

O.P. No.85 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.03.2025

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

O.P. No.85 of 2021
and
Arb. Appln. No.281 of 2021
and
O.A. No.686 of 2021
and
A. No.278 of 2021

The Board of Trustees of Chennai Port Trust,

Rep. By its Chairman,

Rajaji Salai,

Chennai – 600 001.

... Petitioner

Vs

1. M/s.SICAL Logistics Ltd.,

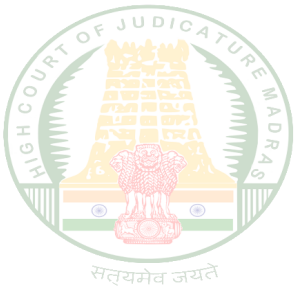
South Inia House,

No.73, Armenian Street,

Chennai – 600 001.

... Respondent

Prayer : Original Petition filed under Section 34 (3)(a)(iv) of the Arbitration and Conciliation Act, 1996 seeking to set aside the award, dated 05.09.2019 of the Hon'ble Arbitral Tribunal insofar as it is against the petitioner / Chennai Port Trust, where its counter claims are rejected under Section 34 of the Arbitration and Conciliation Act.



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For Petitioner	: Mr.AR.L. Sundaresan Addl. Solicitor General for Mr.S. Haja Mohideen Gisthi
For Respondent	: Mr. Srinath Sridevan Senior Counsel for Ms.Aishwarya & Nathan

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the Arbitral Award, dated 05.09.2019 passed by the Arbitral Tribunal.

2. Under the impugned Arbitral Award, the respondent/claimant was liable to pay a sum of Rs.4,78,28,931/- for the 15th year of their operations and Rs.4,65,47,086/- for the 16th year of their operations, totalling Rs.9,43,76,017/- and out of the said total amount, after adjusting the amounts which they have already paid, they were directed to pay a further sum of Rs.59,84,592/- to the petitioner / Port Trust. The said amount is payable within eight weeks from the date of the Award, failing which the said sum shall carry an interest at 9% p.a. from 02.09.2014,

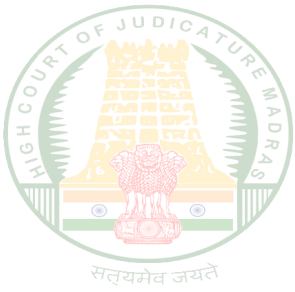


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i.e., the date of the statement of the claim. The counter claim filed by the petitioner before the Arbitral Tribunal was not taken into consideration, in view of the finding rendered by the Arbitral Tribunal that the license agreement stood frustrated from 01.10.2011.

3. The dispute between the parties arose out of a Contract, dated 26.02.1998. The contract pertains to handling of Berth in Chennai Port Trust. According to the respondent, the contract got frustrated on account of an order passed by the Hon'ble Division Bench of this Court, dated 11.05.2011 in W.P. No.11747 of 2002 etc. batch, prohibiting handling of dusty cargo in Chennai Port with effect from 01.10.2011. Originally, the Agreement for licensing the berth, which is the subject matter of the contract given to the respondent by the petitioner was for a period of 20 years. According to the respondent as seen from the arbitral proceedings, the contract got frustrated due to the aforesaid reasons as they were prohibited from performing their obligations under the contract on account of prohibition imposed by orders of the Hon'ble Division Bench of this Court, as stated supra. Under those circumstances, the respondent / claimant made an arbitral claim against the petitioner / Port Trust seeking for the following reliefs :-



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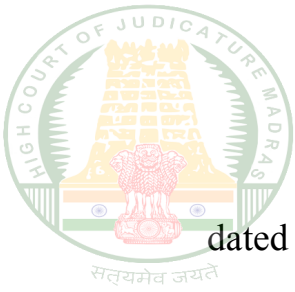
a) To declare that the contract earlier entered into by the petitioner with the respondent has become unenforceable on account of the prohibition to handle all dusty cargo viz., coal and iron ore in the berth at Chennai Port Trust, as null and void;

b) In the alternative, the respondent /claimant has sought for a prayer before the Arbitral Tribunal that the contract having become frustrated their obligations under the said contract have to be declared as discharged;

c) To direct the petitioner to refund all the monies paid by the respondent with effect from 01.10.2011, when according to the respondent, the contract become frustrated.

d) To direct the petitioner to render accounts pertaining to the contract.

5. On the other hand, the petitioner before the arbitration has disputed the contentions of the respondent, as stated supra. They have also filed a counter claim before the Arbitral Tribunal seeking to direct the respondent / claimant to perform their obligations under the contract,



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dated 26.02.1998 and also to direct the respondent to pay the advance amount payable for the 17th, 18th, 19th and 20th year of operations amounting to Rs.34,93,49,969/- and for other reliefs.

6. Before the Arbitral Tribunal, Exhibits C1-C73 have been filed by the claimant and Exhibits R1-R55 have been filed on the side of the respondent

9. Based on the evidence available on record, the Arbitral Tribunal comprising of three Members, viz., two Former Judges of this Court and one former Judge of Hon'ble Supreme Court have passed an unanimous Arbitral Award rejecting the counter claim of the petitioner and has held that the respondent / claimant was liable to pay a sum of R.4,78,28,931/- for the 15th year of their operations and Rs.4,65,47,086/- for the 16th year of their operations, totalling to Rs.9,43,76,017/-.

10. The Arbitral Tribunal has also held that after adjusting the amounts, which were paid by the respondent to the petitioner during the aforesaid two years (15th and 16th years) and Rs.2,00,00,000/-, which

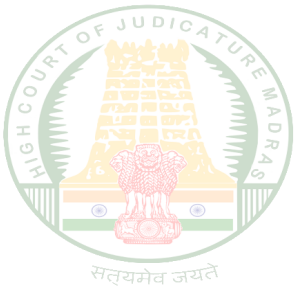


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was deposited by the respondent under the orders of the Arbitral Tribunal, the balance sum of Rs.59,84,592/- was held to be payable by the respondent to the petitioner. The said amount was directed to be paid within eight weeks from the date of the Award, failing which, the said sum shall carry an interest at 9% from 02.09.2014 i.e., the date of the statement of claim till the date of realization.

11. The Arbitral Tribunal in the impugned Arbitral Award has rejected all other claims made by the respondent /claimant and has also rejected the counter claim made by the petitioner in respect of the minimum guarantee amount payable under the Licence Agreement for the 17th, 18th, 19th and 20th year of operations.

12. While rejecting the petitioner's counter claim, the Arbitral Tribunal has recorded a finding that on account of the frustration of the contract / License Agreement w.e.f. 01.10.2011, the subject contract stands dissolved for the subsequent years of operations i.e., 17th, 18th, 19th and 20th, and the parties on either side shall stand discharged of their duties, obligations, rights and liabilities for those years under the said contract.

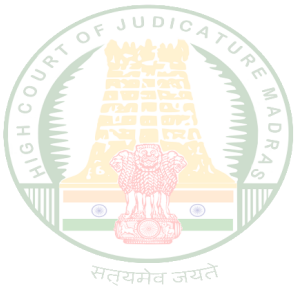


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13. Admittedly, the Hon'ble Division Bench of this Court in its order, dated 11.05.2011 passed in W.P. No.11747 of 2002 etc., batch had prohibited the handling of dusty cargo i.e., coal and iron ore by Chennai Port Trust, w.e.f. from 01.10.2011. Admittedly, coal /iron ore, which was also handled by the respondent in the berth allotted to them under the contract. The said berth was allotted under a reservation scheme, which is the subject matter of the contract. Since the dusty cargo was prohibited to be handled at Chennai Port Trust, necessarily, the conclusion arrived at by the Arbitral Tribunal that the contract got frustrated w.e.f. 01.10.2011 is a correct conclusion.

14. While deciding an application under Section 34 of the Arbitration and Conciliation Act, 1996, this Court cannot re-appreciate the evidence. Only based on the evidence available on record, the Arbitral Tribunal has come to the right conclusion that the subject contract has become frustrated and the same could not be performed by the respondent. Both the parties participated in the arbitration. They have let in evidence in support of their contentions.

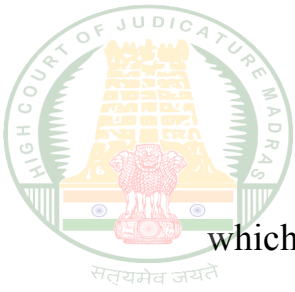


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15. The Arbitral Tribunal comprised of three Members, by an unanimous Arbitral Award, only based on the evidence available on record has come to the right conclusion and issued directions as seen from the impugned Arbitral Award. This Court does not find any infirmity in the impugned Arbitral Award, dated 05.09.2019.

16. It is brought to the notice of this Court by the learned Senior Counsel appearing for the respondent that subsequent to the passing of the impugned Arbitral Award, a resolution plan was submitted and the same was approved by the National Company Law Tribunal (NCLT) and thereafter the present Management of the respondent has taken over the Management of the respondent Company. Therefore according to him, since the petitioner did not make their claim before the NCLT and they were not part of the Committee of Creditors who had finalised the resolution plan, which was also approved by the NCLT and resolution plan submitted by the Committee of Creditors was also sanctioned by the NCLT, the respondent cannot be made liable. In support of his contention, the learned Senior Counsel for the respondent drew the attention of this Court to various decisions of the Hon'ble Supreme Court



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which includes the latest decision rendered by the Hon'ble Supreme

Court in ***Vaibhav Goel & Another vs. The Deputy Commissioner of***

Income Tax and another rendered in Civil Appeal No.49 of 2022 on

20.03.2025 and would submit and it is settled law that a successful

resolution applicant cannot suddenly be faced with “undecided” claims

after the resolution plan submitted by him has been accepted as this

would amount to a hydra head popping up which would throw into

uncertainty amounts payable by a prospective resolution applicant who

would successfully take over the business of the corporate debtor. All

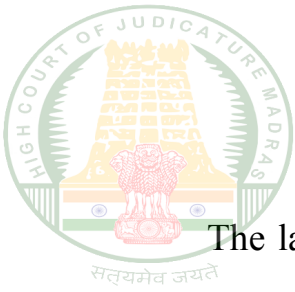
claims must be submitted to and decided by the resolution professional

so that a prospective resolution applicant knows exactly what has to be

paid in order that it may then take over and run the business of the

corporate debtor.

17. Therefore, according to the learned counsel for the applicant since the respondent having taken over the Management of the Company, pursuant to a successful resolution plan approved by NCLT cannot be mulcted with any liability which pertains to the transactions earlier entered into by the erstwhile Management of the respondent Company.



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The law is now well settled. The proposition submitted by the learned

Senior Counsel for the respondent is now well settled as seen from the

decisions rendered by the Hon'ble Supreme Court which includes the

decision referred to supra in *Vaibhav Goel's case*. However, even on

merits, the petitioner, as observed earlier, has not made out a case for

interference by this Court under Section 34 of the Arbitration and

Conciliation Act, 1996, where the scope of interference is very limited.

Unless and until the petitioner satisfies any of the grounds falling within

the purview of Section 34 of the Arbitration and Conciliation Act, 1996,

the question of interfering with the impugned Arbitral Award by this

Court does not arise. The ground raised by the respondent that this

petition is not maintainable as against them since they are the new

Management also deserves merit in view of the settled law laid down by

the various decisions of the Hon'ble Supreme Court which includes the

decision referred to supra.

18. For the foregoing reasons, since the Award passed by the

Arbitral Tribunal is based on evidence and it is an intelligible Award,

which does not call for any interference and in view of the fact that new



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Management has taken control of the respondent Company, pursuant to resolution plan approved by the NCLT, the question of interference with the impugned Arbitral Award does not arise.

19. In the result, there is no merit in this petition. Accordingly this petition (O.P. No.85 of 2021) stands dismissed. No costs.

20. Since Arb. Appln.281 of 2021 and O.A. No.686 of 2021 were filed before the resolution plan was approved by the NCLT, those applications are closed. Consequently, A. No.278 of 2021 is also closed.

21. However, liberty is granted to the respondent Company represented by its new Management to file fresh applications on the same cause of action seeking for the very same reliefs.

22. Since the respondent was earlier having the benefit of an interim injunction in the aforesaid applications and to enable them to file fresh applications, this Court is inclined to extend the interim order



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granted in those applications for a limited period of one week from the

date when this order is uploaded in the website, to enable the respondent

to file fresh applications. However, in case, in the event of non extension of interim injunction for a particular period earlier, the interim injunction granted by this Court will not impact the petitioner and the respondent cannot file a Contempt Petition insofar as the said period is concerned.

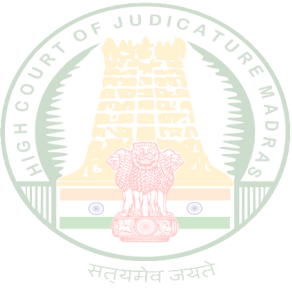
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Index: Yes/ No

Speaking order / Non speaking order

Neutral citation : Yes / No

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