



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19-06-2026

Pronounced on : 08.07.2026

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THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 16 of 2020

AND

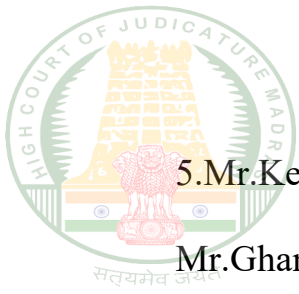
CMP NO. 3944 OF 2026,CMP NO. 876 OF 2020

1.Nirmal Datacomm Pvt Ltd
Rep. By Its Managing Director,
Mr.Kedar Ghanshyam Shah
Prem Estate, C Wing, 3rd Floor,
Sant Savta Cross Road No.1, Mustafa Bazar,
Byculla, Mumbai-400 010

2.Nirmal Datacomm Pvt. Ltd.
Rep By Its Director Mrs.Saroj Kedar Shah Prem
Estate, C Wing, 3rd Floor,
Sant Savta Cross Road No.1, Mustafa Bazar,
Byculla, Mumbai-400010

3.Nirmal Datacomm Pvt. Ltd.
Rep. By Its Director
Mrs.Saroj Purshottam Makwana
Prem Estate C Wing, 3rd Floor
Sant Savta Cross Road No.1, Mustafa Bazar,
Byculla, Mumbai-400010

4.Nirmal Datacomm Pvt. Ltd.
Rep. By Its Director
Mr.Ghanshyam Maneklal Shah,
Prem Estate C Wing, 3rd Floor
Sant Savta Cross Road No.1, Mustafa Bazar,
Byculla, Mumbai-400010



5.Mr.Kedar Ghanshyam Shah

Mr.Ghanshyam Maneklal Shah(deceased)

6.Mrs.Saroj Kedar Shah

7.Mr.Saroj Purshottam Makwana

..Appellants

Vs

1.M/s.Redington (India) Ltd.
Rep. By Mr.M.Sundararajan
Senior Legal Executive,
SPL Guindy House, 95, Mount Road,
Guindy, Chennai-600 032

2.K.Balasubramanian
Sole Arbitrator,
D.No.33A, Block No.52,
Jeevan Bheema Nagar, (LIC Colony),
Anna Nagar West Extension
Chennai-600101

..Respondents

Prayer: Original Side Appeal is filed under Clause 15 of Letter Patents Act Read with Order XXXVI Rule 1 of O.S. Rules and Section 37(C) of Arbitration and Conciliation Act, 1996 praying to set aside the order in O.P.No.291 of 2018, dated 20.08.2019 on the file of this Court.

For Appellants:

Mr.K.V.Sajeevkumar

For Respondent(s):

Mr. S.S.Rajesh for R1
R2 - Sole Arbitrator



Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

Challenge in this Appeal is made to the order passed by the learned Single Judge in O.P.No.291 of 2018, dated 20.08.2019.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

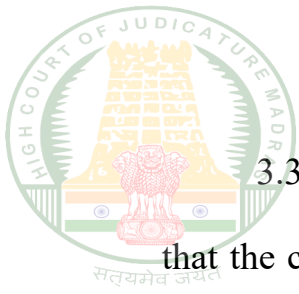
3. Facts:

3.1. The claimant is a Public Limited Company doing the business of distribution of IT Hardware & Software Produces and peripherals including products from Non IT and telecom segments, carrying on the business activities across the Country through its Branch Offices. The respondents approached the claimant and offered to purchase from time to time on revolving credit basis, agreeing to pay the price on the due date as mentioned in the respective invoices raised by the claimant. Believing the assurance given, the claimant, in good faith, supplied the products to the respondents vide various invoices from 17.05.2011 till 13.03.2012. Through letter dated 19.01.2015, the respondents confirmed the balance outstanding payable to the claimant to the tune of Rs.6,52,42,759/- as on 30.09.2014 and after the adjustments of part payments made by the respondents, the remaining amount due is Rs.6,44,69,007/-.



Despite several requests made by the claimant, the respondents evaded payments. Hence, the matter was referred to Arbitrator. During the Arbitral proceedings, despite receipt of notice, the respondents have not appeared before the Arbitrator. Hence, the Arbitrator passed the Award for a sum of Rs.6,44,69,007/- with interest at the rate of 18% based on the materials on record.

3.2. Aggrieved by this, the respondents filed an Application under Section 34 of the Arbitration and Conciliation Act, 1996 (herein after referred to as 'A&C Act,1996'), before the learned Single Judge in O.P. No.291 of 2018 on the ground that the Arbitrator has not followed mandatory procedures and a procedural error committed by the Arbitrator as against the Sections 23, 24 and 34 of the A&C Act,1996. The learned Arbitrator has not framed the time for filing the Claim Statement and hearing dates. All the documents and statements and other informations were not communicated to the respondents as contemplated under Section 24(3) of the A&C Act,1996 and the entire Award is bereft of reasons. The Arbitrator has decided the matter *ex parte*. Even in default or *ex parte* suits, Courts should identify legal points and give a reasoned answer, for which the learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Pramod Shroff vs. Mohan Singh Chopra*** reported in ***2026 SCC Online SC 598***.



3.3. Further it is submitted that Clause 19 of the invoices clearly indicate that the claim can be made within a period of three years. This aspect has not been considered by the Arbitrator and the statements produced by the claimant has been accepted in whole without looking into respondents' contention that the accounts required to be reconciled. Further a sum of Rs.2 crores paid by the respondents has not been given credit and accounts have not been reconciled. This aspect has not been taken note by the Arbitrator. It is further contended that the Claim Statement has not been sent to the respondents. Hence, it is submitted that the Arbitrator failed to proceed in accordance with the procedure as contemplated in the Statute.

3.4. The learned Single Judge in the order dated 20.08.2019, in O.P. No.291 of 2018 dismissed the said petition against which the present appeal is preferred.

4. Mr.K.V.Sajeevkumar, the learned counsel for the appellants/respondents would submit that the learned Single Judge failed to exercise his judicial discretion under Section 34 of the A&C Act,1996, once the appellants herein has been held *ex parte* by examining each and every documents presented by the 1st respondent / claimant particularly when reconciliation of accounts in the commercial transaction between appellants/respondents and 1st respondent / claimant had not been completed as



put forth by the appellants/ respondents in their communication to the Arbitrator on receipt of the Arbitrator's notice. The learned Single Judge failed to take note of the fact that the Arbitrator failed to provide a fair and reasonable opportunity to the appellants/respondents, render him guilty of misconduct which is sufficient to vitiate the Award.

4.1. Further, the claim statement was not sent by the 1st respondent / claimant as contemplated under Section 24(3) of the A&C Act, 1996, where it mandates that only the opposite party shall communicate to the other party all statements, documents or other information and not by the Arbitrator. He would further contend that the learned Single Judge did not give any findings with regard to the preliminary issue raised by the appellants/respondents as to when the Arbitrator chosen to conclude the entire Arbitration proceedings and having signed the Award on 23.01.2017, the inordinate delay in dispatching the copy of the Award ought to have been inferred against the Arbitrator of his misconduct. The learned Single Judge failed to see that the Arbitrator's Award is *per se* illegal as he did not have jurisdiction to entertain any claim of the 1st respondent / claimant beyond the period of three years from the date on which the alleged amount payable by the appellants/respondents has become due and the findings in respect of the invoices and further the invoices were not compared with the ledger book available with the 1st respondent/claimant by the Arbitrator and therefore, the Award is vitiated by patent illegality appearing on the face of the



Award and against public policy.

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4.2. His further contention is that, the Arbitrator was not appointed as contemplated under Clause 19 of the agreement and therefore, if the nomination of an Arbitrator by an ineligible Arbitrator is allowed, it would tantamount to carrying on the proceeding of Arbitration by himself. He would submit that ineligibility strikes at the root of his power to arbitrate and for which, he has relied upon the judgment of the Hon'ble Supreme Court reported in the case of **TRF Limited vs. Energo Engineering Projects Limited** reported in **(2017) 8 SCC 377**. His further contention is that, when an Award passed by an Arbitrator who is found to be ineligible, cannot be enforced. To support his contention he has relied upon the judgment in the case of **Bhadra International (India) Pvt. Ltd., and others vs. Airports Authority of India** reported in **2026 SCC Online SC 7**. Hence, prayed for setting aside the order passed by the learned Single Judge in O.P. No.291 of 2018 dated 20.08.2019.

5. On the other hand, Mr. S.S. Rajesh, the learned counsel for the 1st respondent / claimant would submit that on 28.07.2015, the 1st respondent/claimant issued a letter to the appellants/respondents about nominating Mr. K.Balasubramaniam, Registrar General (Retd), Madras High Court, as a designated Arbitrator invoking Clause 19 of the Invoice (the Arbitration Agreement). The issuance of the said letter intimating the

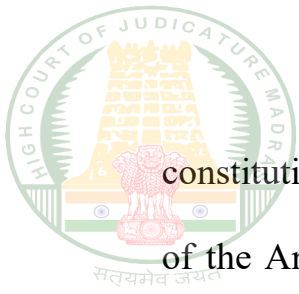


appointment of the designated Arbitrator was pursuant to the letter of authorisation dated 28.07.2015. The authorized signatory Mr. Srinivasan issued the said notice on 28.07.2015. The appellants/respondents did not challenge the constitution of the Arbitrator at any point of time during the proceedings before the sole Arbitrator or proceedings under Section 34 of the Act, before the Single Judge. There was no objection raised at any point in time regarding the constitution of the Arbitral Tribunal. The appellants/respondents have submitted themselves to the Arbitration Proceedings by seeking several adjournment which was time and again granted by the Arbitrator. Despite having the benefit of opportunity to object the constitution of Arbitral Tribunal, the appellants/respondents failed to object the same.

5.1. The constitution of the aforesaid Arbitral Tribunal is not prohibited under Schedule 7 of the Arbitration and Conciliation Act, 1966, as there is no violation of Section 12(3) or 12(5) of the A&C Act, 1996, as amended in the year 2015. The Arbitrator vide his communication dated 25.09.2015 has clearly given a declaration as provided under Section 12(5) read with Schedule 7 that,

'there are no circumstances which give rise to justifiable doubts as to my independence or impartiality in resolving the dispute referred'.

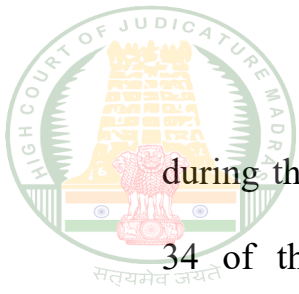
This declaration was given prior to 2015 amendment wherein Section 12(5) was inserted. Even otherwise the appellants had the option of challenging the



constitution of the Tribunal if he had doubted the independence and impartiality of the Arbitrator and or his qualification to be an Arbitrator as under 12(3) of the A&C Act,1996, by moving an appropriate application under Section 13(2) of the A&C Act,1996, read with Section 14 of the A&C Act,1996. None of the above were exercised or opted by the appellants/respondents. The very constitution of the Arbitrator, which the appellants/respondents claimed to be an unilateral appointment, was not challenged even during the proceedings under Section 34 of the A&C Act,1996 in which the judgement was rendered by this Court on 20.08.2019 by then the judgment in **TRF Limited vs. Energo Engineering Projects Limited, (2017) 8 SCC 377** rendered on 03.07.2017 by the Hon'ble Supreme Court of India.

5.2. The appellants having fully submitted themselves to the Arbitration Proceedings without raising any objections to the very constitution of the Tribunal, now trying to bring a new defence referring to the judgment passed by the Hon'ble Supreme Court in **Central Organisaitoin for Railway Electrification vs. ECI SPIC SMO MCML (JV) (2025) 4 SCC 641** rendered on 08.11.2024.

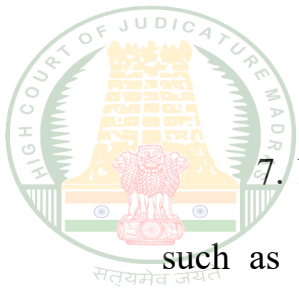
5.3. The learned counsel for the 1st respondent/claimant would further submit that the said judgments can be of any aid or help to the appellants/respondents only in the event of they having raised any objection



during the pendency of Arbitration Proceedings or Proceedings Under Section 34 of the A&C Act, 1996 and such objections raised by them for the constitution of the Tribunal or the unilateral appointment of Arbitrator which has been dis allowed or left unanswered. The appellants/respondents having gone through the entire Arbitration Proceedings, conceding and submitting themselves to the constitution of the Arbitral proceedings cannot now take advantage of the judgments passed by the Hon'ble Apex court in the judgments referred above, to say that they have a right to object the unilateral appointment of Arbitrator in this appeal filed under Section 37 of the A&C Act.

5.4. He would further submit that a reading of Section 4(b) of the A&C Act, 1996, which provides that any objections for non compliance ought to have been objected to without any delay or if time limit is provided to made such objections. When that being the case, raising an objection at this belated stage, after lapse of 10 years would defeat the very object of the provisions of not only Section 4 of the A&C Act, 1996, but the entire object of Arbitration and Conciliation Act by itself. To support his contentions he has relied upon the judgment of the Hon'ble Supreme Court in the case of ***Perkins Eastman Architects DPC and another vs. HSCC (India) Limited reported in (2020) 20 SCC 760***. Hence prayed for dismissal of the appeal.

6. Heard on both sides. Records perused.



7. No doubt, the Hon'ble Supreme Court of India has held in decisions such as ***TRF Limited Vs. Energo Engineering Products Ltd.***, (cited supra) ***Perkins Eastman Architects DPC and another vs. HSCC (India) Limited*** (cited supra), and ***Bharath Broadband Network Limited vs. United Telecoms Limited*** that where the unilateral appointment itself is contrary to law because the appointing authority is ineligible, such an appointment may be treated as fundamentally invalid, and in appropriate case the objections may still be entertained despite non participation.

7.1. In the present case, the appellants/respondents who had notice of the Arbitral proceedings, sought time to appear before the Arbitrator, but thereafter, deliberately failed to participate, and remained silent for nearly 10 years ordinarily cannot later challenged the unilateral appointment of the Arbitrator for the first time in proceedings under Section 34 of the A&C Act, 1996. Further, under Section 4 of the A&C Act, 1996, the party who knows of a procedural irregularity but proceeds without timely objection is deemed to have waived the objection. Under Section 16 of the A&C Act, 1996, objections relating to the jurisdiction or constitution of the Tribunal should ordinarily be raised before the Arbitral Tribunal itself. It cannot be disputed that the appellants/respondents had knowledge of the proceedings. If the appellants/respondents thereafter chose remain *ex parte* and did not challenge the appointment either before the Tribunal or promptly before learned Single



Judge in proceedings under Section 34 of the A&C Act, 1996, such conduct amounts to acquiescence. In fact, the appellants/respondents have submitted themselves to the Arbitration Proceedings by seeking several adjournments which was time and again granted by the learned Arbitrator. The amendment to the Arbitration and Conciliation Act, 1996, in the year 2015, came into effect from 23.10.2015, which is after the date of appointment of the designated Arbitrator as per Clause 19 of the Invoice dated 28.07.2015.

7.2. As per A&C Act, 1996, Section 11(2) prescribed the procedure giving free will to the parties to agree on a procedure for appointment of Arbitrator and Arbitrators and based on which and in line with Clause 19 of the Invoice, the 1st respondent / claimant had appointed the designated Arbitrator. Thus, at the time of issuance of 28.07.2015 invoice, 2015 amendment was not in force. The judgments referred to by the appellants in ***TRF Limited vs. Energo Engineering Projects Limited (cited supra)*** rendered on 03.07.2017 and ***Perkins Eastman Architects DPC vs. HSCC (India) Ltd., 2019 SCC Online SC 1517*** rendered on 26.11.2019, were delivered much later to the passing of the Award which is on 23.01.2017. The mandate of the Arbitrator stood terminated in view of the Award passed on 23.01.2017 as per Section 32(1) of Arbitration and Conciliation Act, 1996, which are prior to the judgment delivered in the matters of ***T RF Limited vs. Energo Engineering Projects Limited (cited supra)*** rendered on 03.07.2017 and ***Perkins Eastman***



Architects DPC vs. HSCC (India) Ltd., 2019 SCC Online SC 1517 rendered
on 26.11.2019.

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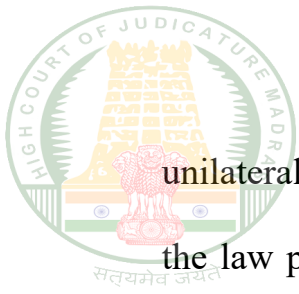
7.3. Even assuming that 2015 amendment to the Act 1996 came into effect on 23.10.2015 is applicable to the present Arbitration proceedings, options were open to the appellants/respondents to question the constitution, independence and impartiality of the Tribunal. Therefore, the judgments relied upon by the appellants/respondents will come to their aid only in the event they having raised any objections during the pendency of Arbitration proceedings under Section 34 of the Arbitration and Conciliation Act, 1996. The appellants/respondents having gone through the entire Arbitration Proceedings, submitting themselves to the constitution of the Arbitral proceedings cannot challenge the same in this appeal, taking advantage of the judgment passed by the Hon'ble Apex Court in the cases referred above. When the appellants/respondents having participated in the proceedings without any objection for a long, a subsequent challenge to the validity of the appointment of the Arbitrator is not open in view of acquiescence. Long participation and acquiescence in the proceedings preclude such a party from contending that the proceedings were without jurisdiction. Unless objection is made before the Tribunal itself within the time prescribed under Section 16(2) of the Act, there would be a deemed waiver under Section 4 of the Act, which reads as follows:



"4. Waiver of right to object.

- A party who knows that (a) any provision of this Part from which the parties may derogate, or (b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object. "

Moreover, raising an objection after lapse of 10 years would defeat the very object of the Act. Therefore, the appellants/respondents having failed to raise a plea of jurisdiction before Arbitral Tribunal, cannot be permitted to raise the same for the first time in this appeal. Section 16(2) of the Act mandates that a plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. Section 4 provides that a party who knows that any requirement under the Arbitration Agreement has not been complied with and yet proceeds with the Arbitration without stating his objection to such non compliance without undue delay shall be deemed to have waived his right to so object. Therefore, challenge to Arbitration Award on the ground of jurisdiction is impermissible when such ground waived by the appellants before Arbitrator. In such circumstance, the appellants are now precluded from raising any submission or objection as to the appointment of



unilateral Arbitrator. Accordingly, if the unilateral appointment was legal under the law prevailing at that time, the appellants / respondents' challenge after 10 years is likely to fail on the grounds of waiver, acquiescence and delay.

7.4. Even on merits, the contention of the the appellants/respondents is unsustainable. They have been served with notice and sufficient opportunities have been given to them. Despite notices sent to the appellants, they failed to appear and participate in the Arbitral Proceedings. Hence, the learned Arbitrator proceeded to decide the matter on merits by framing necessary issues and disposed the matter based on the materials placed in the proceedings. In fact, in Ex.C4, the appellants themselves have acknowledged the liability and the same is taken note by the learned Arbitrator. Since it is not in dispute that the accounts are running accounts and the acknowledgement has been made in the year 2015, the question of reconciliation does not arise. Further, the last invoice is dated 13.03.2012. Within three years form the date of last invoice, an acknowledgement in writing was made by the appellants/respondents through letter dated 09.01.2015 marked as Ex.C4, admitting the liability to the tune of Rs.6,71,94,756/-. Therefore, every invoice need not be independently considered. When the appellants/respondents were aware of the proceedings and despite several notices, failed to appear before the Arbitrator and present any documentary evidence, the Arbitrator proceeded with the matter on the basis of the evidence available before him. Section 25 of the A&C Act, 1996, speaks

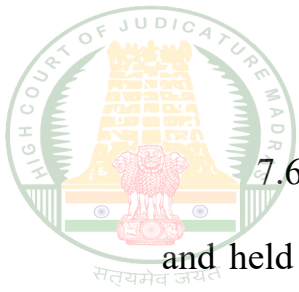


about default of a party. When a party fails to appear, the Arbitrator is at liberty to continue proceedings. Even in the award, the Arbitral Tribunal has taken into consideration, the continued absence of the appellants and rightly drew adverse inference. Whiles, the appellants/respondents cannot be permitted to say that they were not given ample opportunity by the learned Arbitrator. Further, the appellants/respondents failed to prove misconduct or bias on the part of the learned Arbitrator. Mere allegation itself is not sufficient.

7.5. It is now well settled that the Award can be interfered only when the ground set out under 34 of the Arbitration Act is made out. The learned Single Judge has rightly pointed out the scope of interference under Section 34 of the A&C Act, 1996 as discussed in ***Oil and Natural Gas Corporation vs. Saw Pipes Ltd., (2003 (5) SCC 705)*** and ***Associate Builders Vs. Delhi Development Authority reported in 2015 (3) Supreme Court Cases 49***, wherein the Hon'ble Apex Court has held that an Award can be set aside if it is contrary to:

- a) fundamental policy of Indian law; or
- b) the interest of India; or
- c) justice or morality; or
- d) if it is patently illegal.

Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court.



7.6. The Hon'ble Apex Court also explained the term 'patent illegality' and held that patent illegality must go to the root of the matter, Public Policy violation should be so unfair and unreasonable as to shock the conscience of the Court. The supervisory role of the Court under Section 34 is to be kept at a minimum level and interference is envisaged only in case of fraud or bias, violation of natural justice, etc., If the Arbitrator has gone contrary to or beyond the express of law of the contract or granted relief in the matter not in dispute that would come within the purview of Section 34 of the Arbitration and Conciliation Act 1996. Therefore, considering the scope of Section 34 and 37, this Court cannot interfere with the well reasoned award passed by the learned Arbitral Tribunal.

7.7. On perusal of the impugned order, the learned Single Judge has considered all the above aspects in a proper perspective and rightly dismissed the petition filed under Section 34 of the Act, 1996, warrants any interference by this Court.

8. In the result, OSA No.16 of 2020 is dismissed. No costs. Consequently connected miscellaneous petitions are closed.

(P.V.,J.) (K.G.T.,J.)
08-07-2026



Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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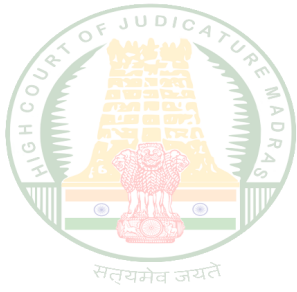
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Rep. By Mr.M.Sundararajan, Senior Legal

Executive, SPL Guindy House, 95, Mount Road,
Guindy, Chennai-600 032

2.K.Balasubramanian

Sole Arbitrator, D.No.33A, Block No.52, Jeevan
Bheema Nagar, LIC Colony, Anna Nagar West
Extension Chennai-600101



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OSA No. 16 of 2



**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

BGA

**Pre-delivery Judgment in
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08-07-2026