



Arb.O.P.(Com.Div.) No.542 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2025

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Arb.O.P.(Com.Div.) No.542 of 2025

AND

A.No.4416 of 2025

The Directorate General of Light House and Light Ships
“Deep Bhavan”, AB Sector-24
Gautam Budh Nagar, Noida 201 301
Rep. by the Director General

.. Petitioner

Vs.

M/s.Vignesh Marine Technical Services Pvt. Ltd.
Plot No.3, 2nd Street, S1, Seenas Apartments
J.P.Nagar Extension, Surapet
Chennai, Tamil Nadu 600 066
Rep. by its Director Mr.N.Arunagiri

.. Respondent

Petition filed under Section 34(2)(a)(iv); 32(2)(b)(ii) & (iii) and 34(2A) of the Arbitration and Conciliation Act, 1996, read with Rule 3(ii) of the Madras High Court (Arbitration) Rules, 2020 and with Section 2(1)(c)(vi) and 10(2) of the Commercial Courts Act, 2015, to set aside the arbitral award dated 02.05.2025 to the extent of directing the petitioner to pay to the respondent, a sum of Rs.1,14,68,408/- in respect of work order No.17/1/2004-D&P dated 01.02.2010, between the petitioner and the claimant in respect of the aforesaid work order with cost.



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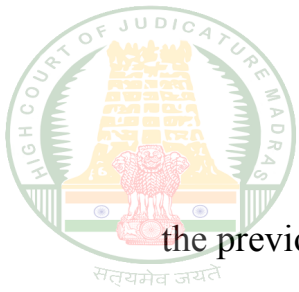
For petitioner : Mr.A.R.Sakhivel
Senior Panel Counsel

ORDER

This application has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity hereinafter referred to as “the Act”), challenging the Arbitral Award dated 02.05.2025, passed by the sole Arbitrator directing the petitioner to pay the respondent a sum of Rs.1,14,68,408/-.

2. Heard the learned Senior Panel Counsel appearing on behalf of the petitioner and carefully perused the materials available on record and more particularly, the award passed by the sole Arbitrator dated 02.05.2025.

3. The respondent, in the course of their business, approached the petitioner regarding the usage of Fiber Glass Reinforce Plastic (FRP) for construction/erection purposes. On enquiry of the petitioner, for construction of a light house using FRP components, the respondent submitted a detailed project design, together with the costing of the same. The petitioner approved the proposal of the respondent and the petitioner issued a Letter of Intent dated 19.08.2009 to the respondent for erection and fabrication of a light house. Thereafter, a subsequent Letter of Intent dated 11.12.2009 was issued cancelling



the previous Letter of Intent dated 19.08.2009. A Work Order dated 01.02.2010

was issued by the petitioner to the respondent for fabrication and erection of 30 meters High FRP Composite Tower as per specification and drawing at Rava Port, Andhra Pradesh, for a total value of Rs.59,68,126/-. The project was to be completed by 30.04.2010. The IIT, Madras, was engaged as a Consultant and Inspection Authority. They studied the entire plan and sketch and suggested suitable modifications, including the use of alternative raw materials. During this process, the validity period of the project was extended periodically. Thereafter, the IIT, Madras consultant preferred stronger resins for the project. The respondent was bringing in various resins to be used as raw materials. Ultimately, the final approval was granted by the petitioner for using Vinylester Resin on 04.02.2013. In the meantime, three years had expired from the date of the Work Order.

4. The project work was commenced only on 22.02.2013. In the meantime, there was price escalation of raw materials and the petitioner asked the respondent to continue the project and ultimately, the respondent completed the project on 30.04.2014 and the light house was thrown open to the public from November 2014.

5. The respondent was insisting for price escalation and increase in the

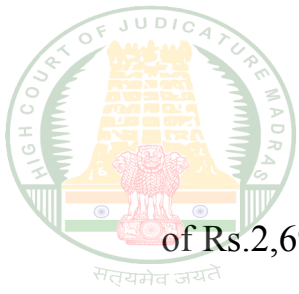


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project value and submitted all the documents in this regard. The IIT, Madras, after scrutiny of all the documents, arrived at a sum of Rs.98,53,148/- being the final escalated value of the project as against the original project value of Rs.59,68,126/-. This was intimated to the respondent and the respondent accordingly raised a bill for the said amount. Even thereafter, repeated meetings were held by the Committee and there was absolutely no progress. Aggrieved by the same, the respondent initiated legal proceedings before the MSE Council on 19.10.2016. When a reply statement was filed by the petitioner, the respondent came to know that the Committee had rejected the claim for price escalation. As per the Reply Statement, the Committee Report stated that the respondent was entitled to receive only a sum of Rs.7,33,440/- along with 12.5% VAT amounting to Rs.91,680/- towards additional expenses and price escalation. The respondent found this amount to be grossly inadequate, considering the actual cost and expenses incurred duly backed by original vouchers and bills.

6. The MSE Council, *vide* order dated 26.09.2018, referred the matter to the Madras High Court Arbitration Centre, by consent given by both sides resulting in the constitution of Arbitral Tribunal constituting of a sole Arbitrator for adjudicating the claim made by the respondent.

7. Thereafter, a Claim Statement was made by the respondent for a sum



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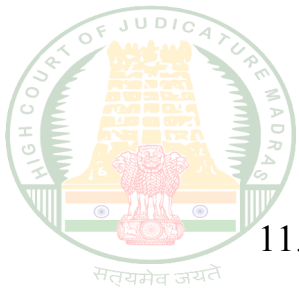
of Rs.2,69,55,938/- along with interest.

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8. The petitioner filed a detailed Statement of Defence completely denying their liability towards both escalation cost as well as additional expenditure claimed by the respondent.

9. The learned Arbitrator, on considering the Claim Statement and the Defence taken by the petitioner, framed four issues for consideration. The first issue is, as to whether the delay in completion of the project was attributable to the petitioner or to the respondent (claimant). The second issue is, as to whether the respondent (claimant) is entitled to price escalation associated with the completion of the project. The third issue is, as to whether the IIT, Madras, had arrived at Rs.98,53,148/- to be the final escalated value of the project as against the original project value and the fourth issue is, as to whether the claimant had incurred additional expenses of Rs.1,14,69,408.55 due to change in the original project design.

10. First, second and fourth issues were decided in favour of the respondent (claimant) and third issue was decided against the claimant.



11. Aggrieved by the Award passed by the sole Arbitrator, the present petition has been filed under Section 34 of the Act.

12. The main grounds that were raised by the learned Senior Panel Counsel appearing on behalf of the petitioner is that there is patent illegality on the face of the award and that the award was contrary to the terms of the contract and the sole Arbitrator had not properly appreciated the evidence and as a result, had rendered perverse findings and the award is contrary to Section 34(2)(a)(iv) and Section 34(2A) of the Act.

13. It was submitted that the work order dated 01.02.2010 was a fixed price contract with no clause permitting escalation. Therefore, there is no question of awarding escalation cost in favour of the respondent (claimant) and it goes against the very terms of the contract. It was further contended that the Work Order was for a fixed period and the delay in completion of the work was only attributable to the respondent (claimant) and therefore, the claimant was not entitled for any additional expenditure and the same was not even provided under the contract and whatever was claimed by the respondent (claimant) was completely awarded in his favour.

14. When it comes to interfering with an award under Section 34 of the



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Act, it is necessary that the Court must be satisfied that there is a patent illegality which warrants setting aside a domestic award. The law on this issue was succinctly captured by the Apex Court in the latest judgment in ***OPG Power Generation Private Limited v. Enxio Power Cooling Solutions India Private Limited and another [2025 (2) SCC 417]***. Paragraph No.73 of the said judgment is extracted hereunder:

“73. In a recent three-Judge Bench decision of this Court in *DMRC Ltd. v. Delhi Airport Metro Express (P) Ltd. [(2024)6 SCC 357]*, the ground of patent illegality/perversity was delineated in the following terms:

39. In essence, the ground of patent illegality is available for setting aside a domestic award, if the decision of the arbitrator is found to be perverse, or so irrational that no reasonable person would have arrived at it; or the construction of the contract is such that no fair or reasonable person would take; or, that the view of the arbitrator is not even a possible view. A finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside under the head of "patent illegality". An award without reasons would suffer from patent illegality. The arbitrator commits a patent illegality by deciding a matter not within its jurisdiction or violating a fundamental principle of natural justice.”

15. The above judgment had taken into account of the earlier judgments of the Apex Court and it was held that the Court exercising its jurisdiction under Section 34 of the Act can interfere with an award only if the decision of the Arbitrator is found to be perverse or it is so irrational that no reasonable person



would have arrived at such a conclusion. The Court can also interfere where the construction of contract is such that no fair or reasonable person would take the view that the Arbitrator had taken and that is not even a possible view. An award can also be rendered perverse, where the finding is based on no evidence at all or the Arbitrator has ignored the vital evidence in arriving at the decision. The Arbitrator can also be said to have committed a patent illegality by deciding a matter not within its jurisdiction or by violating the fundamental principles of natural justice.

16. In the case in hand, the entire dispute revolves around the Award made under two heads *viz.*, the escalation cost and the additional expenditure incurred by the claimant. The main ground that was raised on the side of the petitioner is that the Work Order neither provided for payment of escalation cost or for additional expenditure. Therefore, the award of compensation under these two heads is beyond the terms of the contract and consequently, the award suffers from patent illegality.

17. This Court carefully went through the finding rendered by the learned Arbitrator for the issues No.1 and 2. Issue No.1 pertains to the delay in completion of the project and to whom such delay was attributable. The learned



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Arbitrator has dealt with the entire claim and the defence taken and also the evidence on record and has come to a conclusion that the entire delay had taken place due to factors outside the control of both the parties. Having rendered such a finding, the learned Arbitrator went into the issue of price escalation. The learned Arbitrator, in fact, dealt with the defence taken by the petitioner and came to a conclusion that even if the agreement does not provide for compensation under the head of price escalation, it can be given, where the agreement does not specifically bar the payment of compensation under this head. Having come to such a conclusion, the learned Arbitrator rendered a finding that the delay in the completion of the project which resulted in the increase in terms of cost and time was not attributable to the respondent (claimant) and in the absence of any clause in the Work Order barring a claim under price escalation, it was held that the respondent (claimant) is entitled to price escalation associated with completion of the project. This Court does not find any ground to interfere with the finding of the learned Arbitrator, since it does not suffer from any infirmity. Probably, with the same materials, an alternative interpretation can be given, but, that is not a ground for interfering with the finding of the learned Arbitrator on this issue.

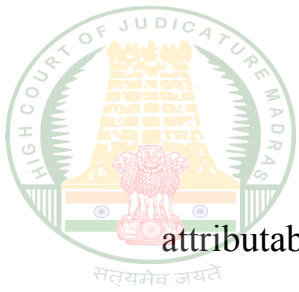
18. Insofar as the fixation of the value for the escalation cost, the learned



Arbitrator has rightly relied upon the value fixed by the IIT, Madras at Rs.98,53,148/- and the claim made by the respondent (claimant) under this head was rejected. Therefore, the escalation cost fixed by the Arbitrator does not require any interference by this Court.

19. The last issue with regard to the additional expenses that was incurred by the respondent (claimant), the learned Senior Panel Counsel appearing on behalf of the petitioner submitted that the petitioner had taken a very specific stand that the Work Order was for a fixed cost and there was no scope for any additional cost payable to the respondent (claimant) and this stand was completely disregarded by the learned Arbitrator.

20. On carefully going through the findings rendered by the learned Arbitrator for issue No.4, which deals with the additional expenditure claimed by the respondent (claimant), it is seen that the learned Arbitrator has relied upon various exhibits in order to support the total cost incurred by the respondent (claimant) as additional expenditure. Even though the petitioner has independently denied the claim made by the respondent (claimant) for price escalation and the additional expenditure, the fact remains that the defence is more or less common. The learned Arbitrator has held that the delay is not



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attributable to the respondent (claimant) and hence, the escalation cost was granted and it was fixed based on the report of the IIT, Madras. If that is the reason given for awarding escalation cost, there is absolutely no reason as to why the respondent (claimant) must be denied the claim made for additional expenditure. The reasoning given by the learned Arbitrator which is summed up at paragraph 56 of the Award, does not suffer from patent illegality.

21. In the light of the above discussion, this Court does not find any ground to interfere with the Award passed by the learned sole Arbitrator, since the facts of this case and the grounds raised on the side of the petitioner does not fall within any of the eight pigeon holes available under Section 34 of the Act. Accordingly, this petition stands dismissed. No costs. Connected application stands closed.

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Index : Yes/No

Neutral Citation : Yes/No



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N. ANAND VENKATESH, J.

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