IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.03.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb O.P.(Com. Div.)No.83 of 2022

1. The Chief Engineer/Metropolitan Transport Project (Railways)
   Poonamalle High Road,
   Southern Railway,
   Egmore, Chennai 600 008.

2. Deputy Chief Engineer/MTP® / MTMY
   Tirumailai Station Building,
   Mylapore, Southern Railway,
   Chennai 600 004. ... Petitioners

vs.

M/s.Progressive-Aliens (JV),
Hyderabad, C/o.Alience Developers Pvt.Ltd.,
Sy.No.384 & 385, Tellapur Village,
RC Puram Mandanl, Sangareddy Dist,
Telengana State-502 032. ... Respondent

Prayer:

Arbitration Original Petition filed under Section 34(2)(a)(iv) & (v) of the Arbitration and Conciliation Act, 1996 read with Section 2(1)(c)(ix) of Commercial Courts Act to set aside the award dated 02.09.2021 made by the Arbitral Tribunal in No.G.16/DGM/ARB/Award/2020/28/FA/S&W/PER by allowing this Original Petition.

For petitioners : Mr.A.V.Arun
Mr.M.T.Arunan

For Respondent : Mr.G.Jeremiah
counsel for caveator

O R D E R

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 03.01.2022 under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] assailing an arbitral award dated 02.09.2021 made by a three member 'Arbitral Tribunal' ['AT']. This arbitral award dated 02.09.2021 made by a three member AT is a unanimous award and the same shall hereinafter be referred to as 'impugned award' for the sake of convenience and clarity.

2. Caption in the petition qua captioned Arb OP reads as follows:

> *'Petition filed under Section 34 (2)(a)(iv),(v) of the Arbitration and Conciliation Act, 1996 to set aside the arbitral award read with under Section 2(1)(c)(ix) of Commercial Courts Act.'*

Notwithstanding aforementioned caption, Mr.A.V.Arun, learned counsel representing Mr.M.T.Arunan, counsel for the petitioners predicated and posited his arguments on Section 34(2)(b)(ii) read with Clause (ii) of

Explanation 1 thereat of A and C Act. There will be a little more elaboration on this infra.

3. Captioned Arb OP is listed in the Admission Board. Therefore Rule 8 of 'The Madras High Court (Arbitration) Rules, 2020' [hereinafter 'MHC Arbitration Rules' for the sake of convenience and clarity] was applied. This means that the captioned Arb OP was heard out qua Admission. To put it differently, learned counsel for petitioners, who are protagonists of the captioned Arb OP assailing the impugned award argued for admission.

4. Law is well settled that a legal drill under Section 34 is one where a Court will perambulate within the limited legal landscape of this provision. Law is equally well settled that campaign against impugned award within the legal perimeter of Section 34 of A and C Act is neither an appeal nor a revision. It is not even a full-fledged judicial review. It is a mere challenge to an award qua various Statutory slots adumbrated in Section 34 more particularly under sub-section (2) of Section 34 of A and C Act, which have been described as 'pigeon holes' by this Court. If the challenge to an arbitral award fits snugly into any one or more of the pigeon holes, arbitral award

will be dislodged. If that not be the case a Section 34 Court will not exercise judicial intervention. This Court also reminds itself that Section 34 legal drill which is a mere challenge to an arbitral award is a delicate balance between a blend of sanctity of finality of arbitral awards and minimum judicial intervention ingrained in Sections 35 and 5 respectively of A and C Act respectively on one side and bedrock of due process of law i.e., judicial review on the other. To be noted, Sections 35 and 5 of the A and C Act read as follows:

Section 35 of A and C Act reads as follows :

> *'**35. Finality of arbitral awards:-** Subject to this part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.'*

Section 5 of A and C Act reads as follows :

> *'**5. Extent of judicial intervention:-** Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this part.'*

5. This Court having set out the scope of a legal drill under Section 34 of A and C Act and having set out procedural law that is being applied,

namely, Rule 8 of 'MHC Arbitration Rules' now proceeds to set out short facts shorn of elaboration owing to the limited legal landscape. Short facts as projected by learned counsel are that a letter of acceptance was issued by Southern Railway {to be noted 'petitioners' shall be collectively referred to as 'Southern Railway'} on 31.08.2010; that this letter of acceptance is for 'some work pertaining to MRTS-Phase II - Extension from Velachery to St.Thomas Mount including construction of RCC framed structures for the proposed elevated station building at Puzhuthivakkam & Adambakkam consisting of cast in situ work' [hereinafter 'said work' for the sake of convenience and clarity]; that said work had to be completed within 12 months from the date of letter of acceptance i.e., by 29.08.2011; that the value of the contract is a little over 25.63 Crores (25,63,63,494.23 INR to be precise); that disputations erupted between Southern Railway and 'respondent' [hereinafter 'contractor' for the sake of convenience and clarity]; that AT was constituted; that AT embarked upon reference, adjudicated claims made by contractor and made the impugned award; that it is to be noted that the contractor is the claimant before AT and Southern Railway is the respondent before AT; that summary of claims are available; that considering the limited legal landscape of Section 34 legal drill it will suffice to say that claims were made by the

contractor under as many as 21 heads, out of this 14 were negatived and 7 were acceded to; that Southern Railway as respondent before AT made a counter claim under 2 heads and both heads of counter claim were negatived vide impugned award; that this Court is informed that there is no independent Arb OP by the contractor qua impugned award as regards those portions of the impugned award which have gone against the contractor; that this is to the knowledge of Southern Railway; that the captioned Arb OP has been presented in this Court on 03.01.2022 (as alluded to supra) assailing the impugned award.

6. Notwithstanding very many averments and several grounds raised in the petition filed in support of the captioned Arb OP, learned counsel in his campaign against impugned award made one crisp submission and that one crisp submission is declaratory reliefs have been acceded to by AT vide claim Nos.1 and 2 of the contractor without giving specific reasons that the contractor is at default qua complaint on which declaratory reliefs have been sought. As already alluded to supra, learned counsel predicated his argument under one of the pigeon holes which can be described as Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1 thereat. The argument that was

projected before this Court very crisply, in the considered view of this Court turns on sub-section (3) of Section 31 rather than Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1. Therefore, this Court would look at both the provisions in examining the argument that has been made in petitioners' campaign to dislodge the impugned award.

7. As the argument is reasons i.e., adequate reasons have not been given as to how the contractor is at default for acceding to declaratory reliefs is the primary and sheet anchor submission, it may be necessary to look at the impugned award as to how the impugned award has dealt with claim Nos.1 and 2. Impugned award has dealt with claim Nos.1 and 2 in Paragraph Nos.13.0 to 13.2 (internal page Nos.10 to 16 of the impugned award). Adverting to these portions of the impugned award, learned counsel submits that as regards claim No.1 after setting out the rival claims, AT has concluded qua the claim in 2 paragraphs which read as follows:

> '*The Tribunal noticed that though there had been initial delays by the Contractor in starting the work, there had been lapses on the part of the Respondent in fulfilling the contractual obligations.*
>
> *The Arbitral Tribunal after analyzing the facts of the case*

and also as per clause 21(4) of general conditions of contract and Sections 51 to 54 of the Indian Contract Act, 1872 orders that the contract came to an end as on 17.02.2012.'

8. Likewise it was submitted regarding claim No.2, that after setting out the rival claims, AT vide impugned award has concluded the matter in the following manner:

'Thus the respondent have not adhered to the provisions contained in Clause-17 and Clause-62 of General Conditions of Contract. In view of the details brought out above, the Tribunal is of the opinion that the termination of the contract agreement was not in order and the provisions of the agreement have not been adhered to by the Respondent. The Tribunal, therefore, concludes that the termination is not in order and is not legally tenable and directs that the action taken by the respondent under Clause 17/62 of GCC is illegal.'

9. This Court having set out relevant portions of the impugned award deems it appropriate to mention about public policy as learned counsel predicated his argument on Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1 thereat of A and C Act though this Court is convinced that the argument will fit into sub-section (3) of Section 31 of A and C Act. Be that as

it may, the expression 'public policy' was statutorily explained for the first time only on and from 23.10.2015 when explanation to Section 34(2)(b)(ii) of A and C Act was introduced. However, even prior to 23.10.2015, the term 'public policy' was explained by way of judicial pronouncement in the celebrated ***Renusagar*** case law ***[Renusagar Power Co., Ltd., Vs. General Electric Co.,*** reported in ***1994 Supp (1) SCC 644]*** and reiterated in ***Saw Pipes*** case ***[Oil & Natural Gas Corporation Ltd., Vs. Saw Pipes Ltd.,*** reported in ***(2003) 5 SCC 705]*** followed by ***Western Geco*** case ***[ONGC Ltd. v. Western Geco International Ltd.,*** reported in ***(2014) 9 SCC 263]*** and ***Associate Builders*** case ***[Associate Builders Vs. Delhi Development Authority reported in (2015) 3 SCC 49]***.

10. Relevant paragraph in ***Saw Pipes*** case law (which captures ***Renusagar*** principle) is paragraph No.31 and the same is as follows:

> ***'31.*** *Therefore, in our view, the phrase "public policy of India" used in Section 34 in context is required to be given a wider meaning. It can be stated that the concept of public policy connotes some matter which concerns public good and the public interest. What is for public good or in public interest or what would be injurious or harmful to the public good or public interest*

has varied from time to time. However, the award which is, on the face of it, patently in violation of statutory provisions cannot be said to be in public interest. Such award/judgment/decision is likely to adversely affect the administration of justice. Hence, in our view in addition to narrower meaning given to the term "public policy" in Renusagar case [1994 Supp (1) SCC 644] it is required to be held that the award could be set aside if it is patently illegal. The result would be — award could 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) in addition, if it is patently illegal.

Illegality must go to the root of the matter and if the illegality is of trivial nature it cannot be held that award is against the public policy. Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the court. Such award is opposed to public policy and is required to be adjudged void.'

11. In paragraph Nos.28 and 29 of ***Associate Builders*** case, paragraph Nos.35 and 38 to 40 of ***Western Geco*** case were extracted and reiterated. Therefore, paragraph Nos.28 and 29 of ***Associate Builders*** case are extracted hereunder and the same read as follows:

'28. *In a recent judgment, ONGC Ltd. v. Western Geco International Ltd. [(2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , this Court added three other distinct and fundamental juristic principles which must be understood as a part and parcel of the fundamental policy of Indian law. The Court held: (SCC pp. 278-80, paras 35 & 38-40)*

"35. What then would constitute the 'fundamental policy of Indian law' is the question. The decision in ONGC [(2003) 5 SCC 705 : AIR 2003 SC 2629] does not elaborate that aspect. Even so, the expression must, in our opinion, include all such fundamental principles as providing a basis for administration of justice and enforcement of law in this country. Without meaning to exhaustively enumerate the purport of the expression 'fundamental policy of Indian law', we may refer to three distinct and fundamental juristic principles that must necessarily be understood as a part and parcel of the fundamental policy of Indian law. The first and foremost is the principle that in every determination whether by a court or other authority that affects the rights of a citizen or leads to any civil consequences, the court or authority concerned is bound to adopt what is in legal parlance called a 'judicial approach' in the matter. The duty to adopt a judicial approach arises from the very nature of the power exercised by the court or the authority does not have to be separately or additionally enjoined upon the fora concerned. What must be remembered is that the importance of a judicial approach in judicial and quasi-judicial determination lies in the

fact that so long as the court, tribunal or the authority exercising powers that affect the rights or obligations of the parties before them shows fidelity to judicial approach, they cannot act in an arbitrary, capricious or whimsical manner. Judicial approach ensures that the authority acts bona fide and deals with the subject in a fair, reasonable and objective manner and that its decision is not actuated by any extraneous consideration. Judicial approach in that sense acts as a check against flaws and faults that can render the decision of a court, tribunal or authority vulnerable to challenge.

***

38. Equally important and indeed fundamental to the policy of Indian law is the principle that a court and so also a quasi-judicial authority must, while determining the rights and obligations of parties before it, do so in accordance with the principles of natural justice. Besides the celebrated audi alteram partem rule one of the facets of the principles of natural justice is that the court/authority deciding the matter must apply its mind to the attendant facts and circumstances while taking a view one way or the other. Non-application of mind is a defect that is fatal to any adjudication. Application of mind is best demonstrated by disclosure of the mind and disclosure of mind is best done by recording reasons in support of the decision which the court or authority is taking. The requirement that an adjudicatory authority must apply its mind is, in that view, so deeply

embedded in our jurisprudence that it can be described as a fundamental policy of Indian law.

39. No less important is the principle now recognised as a salutary juristic fundamental in administrative law that a decision which is perverse or so irrational that no reasonable person would have arrived at the same will not be sustained in a court of law. Perversity or irrationality of decisions is tested on the touchstone of Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] principle of reasonableness. Decisions that fall short of the standards of reasonableness are open to challenge in a court of law often in writ jurisdiction of the superior courts but no less in statutory processes wherever the same are available.

40. It is neither necessary nor proper for us to attempt an exhaustive enumeration of what would constitute the fundamental policy of Indian law nor is it possible to place the expression in the straitjacket of a definition. What is important in the context of the case at hand is that if on facts proved before them the arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which is on the face of it, untenable resulting in miscarriage of justice, the adjudication even when made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards will be open to challenge and may be cast away or modified

depending upon whether the offending part is or is not severable from the rest."

(emphasis in original)

29.*It is clear that the juristic principle of a "judicial approach" demands that a decision be fair, reasonable and objective. On the obverse side, anything arbitrary and whimsical would obviously not be a determination which would either be fair, reasonable or objective.'*

12. Post 23.10.2015 i.e., after public policy was statutorily explained ***Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India*** reported in ***(2019) 15 SCC 131*** was rendered by Hon'ble Supreme Court on 08.05.2019. Most relevant paragraphs in ***Ssangyong*** case law in this regard are Paragraphs 34 to 36 which read as follows:

'34. *What is clear, therefore, is that the expression "public policy of India", whether contained in Section 34 or in Section 48, would now mean the "fundamental policy of Indian law" as explained in paras 18 and 27 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] i.e. the fundamental policy of Indian law would be relegated to "Renusagar" understanding of this expression. This would necessarily mean that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] expansion has been done away with. In short, Western*

Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as explained in paras 28 and 29 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , would no longer obtain, as under the guise of interfering with an award on the ground that the arbitrator has not adopted a judicial approach, the Court's intervention would be on the merits of the award, which cannot be permitted post amendment. However, insofar as principles of natural justice are concerned, as contained in Sections 18 and 34(2)(a)(iii) of the 1996 Act, these continue to be grounds of challenge of an award, as is contained in para 30 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] .

35. *It is important to notice that the ground for interference insofar as it concerns "interest of India" has since been deleted, and therefore, no longer obtains. Equally, the ground for interference on the basis that the award is in conflict with justice or morality is now to be understood as a conflict with the "most basic notions of morality or justice". This again would be in line with paras 36 to 39 ofAssociate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , as it is only such arbitral awards that shock the conscience of the court that can be set aside on this ground.*

36.*Thus, it is clear that public policy of India is now constricted to mean firstly, that a domestic award is contrary to the fundamental policy of Indian law, as understood in paras 18 and 27 of Associate Builders[Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , or secondly, that such award is against basic notions of*

justice or morality as understood in paras 36 to 39 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] . Explanation 2 to Section 34(2)(b)(ii) and Explanation 2 to Section 48(2)(b)(ii) was added by the Amendment Act only so that Western Geco [ONGC v. Western Geco International Ltd., (2014) 9 SCC 263 : (2014) 5 SCC (Civ) 12] , as understood in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , and paras 28 and 29 in particular, is now done away with.'

13. A careful perusal of ***Ssangyong*** principle in the context of the expression 'public policy' which has now been statutorily explained makes it clear that a review of an arbitral award on merits is impermissible in a Section 34 legal drill. Therefore this Court now proceeds to examine the argument on the touchstone of sub-section (3) of Section 31 of A and C Act. Sub-section (3) of Section 31 of A and C Act mandates that an arbitral award shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given or when it is a compromise arbitral award pursuant to a settlement under Section 30 of A and C Act. In the case on hand, impugned award is neither a compromise award i.e., award pursuant to settlement nor is it a case where the parties have agreed that no reasons be

given. Therefore, sub-section (3) of Section 31 of A and C Act would operate. Sub Section (3) of Section 31 of A and C Act was explained by Hon'ble Supreme Court in ***Dyna Technologies*** case law i.e., ***Dyna Technologies Pvt. Ltd. Vs. Crompton Greaves Ltd.*** reported in ***(2019) 20 SCC 1 = 2019 SCC OnLine SC 1656.*** A careful perusal of elucidation of Section 31(3) of A and C Act and more particularly elucidation qua reasons to be given qua arbitral award, Hon'ble Supreme Court made it clear that an arbitral award need not be elaborate like a judgment. Elucidating the principle ingrained in Section 31(3) of A and C Act, it was held that there are three facets of the matter and those three facets are (a) proper; (b) intelligible; and (c) adequacy.

14. Regarding (a) proper, it was held that it is a case where there is a procedural flaw in making the award. Regarding (b) intelligible, it was made clear that it should be a case of perversity or irrationality. In the case on hand, it is neither (a) nor (b). Therefore, it turns on (c) namely, adequacy. Regarding (c) adequacy, it was made clear that there can be no straight jacket formula and the matter i.e., arbitral award has to be tested on a case to case basis depending on the kind of reason that needs to be given. The most relevant paragraphs in ***Dyna Technologies*** case law are paragraph Nos.34 &

35 which read as follows:

'34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the Courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regards to the speedy resolution of dispute.

35. When we consider the requirement of a reasoned order three characteristics of a reasoned order can be fathomed. They are: proper, intelligible and adequate. If the reasoning in the order are improper, they reveal a flaw in the decision-making process. If the challenge to an award is based on impropriety or perversity in the reasoning, then it can be challenged strictly on the grounds provided under Section 34 of the Arbitration Act. If the challenge to an award is based on the ground that the same is unintelligible, the same would be equivalent of providing no reasons at all. Coming to the last aspect concerning the challenge on adequacy of reasons, the Court while exercising jurisdiction under Section 34 has to adjudicate the validity of such an award based on the degree of particularity of reasoning required having regard to the nature of issues falling for consideration. The degree of particularity cannot be stated in a precise manner as the same would depend on the complexity of the issue. Even if the Court comes to a conclusion that there were gaps in the reasoning for the conclusions reached by the Tribunal, the Court needs to have

regard to the documents submitted by the parties and the contentions raised before the Tribunal so that awards with inadequate reasons are not set aside in casual and cavalier manner. On the other hand, ordinarily unintelligible awards are to be set aside, subject to party autonomy to do away with the reasoned award. Therefore, the courts are required to be careful while distinguishing between inadequacy of reasons in an award and unintelligible awards.'

15. This takes this Court back to the portions of the impugned award wherein claim Nos.1 and 2 have been dealt with. To be noted, those portions have been extracted and reproduced supra elsewhere in this order. A careful perusal of the excerpted portions makes it clear that the reasons no doubt are epigrammatic but not laconic. As long as the reasons are not laconic, it cannot be gainsaid that it is hit by adequacy facet qua reasons in a impugned award. When this Court says epigrammatic being terse and being expressive are not mutually exclusive. After all, the expression 'tersely eloquent' is not alien to judgment writing. To be noted, this is the law laid down by Hon'ble Supreme Court qua ***Dyna Technologies*** case law and the most relevant paragraphs namely, paragraph Nos.34 and 35 have been extracted and

reproduced supra.

16. To elucidate a little more on this, a careful perusal of the manner in which the impugned award has been dealt with qua claim No.1 brings to light that AT has proceeded on the basis of clause 21(4) of 'General Conditions of Contract' ['GCC'] and Sections 51 to 54 of Indian Contract Act, 1872 a combined reading of the two in the light of the facts preceding termination makes it clear that the said contract came to an end on 17.02.2012. This in the considered view of this Court is reason that is adequate enough for considering the nature of the complaint which the AT was dealing with. This takes this Court to claim No.2.

17. Regarding claim No.2 again, AT in the impugned order has referred to clause Nos.17 and 62 of GCC and thereafter it came to the conclusion regarding termination and held that Southern Railway had erred in the termination in this view of the matter.

18. The above are covenants. The above are codified arrangements of contract between the parties. To be noted, this Court is informed that GCC

stands for General Conditions of Contract, it is in the form of a template which is supplied across the board to the Southern Railway contractors and covenants therein get telescoped into contracts. Therefore, the argument that reasons have not been given does not hold water in a campaign under Section 34 of A and C Act, more particularly, in the light of the sacrosanct philosophy underlying Sections 35 and 5 of A and C Act namely i.e., finality of arbitral award and minimum judicial intervention.

19. Learned counsel for petitioners made a faint attempt to rely on a recent judgment of Hon'ble Supreme Court rendered on 01.02.2022 in C.A.Nos.837 to 838 of 2022 in the case of ***Indian Oil Corporation Ltd., Vs. M/s.Shree Ganesh Petroleum RajguruNagar*** reported in ***2022 (2) Scale 738*** equivalent to ***(2022) SCC OnLine SC 131.*** A careful and respectful perusal of ***Shree Ganesh*** case law brings to light that it does not come to the aid of petitioners in the case on hand. One of the reasons is, it is completely distinguishable on facts. That is a case where on facts a petroleum dealership with a oil company consists of lease agreement and dealership agreement and the question of treating the two as distinct was examined and on law it turns on public policy. The only paragraph therein which talks about reason qua

arbitral award is paragraph No.57 of ***Shree Ganesh*** case law and the same reads as follows:

> *'57. In this case, there is no finding by the Arbitral Tribunal that any condition of the dealership agreement was unconscionable and the Arbitral Tribunal has not interfered with termination of the dealership agreement.'*

20. To be noted, the aforementioned ***Shree Ganesh*** case law has been rendered by a two member Hon'ble Bench and ***Dyna Technologies*** case law which is prior in point of time and rendered by a three member Hon'ble Bench of Hon'ble Supreme Court has not been placed before Hon'ble Court. In any event, as far as reason qua arbitral award is concerned, the authority for proposition on the facets of reason i.e., proper, intelligible and adequacy is ***Dyna Technologies*** case law. Further point as to why ***Shree Ganesh*** case law does not come to the aid of petitioners in the case on hand lies in ***Shree Ganesh*** case law itself. In paragraph No.59 of ***Shree Ganesh*** case law, Hon'ble Supreme Court has made it clear that a judgment of a Court is precedent for the issue of law which is raised and decided and words and phrases used in a judgment cannot be read in isolation and reading the judgments and observations in judgements are not to be read as Euclid's

theorems or as provisions of Statute has been reiterated. This takes this Court to the celebrated ***Padma Sundara Rao*** case law [***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in ***(2002) 3 SCC 533***]. To be noted, ***Padma Sundara Rao*** case law is an authority as to how a citation or case law has to be referred. It is also to be noted that ***Padma Sundara Rao*** case law was rendered by a Hon'ble Constitution Bench and therefore, it is not just a ratio but declaration of law. Relevant paragraph in ***Padma Sundara Rao*** case law is paragraph No.9 which reads as follows:

> ***'9.****Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'*

21. The narrative, discussion and dispositive reasoning thus far draws

the curtains on the campaign of petitioners qua impugned award. The sequitur is, no case is made out for Admission. Captioned Arb OP fails and the same is dismissed. There shall be no order as to costs.

08.03.2022

Speaking/Non-speaking order
Index : Yes / No
Internet : Yes / No

mk/nsa

M.SUNDAR. J.,

mk/nsa

Arb O.P.(Com. Div.)No.83 of 2022

08.03.2022