IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**29.07.2026**
Pronounced on	**21.08.2026**

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

OSA(CAD) No. 47 of 2022
AND
CMP NO. 5244 OF 2022

M/s.Madras Fertilizers Ltd
Post Bag No.2, Manali, Chennai 600 068.

..**Appellant**(s)

Vs

M/s.SICGIL INDIA LTD
Dhun Building, No. 827, Anna Salai, Chennai 600 002.

..Respondent(s)

Prayer: Original Side Appeal is filed under Section 13(1) of the Commercial Courts Act, 2015, to set aside the Judgment and Decree dated 09.08.2021 in O.P.No.543 of 2017.

For Appellant(s): Mr.Jayesh B.Dolia
Senior Advocate
Assisted by
Mr.T.Karthi for M/s.Aiyar and Dolia

For Respondent(s): Mr.T.K.Bhaskar

JUDGMENT

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

This appeal is filed praying to set aside the judgment and decree dated 09.08.2021 passed in O.P.No.543 of 2017.

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

3.The brief facts leading to the filing of this appeal are as follows:

The respondent/claimant is a Public Limited Company incorporated under the Companies Act. It has entered into an agreement with the petitioner on 21.06.1972 for sale and purchase of carbon dioxide. The agreement was subsequently renewed from time to time and a fresh agreement was entered into between the petitioner and the respondent/claimant on 30.12.1993 for a period of 10 years with effect from January 1994. From the year 1994, invoices have been raised by the respondent/claimant on the basis of quantities raised by the petitioner on proper payment of excise duty, which was levied. Based on the above practice, the petitioner has made the payment as per the agreement without any default on the basis of practice availed in a way upon which payment of excise duty and other statutory duties levied as contemplated under the agreement. In the said situation, the said practice was continued for more than 22 years from the year 1994. Further, the petitioner started raising invoices on the basis of the flow meter installed by the petitioner from 10.10.2001, which was not agreed to by the respondent/claimant.

3.1.As the dispute has been raised by the respondent/claimant claiming invoices for the supply of products on the basis of flow meter recordings during negotiations between the parties, the petitioner had suddenly stopped the supply of gas from 31.12.2002, though the contract was to expire only in the month of December 2003.The sudden stoppage of supply of gas led to huge loss to the respondent/claimant. Accordingly, the matter has been referred to arbitration as per the Clause 11 of the agreement claiming the following damages:-

(a) directing the respondent to pay a sum of Rs.378.24 lakhs towards damages arising from the breach of the agreement dated 30.12.1993 together with interest at 18% on the amount so ascertained by the Hon'ble Arbitrator from the date of award till the date of payment."

3.2.The respondent/claimant took a stand before the learned Arbitrator that clause 16 of the Agreement envisages settlement of any dispute by reference to arbitration only if the dispute is as to the interpretation of the agreement. The present dispute raised by the petitioner is with regard to the recovery of money for the goods sold and delivered. Therefore, it is not arbitrable as per clause 16 of the contract. It is his further contention that the invoices were raised only based on the measurement of the goods sold on the basis of the flow meter installed by the claimant. It is also his further contention that there was a negotiation, in which the claimant has agreed to pay the amount, however, they failed to pay the amount. Therefore, the supply of product was stopped. However, the same has been projected as if the contract was terminated. They have also pleaded a counter claim for recovery of a sum of Rs.57,19,294.98 towards differential amount.

4.The learned Arbitrator had framed the following issues:

1. Whether the dispute raised by the claimant is within the ambit of the Arbitration clause?

2. Whether the respondent had committed any breach of contract and whether the claimant is entitled to Rs.378.24 lakhs as claimed by the claimant?

3. Whether the claimant is entitled to interest at the rate of 18% per annum?

4. Whether the claimant had committed any breach of the contract and *whether the respondent is entitled to counter claim of Rs.93,83,684/-?*

5. Whether the respondent is entitled to interest at the rate of 18% per annum?

6. Whether the claim made by the claimant is sustainable in terms of the clause 11 of the agreement dated 30.12.1993?

7. To what other reliefs the parties are entitled to?

5.The learned Arbitrator, after analysing the oral and documentary evidence, directed the appellant/respondent to pay a sum of Rs.3,25,40,500/- with interest at the rate of 18% per annum from the date of award till the date of realization to the claimant and also directed the appellant/respondent to pay a sum of Rs.8,00,000/- towards cost to the claimant within a period of three months from the date of receipt of award, failing which interest shall be payable at the rate of 6% per annum till the date of realisation.

6.Aggrieved by this, the appellant has preferred a petition under Section 34 in O.P.No.543 of 2017. This original side appeal is directed against the order dated 09.08.2021 passed by the learned Single Judge in O.P.No.543 of 2017, whereby the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Arbitral Award dated 30.01.2017 came to be dismissed.

7.For the sake of convenience, the parties are referred to as the appellant and the respondent.

8.The appellant, Madras Fertilizers Ltd., entered into an agreement with the respondent for supply and purchase of carbon dioxide (CO2). The original agreement was entered into on 21.06.1972 and the arrangement was subsequently renewed from time to time. A fresh agreement dated 30.12.1993 was entered into for a period of ten years commencing from January 1994.

9.The dispute principally arose regarding the basis on which the quantity of CO2 supplied was to be invoiced. The appellant relied upon the flow meter readings, whereas the respondent disputed the manner in which the invoices were raised and claimed that the quantity should be reckoned in accordance with the contractual arrangement and the practice followed between the parties. The dispute ultimately resulted in stoppage of supply of CO2 by the appellant with effect from 31.12.2002, though the contractual period was to expire only in December 2003. The respondent claimed that the premature stoppage of supply constituted a breach of contract and caused substantial loss and consequently, invoked the arbitration clause.

10.The learned Sole Arbitrator, after considering the pleadings, oral evidence and documentary evidence, framed seven issues, including the issue as to whether the dispute fell within the Arbitration clause, whether there was breach of contract, the quantum of damages, interest and the counter claim of the appellant.

11.By award dated 30.01.2017, the learned Arbitrator directed the appellant to pay a sum of Rs.3,25,40,500/- to the respondent with interest at 18% per annum from the date of the award till realisation and also directed payment of Rs.8,00,000/- towards costs, with interest at 6% per annum in case of default.

12.Aggrieved by the award, the appellant preferred O.P.No.543 of 2017 under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Single Judge after considering the rival submissions and the entire award, dismissed the petition. The present appeal is against the said order.

13.Mr.Jayesh B.Dolia, learned Senior Counsel appearing for the appellant would submit that the learned Arbitrator had exceeded the scope of the Arbitration Agreement; that Clause 16 contemplated arbitration only in respect of disputes concerning interpretation of the agreement; that the correspondence between the parties discloses that the dispute had been settled; that the damages awarded were excessive and that the learned Arbitrator had also failed to consider the question of mitigation of damages.

14.It is further submitted that there was considerable delay in pronouncing the award and that such delay vitiated the arbitral proceedings. According to the learned counsel for the appellant, the learned Single Judge ought to have interfered with the award under Section 34 of the Act. To support his contention, he has relied upon the following judgments reported in:

1.AIR 1975 SC 1259

2.2010(2) SCC 385

3.AIR 2015 SC 620

4.(2017) 5 SCC 743

5.(2019) 20 SCC 1

6.(2010) 4 MLJ 685

7.(2015) 3 Gauhati Law Reports 103

8.(2017) 1 Arb LR 348

9.(2020) 1 Mad LJ 169

10.2026 SCC Online Del 4851

15.Per contra, Mr.T.K.Bhaskar, learned counsel appearing for the respondent would submit that the learned Arbitrator had considered the entire contractual arrangement and the evidence adduced by both parties. The controversy concerning the flow meter readings and the basis for raising invoices necessarily involved interpretation of the contractual terms and was therefore squarely within the arbitration clause.

16.It is further submitted that the correspondence relied upon by the appellant did not constitute a concluded settlement. The respondent had agreed to make payments under protest and without prejudice to its rights only for the purpose of restoration of supply. The learned Arbitrator had considered the said correspondence in detail and arrived at a finding of fact.

17.The learned counsel would further submit that the scope of interference under Section 34 of the Arbitration and Conciliation Act is narrow and there cannot be any re-appreciation of evidence merely because another view is possible. To support his contention, he has relied upon the judgment reported in 2018 (6) SCC 287.

18.We have carefully considered the rival submissions and perused the material placed before us.

19.The first question that arises for consideration is as to whether the dispute was within the scope of the arbitration clause. Clause 11 of the Agreement stipulated the manner in which invoices were to be raised for the product supplied. Clause 16 provided for settlement of disputes concerning the interpretation of the agreement through mutual negotiations or arbitration.

20.The dispute between the parties was not an independent claim unrelated to the agreement. On the contrary, the entire controversy arose out of the interpretation and application of the contractual mechanism governing measurement of the product supplied and raising of invoices. The learned Arbitrator was therefore well within his jurisdiction in examining the contractual terms and the conduct of the parties.

21.The contention of the appellant that the correspondence between the parties constituted a concluded settlement also cannot be accepted. The learned Arbitrator has considered the correspondence exchanged between the parties and has found that the respondent had agreed to make payment under protest and without prejudice to its rights, principally with a view to securing restoration of supply.

22.A payment or undertaking made expressly under protest and without prejudice cannot, by itself, be treated as a concluded settlement extinguishing the underlying dispute. The learned Single Judge rightly noticed that the correspondence did not culminate in a binding settlement.

23.The next contention relates to the finding that the stoppage of supply constituted breach of contract. The learned Arbitrator considered the contractual period, the circumstances in which supply was stopped and the correspondence exchanged between the parties. On appreciation of the evidence, the Arbitrator arrived at a conclusion that the appellant had committed breach of the contractual arrangement and that the respondent had suffered loss on account of such breach. Such findings are essentially findings of fact based upon the contractual terms and evidence available before the Arbitral Tribunal. Unless the appellant establishes that the findings are perverse, contrary to the contract, or fall within one of the statutory grounds under Section 34(2) or Section 34(2-A) of the Act, the Court cannot substitute its own appreciation of the evidence for that of the Arbitrator.

24.The Hon'ble Supreme Court in ***Ssangyong Engineering and Construction Co. Ltd. Vs. National High Ways Authority of India,*** reported in ***(2019) 15 SCC 131*** has reiterated the limited scope of interference under

Section 34. The Court cannot enter into the merits of the dispute under the guise of examining the award on the ground of public policy or patent illegality. The learned Single Judge has correctly applied the said principle. It is equally well settled that where two views are reasonably possible on the material before the Arbitrator, the Court exercising jurisdiction under Section 34 cannot substitute the view of the Court for that of the Arbitrator merely because it considers another view preferable.

25.The appellant has also questioned the quantum of damages. However, the award discloses consideration of the pleadings, evidence and documents placed before the learned Arbitrator. The appellant has not demonstrated that the determination of damages is based on a finding which is wholly unsupported by evidence or that the Arbitrator has travelled outside the contract.

26.The plea concerning mitigation of damages also does not advance the case of the appellant. The learned Single Judge has specifically noticed that such a plea had not been raised either in the statement filed before the Arbitrator or in the grounds of challenge under Section 34. A new factual plea requiring examination of evidence cannot ordinarily be introduced for the first time at the appellate stage.

27.The next ground urged is the delay in pronouncement of the award. It is true that arbitral proceedings are intended to provide speedy resolution of disputes and that unexplained and inordinate delay in pronouncing an award may, in an appropriate case, have serious consequences. However, in the present case, the learned Single Judge has recorded a specific finding that the delay in release of the award was attributable to circumstances concerning the payment of the Arbitrator's fee and that the learned Arbitrator had nevertheless considered the pleadings, documents and evidence in detail. The award itself runs into paragraphs and demonstrates consideration of the rival contentions. Therefore, on the facts of the present case, mere delay, without demonstration of prejudice or failure of adjudicatory application of mind, cannot constitute a ground for setting aside an otherwise reasoned award.

28.The appellant essentially seeks re-appreciation of evidence and a fresh determination of the contractual dispute. Such an exercise is impermissible in proceedings under Section 34 and even more so in an appeal arising from an order disposing of Section 34 petition. The appellate jurisdiction under Section 13 of the Commercial Courts Act cannot be utilised to enlarge the statutory grounds available for interference with an arbitral award. The appellate Court has to remain conscious of the legislative policy of minimum judicial intervention in arbitral proceedings.

29.On a careful consideration of the award and the order under challenge, we find that the learned Single Judge has considered each of the substantial grounds urged by the appellant and has rightly declined to interfere with the award. We find no perversity, patent illegality, violation of fundamental policy of Indian law or any other ground recognised under Section 34 of the Arbitration and Conciliation Act warranting interference. Consequently, the Original Side Appeal fails and is liable to be dismissed.

30.In the result, OSA (CAD) No.47 of 2022 is dismissed. The order dated 09.08.2021 passed in O.P.No.543 of 2017 is confirmed. The arbitral award dated 30.01.2017 stands confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(P.V.,J.) (K.G.T.,J.)
21-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

VSN

To

1.M/s.SICGIL INDIA LTD
Dhun Building, No. 827, Anna Salai, Chennai 600 002.

2. The Section Officer,
Original Side, Madras High Court.

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

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