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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2026

PRONOUNCED ON : 13.03.2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU**

**OSA(CAD) No. 39 of 2021
and
CMP No.11337 of 2021**

M/s.X-Press Container Lines (UK) Ltd
Represented by its Power of Attorney
R.Subramaniam, S.P.Centre 'B' Wing,
41/44 Minoo Desai Marg,
(Behind Radio Club), Colaba,
Mumbai 400001.

Appellant(s)

Vs

The Board of Trustees of the Port of Chennai
Rajaji Salai,
Chennai 600001.

Respondent(s)

PRAYER: Appeal filed under Section 13 (1) of Commercial Courts Act read with Order XXXVI Rule 1 of the OS Rules to set aside the order passed by the learned Judge dated 17.09.2020 in OP No.511 of 2009, allow the present appeal and consequently pass any such or further orders.

For Appellant(s): Mr.J.Sivanandharaaj, Senior Counsel
For Mr.V.Sankara Narayanan

For Respondent(s): Mr. Niranjana Rajagopalan



JUDGMENT

(Judgment of the Court was made by C.V.Karthikeyan, J.)

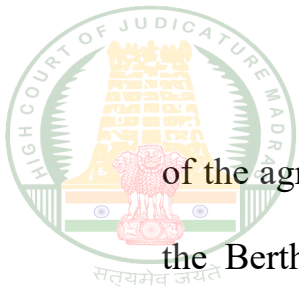
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The first respondent in O.P.No.511 of 2009 aggrieved by the order dated 17.09.2020 allowing the said Original Petition has filed the present appeal.

2.O.P.No.511 of 2009 had been filed challenging the Award dated 17.01.2009 by the Arbitral Tribunal, by which Award, the Tribunal had granted a sum of Rs.1,21,91,869/- to be refunded to the claimant/appellant herein together with interest. The learned Single Judge *vide* his order dated 17.09.2020 had set aside the said Award necessitating the claimant before the Arbitral Tribunal to file the present appeal.

3.The appellant M/s.X-Press Container Line (UK) Ltd., had entered into Berth Reservation Agreement on 18.01.1995 with the respondent, the Board of Trustees of the Port of Chennai for a period of two years till 24.09.1997 to use the Berth at the West Quay with back up area and the container handling equipment for the use of handling of containers carried by the vessels of the appellant and also including discharge and loading of containers.

4.The respondent Port of Chennai forwarded a communication to the appellant on 28.02.1997 complaining that the appellant had breached the terms



of the agreement and that a sum of Rs.62,48,950.32 was due for payment under the Berth Reservation Scheme and further that an advance payment for the second year of operation including Berth Hire Charges, Berth Reservation Charges, Annual Maintenance and Annual Licence Fee to a total sum of Rs.1,00,13,000/- had not been paid, again in breach of the Berth Reservation Agreement. It was held out that if the aforementioned amounts were not paid, the respondent would issue a formal notice of termination of agreement. The appellant by its correspondence on 08.03.1997 had refuted the claims. However, the respondent issued a notice of termination on 16.03.1997. The respondent also called upon the appellant to pay a further sum of Rs. 62,48,950.32 towards Penal Levy for Shortfall. A further letter was addressed by the respondent on 22.04.1997, again demanding payment of the said sum. The appellant by letter dated 25.04.1997 had accepted the calculation of Berth Hire Charges and Berth Reservation Charges, but however, disputed the calculation of Penal Levy for Shortfall in throughput.

5. In view of the dispute that had arisen, the appellant sought appointment of an Arbitrator to examine and adjudicate the dispute. The appellant also denied the claim for a sum of Rs.1,00,13,000/- and further claimed that Penal Levy on Shortfall was wrongly calculated at Rs.540/- by the respondent. The appellant also nominated its Arbitrator and called upon the respondent to



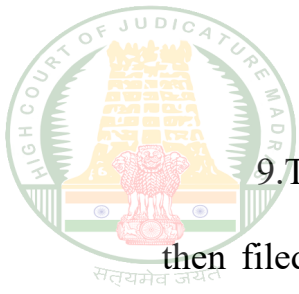
nominate their Arbitrator. Thereafter, correspondences were exchanged between the parties with each other reiterating their respective claims.

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6.The appellant then filed OP No.292 of 2001 under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of a second Arbitrator. By order dated 28.09.2004, an Arbitrator was appointed by the Court.

7.This order was challenged by the respondent by filing W.P.No.7692 of 2005. Stay of the arbitration proceedings was granted. The appellant filed W.A.No.1459 of 2005 and a direction was issued by the Court for the arbitration proceedings to continue and that the issue of limitation or any other issue can be raised before the Arbitral Tribunal.

8.The appellant filed its claim statement before the Arbitral Tribunal. The respondent filed a counter claim and also filed a petition under Section 43 of the Arbitration and Conciliation Act, 1996 and yet another petition under Section 16 of the said Act contending in both petitions that the claim was barred by the law of limitation and that the Tribunal does not have jurisdiction to entertain the claim.

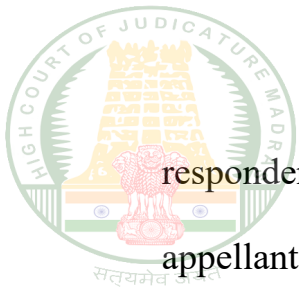


9. The Tribunal however dismissed both the applications. The respondent then filed CMA No.134 of 2007 challenging the orders of the Tribunal. Stay was granted by this Court.

10. The appellant then filed SLP (Civil) No.5660 of 2007. The Hon'ble Supreme Court had dismissed the above SLP, but directed that the arbitration proceedings should continue and that the Award should also be pronounced, but should not be executed till CMA No.134 of 2007 had been disposed of.

11. CMA No.134 of 2007 was disposed of on 09.10.2007 holding that the appeal was not maintainable and granting liberty to raise all issues when a petition is filed under Section 34 of the Act.

12. The Arbitral Tribunal passed an Award on 17.01.2009 granting the claim in favour of the appellant herein. Challenging that Award, the respondent had filed OP No.511 of 2009 under Section 34 of the Act. A learned Single Judge of this Court, by order dated 17.09.2020, allowed the Original Petition and set aside the Award. The learned Single Judge had refused to exempt the period of negotiation between 27.08.1999 and 13.07.2000 from the period of limitation and had held that the claim before the Arbitral Tribunal was barred by the law of limitation. The learned Judge had also refused to hold that the



respondent herein had admitted to refund the payment levy collected from the appellant and had also communicated that settlement of the same would be made. The learned Single Judge had also observed that the Award suffered from patent illegality. It was also observed that the computation of quantum by the Arbitral Tribunal was not in accordance with the terms of the contract and that the findings by the Tribunal with respect to the Berth Hire Charges were based on no evidence. Holding as above, the Award was set aside. Challenging those reasonings given by the learned Single Judge, the present appeal had been filed.

13. Heard arguments advanced by Mr.J.Sivanandharaaj, learned Senior Counsel for the appellant and Mr. Niranjan Rajagopalan, learned counsel for the respondent.

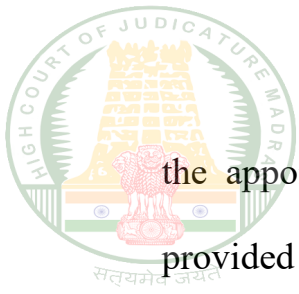
14. Mr.J.Sivanandharaaj learned Senior Counsel after taking this Court through the facts of the case pointed out the correspondences between the parties, wherein, initially there was refusal to appoint an Arbitrator by the respondent which forced the appellant to file an Original Petition under Section 11 of the Act seeking appointment of an Arbitrator. A former Judge of this Court was appointed as an Arbitrator.



15. The learned Senior Counsel pointed out that at the time when such an order was passed, it was considered to be an administrative order. The respondent herein therefore filed a writ petition challenging the said order. A Writ Appeal was also filed and an Arbitral Tribunal was constituted.

16. The appellant then filed a claim statement before the Tribunal. The respondent also filed a counter claim and also presented petitions under Sections 43 and 16 of the Act, raising issues of jurisdiction and limitation. The Tribunal held in favour of the appellant. The respondent filed a Civil Miscellaneous Appeal before this Court. Stay was granted. The appellant challenged the grant of stay before the Hon'ble Supreme Court, wherein, the Tribunal was directed to proceed further. It was however held that enforcement should be kept in abeyance till the disposal of the Civil Miscellaneous Appeal. Finally, the Civil Miscellaneous Appeal was dismissed as not maintainable.

17. The learned Senior Counsel pointed out that the Arbitral Tribunal had then proceeded to adjudicate the claim and had granted an Award in favour of the appellant. The learned Senior Counsel stated that there was no delay either in issuing notice under Section 21 of the Act or in proceeding further with arbitration. The learned Senior Counsel argued that the delay if any was only on the part of the respondent who protracted and challenged every order including



the appointment of an Arbitrator though the agreement between the parties provided for settlement of disputes through arbitration. The learned Senior Counsel assailed the order of the learned Single Judge who had held that the proceedings were barred by the law of limitation and further held that the Award suffered from patent illegality.

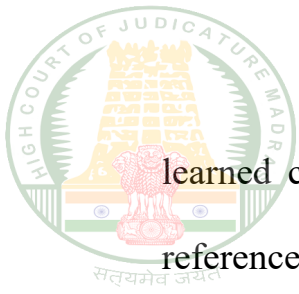
18.The learned Senior Counsel pointed out that the learned Single Judge had unfortunately misdirected himself in holding that the judgment relied on *in S.B.P. & Company Vs. Patel Engineering Limited and another* reported in (2005) 8 SCC 618 would operate retrospectively. The learned Senior Counsel pointed out that the dictum laid down in the aforementioned judgment was that an order under Section 11 of the Arbitration and Conciliation Act was in exercise of judicial power and not an exercise of administrative power. The learned Senior Counsel further stated that though the respondent had candidly admitted to the claim of the appellant, the learned Single Judge had still rejected the contention that such admission was binding on the respondent nor gave rise to the claim being adjudicated against the respondent.

19.The learned Senior Counsel further argued that the Limitation Act would not apply since the order passed under Section 11 of the Act should be held to be an administrative order and there cannot be any limitation placed in



challenging any administrative order. The learned Senior Counsel further pointed out Section 18 of the Limitation Act, 1963 and more particularly, Explanation (a), which speaks about the effect of acknowledgment to a person other than the person entitled to the property or right. In this connection, the learned Senior Counsel pointed out that the respondent in their minutes in a meeting had acknowledged their liability to the claim of the appellant and such meeting was attended by a representative of the Association to which the appellant belongs. The learned Senior Counsel further pointed out that during the course of discussion between the parties, limitation should freeze. He expressed grievance that the learned Single Judge had not considered this aspect. The learned Senior Counsel therefore urged that this Court should set aside the order and allow the appeal and restore the Award of the Arbitral Tribunal.

20.Mr.Niranjan Rajagopalan, learned Counsel for the respondent claimed that the proceedings before the Arbitral Tribunal suffered owing to being barred by law of limitation. The learned counsel stated that recording of the minutes relied on by the appellant should be discarded by this Court as had been done by the learned Single Judge since it was a discussion between two members of the respondent which can never be interpreted as an acknowledgment of debt. The learned counsel pointed out that even if it should be taken as an acknowledgment, it had not been independently communicated by the respondent to the appellant and therefore, could never bind the respondent. The



learned counsel further pointed out that no evidence had been adduced with reference to the Hire Charges collected from third parties/Port users and grant of Award on that basis should be set aside and had been correctly set aside by the learned Single Judge. The learned counsel stated that the order of the learned Single Judge requires no interference and urged that the appeal should be dismissed.

21. We have carefully considered the arguments advanced and perused the material records.

22. This appeal had been filed under Section 37 of the Arbitration and Conciliation Act, 1996. Section 37(1)(c) provides that an appeal could be filed against an order setting aside an arbitral award under Section 34 of the Act.

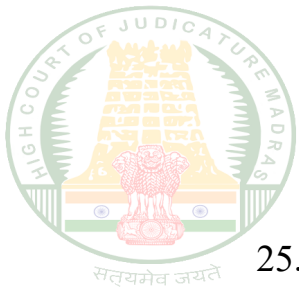
23. The grounds to set aside the Arbitral Award as provided under Section 34 are extremely narrow. The learned Single Judge had set aside the award on the ground that it suffered from patent illegal. It was also held that the claim was barred by the law of limitation. This would require examination of the terms of the agreement entered into between the appellant and the respondent and more importantly, the correspondences exchanged between them to determine whether there was an acknowledgment of liability by the respondent and whether such acknowledgment would bind the respondent and whether



there were periods of negotiations and whether the period of negotiations could be adjudicated as a period when the limitation stood freezed.

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24.The appellant M/s.X-Press Container Line (UK) Ltd had entered into a Berth Reservation Agreement on 18.01.1995 with the respondent, the Board of Trustees of the Port of Chennai for Reservation of 200 metres of Berth for a two year tenure ending on 24.09.1997. The appellant had necessity to use the Berth for the purpose of berthing its vessels and discharging and loading of its goods and to handle containers. It had been further provided in the agreement that if the whole or any part of the conditions had been violated, the agreement could be terminated by either party upon written notice of 30 days. The appellant was also liable to pay Berth Hire Charges, Berth Reservation Charges, Maintenance Charges and License Fee apart from payments towards electricity, watersupply and for other amenities as provided or arranged by the respondent. The agreement also provided referring disputes before two Arbitrators, one to be appointed by the appellant and the other by the respondent. If there was a difference as to the adjudication of the Award, an Umpire could be appointed by the said Arbitrators. It was also contended that the decision should be final and binding on the parties and the provisions of the Arbitration Act 1940 and the Rules thereunder shall apply.



25. We would have to take immediate recourse to Section 85 of the Arbitration and Conciliation Act, 1996 and more specifically to Section 85(2) of the said Act which provides that the provisions of the Arbitration Act, 1940 which stood repelled under Sub Section 1 of Section 85 would apply only to arbitration proceedings which had commenced before the Arbitration and Conciliation Act, 1996 came into force and that the Arbitration and Conciliation Act, 1996 shall apply in relation to arbitral proceedings which commenced on or after this Act had come into force. Section 85 in entirety is extracted hereunder:

85. Repeal and saving.-(1) *The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 ([10 of 1940](#)) and the Foreign Awards (Recognition and Enforcement) Act, 1961 ([45 of 1961](#)) are hereby repealed.*

(2) *Notwithstanding such repeal,*

(a) *the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;*

(b) *all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed*



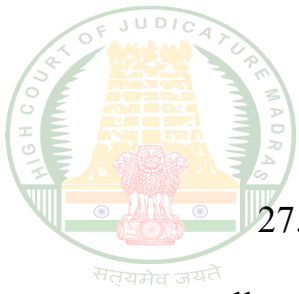
respectively to have been made or issued under this Act.

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26. We are constrained to point out the above provision since the appellant and the respondent in their agreement dated 18.11.1995 which had been entered into before 1996 Act came into effect had stated that any dispute should be referred to arbitration under the provisions of the Arbitration Act, 1940. The Arbitration and Conciliation Act, 1996 received the assent of the President on 16.08.1996 and was published in the Gazette of India on 16.08.1996. The appellant had raised a dispute regarding the claim for Berth Hire Charges, Berth Reservation Charges and Penal Levy Short fall and had sought appointment of an Arbitrator by the respondent. This would effectively mean that the earliest date when the arbitration proceedings commenced as provided under Section 21 of the said Act would be from 25.04.1997, after the Arbitration and Conciliation Act, 1996 had come into force. The provisions of that Act therefore would cover the adjudication of disputes though the parties had agreed that the disputes will be covered through arbitration under the provisions of the Arbitration Act, 1940.

Section 21 of the Arbitration and Conciliation Act, 1996 is as follows:

21. Commencement of arbitral proceedings.—*Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.*



27. In the instant case, the Berth Reservation Agreement between the appellant and the respondent was on 18.01.1995. Thereafter, the respondent addressed a letter on 28.02.1997 to the appellant herein serving notice of violation of the terms of the Berth Reservation Agreement. It was pointed out in the said communication that the appellant had not furnished the forwarding schedule of the vessel to be handled at the dedicated berth. It was further stated that the appellant had not furnished details on throughput for the period from 25.09.1996 till the date of the communication/28.02.1997, for the second year of the operation. It was further pointed out that there were outstandings payable towards the Berth Hire Charges and Berth Reservation Charges and the amount payable was also quantified. A demand was also made for the Penal Recovery for Shortfall of throughput for the first year of operation. It was also pointed out that an advance payment of the Berth Hire Charges and Berth Reservation Charges, Annual Maintenance and Annual License Fee for the second year of operation had not been paid. It was finally informed that the violations indicated should be rectified and the payment due to the respondent should be paid immediately, failing which, notice terminating the agreement would be issued.

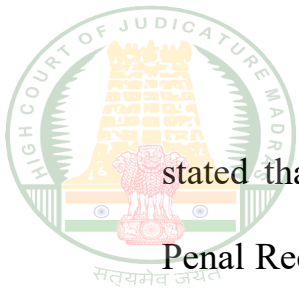
28. The appellant issued a reply on 14.03.1997 stating that in their earlier letter dated 08.03.1997, they had clarified the points raised. The appellant also enclosed a cheque for Rs.1,00,13,000/- as advance payment for the second year



of operation. They raised a dispute over the demand for Penal Recovery for shortfall of throughput for the first year of operation and also on the calculation of wharfage charges and the rates at which they had been calculated. The appellant had given their calculation and sought confirmation about the correctness of the same.

29.The respondent addressed a further letter on 16.03.1997 stating that though there has been rectification of the violations pointed out, still there were further breaches, namely, in payments due to the Port towards the Berth Reservation Charges and Penal Recovery for the short fall in throughput during the first year of operation. The amount payable was crystallised at Rs.62,48,950.32. It was again held out that if there was no compliance or rectification of the breach, the respondent would issue a notice to terminate the agreement on the expiry of 21 days from that date/16.03.1997.

30.The examination of the aforementioned correspondences would show that a dispute had been raised by the respondent complaining breach of the terms of the Berth Reservation Agreement. The appellant had complied with the demand, particularly, the advance payment for the second year of operation. The respondent also noticed that there was part compliance of the demands raised by them, but however in their communication dated 16.03.1997 had



stated that the appellant had not paid the Berth Reservation Charges and the Penal Recovery for shortfall in throughput during the first year of operation and therefore, by letter dated 16.03.1997 had threatened to terminate the agreement, effective from 21 days from the date of the said communication.

31.The appellant then issued a communication dated 27.03.1997 pointing out that the points of dispute should be re-examined, particularly, relating to Berth Hire Charges, Berth Reservation Charges and Penal Levy for shortfall. They further enclosed a cheque for the total amount demanded namely, Rs.62,48,950.32 which they paid under protest with an understanding that after the issues are examined the excess amount paid would be refunded to the appellant.

32.Thereafter, they had stated as follows in the said letter,

Since the Berth Reservation agreement also provides for arbitration, we would also request you to consider appointing an Arbitrator so that the two Arbitrators – one appointed by you and the other appointed by us can arbitrate on the various issues that are involved and come to a settlement.

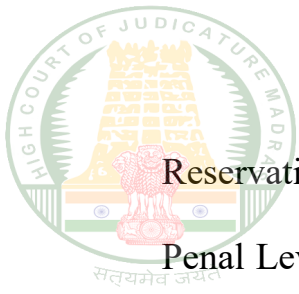
33.This communication is a clear indication that since the Berth Reservation Agreement provides to refer disputes to arbitration, the issue should



be so referred. The appellant had called upon the respondent to appoint an Arbitrator which would enable the appellant to also nominate an Arbitrator who both could constitute the Arbitral Tribunal to examine the disputes which had arisen between the parties.

34. Section 21 of the Act which had been extracted above clearly stipulates that the commencement of arbitral proceedings would be the date on which a request for the dispute to be referred to arbitration is received by the respondent before the Tribunal. The aforementioned communication from the appellant is a request to refer the disputes to arbitration and therefore, we hold that the commencement of arbitration with reference to the disputes between the appellant and the respondent was 27.03.1997, the date of the said communication.

35. The respondent issued a further communication on 22.04.1997 once again reiterating the issues in dispute, namely, the Berth Hire Charges, Berth Reservation Charges and the Penal Levy for shortfall, but however, not answering the demand raised by the appellant to nominate an Arbitrator in the manner prescribed under the Berth Reservation Agreement. The appellant had replied by a communication dated 25.04.1997 and had accepted to the calculation of the respondent with reference of Berth Hire Charges and Berth



Reservation Charges, but raised a protest over the calculation relating to the Penal Levy for shortfall. According to the appellant, the amount payable under this category was Rs.3,84,440/- whereas, the respondent had claimed a sum of Rs.65,35,080/-. They then stated as follows:

In our letter we have already said that since the Berth Reservation Agreement provides for arbitration, an Arbitrator may please be appointed by you so that your Arbitrator and our Arbitrator can arbitrate on this particular issue and come to a settlement.

Since we have paid a substantially higher amount than what is due to the Port and are losing a considerable amount of interest on the excess amount that is now lying with you, we request you to please appoint an Arbitrator immediately and inform us so that the matter can be settled as early as possible.

36.It is thus seen that the appellant had again reiterated their demand to refer the dispute to arbitration and had again sought the respondent to nominate an Arbitrator immediately. The respondent then issued a communication dated 19.07.1997 wherein, with respect to call to referring the disputes to arbitration, they had stated as follows:

With regard to your request for appointment of Port's Arbitrator for referring the alleged dispute, it is stated that there is no arbitrable



dispute and in any event the question of Arbitration does not arise at this stage.

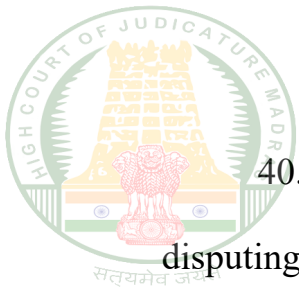
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37.They further stated as follows:

In the light of the above, it is informed that the Port is painfully constrained to issue advance notice of 15 days as per agreement for you to make immediate arrangements to pay the sum of Rs.37,21,680/-being the levy of wharfage due for the shortfall of 6892 TEUs in the guaranteed throughput of 37.500 TEUs for the nine month period ending 24.6.97 as per the agreement. It is further informed that non-payment of the same would amount to breach of the terms and conditions of the Agreement and would invite termination of licence.

38.Thus, though the respondent had stated that there was no arbitral dispute and that the issue of arbitration does not arise at that stage, they had still made a demand for a sum of Rs.37,21,680/-. They had further stated that if the said amount is not paid, the respondent would terminate the license.

39.It is thus seen that till this stage, though the appellant had disputed the claim of the respondent towards the Penal Levy for shortfall and had also called upon the respondent to appoint an Arbitrator, the respondent had stated that the issues were not arbitrable and had rather held out a threat to terminate the agreement, not for the first time, but for the second time.

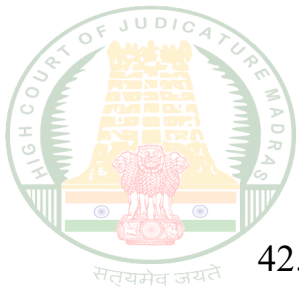


40. The appellant then issued a communication dated 01.08.1997 again disputing the stand taken by the respondent and again reiterating the demand for nomination of an Arbitrator and more specifically, nominating an Arbitrator on their side and naming the Arbitrator also. In their communication dated 01.08.1997, they had stated as follows:

In view of the difference in perception of the agreement provisions leading to a dispute between Chennai Port Trust and X-Press Container Line on the issues relating to berth Hire and penal levy in the Berth Reservation Agreement dated 18th January '95 we have appointed Mr.P.C.Tilak, 13, Norton 1st Street, Mandavali, Madras 6000028 as our Arbitrator. We would request you to please nominate your Arbitrator at the earliest.

41. The appellant then addressed a further communication on 25.04.1998 again reiterating that the disputes should be referred to arbitration. They had stated as follows:

In our letter dated 1.8.97, we have advised you of the appointment of Mr.P.C.Tilak as our arbitrator. We had also requested you to nominate an arbitrator from your side but till date we have not heard anything from you in this regard. We would request you to please let us have your reply together with your cheque for the above amount within 15 days from the date of this letter.



42.They had very specifically given their calculation for the penal levy payable and had stated that the amount was Rs.7,02,000/- and had stated that the respondent had collected a sum of Rs.1,02,56,760/-. The appellant therefore raised a demand against the respondent for the sum of Rs.94,54,769/-.

43.They issued a further communication on 06.01.1999 and stated that they were informed that the respondent would work out the excess amount charged towards Penalty and excess Berth Hire Charges and refund the balance to the appellant. The letter in entirety is extracted below.

We refer to your letter no. A/32551/87/T (M&S) dated 27.8.98 and the discussions that were held with the Traffic Manager, Chennai Port Trust and other senior officials in respect of the amounts paid towards excess berth Hire and penal recovery, that is to be refunded to us.

During Mr. Raman's meeting with the Traffic Manager and others on 31 August 1998, we were informed that the Port Trust would work out the excess amount charged towards penalty and excess berth Hire Charges collected and refund the balance to us shortly.

We have received a note ref: AS(MF)A/5690/98/AR dated 16.9.98 indicating that an amount of Rs.18,76,780/- has to be



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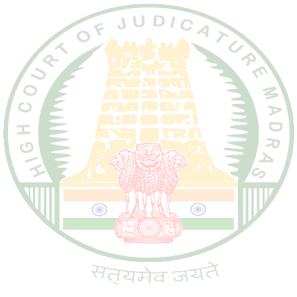
refunded towards excess penal recovery. However, we are still awaiting the excess berth Hire Charges that you have collected.

We would request you to please make immediate arrangements to refund the amount of Rs 18,76,780/- towards penalty and also the amount that has to be refunded to us towards excess collection of berth Hire Charges.

44.It is thus seen that the appellant had laid a claim against the respondent and had also nominated an Arbitrator in accordance with the Berth Reservation Agreement and had been demanding the respondent to nominate an Arbitrator on their side. It is also to be noted that in this communication dated 06.01.1999, the appellant had also stated that the Traffic Manager had stated that the excess amount charged towards Penalty and excess Berth Hire Charges collected would be worked out and refunded to the appellant.

45.By a further communication dated 27.08.1999, the appellant again placed a demand for refund of the amounts and further stated as follows:

In June'99, we had called on Mr. Muthu Srinivasan, FA&CAO and brought to his attention the inordinate delay in refunding the amount to us. We were assured by the FA&CAO that the details have already been compiled and the amount



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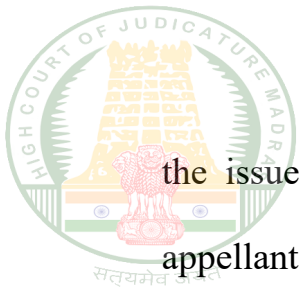
*would be refunded to us in about a week's time.
We regret that up to now the amount has still not
been refunded.*

46.The appellant had again stated that there had been an assurance extended by the officials of the respondent that the amount would be refunded to the appellant. The appellant in their communication dated 05.01.2000 again raised a demand for refund of the excess levy collected as Berth Reservation Charges. They further stated as follows in the said communication.

*We would also like to point out that when
our representatives met the Chairman on the
issues, we were informed by the Chairman that
orders have already been passed for refund of the
amount on the above two aspects.*

47. The appellant had stated that they had been informed by Chairman that orders had already been passed for refund of the amount to the appellant.

48.The Advisory Committee of the respondent had a meeting on 04.04.2000 and the minutes recorded therein were communicated on 25.04.2000. Quite apart from the Chairman and other officials of the respondent, the representatives of the Chennai Steamer Agents' Association, All India Shippers' Council, Chennai Port Stevedores' Association and Chennai Custom House Agents' Association had participated in the said meeting. One of

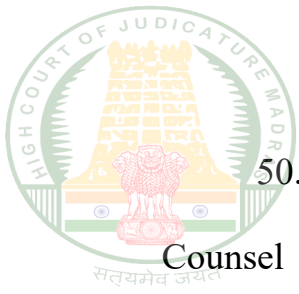


the issues raised was with reference to the amount due and payable to the appellant and it had been recorded as follows:

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When the Chairman wanted information on the latest position on the refund claims of M/s.BIL, M/s.XCL, FA&CAO informed that in the case of M/S.XCL, refund of Berth Hire Charges collected from non-licensee's vessels berthed in Licensee's berth during the BRS period has been decided as approved by CPT and on refund of excess penal levy collected from M/s.XCL, amount has been worked out deciding the ratio of empty and loaded containers. LA's opinion has also been obtained and the settlement will be made shortly. To a query from Shri Rahushankar on implementation of TAMP's order on port too paying interest for delayed settlement, FA&CAO and TM pointed out the practical difficulties in implementing TAMP's order.

49.A careful reading of the minutes recorded shows that the respondent had approved refund of Berth Hire Charges and had also calculated the amount to be refunded towards the excess Penal Levy. It was also minuted that Legal Advisor's opinion had been obtained and that the settlement will be made shortly.



50. This communication had been pointed out by the learned Senior Counsel for the appellant as an acknowledgment of the debt of an existing liability which had also been communicated to the agent of the appellant who was present during the meeting. The appellant raised a further demand for the refund of the excess amount calculated by the respondent by a communication dated 29.05.2000.

51. Thereafter, the appellant filed the petition under Section 11 (3) of the Arbitration and Conciliation Act, 1996 before the Original Side of this Court in OP No.292 of 2001 seeking appointment of a second Arbitrator in terms of the agreement dated 18.01.1995. The point to be now considered is whether the claim of the appellant stood barred by the law of limitation.

52. The letters exchanged between the appellant and the respondent have been extracted above.

53. The Berth Reservation Agreement between the appellant and the respondent is dated 18.01.1995. The respondent by a communication dated 28.02.1997 had raised a dispute stating that the appellant was due and payable the Berth Hire Charges, Berth Reservation Charges and Penal Levy for shortfall of throughput for the first year. The total amount was crystallised at



Rs.1,00,13,000/-. The appellant by a communication dated 14.03.1997 stated that they are enclosing a cheque for the said amount of Rs. 1,00,13,000/- and had also given their calculation for the Penal Levy at Rs.3,84,440/- and requested confirmation of the same and had in the alternative sought adjustment of the said amount with Berth Hire Charges lying to their credit. The respondent by communication dated 16.03.1997 however contended that the total amount payable had been reworked to Rs.62,48,950.32 and stated that if the amount is not paid, they would terminate the agreement. As a matter of fact, they had held out this threat of termination of the agreement even in their communication dated 28.02.1997, whereby, they had demanded a sum of Rs.1,00,13,000/-. The appellant by their communication dated 27.03.1997 informed that they would pay the full demand of Rs.62,48,950.32 and enclosed a cheque stating that the amount had been paid under protest.

54.The appellant then invoked the clause relating to settlement of disputes through arbitration and called upon the appellant to appoint an Arbitrator. As pointed out earlier, under Section 21 of the Arbitration and Conciliation Act 1996, the arbitral proceedings are deemed to commence from the date when the notice invoking the arbitration clause is issued. The appellant had issued such a notice on 27.03.1997.



55.The respondent by their communication dated 22.04.1997 stated that the collection of various charges from the appellant was proper and demanded a further sum of Rs.5,81,568.62. They however did not address the demand for appointment of an Arbitrator.

56.The appellant, by their communication dated 25.04.1997 stated that they are due and payable only a sum of Rs.3,84,440/- and pointed out that they had paid under protest a sum of Rs.62,48,950.32 by letter dated 27.03.1997. Again the appellant demanded appointment of an Arbitrator by the respondent to adjudicate this point of dispute. They had specifically stated that they had paid a substantially higher amount than what was due to the respondent and that they are losing considerable amount of interest on the excess amount paid and therefore again urged appointment of an Arbitrator by the respondent. There was no reply by the respondent to this communication. They again did not specifically address the demand for appointment of an Arbitrator.

57.The appellant then issued a further communication on 20.06.1997, wherein, again they reiterated their demand for appointment of an Arbitrator and to refer the disputes to the arbitration. The respondent did not reply to this demand.



58.The respondent by their communication dated 19.07.1997 stated that there was no dispute and that therefore the question of arbitration did not arise that stage. They then informed that the said communication was an advance notice of 15 days for payment of a sum of Rs.37,21,680/- and that non payment would invite termination of the license.

59.It is thus seen that the communications between the appellant and the respondent did not have convergence on any issue at any point. The respondent had initially demanded the appellant to pay the Berth Hire Charges, Berth Reservation Charges and Penalty for shortfall in throughput. The appellant had paid Rs.1,00,13,000/-, the amount demanded. The respondent raised a further demand of Rs.62,48,950.32/-. The appellant paid that amount under protest and demanded appointment of an Arbitrator by the respondent. There was no direct reply to this demand. But in every communication by the respondent, there was a threat to terminate the agreement. By a further communication dated 19.07.1997, the respondent stated that there was no arbitrable issue and that there was no dispute between the parties, but raised a further demand for a sum of Rs.37,21,680/- and again held out a threat of termination of the agreement.

60.The appellant by their communication dated 01.08.1997 claimed that they had paid all amounts including the sum of Rs.37,21,680/- and sought an



official receipt for the said amount and again demanded the issue to be referred to arbitration and also appointed Mr.P.C.Tilak as their Arbitrator. The respondent did not reply to this communication. The respondent have not produced any document to show that they had actually appointed an Arbitrator. There are no documents produced by the respondent that they had protested against the appointment of Mr.P.C.Tilak as an Arbitrator. There are no documents produced by the respondent expressing willingness to refer the issue to arbitration.

61.The appellant by their further communication dated 25.04.1998 had again later raised a protest over the amount demanded and had given their calculation and stated that it was the respondent who has to pay the appellant a sum of Rs.95,54,760/- and raised a demand for the said amount. They again reiterated the appointment of Mr.P.C.Tilak as Arbitrator and requested appointment of an Arbitrator by the respondent. There was no indication that the respondent ever replied to this letter.

62.It is thus seen that the respondent was demanding amounts from the appellant and threatening termination. The appellant then turned the tables around and claimed that it was the respondent who was liable to pay a substantial sum of Rs.95,54,760/- being excess amount collected from the appellant. It is further seen that though the appellant had been demanding the

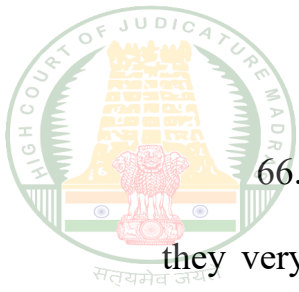


disputes to be referred to arbitration and had also appointed their Arbitrator, the respondent had failed to address this particular issue directly even though correspondences had been exchanged between the parties.

63.The appellant by communication dated 04.06.1998 again raised a demand for the amount payable by the respondent and stated that they would take legal action in this regard.

64.The appellant by a further communication dated 06.01.1999 specifically stated that a discussion was held with the Traffic Manager, Chennai Port Trust and other Senior Officials with respect to the excess amount paid by them and refundable by the respondent and specifically stated that the Traffic Manager and others in the meeting on 31.08.1998 had stated that the Port Trust would work out the excess amount charged and refund the balance.

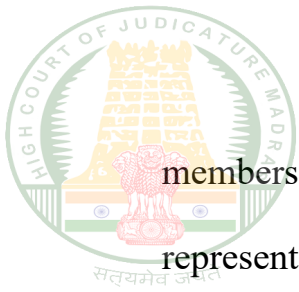
65.This statement by the appellant indicating admission by the official of the respondent that excess amount had been collected from the appellant was not replied by the respondent. It could only be inferred that the respondent had not just admitted that excess amount had been collected, but had also not protested that an admission had been made by the Traffic Manager on this aspect.



66.The appellant issued a further communication on 27.08.1999, wherein, they very specifically stated that they had called upon Muthu Srinivasan, FA & CAO who assured that details have been compiled and that the amount collected in excess would be refunded in about a weeks' time. This again is a specific allegation of direct admission of liability by the respondent, by a responsible official of the respondent. Again, there has been no denial of this admission and there has been no statement made by the respondent that the said official who was holding the post of FA & CAO was not competent to so admit the liability or was not authorised to admit the said liability.

67.By a further communication dated 05.01.2000, the appellant pointed out that the Chairman of the respondent/Chennai Port Trust had informed that orders have already been passed for refund of the amount due and payable to them. This statement by the appellant referring to a commitment to pay the appellant the amount due and that orders have already been passed had again not been either replied denying the same specifically or stating that the appellant had stated an incorrect fact.

68.The respondent then convened an Advisory Committee meeting on 04.04.2000 and had forwarded the minutes recorded therein on 25.04.2000 to the Chennai Steamer Agents' Association which forwarded the same to all



members. The appellant was also a member of the said Association and a representative was present in the said meeting. In the said meeting, it had been

recorded that the FA & CAO of the respondent informed that the amounts payable to the appellant had been worked out and Legal Advisor's opinion had also been obtained and that settlement would be made shortly. This is a specific admission of liability.

69. Section 18 of the Limitation Act, 1963, provides for an effect of acknowledgment in writing and in Explanation (a) of the said provision, it had been very specifically stated that an acknowledgment may be sufficient if it is addressed to any person, other than a person entitled to the property or right.

70. Section 18 in entirety is given below for better appreciation:

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.



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(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

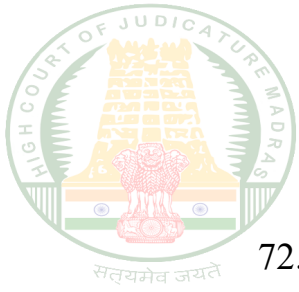
(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

71. It is thus seen that the appellant had issued their notice calling upon the disputes to be referred to arbitration by their communication dated 27.03.1997. They further reiterated this demand by their communication dated 25.04.1997. The respondent had stated that there were no issues to be referred to arbitration in their communication dated 19.07.1997. The appellant had



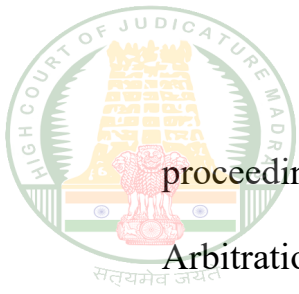
specifically nominated an Arbitrator by their communication dated 01.08.1997 and reiterated this fact in their communication dated 25.04.1998. The appellant by their communication dated 06.01.1999 specifically referred to an admission of liability by the Traffic Manager which had not been denied by the respondent. The further admission of liability by the FA & CAO was pointed out on 27.08.1999 and again not denied by the respondent. Thus, though the arbitration proceedings had commenced by a communication dated 27.03.1997, raising a demand to refer the disputes to arbitration, there has been an acknowledgments of debt, referred in the letters dated 06.01.1999 and 27.08.1999 by the appellant. The cause to refer the dispute now stood extended. The appellant then, by their communication dated 05.01.2000 specifically stated that the Chairman of the respondent had passed orders for the refund of the amounts payable to the appellant. Thus the respondent had extended the period of limitation by not denying this statement made by the appellant. It has to be therefore construed that the respondent admitted liability. Finally, by minutes dated 25.04.2000, the respondent had acknowledged in writing that they were liable to pay amounts to the appellant and that the same would be paid shortly. This admission was not only communicated in writing, but also stated in the presence of the representative of the appellant, namely, a member of the Chennai Steamer Agents' Association.



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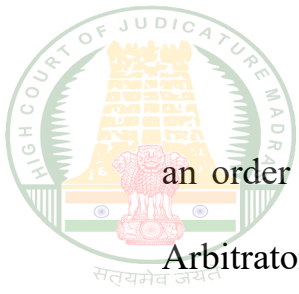
72.The learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in *OPG Power Generation Private Limited Vs. Enxio Power Cooling Solutions India Private Limited and another* reported in (2025) 2 SCC 417, wherein, the scope of the recording of liability in the minutes of a meeting had been discussed with reference to a counter claim. In the instant case, the respondent had never denied that there was no such meeting on 04.04.2000 and that in the said meeting acknowledgment of liability was not expressed, and that in the said meeting there was never an assurance held that the liability would be settled shortly and that in the meeting there was no representative of the Association present and that the said minutes were not communicated to the Association. The respondent is thus bound by the minutes, particularly since, the meeting was conducted in the presence of the representative of the appellant's Association and the minutes were communicated to the Association. We therefore hold that the minutes of the meeting dated 04.04.2000 would be binding on the respondent.

73.The appellant made a further demand, by communication dated 29.05.2000, wherein, they again stated that the FA & CAO had assured that settlement would be made shortly. The agent of the appellant issued a notice on 13.07.2000 that if the respondent did not honour their liability, legal



proceedings would be initiated. An application under Section 11 of the Arbitration and Conciliation Act was then filed in October 2000. The last acknowledgment of the liability by the respondent was in their meeting held on 04.04.2000, communicated to the agent of the appellant and by not replying to the further communication of the appellant dated 29.05.2000, the filing of the petition under Section 11 of the Act in October 2000 can never be stated to be barred by law of limitation. We hold that the appellant had initiated necessary proceedings within the period of limitation and the reasonings of the learned Single Judge without examining any of the communications between the parties in their proper perspective will have to be interfered with and are set aside.

74.The appellant then filed O.P.No.292 of 2001 under Sections 11 (3) & 11 (4) of the Arbitration and Conciliation Act, 1996, seeking appointment of a second Arbitrator in accordance with the terms of the Berth Reservation Agreement dated 18.01.1995. It had been contended in the said petition that the appellant had appointed an Arbitrator by its letter dated 01.08.1997 and that the respondent had failed to appoint their Arbitrator within 30 days from the date of the receipt of the notice. In the said petition, the respondent filed a counter affidavit contending that no dispute had arisen between the appellant and the respondent and that therefore, the issue of invoking the clause to refer disputes to arbitration did not arise. This petition filed by the appellant had been filed in October 2000. The matter then came up before the then Chief Justice, who by



an order dated 28.09.2004, had appointed a former Judge of this Court as an Arbitrator to decide the disputes in accordance with the provisions of the Act within a period of six months.

75.It must be mentioned that the law which prevailed at that point of time was that an order appointing an Arbitrator under Section 11 of the Act was an administrative order, subject to judicial review. The respondent filed W.P.No.7692 of 2005 challenging the appointment of an Arbitrator. The matter then proceeded before the Writ Appellate Court, wherein, W.A.No.1459 of 2005 was filed and by an order dated 23.09.2005, a Division Bench of this Court stated that a third Arbitrator would be appointed by the two Arbitrators, one appointed by the Contractor and the other appointed by the Court. It was further ordered that the issue of limitation or any other question can be raised before the Arbitrators. It is thus seen that the matter had been pending judicial consideration from October 2000 when the petitioner filed a petition under Section 11 of the Act seeking appointment of an Arbitrator till September 2005 when the Division Bench had formulated a procedure for appointment of a third Arbitrator. This period will naturally have to be excluded when the issue of limitation is examined.

76.Quite apart from the above, it is to be noted that for the communications issued by the appellant, the respondent had not issued any

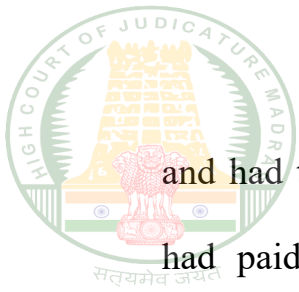


reply, particularly, with respect to the demand for appointment of a second Arbitrator and with respect to the specific averments that initially the Traffic Manager and later the FA & CAO of the respondent Port Trust and finally the Chairman had admitted to the claim of the appellant. Thereafter, the claim was presented before the Arbitral Tribunal by the appellant on 11.11.2005 less than two months from the date of order by the Division Bench formulating the procedure to form an Arbitral Tribunal. The respondent then raised the issue of limitation. The Arbitral Tribunal framed the issue of limitation as a preliminary issue and held that the claim petition was filed within the period of limitation. Challenging that order, the respondent herein filed CMA No.134 of 2007 under Section 37 of the Arbitration and Conciliation Act, 1996. A learned Single Judge of this Court by order dated 09.10.2007 observed that the appeal had been admitted and interim stay had been granted and that the appellant herein had filed an application to vacate the stay which was dismissed and the stay was made absolute. It was further observed that the appellant had filed a Special Leave Petition before the Hon'ble Supreme Court, wherein, the petition was disposed of by requesting the High Court to decide the issue of maintainability of the appeal and that in the mean time, the arbitration may proceed and Award may also be pronounced, but shall not be put into execution till the maintainability of the appeal is decided. The learned Single Judge finally held that CMA No.134 of 2007 was not maintainable and dismissed the same.



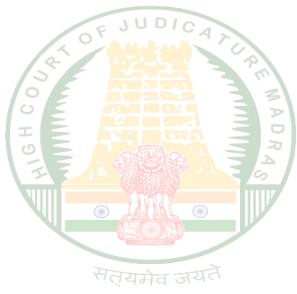
77. The Arbitral Tribunal then proceeded to pass an Award on 17.09.2007, challenging which the respondent had filed O.P.No.511 of 2009 under Section 34 of the Act. The learned Single Judge had held the issue of limitation in favour the respondent herein. We hold that while deciding the issue of limitation, due regard should have been given to the admissions made by the respondent and to the further facts that the respondent had protracted the issue by first refusing to appoint an Arbitrator, second by denying that there was any dispute to be referred to arbitration, third by contesting the petition filed under Section 11 of the Act filed by the appellant herein, fourth by challenging the order by filing a writ petition, fifth by raising the issue of limitation before the Arbitral Tribunal and sixth by challenging the order passed on the issue of limitation again in appeal before this Court. The period taken in all these proceedings should be excluded as they were not under the control of the appellant and could only be termed as frivolous steps taken by the respondent to delay the payment of the admitted claim by them.

78. It had been held by the learned Single Judge that the Arbitral Tribunal had allowed the claims without evidence being available. During the Arbitral proceedings, the appellant, as claimant had examined their Regional Representative and the correspondences referred *supra* had been marked which clearly indicate that the respondent had initially made demands for the Berth Hire Charges, Berth Reservation Charges and Penalty for shortfall in throughput



and had threatened termination of the agreement, to avert which the appellant had paid the amount demanded and later it was found that the amounts demanded and paid were far in excess of the actual amount payable by the appellant. It was the respondent who had to refund the excess amount payable. This liability was acknowledged by the Traffic Manager of the respondent, by the FA & CAO of the respondent, by the Chairman of the respondent and further in the presence of the representative of the Association of the appellant in a meeting convened by the Chairman, attended by the FA & CAO of the respondent. This acknowledgment is more than sufficient to hold that the respondent was due and payable the amount to the appellant.

79. It is beyond the scope of the Court under Section 34 or Section 37 of the Act to go into the intricacies of the calculations made and presented before the Arbitral Tribunal to find whether they were arithmetically correct or not, particularly when there was no denial of the correctness of the demand of the appellant and more particularly since there was an admission of liability by the respondent. Even otherwise, the witness for the appellant very specifically stated during cross examination that he came to know what exactly transpired in the Advisory Committee meeting held on 04.04.2000 from the minutes of the meeting. He further asserted that an assurance was given that the amounts would be settled. He denied that such an assurance was not given. He specifically stated as follows:



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Q.175 Sir, Read that part of the minutes which you refer that is in your favour, who according to you assured XCL. whether Chairman or F.A & CAO ?

Ans: On Chairman's enquiry the F.A & CAO confirmed in presence of our Agent's Association representative.

80.The next question was not that this statement by the witness was not correct. Rather a question was put as to what was the name of the Chairman of the respondent. The said question and answer are as follows:

Q. 176. Who was the Chairman of the advisory committee meeting held on 04/04/2000?

Ans. Shri. Baskara Doss, IAS chaired the meeting.

81.It is thus seen that the respondent has not specifically challenged the statement made by the witness that the admission of liability was made in the presence of the representative of the Agents' Association. It would only be proper to once again reiterate that the effect of acknowledgment of liability in the presence of a person other than to whom the right had accrued is more than sufficient in accordance with the Explanation (a) of Section 18 of the Limitation Act, 1963. The documentary evidence produced and referred above and the oral evidence adduced would only indicate that the Tribunal had come to a proper decision in the claim petition preferred by the appellant and there is no patent illegality. It can never be stated that it was perverse or that extraneous reasons



had been given to justify the claim being granted by the Tribunal. We would set aside the reasoning of the learned Single Judge on this aspect.

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82.The learned counsel for the respondent had placed reliance on the judgment of the Hon'ble Supreme Court in *SSANGYONG Engineering and Construction Company Limited Vs. National Highways Authority of India*, reported in (2019) 15 SCC 131, wherein, the Hon'ble Supreme Court had held that when a party was not able to present his case, it could be construed as patent illegality. It was also held that if a conclusion is reached on no evidence, then it would indicate patent illegality. In the instant case, there was more than sufficient evidence available, there was more than one acknowledgment of liability and there was no denial of such acknowledgment of liability and there was no denial that the documents presented by the appellant were never communicated to the respondent.

83.We hold that the Award granted by the Tribunal had been granted on the basis of sufficient evidence produced and can never be categorised as suffering from patent illegality.

84.In view of all these reasons, we set aside the order of the learned Single Judge and restore the award of the Arbitral Tribunal on the same terms



granted by the Tribunal. The judgment of the learned Single Judge in O.P.No.511 of 2009 dated 17.09.2020 is set aside. The Appeal stands allowed with costs. Consequently, connected miscellaneous petition is also closed.

**(C.V.K.J.,) (K.B.J.,)
13-03-2026**

Index: Yes/No

Speaking/Non-speaking order

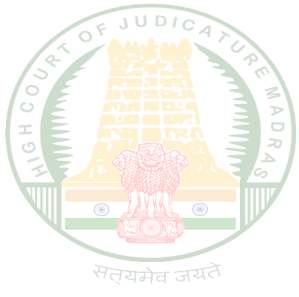
Internet: Yes

Neutral Citation: Yes/No

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To

The Board of Trustees of the Port of
Chennai,
Rajaji Salai, Chennai 600001.



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OSA(CAD) No. 39 of 2



**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

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**Pre-delivery Judgment in
OSA(CAD) No. 39 of 2021**

13-03-2026