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A.No.1883 of 2025 &
E.P.(D).No.2764 of 2025

In the High Court of Judicature at Madras

Reserved on 08.9.2025	Delivered on : 12.9.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

A.No.1883 of 2025 & E.P.(Diary) No.2764 of 2025

M/s.Trading Engineers
(International) Ltd.,
UM House, plot No.35-P,
Sector-44, Gurgaon-122002.
Haryana

...Award Holder/
Applicant

Vs

M/s.Trimurthi Hitech Company
Private Limited, regd.office :
No.58, I Floor, Maddox Street,
Choolai, Chennai-112

...Judgment
debtor/
Respondent

APPLICATION under Order XIV Rule 10 of the Original Side Rules
read with Order XXI Rules 41(2) and 41(3) of the Civil Procedure Code
read with Section 151 of the Civil Procedure Code praying to direct the
respondent/judgment debtor to file an affidavit stating the particulars



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of all the encumbrance-free assets, both (movable and immovable) including the statement of accounts of the bank accounts held in the name of the respondent/judgment debtor company as provided under Order XXI Rule 41(2) of the Civil Procedure Code and in case of disobedience of the order by the respondent/judgment debtor, to pass necessary orders as provided under Order XXI Rule 41(3) of the Civil Procedure Code interalia detaining Mr.Sundeep Kabra and Mr.Banwari Lal Kabra, Managing Director/Director, M/s.Trimurthi Hitech Company Private Limited - the respondent/judgment debtor, in the civil prison.

EXECUTION PETITION filed on behalf of the Resolution Professional praying to arrest and detain the director of the judgment debtor Mr.Sundeep Kabra and Mr.Banwari Lal Kabra in the civil prison till the satisfaction of the award.

For Applicant/
Award Holder : Mr.U.Venkatesh for
Mr.Nipum Gautam

For Respondent/
Judgment Debtor : Mr.Ramakrishnan Veeraraghavan,
Barrister & Senior Advocate for
Mr.S.Sathyaganesh



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COMMON ORDER

Application No.1883 of 2025 has been filed by the applicant/ award holder seeking for a direction to the respondent/judgment debtor to file an affidavit stating the particulars of all the encumbrance free assets, both movable and immovable including the bank statements pertaining to the accounts in the names of the judgment debtor company and its directors and in case of disobedience, to proceed further against the Managing Director/Director of the judgment debtor by detaining in a civil prison under Order XXI Rule 41(3) of the Civil Procedure Code (CPC).

2. The main execution petition has been filed seeking to arrest and detain the directors of the judgment debtor - Mr.Sundeep Kabra and Mr.Banwari Lal Kabra in the civil prison till the satisfaction of the award amount.

3. Heard both.

4. The applicant is represented by the Interim Resolution Professional (IRP) appointed by the National Company Law Tribunal

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concerned under the Insolvency and Bankruptcy Code, 2016.

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5. The case of the applicant is as follows :

(i) An Arbitral Tribunal was constituted pursuant to the order dated 09.5.2016 passed by the Delhi High Court in Arbitration Petition No.343 of 2015. The claim against the respondent arose under the Exit Memorandum of Understanding (MoU) dated 11.3.2014. Pursuant to the reference made, the Arbitral Tribunal, after considering the claim made by both parties and the materials that were relied upon, passed an award dated 11.1.2018 directing the respondent to pay (i) a sum of Rs.85,21,630/- together with interest at the rate of 13% per annum from 11.3.2014 till the date of filing the claim petition on 20.7.2016; (ii) another sum of Rs.42,98,303/- towards letter of credit; and (iii) a further sum of Rs.3,31,330/- on account of EMD.

(ii) The award dated 11.1.2018 has become final and the respondent/judgment debtor failed to comply with the award. In view of the same, the applicant wanted to proceed against the respondent for recovery of money and for that purpose, the above execution petition has been filed before this Court. Later, the above application has been filed seeking for a direction to the respondent/judgment

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debtor to file an affidavit furnishing the particulars of all encumbrance free assets as provided under Order XXI Rule 41(2) of the CPC and in case of disobedience, to pass an order against the Managing Director/ Director of the respondent under Order XXI Rule 41(3) of the CPC.

6. The respondent initially filed a counter affidavit wherein they took a stand that a copy of the award was not served on the respondent/judgment debtor as required under Section 31(5) of the Arbitration and Conciliation Act, 1996 (for short, the Act) and that the respondent came to know about passing of the award only on 06.6.2025 after receiving the notice in the above application.

7. An additional counter has been filed by the respondent to the following effect:

A petition under Section 34 of the Act was filed by the respondent before the Delhi High Court challenging the award dated 11.1.2018. But, the Delhi High Court disposed of the said petition on 28.8.2025 as not maintainable on the ground that the applicant was under the Corporate Insolvency Resolution Process (CIRP) by leaving open all the contentions to be raised by the respondent in the

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execution proceedings pending before this Court. The award is inadequately stamped and such an inadequate stamping of the arbitral award can be dealt with at the time of enforcement of the award. Therefore, the award becomes inexecutable unless the award is properly stamped as required under the Indian Stamp Act, 1899.

8. In the initial counter that was filed before this Court, the respondent took a stand that they were willing to pay a sum of Rs.65 lakhs towards full and final settlement of the outstanding amount payable to the applicant/award holder and expressing their mind, they sent an e-mail on 25.6.2025 to the applicant. However, the applicant has not sent any reply to that.

9. The other issues that have been raised in the additional counter affidavit filed by the respondent are as follows :

The award is a nullity in the eye of law since the Exit MoU dated 11.3.2014, which was the basis for making the claim, did not contain the arbitration clause. Therefore, it is not an agreement as contemplated under Section 7 of the Act. As a consequence, the Arbitral Tribunal did not have jurisdiction to pass the award. Such

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award passed by the Arbitral Tribunal is a nullity and is inexecutable.

The copy of the order passed by the Delhi High Court under Section 11 of the Act on 09.5.2016 was directed to be furnished dasti to both the parties. If that is so, the Arbitrator would have entered into a reference at least by 11.5.2016 and the 12 months' period that was fixed might have expired on 10.5.2017. In the absence of any extension either by consent or by order passed by the Court, the mandate of the Arbitral Tribunal came to an end and any award passed thereafter would be a nullity in the eye of law.

10. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.

11. The following issues arise for consideration in this case :

(1) Whether the award dated 11.1.2018 is a nullity in the eye of law since it was passed by an Arbitral Tribunal constituted under the Exit MoU, which did not contain an arbitration clause ?

(2) Whether such award passed after the expiry of the mandate under Section 29A of the Act is valid ?

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(3) Whether the award is insufficiently stamped and hence, it is inexecutable ? and

(4) What is the effect of the rejection order dated 28.8.2025 passed by the Delhi High Court in the petition under Section 34 of the Act filed against the award ?

12. The parties entered into a MoU on 22.5.2013 and as per this agreement, the respondent was the technical partner and the applicant was the financial partner, which were participating in various tenders floated by different departments in joint venture on a long term basis. This agreement contained an arbitration clause, which is extracted as hereunder :

"3. This MOU shall be governed by and construed in accordance with the laws of India. Any dispute or differences arising under the agreement shall be referred to arbitration by sole arbitrator in Delhi, India to be appointed with the mutual consent of the both parties and soon arbitration shall be held in accordance with the (Indian) Arbitration & Conciliation Act, 1996, and any re-enactment or modification thereof and judgment upon the award rendered may be entered in the High Court of Delhi or in any other



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court in India of competent jurisdiction. The arbitral award shall be treated as final and binding on the parties hereto. All proceedings shall be in the English language."

13. The above MoU dated 11.5.2013 was short-lived since the parties expressed their inability to continue as per the MoU. As a result, an Exit MoU dated 11.3.2014 was entered into. Though the Exit MoU made a reference to the original MoU dated 22.5.2013, it contains a different set of obligations between the parties. Further, the terms and conditions/clauses in the original MoU were not incorporated or read into the Exit MoU. In addition, the Exit MoU did not have any arbitration clause.

14. A dispute arose after the parties entered into the Exit MoU and therefore, a stand has been taken by the respondent to the effect that without an arbitration clause, an arbitrator cannot be appointed and that if any award is passed, it will be a nullity in the eye of law.

15. The above stand taken by the respondent was considered by the Delhi High Court in Arbitration Petition No.343 of 2015, was dealt



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with at paragraph 11 of the order dated 09.5.2016 and was ultimately rejected on the ground that the subsequent MoU is in continuation of the earlier MoU. But, it was made clear that this issue could also be raised before the Arbitral Tribunal.

16. The sole Arbitrator entered into a reference and the respondent, while filing the reply/objections, took a preliminary objection stating that the Exit MoU did not have any arbitration clause, that therefore, the claim petition itself was not maintainable and that it had to be dismissed on this preliminary ground.

17. The above issue was dealt with by the learned Arbitrator at paragraph 9, which reads as follows :

"9. Both the MOUs i.e. the MOU dated 22.05.2013 and the exit MOU dated 11.03.2014 have been admitted by the respondent. Though it is a case of the respondent that after the signing of the exit MOU dated 11.03.2014, the earlier MOU became Infructuous, inoperative and non-existent. The exit MOU dated 11.03.2014 in fact refers to the earlier MOU dated 22.05.2013, by virtue of which, both the parties had made a joint venture



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to participate in various contracts. It is only after the claimant expressed its inability to continue the work as per the joint venture, the said exit MOU dated 11.03.2014 was entered, as such, the contentions of the respondent that the earlier MOU had become infructuous, inoperative and non-existent is without any basis whatsoever."

18. The Hon'ble Apex Court in the case of **NBCC (India) Limited Vs. Zillion Infraprojects (P) Limited [reported in 2024 (7) SCC 174]** dealt with a case where a reference was made to the earlier agreement, which contained an arbitration clause. However, the subsequent agreement entered into between the parties did not have such a clause. While dealing with this issue, the Hon'ble Apex Court considered the effect of Section 7(5) of the Act by placing specific reliance on the earlier judgment in the case of **M.R.Engineers & Contractors (P) Ltd. Vs. Som Datt Builders Ltd. [reported in 2009 (7) SCC 696]**, the relevant portions of which are extracted as hereunder :

"15. Section 7(5) therefore requires a conscious acceptance of the arbitration clause from another document, by the parties, as a part of their contract, before such arbitration clause



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could be read as a part of the contract between the parties. But the Act does not contain any indication or guidelines as to the conditions to be fulfilled before a reference to a document in a contract can be construed as a reference incorporating an arbitration clause contained in such document into the contract. In the absence of such statutory guidelines, the normal rules of construction of contracts will have to be followed.

16. There is a difference between reference to another document in a contract and incorporation of another document in a contract, by reference. In the first case, the parties intend to adopt only specific portions or part of the referred document for the purposes of the contract. In the second case, the parties intend to incorporate the referred document in entirety, into the contract. Therefore when there is a reference to a document in a contract, the court has to consider whether the reference to the document is with the intention of incorporating the contents of that document in entirety into the contract, or with the intention of adopting or borrowing specific portions of the said document for application to the contract.

17. We will give a few instances of incorporation and mere reference to explain the position (illustrative and not exhaustive). If a contract refers to a document and provides that



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the said document shall form part and parcel of the contract, or that all terms and conditions of the said document shall be read or treated as a part of the contract, or that the contract will be governed by the provisions of the said document, or that the terms and conditions of the said document shall be incorporated into the contract, the terms and conditions of the document in entirety will get bodily lifted and incorporated into the contract. When there is such incorporation of the terms and conditions of a document, every term of such document (except to the extent it is inconsistent with any specific provision in the contract) will apply to the contract. If the document so incorporated contains a provision for settlement of disputes by arbitration, the said arbitration clause also will apply to the contract.

18. On the other hand, where there is only a reference to a document in a contract in a particular context, the document will not get incorporated in entirety into the contract. For example, if a contract provides that the specifications of the supplies will be as provided in an earlier contract or another purchase order, then it will be necessary to look to that document only for the limited purpose of ascertainment of specifications of the goods to be supplied. The referred document cannot be looked into for any



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other purpose, say price or payment of price. Similarly, if a contract between X and Y provides that the terms of payment to Y will be as in the contract between X and Z, then only the terms of payment from the contract between X and Z, will be read as part of the contract between X and Y. The other terms, say relating to quantity or delivery cannot be looked into.

19. Sub-section (5) of Section 7 merely reiterates these well-settled principles of construction of contracts. It makes it clear that where there is a reference to a document in a contract, and the reference shows that the document was not intended to be incorporated in entirety, then the reference will not make the arbitration clause in the document, a part of the contract, unless there is a special reference to the arbitration clause so as to make it applicable.

20. The following passages from Russell on Arbitration throw considerable light on the position while dealing with Section 6(2) of the (English) Arbitration Act, 1996 corresponding to Section 7(5) of the Indian Act. (See pp. 52-55, 23rd Edn.):

'Reference to another document.—The terms of a contract may have to be ascertained by reference to more than one document. Ascertaining which documents constitute the contractual documents and in what, if any, order of



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priority they should be read is a problem encountered in many commercial transactions, particularly those involving shipping and construction. This issue has to be determined by applying the usual principles of construction and attempting to infer the parties' intentions by means of an objective assessment of the evidence. This may make questions of incorporation irrelevant, if for example it is clear that the contractual documents in question are entirely separate and no intention to incorporate the terms of one in the other can be established. However, the contractual document defining and imposing the performance obligations may be found to incorporate another document which contains an arbitration agreement. If there is a dispute about the performance obligations, that dispute may need to be decided according to the arbitration provisions of that other document. This very commonly occurs when the principal contractual document refers to standard form terms containing an arbitration agreement. However the standard form wording may not be apt for the contract in which the parties seek to incorporate it, or the reference may be to another contract between parties at least one of whom is different. In these circumstances it may be possible to argue that the purported incorporation of the arbitration



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agreement is ineffective. The draftsmen of the Arbitration Act, 1996 were asked to provide specific guidance on the issue, but they preferred to leave it to the court to decide whether there had been a valid incorporation by reference. (Para 2.044)

Subject to drawing a distinction between incorporation of an arbitration agreement contained in a document setting out standard form terms and one contained in some other contract between different parties, judicial thinking seems to have favoured the approach of Sir John Megaw in Aughton, namely, that general words of incorporation are not sufficient. Rather, particular reference to the arbitration clause needs to be made to comply with Section 6 of the Arbitration Act, 1996, unless special circumstances exist. (Para 2.047)

Reference to standard form terms.—If the document sought to be incorporated is a standard form set of terms and conditions the courts are more likely to accept that general words of incorporation will suffice. This is because the parties can be expected to be more familiar with those standard terms including the arbitration clause.' (Para 2.048)."

19. In the above judgment, the Hon'ble Apex Court, in no



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uncertain terms, held that where the parties enter into a contract by making a general reference to another contract, such a general reference would not have the effect of incorporating the arbitration clause from the referred document into the subsequent contract between the parties. The arbitration clause from another contract can be incorporated into the subsequent contract where such a reference is made only by a specific reference to arbitration clause. In other words, the arbitration clause from the referred document has to be physically incorporated in the subsequent contract.

20. In the case in hand, the parties entered into an MoU dated 22.5.2013, which was short-lived and the subsequent Exit MoU dated 11.3.2014 merely made a reference to the earlier MoU and it did not incorporate all the terms and conditions in the earlier MoU and the arbitration clause in the earlier MoU was also not incorporated nor relied upon in the Exit MoU dated 11.3.2014. In short, the Exit MoU did not contain the arbitration clause.



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21. In the light of the above findings, the crucial issue that has to be considered by this Court is as to the legality of the award passed by the Arbitrator and its enforceability.

22. It is true that this issue was specifically raised before the learned Arbitrator, who has literally brushed aside this ground without even discussing the legal effect of the Exit MoU qua the original MoU dated 22.5.2013.

23. The learned counsel for the applicant submitted that since the respondent has not questioned the award on time and as the Arbitrator has also dealt with this issue, the respondent is estopped from raising this issue at the stage of execution of the award.

24. The respondent raised a very specific ground in the counter to the effect that they became aware of the award only on 06.6.2025 after receiving the notice in this application. Paragraph 5 of the counter is extracted as hereunder :

"5. I state that the award dated 11 January 2018 passed by the Arbitrator is not received by



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the judgment debtor as required under Section 31(5) of the Arbitration and the Conciliation Act 1996 (herein after called "Arbitration Act"). The judgment debtor came to know about the aforesaid award only on 6 June 2025 after receiving the notice in the above Application No. 1883 in E.P. (Diary) No. 2764 of 2025. Hence the Judgment Debtor could not able to challenge the aforesaid award by filing a petition under section 34 of the Act."

25. The above stand taken by the respondent is substantiated by the materials placed before this Court. When the IRP took over the administration of the applicant company, a notice dated 17.8.2019 came to be issued wherein it has been mentioned that on the analysis of the books of accounts of the corporate debtor, it was ascertained that a sum of approximately Rs.1.50 Crore was payable as on 19.7.2019. But, there is absolutely no reference to the award passed by the Arbitrator. The same is the case even when the reminder notices were issued.



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26. For the first time, at paragraph 7 of the legal notice dated 03.6.2024, the respondent was informed about the award passed by the Arbitrator. On receipt of this legal notice, the respondent gave a reply dated 14.6.2024 seeking to furnish a copy of the award and after receipt of a copy of the same, the respondent reserved their right to issue a detailed reply. Thereafter, the copy of the award dated 11.1.2018 reached the hands of the respondent only when the notice was issued in this application. Even in the award copy that was relied upon by the applicant, the date of issuance of the certificate is shown as 30.5.2022. However, the award is dated 11.1.2018.

27. When this Court posed a question to the learned counsel for the applicant as to why there is a discrepancy in the date, month and year in the e-stamp, the learned counsel confirmed that as an IRP, the applicant was not able to trace the original award in the office of the applicant and that therefore, the IRP applied for the copy of the award with the Arbitrator in the year 2022 and it was furnished to the IRP. This explanation given on the side of the applicant also confirms the fact that there is no material available to show that the award passed in the year 2018 was served either on the applicant or on the

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respondent as required under Section 31(5) of the Act. This also adds in favour of the stand taken by the respondent to the effect the award passed in the year 2018 was not communicated to the respondent.

28. Immediately thereafter, the petition under Section 34 of the Act was filed by the respondent before the Delhi High Court and it was disposed of by order dated 28.8.2025 in the following terms :

"1. This is a petition filed under section 34 of the Arbitration and Conciliation Act, 1996 seeking to challenge the Award dated 11.01.2018 passed by the learned Sole Arbitrator.

2. The respondent No.2 is deleted from the array of parties as he is the learned Sole Arbitrator.

3. It is stated that the respondent No.1 is under CIRP and the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is in operation. Hence, in view of the judgment passed by the Hon'ble Supreme Court in P.Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258, the present petition will not lie.

4. I have already taken a view while relying on P.Mohanraj (supra) in the judgment of "Ansal Properties and Infrastructure Ltd. v. Vistra Itcl (India) Ltd." in OMP. (COMM) 231/2025.



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5. For the said reasons, granting the liberty to the petitioner to avail its remedies as and when CIRP proceedings are finalised, the petition is disposed of.

6. Additionally, the petitioner is also at liberty to raise all objections as permissible in law in the execution proceedings.

7. Needless to add, the petitioner will be entitled to take the benefit of section 60(6) of the Insolvency and Bankruptcy Code, 2016."

29. In the light of the above order dated 28.8.2025, the respondent, which could have otherwise raised the issue in the petition under Section 34 of the Act, has been denied that opportunity and the only other option left to the respondent is to raise this issue in the above execution proceedings pending before this Court, for which, liberty was granted by the Delhi High Court.

30. If, on a demurrer, it is presumed that the respondent was aware of the award dated 11.1.2018 in the year 2022 as per the e-stamp available along with the award copy furnished by the applicant, the situation would have been no different for the respondent since the same ground that was put against the respondent by the Delhi High

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Court in the year 2025 was available even in the year 2022.

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31. It must be made clear that there are no materials to show that the copy of the award dated 11.1.2018 was received by the respondent as required under Section 31(5) of the Act. If that is so, it cannot be held that the award has become final and that the respondent will be bound by the award. The Delhi High Court made it clear that the above ground could be raised in the execution proceedings pending before this Court. Therefore, this issue has to be necessarily considered by this Court.

32. Another related issue that has to be considered is as to whether such ground of nullity can be considered in the execution proceedings pursuant to the award passed by the Arbitral Tribunal. This issue was dealt with by the Hon'ble Apex Court in the case of ***Electrosteel Steel Limited (now M/s.ESL Steel Limited) Vs. ISPAT Career Private Limited [Civil Appeal No.2896 of 2024 dated 21.4.2025]*** wherein the relevant portions are extracted as hereunder :

"44. This order came to be challenged by the



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appellant before the High Court in a proceeding under Article 227 of the Constitution of India. We have already noted the three issues framed by the High Court for consideration. In so far the first issue is concerned, High Court is of the view that an award can be challenged in a proceeding under Section 47 CPC on the very limited ground of the award being a nullity or void ab initio or suffering from inherent lack of jurisdiction. However, the High Court opined that if an aggrieved party does not challenge an award under Section 34 of the 1996 Act, it cannot be permitted to object to its execution by alleging it to be a nullity though such a plea of nullity can be entertained if it is of such a grave nature that it is not even capable of being waived by one or the other party. Therefore, High Court concluded that the plea of nullity qua an arbitral award can be raised in a proceeding under Section 47 CPC but such a challenge would lie within a very narrow compass.

45. In so far the second issue is concerned, High Court rejected the contention of the appellant that since the award suffered from patent or inherent lack of jurisdiction, objection to the award can be taken at the stage of execution without challenging the award under Section 34 of the 1996 Act. While rejecting the said contention, High Court held that the arbitral proceedings



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culminating in the award cannot be said to be suffering from inherent lack of jurisdiction.

46. As regards issue No. 3, High Court examined as to how the claim of the respondent was dealt with in the resolution plan. After observing that the respondent was not included in the top 30 operational creditors whose claims were settled at nil, High Court held that the Facilitation Council had the jurisdiction to proceed and pronounce the award even after approval of the resolution plan. The arbitral proceedings were initiated prior to the resolution insolvency date, suspended during the moratorium period and resumed upon expiry of the moratorium period. High Court further observed that the approved resolution plan did not determine the claim of the respondent as nil and that the proceedings before the Facilitation Council was taken note of in the resolution plan.

47. High Court is correct in answering the first issue that a plea of nullity qua an arbitral award can be raised in a proceeding under Section 47 CPC but such a challenge would lie within a very narrow compass.

48. Section 36 of the 1996 Act deals with enforcement of arbitral awards. Sub-section (1) says that where the time for making any application to set aside an arbitral award under



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Section 34 has expired, then subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of the court. As per sub-section (2), where an application to set aside an arbitral award has been filed under Section 34, the filing of such an application shall not by itself render an award unenforceable unless an order of stay is granted by the court. Therefore, in terms of Section 36 of the 1996 Act, an award can be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of a civil court.

48.1. Section 47 CPC deals with questions to be determined by the court executing decree. As per subsection (1), all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Execution of decrees and orders is provided for in Order XXI CPC. The law is well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court in Vasudev Dhanjibhai Modi Vs.



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Rajabhai Abdul Rehman⁹ is that only a decree which is a nullity can be the subject matter of objection under Section 47 CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field.

49. Objection to execution of an award under Section 47 CPC is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. High Court was not justified in taking the view that since the appellant did not file a petition under Section 34 of the 1996 Act, therefore, it was precluded from filing an application before the Executing Court to declare the award as void and hence non-executable."

33. The above judgment of the Hon'ble Apex Court makes it clear that even if an award has not been challenged, the objection as to the executability of the award on the ground that it is a nullity in the eye of law can be raised before the Executing Court as Section 36 of the Act provides that an award can be enforced in accordance with the provisions of the CPC in the same manner as if it were a decree of a civil court and consequently, Section 47 of the CPC will come into play. The objection to execution of an award under Section 47 of the CPC is



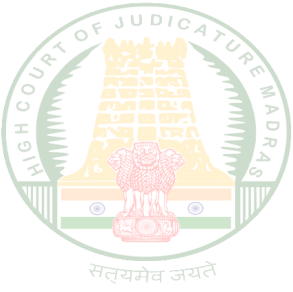
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not dependent or contingent upon filing a petition under Section 34 of the Act. However, such objection is limited to the ground of jurisdictional infirmity or voidness.

34. In the light of the judgment of the Hon'ble Apex Court in the case of **NBCC (India) Limited** and in the absence of an arbitration clause being specifically incorporated in the later agreement from the referred agreement, there is no valid agreement as is contemplated under Section 7(5) of the Act. The Hon'ble Apex Court had placed strong reliance on the earlier judgment in **M.R.Engineers & Contractors (P) Ltd.** In view of the same, the very appointment of an arbitrator becomes questionable and the prima facie findings rendered by the Delhi High Court, while appointing the arbitrator under Section 11(6) of the Act, are not final and will not bind the Arbitral Tribunal. The Arbitral Tribunal was expected to specifically deal with the legal issue, which it failed to do so and instead, merely brushed aside this issue. The Arbitral Tribunal also failed to take an independent view and therefore, this issue has assumed significance. This is more so since the respondent is not in a position to question the award in the light of the order dated 28.8.2025 passed by the Delhi High Court.

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35. The upshot of the above discussions leads to the only conclusion that the award dated 11.1.2018 passed by the Arbitrator has to be construed as a nullity in the eye of law since the Exit MoU dated 11.3.2014, which gave rise to the dispute between the parties, did not contain an arbitration clause.

36. Accordingly, issues Nos.1 and 4 are answered against the applicant and in favour of the respondent.

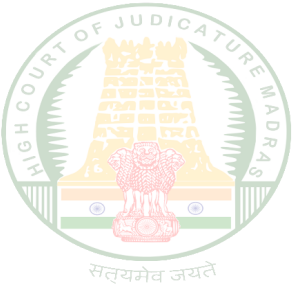
37. In the light of the above findings, it is not necessary for this Court to go into the issue touching upon the insufficiently stamped award and the other issue as to whether the award was passed beyond the mandate under Section 29A of the Act. **Issue Nos.2 & 3 are answered accordingly.**

38. In the result, Application No.1883 of 2025 is dismissed. Further, E.P.(Diary) No.2764 of 2025 stands rejected.

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N.ANAND VENKATESH,J

RS

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Neutral Citation : Yes

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