



OSA No. 315 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08-07-2026

Pronounced on :31.07.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 315 of 2019

and

CMP NO. 25739 OF 2019

Vedanta Limited
Successor-in-interest of
Erstwhile Sterlite Industries India Ltd,
SIPCOT Industrial Complex,
Madurai Bypass Road, T.V.Puram, P.O.Tuticorin,
Tamil Nadu 628 002

..Appellant

Vs

Masyc Projects Pvt Ltd.,
20 Community Centre Mayapuri Phase I,
New Delhi 110 064

..Respondent

Prayer: The Original Side Appeal is filed under Section 37 of the Arbitration and Conciliation Act, 1996, against the order of this Court dated 04.10.2019 made in O.P. No.517 of 2016.

For Appellant:

Mr.Rahul Balaji

For Respondent:

Mr.Adithya Reddy



Judgment

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

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The appellant is the Respondent in the Arbitration Proceedings and Petitioner in O.P. No.517 of 2016 of this Court. Aggrieved over the order dated 04.10.2019 passed in the abovesaid Original Petition, he has preferred the present Appeal.

2. The respondent herein filed a claim petition before the Arbitral Tribunal on the following grounds:

2.1. The appellant issued a Letter of Intent dated 18.01.2007 to the Respondent/claimant for Design, Manufacture, Supply, Fabrication, Erection, Testing and Commissioning of various conveyors including the related Civil, Electrical and Instrumentation work of the copper concentrate warehouse at Tuticorin, Tamil Nadu, for a total sale consideration of Rs.7,22,88,414/- and a Purchase Order dated 18.02.2007 and two Work Orders dated 13.03.2007 were issued by the appellant to the Respondent/claimant. Out of the above, the Purchase Order was in respect of the design, manufacture, supply and fabrication of the conveyors and related equipments for the copper concentrate warehouse of the appellant.



2.2. The terms of payment under the Purchase Order specified that 10% would be paid as advance on submission of an advance bank guarantee, 5% on approval of general arrangement drawings, 75% on receipt of material at the appellant's site, 5% on completion of supplies against the submission of performance bank guarantee and the final 5% on completion of erection and commissioning against submission of a performance bank guarantee.

2.3. The dispute arose from a copper concentrate conveyor system project governed by two work orders dated 13.03.2007: one for civil works and another for erection and commissioning. The equipment supply was fully completed and both parties agreed that the civil works were completed. The disagreement concerned the commissioning of the conveyor system. The Respondent/claimant claimed that the system was fully commissioned in 2008. The Appellant argued that only "cold commissioning" was done and that "on-load commissioning" was not completed. The appellant released an aggregate sum of Rs.5,75,05,154/- towards supply of material and withheld an amount of Rs.81,90,326/-. As regards civil work, the appellant released an amount of Rs.61,61,250/- as against the total amount of Rs.63,34,928/- leaving an outstanding balance amount of Rs.1,73,678/-. In view of the inability of the parties to resolve the said dispute amicably, the arbitration clause was invoked by notice dated 20.06.2009. The Respondent/ claimant raised the following



claims:

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1) An amount of Rs,81,90,326/- towards balance due & outstanding payment for the goods already received by the appellant.

2) Rs.27,01,495/- towards the accrued statutory interest on the sum of Rs.81,90,326/- at the rate of 24% per annum for the period calculated with effect from the date of delivery i.e., 01.02.2008 upto 20.06.2009.

3) Rs.1,73,678/- towards balance due and outstanding payment for the civil work and the erection and commissioning work done in terms of two work orders.

4) Rs.57,671/- towards the accrued statutory interest at the rate of 24% per annum on the sum of Rs.1,73,678/- for the period calculated with effect from the date of work done upto 20.06.2009.

5) Rs.2,58,005/- towards the balance due and outstanding payment for the revamping work done.

6) Rs.14,929/- towards the accrued statutory interest at the rate of 24% on the sum of Rs.2,58,005/- .

7) Interest both pendente lite and future at the rate of 24% per annum on the sum claims to the extent of Rs.86,22,009/- from the date of legal notice till the date of actual realisation

8) Cost of Arbitration proceedings to an extent of Rs.50,00,000/-



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The Appellant filed counterclaims totalling Rs.4,50,12,605/- plus 18% interest.

2.4. In the said Arbitration Proceedings, both parties adduced both oral and documentary evidence. The Respondent/claimant adduced evidence through C.W.1 to C.W.3 and exhibited 162 documents which were marked as Ex.C-1 to Ex.C-162. Likewise, the appellant examined 4 witnesses R.W.1 to R.W.4 and exhibited 9 documents which were marked as Ex.R-1 to Ex.R-9. The learned Arbitrator framed 6 issues and pronounced the Award dated 08.03.2016, whereby a sum of Rs.81,90,326/-, Rs.1,73,678/- and Rs. 2,58,005/- with interest at 24% per annum from 27.06.2009 till the date of Award and 18% per annum from thereon till the date of realisation was awarded. All the counter claims were rejected as barred by limitation.

2.5. The said Award was challenged by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (In short A&C Act, 1996) before the learned Single Judge. The learned Single Judge after analysing the oral and documentary evidence, dismissed the petition subject to the re fixation of interest at 14% per annum from 27.06.2009 upto the date of Award on the sums awarded in the Award. Aggrieved over the same, the present appeal has been preferred.



3. Mr. Rahul Balaji, the learned counsel appearing for the Appellant would submit that the contract for the Supply, Erection, Commissioning and Testing of the conveyor system was a composite contract, which was broken down into one purchase order and two work orders for tax efficiency purposes. He further submitted that the said contract was awarded on turnkey basis. In order to establish that it is a composite contract, he referred to Clause 1.4 of the contract which defines the contract's scope as under:

“1.4.'The contract scope' shall mean the design, engineering, procurement of materials, fabrication and manufacturing, Inspection & testing, Painting, Packing, marking, loading, transit Insurance, transport, unloading at SIIL site as set out in Annexure-I (but not limited to)of this contract. Seller shall be responsible for successful commissioning of the entire conveying system and hence shall supply other related items necessary for the commissioning but not explicitly mentioned in the annexure-I attached herewith.”

He also referred to Clause 1.7 which defines cold commissioning as under:

“1.7 'Cold commissioning' or Mechanical completion shall mean the date on which the said system is erected, mechanically and electrically, tested and ready in all respects for conveying the copper concrete.”



He further relied on Clause 22 and Clause 26 of the contract. Clause 22 required the Respondent/claimant to provide training to the Appellant's personnel on operation and maintenance of the conveyor system after the plant became fully functional. Clause 26, the risk purchase clause, allowed the appellant to take specified actions if the Respondent/claimant failed to perform its contractual obligations, including continuing the contract with liquidated damages, engaging another agency at the Respondent/claimant's risk and cost, or cancelling the contract and completing the remaining work through another agency. The appellant exercised the second option by engaging another agency to complete the remaining work at the Respondent/claimant's risk and cost without terminating the contract.

3.1. The learned counsel further submitted that the learned Arbitrator, has erred in not appreciating the contractual agreement with respect to commissioning agreed to between the parties. He would submit that the definition of "commissioning" as provided for in the contract between the parties, more particularly Clause 1.10 of the Erection and Commissioning Agreement dated 13.03.2007, entered into by the parties, reads as follows:

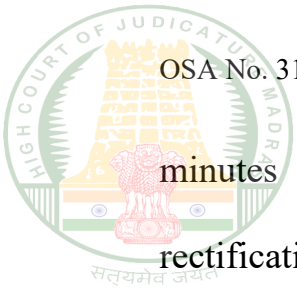
"1.10. Commissioning means the phase beginning with the successful demonstration of the conveying system carrying out the intended purpose to the satisfaction of the buyer."



By referring to the said clause, he emphasized that parties agreed that commissioning is achieved only when the Respondent/claimant successfully demonstrates the working of the conveyor system to the satisfaction of the appellant. He further submitted that the dispute in this case largely revolves around the failure of the Respondent/claimant to commission the conveyor system in such a manner as to fulfil the intended purposes of the said conveyor system to the satisfaction of the appellant. In order to substantiate this submission, he referred to the Minutes of the Meeting held on 10.06.2008(Ex. C-125) between the representatives of the appellant and the Respondent. In specific, he pointed out that it is recorded in the said minutes of meeting as under:

“Sterlite asked for continuous trial of pipe conveyor, belt conveyor, minimum 24 hours. After that they will take over the system.”

He pointed out that the said minutes of meeting was signed by one representative, namely, the General Manager(Purchase) of the Respondent/claimant and two representatives of the appellant. He, further, referred to the communications on various dates in June 2008, after the minutes of the said meeting, so as to demonstrate that “on load tests” were conducted for about one hour to one hour 15 minutes and that the documents disclose that none of the load tests were carried out for a continuous period of 24 hours as agreed to in the minutes of meeting dated 10.06.2008. He also referred to the



minutes of meeting dated 23.06.2008[Ex.C-133] to point out that some rectification work was admittedly pending even as of 23.06.2008. He further submitted that the statements in the letter dated 30.06.2008 to the effect that the plant was ready and commissioned as of 05.05.2007 and that the load commissioning had been deferred for reasons not attributable to the Respondent is false. He also submitted that the letter dated 16.05.2008 [Ex. C-95], which was strongly relied upon by the learned Arbitrator, did not deal with “on load testing” as is evident from the said document and the subsequent communications in June 2008 relating to such “on load tests”. He also referred to the letter dated 08.10.2008 with regard to the damaged pipe conveyor belt and the replacement thereof. This was followed by references to the e-mails exchanged between the parties in April 2009 with regard to the meeting that took place between 7th and 9th of April 2009. In this regard, he pointed out that the appellant had prepared the draft minutes of the said meeting, wherein it is stated that the Respondent/claimant would rectify the technical problems so as to commission the system successfully, whereas the Respondent/claimant in its draft minutes wrongly referred to it as re-commissioning and not commissioning. He also referred to the cross examination of C.W.1 and, in particular, to the answers to questions 5,6, & 7 so as to establish that the Respondent/claimant had not executed any pipe conveyor system previously and, to the answers to questions 52 to 54 by C.W.1, wherein C.W.1 admitted that joint load tests were conducted after the minutes of meeting held on



10.06.2008 and that the said load trials were not conducted for a continuous minimum period of 24 hours. With specific reference to the answer to question 55, he pointed out that the witness admitted that the successful commissioning of a conveyor system is recorded after a trial run is conducted on an “on load” basis. He further referred to the cross examination of C.W.3 and, in particular, to the answers to questions 3,6,7,8,9 and 13 with regard to the alleged completion certificate dated 05.07.2008. By relying on the answers of C.W.3, he submitted that it is clear that the said document dated 05.07.2008 is not a completion certificate.

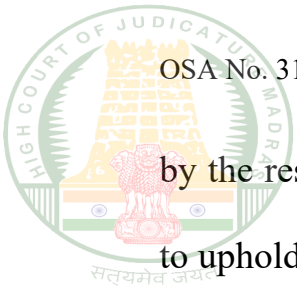
3.2. Further, he submitted that the learned Arbitrator concurred with the contention of the appellant that the project is a turnkey project covering three orders relating to supply, civil work and erection and commissioning, however, the learned Arbitrator committed a patent illegality in relying upon the e-mail dated 15.05.2008[Ex.C-94] from the Respondent/claimant to conclude that the plant had been successfully commissioned as of May 2008. In this regard, he pointed out that the said e-mail itself records that the pipe conveyor and other equipments are being operated regularly on “no load” basis and that the said e-mail further records that the appellant should arrange for the load so that the conveyor can be put on load. He also pointed out that the learned Arbitrator also relied heavily upon the letter dated 16.05.2008, which is an unsigned document that relates to the handing over of the equipments specified therein.



In specific, he pointed out that it is clear from the list of equipments that the pipe conveyor is not one of the equipments mentioned therein. In effect, his submission was that the learned Arbitrator relied upon irrelevant evidence in order to conclude at paragraph 10(b) of the Award that “these two documents unerringly establish that the appellant did not find anything wrong in the material handling system erected and commissioned by the Respondent/claimant.

3.3. With regard to the counter claim, he submitted that it was erroneously rejected on the ground of limitation. He also referred to Exs.R-1, R-2, R-5 and R-9 to establish that the appellant was constrained to replace the defective guide rollers by issuing a work order to a third party which, in turn, supplied the said guide rollers and commissioned the system by charging the appellant for the same. In a nutshell, his submissions were that the contract provides for commissioning by the Respondent/claimant so as to be fit for the intended purpose to the satisfaction of the appellant. This requirement was not fulfilled.

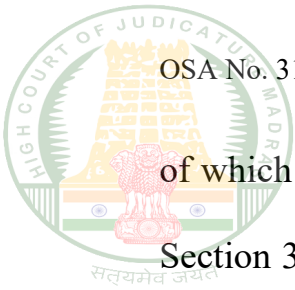
3.4. The learned Single Judge, after having concurred with the contention of the appellant, and having held that “the inference of the learned Arbitrator that the said Ex.C-94 and Ex.C-95 unerringly establish that the appellant did not find anything wrong in the material handling system erected and commissioned



by the respondent is not correct” , erred in thereafter, substituting his reasoning to uphold the conclusion by holding that, “in this connection, it is also relevant to note that there is no contemporaneous document on record to the effect that the Respondent failed to commission the conveyor system to the satisfaction of the Petitioner by not carrying out "on load" trial run for a continuous period of 24 hours"; when in fact there is precisely such contemporaneous documents in the form of the six jointly signed Load Test reports and Minutes of Meetings of June 2008 being Ex C-123, C-125, C-129, C-130, C-131 and C-132 and once again captured in jointly signed Minutes being Ex C-133, which was recorded by the Learned Single Judge, which show that the admitted position is that a 24 hour continuous test was not done.

3.5. His further contention is that the learned Arbitrator while coming to his conclusions, has completely disregarded the express terms of the *inter se* agreement between the parties, ignoring the settled principle that the Arbitrator is a creature of the contract and cannot travel beyond its express terms. This error violates the fundamental principle that a court, much less an arbitral tribunal, cannot be a supplier of bargains to the parties.

3.6. His further contention is that, the Arbitrator is expected to take into account the contractual terms as applicable to the transaction between the parties is mandated under Section 28(3) of the Arbitration Act, non-compliance



of which provision has been held to be ground indicating patent illegality under Section 34(2A) in *Associate Builders v. Delhi Development Authority* reported in (2015) 3 SCC 49 , followed in *Ssangyong Engineering and Construction Co. Ltd. v. NHAI* reported in 2019 SCC OnLine SC 677. More particularly, the Hon'ble Supreme Court in *Associate Builders* (supra) has held that:

"42.3. (c) Equally, the third subhead of patent illegality is really a contravention of Section 28(3) of the Arbitration Act, which reads as under:

- i. "28. Rules applicable to substance of dispute.-(1)-(2)**
- ii. (3) In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."*

This last contravention must be understood with a caveat. An Arbitral Tribunal must decide in accordance with the terms of the contract, but if an arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. Construction of the terms of a contract is primarily for an arbitrator to decide unless the arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do."



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While so, the learned Single Judge ought to have considered that it is settled law that an award passed without evidentiary basis including an award passed in ignorance of material documents/ evidence is untenable and liable to be set aside for which he has relied upon the decision by the Hon'ble Supreme Court in ***Associate Builders v. Delhi Development Authority*** reported in ***(2015) 3 SCC 49*** in which it has held that:

“31. The third juristic principle is that a decision which is perverse or so irrational that no reasonable person would have arrived at the same is important and requires some degree of explanation. It is settled law that where:

- (i) a finding is based on no evidence, or*
- (ii) an Arbitral Tribunal takes into account something irrelevant to the decision which it arrives at; or*
- (iii) ignores vital evidence in arriving at its decision, such decision would necessarily be perverse.”*

Therefore, the non consideration of vital evidence including the minutes of the meeting dated 10.06.2008, notice dated 22.06.2008 alleging defect in manufacture by the respondent, the notice dated 18.09.2008 informing the respondent of the malfunctioning of the conveyor belt and the letter of M/s.Modtech Projects India Pvt. Ltd., dated 20.12.2008 detailing the



manufacturing defects in the conveyor belt, render the Arbitrator's Award unenforceable. He further submitted that irrelevant evidence, namely, Exhibits C-94 and C 95 were relied upon and that the minutes of meeting dated 10.06.2008(Ex.C-125) with regard to the agreement between the parties on 24 hours continuous load test was disregarded. On this ground also, the learned Single Judge ought to have set aside the Award.

3.7. His further contention is that, the learned Single Judge ought to have considered the delay in filing of claims by the respondent, while determining interest, especially so when the claim is primarily for damages. Interest *Pendente lite* cannot be excessive and ought to have correlated with the prevalent market rate. He has relied upon the judgment in ***Vedanta Ltd., vs. Shenzhen Shandong Nuclear Power Construction Co. Ltd.***, reported in **2018 SCC OnLine SC 1922**, in which it is held that Courts may reduce the interest rate awarded by an Arbitral Tribunal where such interest rate does not reflect the prevailing economic condition or where it is not found reasonable or promotes the interest of justice. Hence, submitted that the interest must commensurate with prevalent rate of interest for the relevant period and that the learned Single Judge ought to have reduced the rate of pendente lite interest and interest for pre reference period.



4. *Per contra*, the learned counsel for the Respondent/claimant argued that each contract was independent and that the supply contract provided remedies, including encashment of the performance bank guarantee, in case of defective supplies. Since the guarantee was never encashed, the Respondent/claimant, contended that the supplied equipment was not defective. The Respondent further argued that the Petitioner's claim regarding failure of on-load commissioning was raised belatedly and was not mentioned even in the earlier legal notice.

4.1. He would further submit that the interest awarded by the learned single judge at 14% is in accordance with the prevailing economic conditions. Therefore, he submitted that there is no infirmity or grounds for interference with the impugned order of the learned single judge. The learned counsel further submits that the jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34, is more constraint than the jurisdiction of the Court dealing with a petition under section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in petition under Section 34. The ultimate function of the appellate court under section 37 is to decide whether the jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints. To



support his contention, he has relied upon the judgment dated 08.07.2024 of the

Hon'ble Supreme Court in the case of ***Bombay Slum Redevelopment***

Corporation Private Limited vs. Samir Narain Bhojwani (Civil Appeal

No.7247 of 2024)

5. Heard on both sides. Records perused.

6. The specific contention of the learned counsel for the appellant is that, the learned Arbitrator passed the Award based on irrelevant evidence and discarded the vital evidence. According to him, the learned Arbitrator relied on irrelevant evidence for the purposes of arriving at a conclusion of a successful commissioning and disregarded the vital evidence in the form of joint minutes marked as Ex.C-123, Ex.C-125, Ex. C-129, Ex.C-130, Ex.C-132 and also Ex.C.133, a jointly signed minutes, which shows that a 24 hour continuous trial test was a mandatory prerequisite for successful commissioning, which was never carried out by the respondent despite the appellant's request for the same. Further he would contend that, the learned Arbitrator failed to consider the vital evidence, the minutes of the meeting dated 10.06.2008 and the notice dated 22.06.2008 alleging defective manufacturing by the respondent, and also the notice dated 18.09.2008 informing the respondent of the malfunctioning of the conveyor belt and the letter of M/s.Modtech Projects India Pvt. Ltd., dated 20.12.2008 detailing the manufacturing defects in the conveyor belt. While so,



the learned Single Judge ought to have considered that it is settled law that an award passed without evidentiary basis including an award passed in ignorance of material documents/ evidence is untenable and liable to be set aside.

6.1. On perusal of the Award, it is seen that the learned Arbitrator had referred to the email dated 15.05.2008 sent by the respondent to the appellant, which records that,

“we understand the pipe conveyor and other equipments are being operated regularly on no load and found the same have stabilised. We hope you are satisfied with the progress and accordingly we request you to kindly arrange for the load, so that the conveyors can be put in the load.”

The learned Arbitrator had also referred to a document which records as,

“equipment related to copper constitute conveying system handed over after final trial and load test”

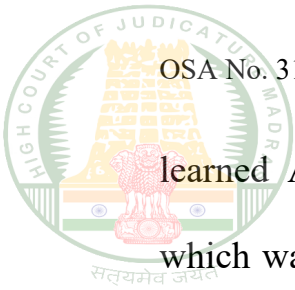
and observed that the above two documents unerringly establish that the respondent did not find anything wrong in material handling system erected and commissioned by the claimant and that the appellant/respondent had not come out with any specific details as to how and in what manner the material handling system provided by the claimant was not functioning. In fact, the appellant/respondent had admitted the above documents but only denied its contents. The appellant/respondent failed to establish that the contents of the



documents are otherwise.

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6.2. The learned Arbitrator further held that except relying upon a report of M/s. Modtech about the guide rollers there is nothing else on record giving any technical details to assess the claim of the appellant/respondent that the material handling system was not successfully commissioned and that trial runs were conducted on various dates. Though the same was admitted by R.W.1, he would say that it would not amount to a successful commission. It is contended by the learned counsel for the appellant that 24 hour continuous trial run was not done by the respondent/claimant. In this regard, the learned Arbitrator has clearly held that, though the minutes dated 10.06.2008 shows that the appellant/respondent made request for trial of the pipe conveyor, belt conveyor for minimum of 24 hours, yet, it appears that, they did not pursue it and that it is all the more so because in the document produced by the claimant, it had indicated that as there was no space in the bin provided by the appellant/respondent, longer duration of test run cannot be conducted. This fact has not been denied by the appellant/respondent. The learned Arbitrator also noted that none of the witnesses on the side of the respondent adduced evidence as to how and in what manner the test runs admittedly conducted failed to satisfy them and that in the face of the notings in the test run documents that it was successful and in the absence of any contra evidence, it must be held, that as the documents speak for themselves that the claimant's case is true. The



learned Arbitrator also noted that the author of the letter dated 20.12.2008 which was sent by M/s. Modtech to the respondent was not examined to prove the nature of fault found by them. Further the learned Arbitrator held that there is no evidence on record to show that the claimant was in charge of the maintenance of the system after it was successfully commissioned in May 2008 and that the respondent never made any complaint that the damage to the conveyor belt was due to poor design of the conveyor system and low quality of conveyor belt.

6.3. The learned Arbitrator had arrived at a just and reasoned conclusion after carefully perusing the materials and evidence on record. When the Arbitrator has applied its mind to the pleadings, the evidence adduced before him and the terms of the contract, there is no scope for the Court to reappraise the matter as if this were an appeal and even if two views are possible, the view taken by the Arbitrator would prevail.

6.4. Therefore, in the facts of the case in hand, while deciding the petition under Section 34 of the Arbitration Act, the learned Single Judge has made a very elaborate consideration of the submissions made across the bar, the findings recorded by the Arbitrator. The learned Single Judge has addressed all the issues raised by the respective parties. The learned Single Judge, while examining Ex.C94 and Ex.C95 has held as follows:



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“...it is clear that the said documents evidence that the conveyor system has been duly operated by the Petitioner, albeit on a "no load" basis. Therefore, it cannot be said that the said evidence is irrelevant. It is also clear from the subsequent correspondence between the parties that “on load” trials were conducted, thereafter, in June 2008 after the meeting held on 10.06.2008(Ex.C-125). Therefore, the inference of the learned Arbitrator that the said Ex.C-94 and Ex.C-95 unerringly establish that the Petitioner herein did not find anything wrong in the material handling system erected and commissioned by the Respondent is not correct. Nevertheless, the question arises as to the consequences of the inference drawn by the learned Arbitrator. From the evidence on record, it is clear that about 7 load tests were carried out in June 2008 and the documents pertaining thereto disclose that all the load tests were carried out successfully. The said documents were also considered by the learned Arbitrator as seen at paragraph 10(b) of the Award at pages 325 and 326 of Volume 1 and the learned Arbitrator records that no evidence was provided by the first Respondent's witnesses, including RW4, as to the manner in which the load tests were not satisfactory. As regards the contention that Ex.C-125, namely, the minutes of meeting dated 10.06.2008 was disregarded, the Award discloses at paragraph 10(d) that the learned Arbitrator examined the said



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document but concluded that the parties did not pursue a trial run continuously for 24 hours on an “on load” basis. In this connection, it is also relevant to note that there is no contemporaneous document on record to the effect that the Respondent failed to commission the conveyor system to the satisfaction of the Petitioner by not carrying out an "on load" trial run for a continuous period of 24 hours. In this factual context, the above inference of the learned Arbitrator is based on a fair reading of the relevant documents and, therefore, it cannot be said that the learned Arbitrator disregarded vital evidence. Thus, the said contentions of the learned counsel for the Petitioner to the effect that the learned Arbitrator relied on irrelevant evidence or disregarded vital evidence is rejected.”

Further, the learned Single Judge, with regard to the damage to the belt that occurred on 14.02.2008, has held as follows:

“13. With regard to the damage to the belt that occurred on 14.02.2008, the learned Arbitrator relied upon the answer of R.W.2 to question No.10 and recorded that R.W.2 admitted that the damage to the conveyor belt could be due to faulty maintenance. He further examined the letter of the third party, namely, Modtech and concluded that the said letter with regard to the alleged modifications carried out by Modtech was not provided to the Respondent herein.

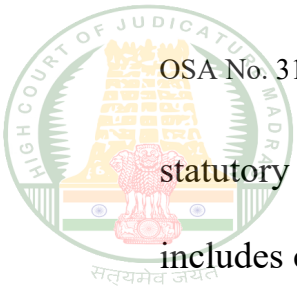


By appraising the evidence on record, the learned Arbitrator concluded that the tear to the belt may be due to faulty maintenance.

Once again, the said conclusion is based on a reasonable appraisal of the evidence on record and does not warrant interference on any of the recognized grounds for interference with an arbitral award. The conclusion that the counter claims of the Petitioner are barred by limitation is, once again, an inference drawn on the basis of a reasonable appraisal of the evidence so as to conclude that the date of filing of the statement of defence and counter claim is the relevant date and that the counter claim is barred by limitation when the said date is reckoned. From a legal perspective, this conclusion is in conformity with principles laid down in State of Goa Vs. Praveen Enterprises (2012) 12 SCC 581 with regard to the limitation period for counter claims. Therefore, this conclusion does not warrant interference under Section 34 of the Arbitration Act.”

Therefore, the learned Single Judge justified the findings of the learned Arbitrator in a right perspective manner.

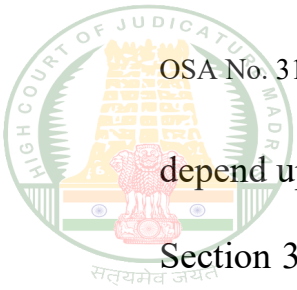
6.5. Further, the scope of judicial interference under Section 34 of the A&C Act, 1996, is extremely narrow. Courts are strictly limited to setting aside the award based on exhaustive statutory grounds and cannot reappraise evidence, review the merits of the case or substitute the Arbitrator's findings. An arbitral award can only be challenged if the petitioner proves specific irregularities of if the Court finds the Award violates core legal principles. This



statutory ground under Section 34(2) and Section 34(2A) of A&C Act, 1996, includes conflict with public policy and patent illegality. The Hon'ble Supreme

Court in a land mark judgment in ***Gayathri Balasamy vs. I.S.G. Novasoft Technologies Ltd.***, reported in **(2025) 7 SCC 1**, has held that courts do not have the sweeping authority to modify or alter arbitral award under Section 34 of the A&C Act, 1996, and that the permissible judicial interventions are limited to correcting the clerical errors, addressing post award interest or setting aside strictly severable portions of the award.

6.6. With regard to payment of interest, the learned Single Judge relying on the judgment in ***Sayeed Ahmed vs. State of UP*** reported in **(2009) 12 SCC 26** has held that, the respondent/claimant will be entitled to 14% interest per annum during the pre reference period and the *pendente lite* period. It is to be noted that, the power of the Arbitrator to award interest for pre award period, interest *pendente lite* and interest post award period is not in dispute. Section 31(7)(a) provides that the Arbitral Tribunal may award interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which award is made, i.e., pre award period. This, however, is subject to the agreement as regards the rate of interest on unpaid sums between the parties. The question as to whether interest would be paid on the whole or part of the amount or whether it should be awarded in the pre award period would



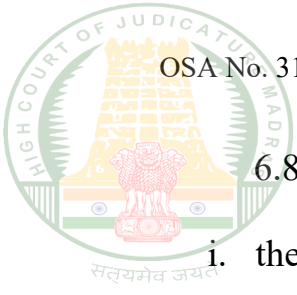
depend upon the facts and circumstance of each case. The Arbitral Tribunal and Section 34 Court in this behalf will have to exercise its discretion as regards (i) at what rate interest should be awarded; (ii) whether interest should be awarded on the whole or part of the award money; and (iii) whether interest should be awarded for the whole or any part of the pre award period. However, in some cases, the Hon'ble Supreme Court has resorted to exercise of its jurisdiction under Article 142 in order to do complete justice between the parties. The learned counsel for the appellant has referred to the judgment of the Hon'ble Supreme Court in *Vedanta Ltd., vs. Shenzhen Shandong Nuclear Power Construction Co. Ltd.(cited supra)*, has held that, Courts may reduce the interest rate awarded by an Arbitral Tribunal where such interest rate does not reflect the prevailing economic condition or where it is not found reasonable, or promotes the interest of justice. Similarly in *Krishna Bhagya Jala Nigam Ltd. vs. G. Harichandra Reddy* reported in (2007) 2 SCC 720, which expressly limits interests liability on arbitral awards to 9% by holding that after economic reforms in our country the interest regime has changed and the rates have substantially reduced. The relevant portion of the said judgment is extracted hereunder:

“11. On the merits of the claims made by the contractor we find from the impugned award dated 25.06.2000 that it contains several heads. The arbitrator has meticulously examined the claims of the



contractor under dach separate head. We do not see any reason to interfere except on the rates of interest and on the quantum awarded for letting machines of the contractor remaining idle for the periods mentioned in the award. Here also we may add that we do not wish to interfere with the award except to say that after economic reforms in our country the interest regime has changed and the rates have substantially reduced and, therefore, we are of the view that the interest awarded by the arbitrator at 18% for the pre-arbitration period, for the pendente lite period and future interest be reduced to 9%.”

6.7. The learned Single Judge considering the prime lending / base rate of the State Bank of India from 27.06.2009 to date of Award (8.3.2016) as a reasonable bench mark for a business commercial transaction revised the rate of interest from 24% per annum to 14% per annum during the pre reference period and the *pendente lite* period. The learned Single Judge ought to have considered that the interest must commensurate with the prevalent rate of interest for the relevant period. No reason was stated by the learned Single Judge that the interest rate at 14% reflects the prevailing economic conditions. Admittedly the legal notice was issued in the year 2009 and the pleadings were submitted in the year 2013 and the award was passed in the year 2016. Hence, we are of the view that the interest awarded by the learned Single Judge at 14% for the pre arbitration period and for the *pendente lite* period be reduced to 9% per annum.



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6.8. In the result,

i. the Original Side Appeal is partly allowed. No costs. Consequently

connected miscellaneous petition is closed.

ii. The order dated 04.10.2019 passed in O.P. No. 517 of 2016 is modified to the extent that the respondent/claimant shall be entitled to interest at the rate of 9% per annum for the pre-arbitration period and the pendente lite period, instead of 14% per annum. In all other respects, the order of the learned Single Judge is confirmed.

(P.V.,J.) (K.G.T.,J.)

31-07-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

BGA

To

1. Masyc Projects Pvt Ltd
20 Community Centre Mayapuri Phase I,
New Delhi 110 064

2. The Sub Assistant Registrar,
Original Side, High Court, Madras.



OSA No. 315 of 2019



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

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Pre delivery Judgment in
**OSA No. 315 of 2019
AND
CMP NO. 25739 OF 2019**

31-07-2026