2026:MHC:4510

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 16.10.2026

ORDERS PRONOUNCED ON : 11.11.2026

CORAM

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Original Petition No.680 of 2019
and Application No.4013 of 2024

M/s. Appu Hotels Ltd.,
"PGP" House, No.57, Sterling Road
Nungambakkam, Chennai - 600 034
rep.by its Director ... Petitioner

Vs.

M/s. Voltas Limited a Company incorporated
under the Provisions of Companies Act, 1913
and having registered office at Voltas House
"A", Dr.Babasaheb Ambedkar Road, Chinchpokli,
Mumbai-400 033 and branch office at
No.621, Anna Salai, Chennai - 600 018,
rep.by its Authorised Representative ... Respondent

PRAYER: Original Petition filed under Section 32 (2) of the Arbitration and Conciliation Act, 1996, praying to set aside the award dated 01.03.2019 and pass such further or other orders.

For the petitioner : Mr.Om Prakash, Senior Counsel
for Mr.T.Ravichandran

For the respondent : Mr.Vinod Kumar

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O R D E R

This Original Petition is filed under Section 34(2)(b)(i) and (ii) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act’), challenging the award dated 01.03.2019 of the sole Arbitrator in the arbitration dispute arising out of an agreement dated 11.05.2019 between M/s. Appu Hotels Limited, represented by its Director (the petitioner herein, referred to as 'Appu Hotels'), and M/s. Voltas Limited, represented by its Authorised Representative (the respondent herein, referred to as 'Voltas Limited').

2. The brief facts leading to the filing of this Original Petition are that Appu Hotels, through their consultant, invited bids from eligible bidders for the Heating, Ventilation and Air-Conditioning Systems (HVAC) and the installation of the Electrical System for their proposed ‘Le-Meridien Hotel’ at Coimbatore. The project includes the supply of materials, installation, testing and commissioning of the entire HVAC and electrical systems. Voltas Limited, being the successful bidder, was issued a work order on 11.05.2009 for a total contract value of Rs.11.80 Crores. The period of completion of the contract was eight

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months. Clause 1 of the work order deals with the scope of work; technical specifications are contained in Clause 2; prices are mentioned in Clause 3; terms of payment in Clause 5; completion period in Clause 6; dispute resolution through arbitration in Clause 8; testing and guarantee in Clause 11; and further specifications are annexed to the said work order.

3. Upon further consideration of the exhibits marked in the arbitration proceedings, it is evident that as the work progressed, there were amendments to the work orders on 21.05.2010, 23.05.2020, 20.08.2010, 19.10.2010, 21.10.2010 and 03.04.2011. As the project neared completion, disputes arose between the parties, resulting in claims and counterclaims concerning the completion or abandonment of the work, the balance amount payable under the final bill, the release of the retention amount to Voltas Limited, and the compensation claim made by Appu Hotels on the ground that it was compelled to engage third parties to complete the pending works. Disputes also arose regarding the obtaining of the final clearance from the Chief Electrical Inspector to Government (in short, 'CEIG'). These

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disputes were followed by the issuance of legal notices, replies and rejoinder notices.

4. Under the said circumstances, Voltas Limited invoked arbitration by a letter dated 18.09.2013. On an application filed by them under Section 11 of the Act in O.P.No.78 of 2014, the Hon'ble Mr. Justice A.S. Venkatachalamoorthy (Retd Judge, High Court of Madras) was appointed as the sole arbitrator to enter into the reference and decide the disputes between the parties. By a subsequent order dated 08.01.2016 in Application No.110 of 2016, the original Arbitrator was substituted by another Arbitrator on account of the former’s illness. By this order, the Hon'ble Mr. Justice G.M. Akbar Ali (Retd Judge, High Court of Madras) was appointed to continue the proceedings. Both the original appointment and the substitution made it clear that the arbitration be conducted under the aegis of the Madras High Court Arbitration Centre and that the parties be governed by the rules of the Centre.

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5. It can be seen that Voltas Limited filed a claim petition for Rs.4,53,76,310/-, being the amount due under the invoice dated 20.07.2011, and another sum of Rs.5,02,74,645/-, being 24% interest from 20.07.2011 till the date of filing of the claim, i.e., up to 29.02.2016, in all totaling to Rs.9,56,50,775/-, with further interest at the rate of 24% per annum and for costs.

6. Voltas Limited made a further claim for payment of the retention amount of 10 %, being Rs.1,34,84,844/-, along with interest at the rate of 24 % per annum from 11.06.2012 till 29.02.2016, being Rs.1,21,29,710/- in all, totalling Rs.2,56,14,554/-, with further interest and costs.

7. Appu Hotels resisted the claim by filing a detailed counter statement and, along with the same, a counter claim was made, claiming a sum of Rs.77,11,487/-, being the excess payment made to Voltas Limited, along with interest at the rate of 24 % per annum. A sum of Rs.52,68,610/- was claimed towards liquidated damages, together with further interest at 24 % per annum from 12.01.2010

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until the date of payment. A further sum of Rs.34,50,00,000/- was claimed for the loss, inconvenience, and hardship suffered by Voltas Limited, together with interest at the rate of 24% per annum from 26.12.2012 until realization. The parties also filed rejoinder and sur-rejoinder.

8. After the pleadings were completed, the Arbitrator framed the following twelve issues,

> "1. Whether the Claimant had committed breach of contract, delay of work and abandoned the work site as claimed by the Respondent?
> 2. Whether the Claimant had completed the entire project as per the work order issued by the Respondent on 11.06.2010 as claimed by the Claimant, if not, when was the project completed?
> 3. Whether the Respondent had completed the work by engaging third parties?
> 4. Whether the claim petition is not maintainable for want of cause of action as the Claimant has not completed the work and could not have raised the final bill?
> 5. Whether the Claimant is entitled for the amounts claimed in the invoice dated 20.07.2011 towards total work done by the Claimant as claimed including the commissioning charge at 5% and the testing and handing over charges @10%?
> 6. Whether there is any retention amount in the hands of the Respondent and if any, whether the Claimant is entitled for the same as claimed?
> 7. Whether the Respondent is entitled for any liquidated damages?
> 8. Whether the Respondent is entitled for any amount towards excess payment as Claimed by them?
> 9. Whether the Respondent is entitled for any damages towards loss, inconvenience and hardship?
> 10. Whether the Claim and counter claim are barred by limitation?
> 11. Whether the parties are entitled to interest on various claims as claimed by them?
> 12. To what reliefs, the parties are entitled to?"

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9. The parties adduced oral and documentary evidence. On behalf of Voltas Limited, C.W.1 and C.W.2 were examined. Proof affidavits were filed, and detailed cross-examination was conducted. Exhibits C.1 to C.70 were marked. On behalf of Appu Hotels, R.W.1 was examined. A proof affidavit was filed, and detailed cross-examination was conducted. Exhibits R.1 to R.105 were marked on their behalf.

10. After considering the written and oral arguments on behalf of either side, the learned Arbitrator passed the impugned award dated 01.03.2019. The Arbitrator first considered the arguments on limitation, namely whether the claim and counter-claim were barred by limitation. The Arbitrator held that, for the purpose of limitation, the proceedings shall be deemed to commence on the date on which the request for dispute to be referred to arbitration is received by Appu Hotels, and found that, as per Ex.C.45, the relevant date could be 18.09.2013. Thereafter, taking into account that the claim was based on the final invoice dated 20.07.2011 and that the two-year defect liability period commenced upon completion of the project, the

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Arbitrator rejected Appu Hotels' contention that the work had been completed on 11.06.2010 and that, consequently, the claim was barred by the three-year limitation period.

11. The learned Arbitrator further observed that, according to Appu Hotels' case, Voltas Limited had abandoned the work only in June 2011, compelling Appu Hotels to engage a third party to complete the pending works. The Arbitrator further considered the amended work orders, including the one dated 03.04.2011, and concluded that the claim was made within a period of three years and, as such, is not barred by limitation. The Arbitrator found that the excess payment, liquidated damages, and the damages for the inconvenience caused were all related to the events mentioned and occurred between 2010 and 2012, and that no claim whatsoever was earlier made, and it was raised for the first time only on 14.05.2016, and, as such, held that the counter claim made by Appu Hotels was barred by limitation.

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12. Thereafter, the Arbitrator proceeded to consider issues Nos. 1 to 4. After considering the oral evidence and the correspondence on record, the learned Arbitrator answered issues Nos. 1 and 4, i.e., whether the claimant had committed a breach of contract, delayed the work, and abandoned the work site as claimed by the respondent, and whether the claim petition is not maintainable for want of cause of action, as the claimant has not completed the work and could not have raised the final bill, in favour of the claimant, by holding that the subsequent conduct of the parties would demonstrate the variations of the work order and the period as the work progressed.

13. However, while answering Issue Nos. 2 and 3, namely, whether the claimant had completed the entire project in terms of the work order dated 11.06.2010, as claimed by it, and whether Appu Hotels had completed the pending works by engaging third parties, the learned Arbitrator found in favour of Appu Hotels, holding that it had engaged third parties to complete the pending works and had incurred expenditure in that regard. Thereafter, the learned Arbitrator considered Issue Nos. 5 and 6 with reference to the claimant's

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entitlement to the amount claimed by way of the balance as per the final invoice dated 20.07.2011 and the repayment of the retention amount in the hands of Appu Hotels. After detailed discussion, the Arbitrator discounted the claims of Voltas Limited as per its invoices and bills, as also the case of Appu Hotels, and found that, as per the terms of the contract, the value of the work done by Voltas Limited had been assessed and that the total value of the work was Rs.11,28,20,374/-, of which Appu Hotels had to engage third parties for completion and incurred an expenditure of Rs.1,12,82,037/-, and thus found that the value of the work done by Voltas Limited was Rs.10,15,38,337/-. After considering the payments made against the running bills, totaling Rs.7,59,87,285/-, the learned Arbitrator found that a sum of Rs.2,55,51,052/- is payable.

14. The learned Arbitrator further found that a sum of Rs.1,01,53,833/-, being the 10 % retention value, is again liable to be paid to Voltas Limited. Thereafter, the learned Arbitrator considered issue Nos.7 and 8 and held that neither party was entitled to any damages or any refund of excess amount/damages against the other,

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and answered issue Nos.7 to 9 in the negative. Thereafter, the Arbitrator considered the quantum of interest, both up to the date of filing of the claim and *pendente lite/post* award, and awarded interest at the rate of 18% per annum from the date of award till the date of payment. Aggrieved by the same, the present Original Petition is filed.

15. *Mr.Om Prakash,* the learned Senior Counsel appearing on behalf of Appu Hotels, after taking this Court through the pleadings and the oral and documentary evidence on record, would primarily contend that the Arbitrator's award is self-contradictory, as he could not have found in favour of Voltas Limited on issues Nos. 1 and 4 when issues Nos. 2 and 3 were found in favour of Appu Hotels. Once it is clear that Voltas Limited did not complete the project within time, it goes without saying that it breached the contract and was not entitled to the balance amount raised in its final bill. Admittedly, Voltas Limited raised the final bill on the pretext that it had completed the entire work. The very fact that the CEIG gave its clearance only in the year 2017 shows that Voltas Limited never fulfilled its obligations under

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Clause 11 of the work order, being testing and approvals, and thus the learned Arbitrator committed patent illegality in passing the award.

16. The learned Senior Counsel, by further drawing attention to the answers elicited from C.Ws. 1 and 2 during their cross-examination, which indicate that the work had not been completed, would submit that the learned Arbitrator overlooked the complete lack of evidence adduced by Voltas Limited in support of its claim. He would therefore contend that the award is contrary to the fundamental policy of Indian law, as any award of a claim must be supported by at least some evidence on record. He would further contend that the award, being made on the basis of the valuer's report and disregarding the claim made by Voltas Limited, would render the award with reference to the retention amount patently illegal.

17. The learned Senior Counsel would also draw the attention of this Court to the correspondence exchanged between the parties to demonstrate that Voltas Limited was in breach of the agreement at

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every stage. He would further seek to demonstrate, on a factual analysis of the oral and documentary evidence on record, that certain findings of the learned Arbitrator were erroneous and unsustainable and when the Arbitrator omits material evidence on record for consideration while granting the award, it is a case for interference .

18. The learned Senior Counsel would submit that once the Tribunal, in its award, relied only on the value of the work as assessed by Appu Hotels, as a natural corollary, it ought to have awarded the counter claim and dismissed the claim made by Voltas Limited. The learned Senior Counsel would point out that Voltas Limited's stand on abandonment of work and the permission issued by CEIG is self-contradictory. The claimant witnesses were cross-examined in detail with reference to the various permissions and approvals required for the due completion of the project. The learned Senior Counsel would submit that, on a perusal of Ex.C.43, it is clear that Appu Hotels had made a claim of Rs.24,08,393/- towards excess payment and Rs.56,41,019/- towards liquidated damages, and therefore the Tribunal erred in holding that the counter claim is barred by limitation. In any

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event, having found that the work was done till June 2011, the Tribunal ought to have held that the counter claim to the extent of Rs.24,08,393/- was within limitation.

19. *Per contra, Mr.Vinod,* the learned counsel appearing for Voltas Limited, would submit that, on instructions, he is not supporting the award with reference to the retention money and that they are not pressing the claim with reference to the award made by the Arbitrator on that amount. As to the balance sum payable, he would counter the learned Senior Counsel's arguments by submitting that the surveyor, whose assessment/value cannot be disputed by the parties, found the final value of the work, which the Arbitrator ultimately adopted. With regard to the grant of permissions by the CEIG, the Tribunal also considered the permissions dated 11.06.2010 and 02.03.2011, the issuance of which was not disputed by Appu Hotels.

20. Though Appu Hotels marked Exs.R.45 and R.46 purport to be the surveyor's report, Voltas Limited, through cross-examination of R.W.1, established that the survey reports were not filed by Appu

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Hotels and that the survey value details are correctly reflected as per Ex.C.43, a reply notice, which was considered by the Arbitral Tribunal. The learned counsel would then point out the various exhibits, on which the Arbitral Tribunal came to the conclusion as to the total quantum of work, the total quantum of expenditure actually incurred by Appu Hotels, and the balance amount payable.

21. The learned counsel would then argue that the stand of the Appu Hotels on abandonment of work is inconsistent and would point out that the contract was not terminated and that Voltas Limited was permitted to work till June 2011. In this regard, the learned counsel would also point out that the final permission was granted by CEIG on 02.03.2011. The learned counsel would submit that there is no infirmity in the findings of the learned Arbitrator relating to limitation and the counter claim. With regard to the excess payment, since the award was made based on the valuer's assessment, there is no question of excess payment. With reference to the liquidated damages, the Arbitrator considered that the amendment orders themselves were issued after eight months, whereas the original

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period was mentioned in the work order, and therefore there is no infirmity in the conclusion of the Arbitral Tribunal.

22. The learned counsel would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Kailash Nath Associates Vs. Delhi Development Authority and Another***[1], more specifically paragraphs 24 and 25, and the Judgment in ***S.Brahmanand and Others Vs. K.R.Muthugopal and Others***[2] more specifically paragraph 34.

23. The learned counsel would submit that no grounds were made out for interference under Section 34 of the Act and would rely upon the Judgment of the Hon'ble Supreme Court of India in ***Associates Builders Vs. Delhi Development Authority***[3]. The learned counsel would further submit that the well-reasoned award cannot be interfered with, and once the award is supported by the pleadings and evidence before the Tribunal, it does not call for any interference. The learned counsel would also rely upon the Judgment of the Hon'ble Supreme Court of

1 (2015) 4 SCC 136
2 (2005) 12 SCC 764
3 (2015) 3 SCC 49

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India in ***Dyna Technologies Vs. Crompton Greaves Limited***[4] and ***OPG Power Generation Private Limited Vs. Enexio Power Cooling Solutions India Private Limtied***[5] in support of his contentions.

24. I have considered the rival submissions from both sides and perused the material records of the case.

25. Firstly, with reference to the claim for refund of the retention amount along with further interest and costs, and the award of the learned Arbitrator for a sum of Rs.1,01,53,833/-, I am satisfied that the award in respect thereof is severable, as it can be identified and removed independently, and even in its absence, the remaining award would remain coherent. The validity or otherwise of the remaining part of the award is not inextricably intertwined with this. Therefore, in view of the dictum of the Constitution Bench of the Hon'ble Supreme Court of India in ***Gayatri Balasamy Vs. ISG Novasoft Technologies Limited***[6], I am of the view that the position conceded by the learned counsel for

4 (2019) 20 SCC 1
5 (2025) 2 SCC 417
6 (2025) 7 SCC 1

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Voltas Limited, that they are not pressing the claim for retention of money, can be recorded, and that portion of the award is set aside.

26. Thus, this takes us to the question of the award of Rs.2,55,51,052/- in respect of the balance sum payable to Voltas Limited for the works executed by them. On a concise and clear appreciation of the evidence and cogent reasoning, the learned Arbitrator found that there was no breach of agreement or abandonment of work, which would dis-entitle Voltas Limited from claiming the amount due as per the bill. At the same time, factually, some portions of the project remained unfinished, and Appu Hotels carried out the work by engaging third parties and incurring expenditure. The Arbitrator took into account the parties' conduct as the contract progressed, variations in the original work order, and the circumstances under which the entire work was not completed. Such a finding cannot be perverse or mutually contradictory, patently illegal, or a violation of any fundamental policy of Indian Law.

27. The findings in respect of issue Nos. 1 to 4 are cogent and consistent with each other, leaving only the ground of re-appreciation

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of evidence and substitution of another possible view. That exercise, as if an appellate forum, cannot be undertaken in this petition under Section 34 of the Act. With reference to the quantum, in view of the findings made in issue Nos. 1 to 4, the Arbitral Tribunal considered the assessor/surveyor's report, as periodic assessment/survey is contemplated even under the terms of the agreement between the parties, and the value mentioned therein cannot be disputed by either side. The parties caused the assessment in the natural course of the contract, and the evidence came on record. The aspects of the oral and documentary evidence pointed out by the learned Senior Counsel fall within the realm of re-appreciation of the entire evidence and it is not as if the findings are arrived at by ignoring the terms of the contract between the parties and the material evidence on record.

28. After considering the detailed documentary and oral evidence on record, the Learned Arbitrator has concluded that the total value is Rs.11,28,20,374/-, has taken into account the value of the work done by Appu Hotels to the tune of Rs.1,12,82,037/-, and has arrived at the total value and the balance amount payable after taking into account

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the amount actually paid. This Court is unable to find any error whatsoever, much less any ground for interference, under Section 34 (2) (b) (i) and (ii) of the Act.

29. With reference to the award of interest, while the learned Arbitrator considered the claim for interest at the rate of 24% from the date on which the amount became due till the date of making the claim and rejected the same, the Arbitrator nevertheless awarded post-award interest at the rate of 18% from the date of award till the date of realization. Thus, on a reading of the award as a whole, the background of the claims of both the parties, the award does not call for any interference with reference to the balance sum payable or the quantum of interest awarded in respect thereof.

30. In view thereof, this Original Petition is partly allowed on the following terms:

(i) The impugned award dated 01.03.2019 in the matter of arbitration dispute arising out of an agreement dated 11.05.2009 between Voltas Limited represented by its authorized representative

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and Appu Hotels, in respect of the claim relating to payment of retention amount being Rs.1,01,53,833/- which is included in the operative portion of the award along with further interest shall stand set aside;

(ii) The award made towards the amount due to the respondent – Voltas Limited to the tune of Rs.2,55,51,052/- with further interest at the rate of 18 % from the date of award till the date of realization is not interfered with;

(iii) The parties shall bear their own costs;

(iv) Consequently, the pending Application(s) if any, shall stand closed.

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Neutral citation : Yes/No

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D.BHARATHA CHAKRAVARTHY, J.,
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Pre-Delivery Order made in
Original Petition No.680 of 2019
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