

**IN THE HIGH COURT OF MADHYA PRADESH
AT Indore
AC No. 60 of 2024**

*(M/S TRICON ENERGY UK LIMITED THROUGH ITS AUTHORIZED SIGNATORY MR. SANTOSH KOLI
Vs M/S KRITI INDUSTRIES (INDIA) LIMITED)*

Appearance

*Shri Ashwin Shanker – Advocate assisted by Shri Madhav Lahoti -
Advocate for the applicant.*

*Shri Manoj Munshi - Senior Advocate assisted by Shri Vikram
Malviya and Shri Lucky Jain – Advocates for the non-applicant.*

Reserved on	:	21.04.2025
Pronounced on	:	16.06.2025

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*This arbitration case having been heard and reserved for orders,
coming on for pronouncement this day, the court passed the following:*

ORDER

1] Heard on ***I.A. No.8276 of 2024***, which is an application for recall for the ex-parte order passed by this Court on 15.07.2024, whereby this Court has held that the award submitted by the applicant along with the application under Sections 47, 48 and 49 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act of 1996’) is executable.

2] The present application has been filed seeking recall of the order dated 15.07.2024 on the ground that the non-applicant was prevented from appearing before this Court on account of non-service of notice, as it is submitted that as per the ROC record, the

registered office of the non-applicant/company is at “*Mehta Chambers, 34, Siyaganj, Indore 452007*”, whereas the current address of the non-applicant/company is, “*8th floor, Plot no.10, PSP, IDA Scheme no.78-II, Vijay Nagar, Indore, Madhya Pradesh, India, 452010*”. It is also stated that prior to shifting to the said new address, when the civil suit was filed by the non-applicant before the Commercial Court, their address was mentioned as “*Chetak Chambers, 14, RNT Marg, Indore*”, whereas till date the service report is showing as unserved, screenshot of the service report is also filed on record. It is further contended that till 30.06.2024 there was summer vacation, and the counsel was also not available, who could be instructed to appear before this Court, hence, no one could appear on the first hearing, after issue of notice on 15.07.2024, and on the very first date, this Court has declared the non-applicant to be ex-parte, and has passed the aforesaid, and no sooner the non-applicant came to know about the same, filed I.A. No.7505 of 2024 on 06.08.2024 under Section 48 of the Act of 1996 for refusal to the enforcement of foreign award, and also I.A. No.8151 of 2024 filed on 27.08.2024, which was an additional application in support of the earlier application.

3] Shri Manoj Munshi, learned Senior counsel for the non-applicant has submitted that there was no reason for the non-applicant to not to appear before this Court, especially when a huge award to the tune of Rs.1,30,87,670/- has been passed against it, and has also submitted that in the interest of justice, the order may be

recalled, and an opportunity of hearing, on the objections already filed by the non-applicant, may be given to the non-applicant, otherwise grave prejudice and injustice would be caused to the non-applicant.

4] In support of his submissions, Shri Munshi, learned senior has also relied upon certain decisions rendered by the Supreme Court in the cases of ***Sushil Kumar Sabharwal V. Gurpreet Singh*** reported as (2002) 5 SCC 377; ***Gauhati University V. Niharlal Bhattacharjee*** reported as (1995) 6 SCC 731; ***G.P. Srivastava V. R. K. Raizada*** reported as (2000) 3 SCC 54; ***Parimal V. Veena @ Bharti*** reported as (2011) 3 SCC 545; ***Rafiq & Anr. V. Munshilal & Anr.*** reported as (1981) 2 SCC 788; ***Budhia Swain & Ors. V. Gopinath Deb & Ors.*** reported as (1999) 4 SCC 396; ***Prestige Feedmills Ltd. V. K. N. Resources Ltd. (R.P. No.134/2020)*** dated 23.08.2022; ***Indian Bank V. Satyam Fibres (India) Pvt. Ltd.*** reported as (1996) 5 SCC 550.

5] The prayer is vehemently opposed by Shri Ashwin Shanker, learned counsel for the applicant, and it is submitted that the non-applicant has been served notice on their proper address, the screenshot of which, is also filed on record. It is also submitted that the notice was affected through the Court only, and the non-applicant cannot be allowed to take advantage of the High Court's website, which is showing the notice as 'unserved'. It is submitted that the aforesaid reflection is only because of the High Court's website has not been updated, as they may be awaiting

acknowledgment receipt from the postal office, and even otherwise the non-applicant was already served as evidenced by the delivery report dated 01.07.2024, which is already filed on record.

6] It is also submitted that subsequent to the order dated 15.07.2024, this Court has also passed the order on 06.08.2024, directing the non-applicant to deposit principal amount of USD 1,53,972.58 on the basis of the exchange rate as existed on that day within a period of one week before the Principal Registrar of this Court, and the aforesaid order was also challenged by the non-applicant before the Supreme Court in Court in Petition(s) for Special Leave to Appeal (C) No(s).19247 of 2024, which has already been rejected by the Supreme Court vide its order dated 27.08.2024, and in such circumstances, no case for interference is made out.

7] Heard. Having considered the rival submissions and on perusal of the documents filed on record, it is found that so far as the order dated 15.07.2024 is concerned, this Court in para 1 has noted as under:-

“1] As per the service report submitted by the applicant, notice has been served on the non-applicant on 14.06.2024, 15.06.2024 and 24.06.2024, however, there is no representation on behalf of the non-applicant. In such circumstances, non-applicant is proceeded ex-parte.”

8] However, subsequent to that, on 06.08.2024, an application I.A. No.7399 of 2024 was also filed by the non-applicant for modification of the order dated 15.07.2024 seeking the following reliefs:-

“In view of the above, the respondent most humbly prays to this Hon’ble Court to modify the aforesaid order and allow the respondent to continue with its business operations with the direction that the respondent shall maintain the properties over Rs.2.00 crores to secure the applicant till next date of hearing or any other order or directions as this Hon’ble Court may deem fit and proper.”

9] This application was disposed of by this court with the following observations:-

“7] Heard. Having considered the rival submissions and on perusal of the documents filed on record, as also the decisions relied upon by the counsel for the applicant, this Court is of the considered opinion that looking to the various legal issues involved, which are rather peculiar, and the fact that the non-applicant has already filed its objection to the main application, the order passed by this Court on 15.07.2024 may be modified to the extent that subject to deposit of the principal amount of USD 153,972.58 on the basis of the exchange rate as exists today, within a period of one week with the Principal Registrar of this Court, and further securing immovable properties worth Rs.3 crores by filing an affidavit within a week’s time, the direction in para 8 of the order dated 15.07.2024, that “*till the next date of hearing non-applicant are restrained from transferring their immovable or movable properties in any manner*” is hereby modified and dispensed with, accordingly. The amount so deposited by the non-applicant may be allowed to be withdrawn by the applicant upon their furnishing the solvent security to the satisfaction to the Principal Registrar of this Court.”

(Emphasis Supplied)

10] Whereas, when the non-applicant filed the SLP against the aforesaid order, the same has been rejected *in limine* by the Supreme Court vide its order dated 27.08.2024.

11] In the considered opinion of this Court, after the non-applicant was ordered ex-parte on the first date after service of notice, after tendering their appearance, they have also filed the detailed objections regarding the maintainability of the application itself, regarding which, this Court has also made an observation in

the order dated 06.08.2024 as aforesaid, that various legal issues are also involved which are rather peculiar in nature, in such circumstances, when the non-applicant has also deposited the amount as directed by this court, and the security for the rest of the amount is also provided, this Court is of the considered opinion that although there was some negligence on the part of the non-applicant to pursue the matter, for which appropriate costs may be imposed, however, interest of justice requires that the non-applicant deserves an audience, before the order dated 15.07.2024 is made absolute.

12] Accordingly, I.A. No.8276 of 2024 is hereby allowed, at a cost of Rs.25,000/- to be paid by the non-applicant to the applicant, and the order dated 15.07.2024, to the extent of declaring the non-applicant as ex-parte, is hereby recalled, however, the rest of the order shall remain undisturbed, but the same shall be subject to the final order, which may be passed by this Court on the objections filed by the non-applicant.

13] With the aforesaid, ***I.A. No.8276 of 2024*** stands allowed and ***disposed of.***

14] Let the matter be listed on 16.07.2025.

(SUBODH ABHYANKAR)
JUDGE

Pankaj