



Arb.Appeal.No.9 of 2024

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2025

Pronounced on : 31.01.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

Arb Appeal NO. 9 OF 2024

& C.M.P.No.20458 of 2024

1.Mr.Kondala Rao Balusu
Rep. by its Power of Attorney holder
Mr.Bhaskar Rao Kurella,
Having address at 3000 Solana Avenue,
#100, Hollywood, Florida – 33024,
United States of America

Also at
19925 Stevens Creek Blvd,
#100, Cupertino, California 95014,
United States of America.

2.Mr.Bhaskar Rao Kurella

3.Mr.Manikyala Rao Papolu

Appellant(s)

Vs

Prodapt Solutions Private Limited
A Company incorporated under Companies
Act, 1956, Having its registered office at
No.25 A & B, South Phase,
5th Cross Street,
Thiru Vi Ka Industrial Estate,



Arb.Appeal.No.9 of 2024

Guindy, Chennai – 600 032.

Rep. by its authorised signatory

Mr.Sandeep Somani

Respondent(s)

Prayer: Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 and Section 13 of the Commercial Courts Act, 2015, praying to set aside the interim order dated 29.07.2024 passed by the Tribunal in M.A.No.2 of 2024 in Arbitration Case ID No.5 of 2024 and the consequential direction to pay Rs.1,00,000/- towards costs.

For Applicant(s):

Mr.Anirudh Krishnan
& Mr.R.Abishek

For Respondent(s): Mr.Srinath Sridevan
Senior Counsel
for M/s.VIVRTI Law

JUDGMENT

This is an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, challenging the order passed by the Tribunal under Section 17 of the Arbitration and Conciliation Act, dated 29.07.2024 in M.A.No.2 of 2024 in Arbitration Case ID.5 of 2024, directing the appellants herein to furnish security to the aggregate of INR Rs.60 crores or US dollar equivalent, in the form of bank guarantees with any Scheduled banks or foreign banks that



Arb.Appeal.No.9 of 2024

WEB COPY

have operation in India.

2.I have heard Mr.Anirudh Krishnan, learned counsel for the appellants and Mr.Srinath Sridevan, learned Senior Counsel for M/s.VIVRTI Law, counsel for the respondent.

3.Mr.Anirudh Krishnan, learned counsel for the appellants would primarily contend that the Arbitral Tribunal had erroneously directed the appellants to furnish security, ignoring vital evidence, after having parted contentious issues to be decided after the parties lead evidence before the Tribunal. He would further contend that the provisions of Order XXXVIII Rule 5 of CPC which are applicable to arbitration proceedings have also been ignored. He would further contend that the learned Arbitrator failed to see that the claim itself being for unliquidated damages and when the termination was not for any specific cause or even alleging breach on the part of the appellants, the learned Arbitrator ought not to have directed the appellants to offer security vide the impugned order dated 29.07.2024.



Arb.Appeal.No.9 of 2024

WEB COPY

4.The sum and substance of the argument of the learned counsel for the appellants is that, in and by a Share Purchase Agreement, the appellants sold the Company to the second respondent for a consideration of Rs.65.7 crores. Admittedly, the major client of the appellants was Cisco and after the sale of the Company in September 2021, Cisco began investigations in May 2022 pertaining to the period 2017 - 2019 and it surfaced to light that gifts have been given to certain persons in Cisco which was against the policy of Cisco and thereby the agreement was terminated in 2023, though without cause. In this regard, the learned counsel for the appellants would submit that the investigation itself commenced only after the Company had been sold in September 2021 and even after investigation in May 2022, there was a gap of one year and three months before the termination notice was issued in 2023. He would further refer to Cisco having continued their operations for close to six months till as late as November 2023 and kept the relationship alive. Therefore, he would submit that if really the violation of the gift policy was the cause for termination, then Cisco would not have continued the relationship for a further five to six months.



Arb.Appeal.No.9 of 2024

WEB COPY

5.The learned counsel for the appellants would refer to the Morale Building clause in the statement of work of Cisco which permits the partner to introduce Rewards & Recognition Programmes (Gift Vouchers & Certificates) for their resources associated within the Cisco CMS team at their own cost. According to the learned counsel for the appellants, the gifts of i-phones and other vouchers were only within the permissible Moral Building clause and therefore, there is no violation of the no gift policy of Cisco. According to the learned counsel for the appellants, the learned Arbitrator has side stepped the said contention regarding permissibility of gifts under the Morale Building clause and hence, the order directing furnish security has to necessarily go on this limited score itself.

6.That apart, the learned counsel for the appellants would also take me through the several emails and messages exchanged between the parties, wherein, in most of the mails, there is a reference to the gift being procured only for the CMS team which is permissible under the rewards and recognition programme and therefore there is nothing illegal or improper on the part of the appellants to have acceded to the request of employee of



Arb.Appeal.No.9 of 2024

WEB COPY

Cisco, Sumit Shah. Drawing reference to the Morale Building clause, he would also highlight that the partner was entitled to work with the team leads to identify new ways to motivate and drive production and the team lead being Mr.Sumit Shah, there was nothing illegal or immoral done by the appellants by gifting vouchers and i-phones to the CMS team. He would further contend that various denominations of the vouchers and number of i-phones would itself go to show that it was only for the team and not for any individual employee of Cisco, thereby not violating the no gift policy of Cisco.

7.Further, with regard to the two employees of the first respondent namely, Ms.Jimpy Salhotra and Mr.Vinay Kumar Singh, he would contend that they were friends of Sumit Shah and therefore the financial transactions between the said employees and Sumit Shah has nothing to do with the Company and all this was not gone into by the learned Arbitrator while holding that there has been irregularities, warranting the order to furnish security. The learned counsel for the appellants would also state that admittedly, after the acquisition of the Company within a period of one year,



Arb.Appeal.No.9 of 2024

WEB COPY

a profit to Rs.14 crores had been made by the first respondent Company and thereafter, there has been no proof of the income that has accrued to the first respondent Company. Further he would state that the first respondent also owned immovable properties and the market value of said property had increased and therefore, in an action for recovery of damages, the learned Arbitrator ought not to have passed the order directing the appellants to furnish security. The learned Arbitrator, according to the learned counsel for the appellants has not even rendered a *prima facie* finding on causation of the loss which is a fundamental requirement and therefore, the impugned order requires interference.

8.The learned counsel for the appellants would place heavy reliance on the decision of this Court in *Dr.Pranay Kumar Singh and Another Vs. Dr. Agarwals Healthcare Limited and Others in C.M.A.No.1772 of 2022 in C.M.P.No.12842 & 12844 of 2022* dated 21.12.2022, which later came to be affirmed by the Hon'ble Supreme Court in *SLP.(Civil) Nos.5650 - 5652 of 2023*.



Arb.Appeal.No.9 of 2024

WEB COPY

9. According to the learned counsel for the appellants, the ratio laid down by this Court in *Dr. Pranay Kumar Singh's case*, were on identical set of facts and was a binding precedent of the Arbitral Tribunal and despite placing reliance on the same before the Arbitral Tribunal, the Arbitrator has not considered the said decision. He would further rely on the following decisions:

1. M/s. A-1 Biz Solutions Chennai & M/s. Cascade Billing Center Incorporated (2011 SCC Online Mad 924).

2. Baker Hughes Singapore Pte Vs. Shiv -Vani Oil and Gas Exploration Services Limited (2014 SCC Online Bom 1663).

3. C.S.S Corp Private Limited Vs. Space Matrix Design Consultants Private Limited (2011 SCC Online Mad 2413).

4. Intertoll ICS Cecons O & M Co. (P) Ltd., Vs. National Highways Authority of India (SLP (C) No. 14370-14370 of 2013).

5. Jail Balaji Industries Limited Vs, Huyquip Systems Private Limited (2010 SCC Online Cal 200).

6. Raman Tech & Process Engg. Co. Vs. Solanki Traders (2008) 2 SCC 302).



Arb.Appeal.No.9 of 2024

WEB COPY

10.Per contra, Mr.Srinath Sridevan, learned Senior Counsel appearing for the respondent would support the findings of the learned Arbtrator and seek for dismissal of the appeal and primarily contending the following:

i) Scope of an appeal under Section 37 against an interim order under Section 17 in an international commercial arbitration is very narrow and limited.

ii) The appeal is against a discretionary order and when a plausible view has been taken and discretion has been exercised in some manner or the other, no interference is warranted.

iii) On the facts of the case, the learned Arbitrator has *prima facie* found that there has been a breach of representations and warranties given by the appellants.

iv) The rewards and recognition policy which has been heavily relied on by the appellants, contending that the the statement of work permits the some was insignificant and irrelevant in the light of the specific “no gift policy” of the Company.

v) By an interim order in the arbitration proceedings, all bank



Arb.Appeal.No.9 of 2024

accounts of the appellants had been de-freezed and a very limited protection to the tune of Rs.60 crores alone has been directed by passing the impugned order, and not for the entire claim made by the respondent.

vi) The gifts can be permissible only for Synophic Systems Private Limited employees and not Cisco employees and when it has been clearly established that gifts were given to Sumit Shah, an employee of Cisco, there was a material breach of the representations and warranties of the appellants which had weighed with the Arbitrator in passing the impugned order.

vii) The sequence of dates tells as tale by itself since after the investigation began, the two employees, Jimpy Salhotra and Vinay Kumar Singh left the services of Synophic and thereafter, in July 2023, the termination was given effect.

viii) For two years the appellant had kept the respondent in dark and even though he knew about the investigation in May 2022 itself, the same was not brought to the notice of the respondent and this according to the learned Senior Counsel, is a willful omission to burk the truth.

11.Taking me through various emails, the learned Senior Counsel



Arb.Appeal.No.9 of 2024

WEB COPY

would contend that Sumit Shah had made direct demands which was clearly in violation of the no gift policy, especially when the appellant had sanctioned the gifts and various vouchers to be paid as and when demanded by the said Sumit Shah. He would further contend that though there is a specific averment in the affidavit that the appellants have suppressed the investigation in May 2022 and email dated 05.05.2022 which was well within his knowledge, the same was not even denied by the appellants specifically and it was Cisco which found the breach and not the respondent which made things more evident and easier for the respondent to make the claim against the appellants.

12.Lastly, he would submit that once *prima facie* breach is established the wrong doer is certainly rendered liable and therefore, the discretion exercised by the learned Arbitrator cannot be found fault with.

13.The learned Senior Counsel for the respondent would place reliance on the following decisions:

1.Wander Limited & Another Vs. Antox India Private Limited (1990 (Supp.) SCC 727).

2.Frank Reddaway and Frank Reddaway & Co.,



Arb.Appeal.No.9 of 2024

*Limited Vs. George Banham & George Banham & Co.,
Limited reported in H.L(E). 1896.*

*3.Dinesh Gupta and Others Vs. Anand Gupta and
Others (2020 SCC Online Del 2009).*

14.Before concluding, the learned Senior Counsel would also give a fair concession with regard to the quantification of the order directing furnish security. On instructions, learned Senior Counsel submitted that admittedly, a said sum of Rs.14 crores has accrued to the respondent Company by way of profit and hence, in all fairness, the respondent is willing to adjust the said sum from and out of Rs.60 crores directed to be secured by the Arbitrator and he would conclude his submission stating that the order can be modified from Rs.60 crores to Rs.46 crores.

15.I have carefully considered the submissions advanced by the learned counsel for the applicants and the learned Senior Counsel appearing for the respondent.

16.The first appellant approached the respondent expressing his



Arb.Appeal.No.9 of 2024

intention to sell 100% equity shares in Synophic Systems Private Limited.

WEB COPY

The respondent evinced interest in acquiring Synophic India and Synophic USA. After deliberations and due diligence exercise undertaken, in and by Share Purchase Agreement dated September 2021, the respondent purchased 100% equity shares in Synophic India for a consideration of Rs.65,75,00,000/-. It is an admitted fact that the decisive factor in fixing the consideration was the contract that Synophic enjoyed with the Multinational Company, Cisco. Cisco admittedly had entered into a contract with Synophic India under separate statements of work and it is also an admitted case that substantial business and revenue of Synophic India as well as USA was only on account of the business with Cisco.

17. According to the respondent, they came to know that the appellants had suppressed material facts and circumstances, especially the investigation conducted by Cisco which revealed that Cisco employees have been given gifts by the appellants, which was against the no gift policy of Cisco. According to the respondent, this led to Cisco terminating the agreement with the respondent and in order to recover losses and damages suffered, the



Arb.Appeal.No.9 of 2024

respondent has initiated the arbitration proceedings against the appellants.

WEB COPY

18.It is the case of the appellants that there is no link between the termination and gifts given by the appellants as admittedly the termination notice was without citing any reason. It is the further case of the appellants that even the gifts given by appellants were permissible under the Moral Building clause and further, Cisco continued with the respondent for about five to six months with some of the SOWs. Therefore, according to the appellants, the alleged losses claimed by the respondent Company were not on account of any alleged breach of representations and warranties given to the respondent Company and the termination of the Cisco contract with Synophic was not on account of any action or inaction on the part of the appellants.

19.It is the further contention of the learned counsel for the appellants that the respondent had carried out due diligence for several months prior to the acquisition and post transaction events having no nexus with the termination of Cisco contract cannot be put against the appellants.

14/24



Arb.Appeal.No.9 of 2024

WEB COPY

20.It is the case of the respondent that there has been serious breach of Cisco ethics policies and the Share Purchase Agreement was vitiated by non disclosure of material facts, especially the investigation conducted by Cisco in May 2022 and also because of the indulgence in activities which are against the policy of Cisco and all these amounted to breach of the representations and warranties given by the appellants in the Share Purchase Agreement dated 18.09.2021.

21.I am conscious of the fact that I am deciding an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. The Courts have consistently held that when a Court of first instance has exercised discretion one way or other, the Appellate Court cannot interfere with the exercise of such discretion and substitute its own discretion, unless the discretion has been shown to have been exercised arbitrarily or capriciously or perversely, ignoring settled principles of law, regulating grant or refusal of interim orders. It is also settled law that an appeal against the exercise of discretion is only an appeal on principle and the Appellate Court cannot reassess



Arb.Appeal.No.9 of 2024

WEB COPY

materials and reach a different conclusion if the conclusion reached by the Court of first instance was reasonably possible, on the available materials.

22.In the light of the settled legal position, I am mindful of my limitation in interfering with the decision of the Arbitrator, especially an order which has been passed exercising discretion vested with the Arbitrator, that too in the interlocutory stage. Keeping this in mind, I have carefully gone through the impugned order passed by the learned Arbitrator. The learned Arbitrator has elaborately discussed the rival submissions advanced by the learned counsel for the parties and conscious of the fact that an interim attachment has been sought for and the damages in respect of the claim for damages and that damages are yet to be ascertained, proceeded to hold that the relief of recovery of the consideration paid by the respondent to the appellants can certainly be secured. The learned Arbitrator has also factored the approximate value of the immovable properties which have been offered as security and directed security to be offered only for the remaining Rs.60 crores.



Arb.Appeal.No.9 of 2024

WEB COPY

23.The *prima facie* finding arrived at by the learned Arbitrator that the appellants have indulged in unethical acts is based on the assessment of the documents made available before the Sole Arbitrator, especially there being a direct breach of the express warranties set out in the Share Purchase Agreement at Annexure A. It is not as if the Arbitrator has called upon the appellants to secure the entire claim made by way of damages. The learned Arbitrator has discussed the facts in issue in a detailed manner. The contentions of the appellants regarding the gifts for CMS team and not for employees of the Cisco has also been elaborately discussed and the Arbitrator referring to email communications and investigation by Cisco in 2022 revealing certain corrupt practices and unethical acts of employees of the appellants with Cisco officials has *prima facie* found that there was a breach of the representations and warranties given by the appellants and thought it fit to secure at least a portion of the total claim made by the respondent, limiting it to the consideration that passed under the Share Purchase Agreement without directing security to be furnished in respect of any other liquidated claims / portions. The Arbitrator has also considered the decision relied on by the learned counsel for the appellants, especially the



Arb.Appeal.No.9 of 2024

WEB COPY

decision of this court in *Dr.Pranay Kumar's case*, which according to the learned counsel for the appellants has a striking resemblance to the facts of the present case. The learned Arbitrator has been conscious of settled legal principles in deciding the application for interim attachment and as a first step, has only directed the appellants to furnish security to the tune of Rs.60 crores alone as prayed for in the application by the respondent.

24.Though it is contended by the learned counsel for the appellants, the acquisition of the Company was in 2021 and investigation by Cisco was much later in May 2022 and therefore, the appellants cannot be accused of suppression, it is not the question of suppression of the investigation which is relevant but the suppression of the breaches committed by violating the gifts and ethics policy of Cisco which has a material bearing and rightly the Arbitrator has rendered a *prima facie* finding that the appellants had indeed indulged in certain unethical acts. Such finding is based on available documentary evidence and therefore, the findings of the Arbitrator cannot be found fault with.



Arb.Appeal.No.9 of 2024

WEB COPY

25.The learned Arbitrator has also adverted the fact that though there has been no reason for termination, a reason could be inferred by attendant circumstances and the quantum of damages would be decided based on appropriate proof led by the parties during the stage of evidence in the main arbitration proceedings. While directing the appellants to furnish security for Rs.60 crores or 30 million US Dollar equivalent, the learned Arbitrator has also modified the earlier interim orders and enable the appellants to operate their bank accounts. The learned Arbitrator has also referred the undertaking of the appellants that they would not alienate the properties set out in Schedule B in the Judges Summons in O.A.No.217 of 2024 and undertaking to other immovable properties belonging to the appellants. Though decisions have been cited by the learned counsel on either side and on going through the same, I find that the ratio laid down in the said judgments relating to principles of Order XXXVIII Rule 5 of CPC, Section 17 of the Arbitration and Conciliation Act and the scope of Section 37 appeal under the Arbitration and Conciliation Act are all fairly well settled by now and there is no need to reiterate the said principles one again.



Arb.Appeal.No.9 of 2024

WEB COPY

26.However, since specific reference has been made to the decision of this Court in *Dr.Pranay Kumar's case*, contending that it is on almost identical facts, I am proceeding to discuss the said case in some detail. That was a case where there were Business Transfer Agreements and Service Agreements executed on a particular date. The appellants were Ophthalmologists practicing at Indore. The first respondent and the appellants negotiated for sale of the respondents 2 and 3 partnership firms for a total consideration of Rs.16.43 crores. Under the Service Contract Agreements, the appellants were to be paid consultancy fee of Rs.3,50,00,000/- per month. The agreement also provided for a lock-in period of five years. However, within a year and half of the agreement being entered into, disputes arose and proceedings were initiated under the Arbitration and Conciliation Act. An application under Section 17 was filed seeking the appellants to furnish security to the tune of Rs.16.43 crores alleging that the appellants were working against the interest of the first respondent and the appellants were also attempting to set up practice in a new hospital and the appellants would have no means to pay damages in the event of the first respondent succeeding.



Arb.Appeal.No.9 of 2024

WEB COPY

27.This Court noting that the claim petition was yet to be filed, merely on pleadings in a Section 17 application, the Arbitrator could not have presumed that the termination of the contract had resulted in a loss for the first respondent and under such circumstances, proceeded to set aside the order directing the appellants to furnish security. What mainly weighed with this Court is that when the obligations under the Business Transfer Agreements had been completed and the first respondent had taken over the management and assets of the respondents 2 and 3 and even in respect of Services Contract, the appellants had cooperated for over two years and they had given reasons for terminating the contract, all these could be tested only through evidence. This Court set aside the order directing the appellants to furnish security to the tune of Rs.16.43 crores. Though on first reading, it appears that the facts in the said case are quite similar to the facts of the present case, on careful reading of the said decision, I find that no doubt, in the present case also claim statement has not yet been filed as in *Dr.Pranay Kumar's case*. However, the discretion exercised by the Arbitrator in the present case is based on materials available before him which has led the



Arb.Appeal.No.9 of 2024

WEB COPY

Arbitrator to *prima facie* arrived at a finding that there has been a material breach committed by the appellants and therefore, a portion of the claim can be secured. Such exercise of discretion, in my opinion is not perverse.

28.Conscious of the fact that the powers available under Section 37 of the Act to interfere with the discretionary order passed by the learned Arbitrator and having found that the *prima facie* findings arrived at by the Arbitrator are neither perverse nor illegal and have been arrived at based on documentary evidence available on record and after giving due consideration to all contentions raised by the parties, I do not deem it fit to interfere with the said order of the Arbitral Tribunal. However, in view of the concession shown by the respondent coming forward to adjust the profit of Rs.14 crores, it would be appropriate to modify the order of the learned Arbitrator by restricting the security to be furnished to Rs.46 crores alone instead of Rs.60 crores.

29.In fine, the appeal is partly allowed and the appellants are directed to furnish security for Rs.46 crores or US dollar equivalent, instead of Rs.60 crores, as directed by the learned Arbitrator, in the form of bank guarantees



Arb.Appeal.No.9 of 2024

with any Scheduled banks or foreign banks that have operation in India.

WEB COPY

Connected Civil Miscellaneous Petition is closed.

31-01-2025

ata

P.B.BALAJI,J.

ata

23/24



WEB COPY



Arb.Appeal.No.9 of 2024

Arb.Appeal.No.9 of 2024

31.01.2025