties, an authority named therein shall nominate the arbitrator and refer the disputes which required to be settled by arbitration, the “reference” contemplated is an act of the appointing authority referring the disputes to the arbitrator appointed by him.

(c) Where the parties fail to concur in the appointment of the arbitrator(s) as required by the arbitration agreement, or the authority named in the arbitration agreement failing to nominate the arbitrator and refer the disputes raised to arbitration as required by the arbitration agreement, on an application by an aggrieved party, the court can appoint the arbitrator and on such appointment, the disputes between the parties stand referred to such arbitrator in terms of the arbitration agreement.

11. Reference to arbitration can be in respect of all disputes between the parties or all disputes regarding a contract or in respect of specific enumerated disputes. Where “all disputes” are referred, the arbitrator has the jurisdiction to decide all disputes raised in the pleadings (both claims and counterclaims)



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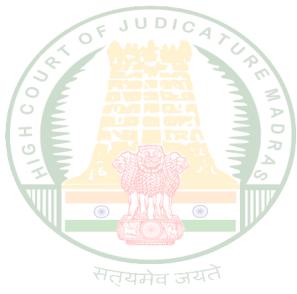


Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

subject to any limitations placed by the arbitration agreement. Where the arbitration agreement provides that all disputes shall be settled by arbitration but excludes certain matters from arbitration, then, the arbitrator will exclude the excepted matter and decide only those disputes which are arbitrable. But where the reference to the arbitrator is to decide specific disputes enumerated by the parties/court/appointing authority, the arbitrator's jurisdiction is circumscribed by the specific reference and the arbitrator can decide only those specific disputes.”

68. *A conspectus of the above authorities would show that where an Arbitral Tribunal has rendered an award which decides matters either beyond the scope of the arbitration agreement or beyond the disputes referred to the Arbitral Tribunal, as understood in Praveen Enterprises [State of Goa v. Praveen Enterprises, (2012) 12 SCC 581], the arbitral award could be said to have dealt with decisions on matters beyond the scope of submission to arbitration.*

69. *We therefore hold, following the aforesaid authorities, that in the guise of misinterpretation of the contract, and consequent “errors of jurisdiction”, it is not possible to state that the arbitral award would be beyond the scope of submission to arbitration if otherwise the aforesaid misinterpretation (which would include going beyond the terms of the contract), could be said to have been fairly comprehended as “disputes” within the arbitration agreement, or which were referred to the decision of the arbitrators as understood by the authorities*



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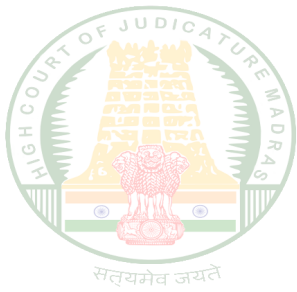


Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

above. If an arbitrator is alleged to have wandered outside the contract and dealt with matters not allotted to him, this would be a jurisdictional error which could be corrected on the ground of “patent illegality”, which, as we have seen, would not apply to international commercial arbitrations that are decided under Part II of the 1996 Act. To bring in by the backdoor grounds relatable to Section 28(3) of the 1996 Act to be matters beyond the scope of submission to arbitration under Section 34(2)(a)(iv) would not be permissible as this ground must be construed narrowly and so construed, must refer only to matters which are beyond the arbitration agreement or beyond the reference to the Arbitral Tribunal.”

144. This Court is also inclined to set aside the award under Section 34(2)(a)(iv) and Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, for being in contravention of public policy, lack of jurisdiction, and procedural impropriety.

145. That apart, under Section 29-A of the Arbitration and Conciliation Act, 1996, an Arbitral Tribunal is required to pass Final Award within the time frame specified therein. Both the Interim Award and the Final Award have to be passed within the time frame fixed under Section 29-A of the Arbitration and Conciliation Act, 1996, unless extended.

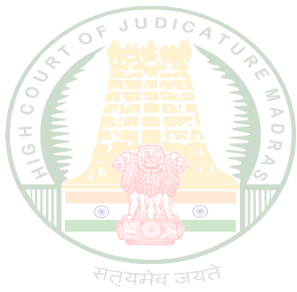


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146. As per sub-clause (1) to Section 29-A of the Arbitration and Conciliation Act, 1996, an Award must be passed within a period of 12 months from the date of completion of the pleadings under sub-section (4) to Section 23 of the Arbitration and Conciliation Act, 1996 or within a extended period of 6 months thereafter under sub-section (3) to Section 29-A of the Arbitration and Conciliation Act, 1996 with the consent of the parties.

147. If the Award is not passed within the period stipulated under sub-section (1) or (3) to Section 29-A of the Arbitration and Conciliation Act, 1996, the mandate of the Arbitral Tribunal will terminate in terms of Section 29-A(4) of the Arbitration and Conciliation Act, 1996 unless the Court has, either prior to or after the expiry of the period so specified, extended the period. As per such Sub-Section (5) to Section 29-A of the Arbitration and Conciliation Act, 1996, an application has to be filed for extending the mandate of the Arbitral Tribunal.

148. This constraint was imposed on the Arbitral Tribunal by an amendment to the said Act by Act 33 of 2019 with effect from **30.08.2019**.



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149. In other words, both the “interim award” (in this case, the impugned preliminary award) and the final award have to be passed either within the period of 12 months from the date of completion of pleadings as per sub-section (1) to Section 29-A or within a period of six months thereafter with the consent of the parties as per sub-section (3) to Section 29-A or within such period as may be extended by the Court under sub-section (4) to Section 29-A of the Arbitration and Conciliation Act, 1996, on application under sub-section (5).

150. As per sub-section (9) to Section 29-A of the Arbitration and Conciliation Act, 1996, such an application to extend the mandate has to be disposed as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party. Thus, an application to extend the mandate of the Arbitral Tribunal under Section 29-A of the Arbitration and Conciliation Act, 1996 is a must.

151. In the present case, it should also be remembered that due to intervening difficulty arising out of outbreak of Covid-19 pandemic during March 2020, the Arbitral Tribunal would have been incapacitated from passing the Award



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in time i.e., within 18 months [12 + 6 months] from the date of completion of pleadings and initial consent.

152. The pleadings in **Claim No.1 of 2019** were complete on **30.11.2019**. The pleadings in **Claim Nos.2 to 4 of 2019** filed by the petitioners herein were complete on **19.11.2019**. The pleadings in **Claim Nos.5 to 7** filed by the respondent No.3 were complete on **30.11.2019**.

153. Since all the claims were to be adjudicated by the same Arbitral Tribunal, the last date for passing the impugned preliminary award can be taken as **29.11.2020** in terms of sub-section (1) to Section 29-A of the Arbitration and Conciliation Act, 1996, as the time for passing the Award is 12 months from the date of completion of the pleadings. Parties may by mutual consent, extend the mandate by a further period of 6 months in terms of Sub section (3) to Section 29-A of the Act.

154. However respondent No.4 and 5 herein have not not consented for extending the mandate of the Arbitral Tribunal for a further period of 6 months in terms of Sub section (3) to Section 29-A of the Act. They were fence sitters and



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did not participate in the proceedings. They were not set ex-parte. Instead, they were transposed as Respondent No.5 and 6 in the Arbitral Proceedings insofar as **Claim Nos.2 to 4 of 2019.**

155. If the parties to the dispute wanted the Arbitral Tribunal to further continue with the Arbitral Proceedings, it was incumbent on the part of the parties to have filed suitable applications under sub-section (4) to Section 29-A of the Arbitration and Conciliation Act read with sub-section (5) to Section 29-A of the Arbitration and Conciliation Act, 1996, to extend the mandate of the Arbitral Tribunal.

156. In this case, neither the proponents of **Claim No.1 of 2019**, namely respondents Nos.1 and 2 herein, who wanted dissolution of the three Partnership Firms, nor the petitioners herein, nor the contesting respondents Nos.3 to 5 herein have come forward with any application under sub-section sub-section (5) to Section 29-A of the Arbitration Conciliation Act, 1996, to extend the mandate of the Arbitral Tribunal under sub-section (4) to Section 29-A beyond the period stipulated under sub-section (1) and sub-section (3) to Section 29-A of the Arbitration and Conciliation Act, 1996. On the other hand, **Arb.O.P.(Com.Div.)**



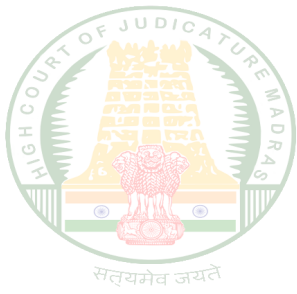
Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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Nos.229 to 232 of 2021 have been filed under Section 15 of the Arbitration and Conciliation Act, 1996 to terminate the mandate of the Arbitral Tribunal.

157. Since the proponents of **Claim No.1 of 2019**, namely respondent Nos.1 and 2, who wanted dissolution of the three Partnership Firms are no longer interested in the dissolution of the Partnership Firms in view of the compromise and in the absence of any application to extend the mandate of the Arbitral Tribunal by respondents Nos.3 to 5 herein under sub-section (4) and sub-section (5) to Section 29-A of the Arbitration and Conciliation Act, 1996, the mandate of the Arbitral Tribunal constituted pursuant to the order dated **19.06.2019** in **O.P.Nos.577 to 579 of 2018** cannot continue. It is deemed to have come to an end in terms of sub-section (4) to Section 29-A of the Arbitration and Conciliation Act, 1996.

158. Failure to file an application to extend the mandate of the Arbitral Tribunal under sub-section (5) to Section 29-A of the Arbitration and Conciliation Act, 1996, by the respondent Nos.3 to 5, is a *fait accompli*.



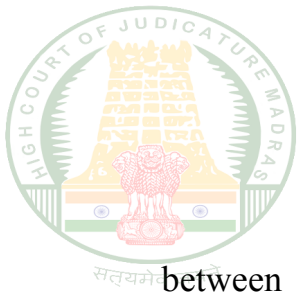
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159. Therefore, it is held that even though the Impugned Preliminary Award dated **18.03.2021** has been passed in time, the mandate of the Arbitral Tribunal has come to an end at this distant point of time on account of the following:-

- i. in absence of an application to extend the mandate under Sub-Section (5) to Section 29-A of the Arbitration and Conciliation Act, 1996.
- ii. In absence of an order of this Court extending the mandate of the Arbitral Tribunal under sub-section (5) to Section 29-A of the Arbitration and Conciliation Act, 1996.

160. Therefore, the exercise to be carried out by the receiver is an exercise in futility, as no finality can be given by the Arbitral Tribunal after the mandate of the Arbitral Tribunal has expired even if it is held that the Award was otherwise valid.

161. Therefore, the impugned preliminary award, cannot be sustained considering the subsequent developments with the amicable resolution of disputes



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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between the petitioners and the proponents of **Claim No.1 of 2019**, namely, respondent Nos.1 and 2 herein.

162. In this case, admittedly, the respondent Nos.4 and 5 did not bargain for dissolution of the Partnership Firm.

163. If at all, respondent No.3 or for that matter, respondent Nos.4 & 5 (the fence sitters) have any grievances regarding their alleged and purported exclusion from the management in business by the petitioners herein, they have an independent cause of action to initiate fresh proceedings to dissolve the three Partnership Firms. This is also in line with the disposition of the Arbitral Tribunal's Order dated **13.12.2023**.

164. Thus, the rights of the respondent Nos.3, 4 and 5 to work out the remedy in accordance with law is left open as observed in the disposition on **13.12.2023** of the Arbitral Tribunal.

165. The dispute regarding group Company has also been referred to a Mediation in the proceedings before the National Company Law Tribunal



Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

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(NCLT) as has been recorded in Order dated **02.09.2021** in **Application Nos.1586, 1587, 1589 and 1590 of 2021** in **O.P.Nos.310 to 313 of 2021** filed by the petitioners.

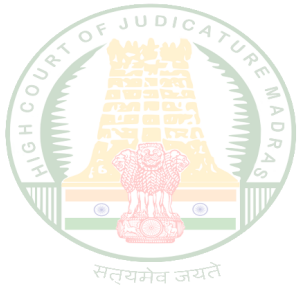
166. Therefore, all the Original Petitions deserves to be allowed as the cause of action for dissolution of the Partnership Firm has been removed by virtue of the compromise between the petitioners and the respondent Nos.1 and 2 (proponents to **Claim No.1 of 2019**).

167. In view of the above discussion, all the issues framed are answered in favour of the petitioners and against the respondent Nos.3, 4 and 5. Liberty of the petitioners and the respondent Nos.3, 4 and 5 to workout their remedy in accordance with law, is, however preserved.

168. These Original Petitions are allowed. There shall be no order as to costs. Connected Applications are closed.

29.01.2025

Neutral Citation : Yes / No
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Arb.O.P.(Com.Div.) Nos.229 of 2021 etc., batch

C.SARAVANAN, J.

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Pre-Delivery Common Order in
Arb.O.P.(Com.Div.) Nos.229, 230, 231 and 232 of 2021
and
O.P.(Com.Div.) Nos.310, 311, 312 and 313 of 2021
and
A.Nos.1586, 1587, 1589 and 1590 of 2021

29.01.2025