Weight Of Arbitration Award (Delivery) Cannot Be Just 55 Grams: Andhra Pradesh High Court

2022 LiveLaw (AP) 134

IN THE HIGH COURT OF ANDHRA PRADESH AT AMRAVATI

R. RAGHUNANDAN RAO; J.

ICOMA.O.A.Nos.1 & 2 of 2019; 5 August, 2022

Sampathrao Sudhakar *versus* **Emirates International Airlines**

COMMON ORDER

As both the applications relate to the same arbitral Award, concerning the same parties, both these applications are being disposed of by this common order.

2. Sri Sampat Rao Sudhakar, the claimant in ICOMA.O.A.No.1 of 2019 is referred to as the claimant and M/s. Emirates, the 1st respondent in ICOMA.O.A.No.1 of 2019 is referred to as the respondent, and the Arbitrator is referred to as the arbitrator.

3. The claimant had been employed by the respondent as a Steward in the Airlines of the respondent. The contract of service between these two parties is contained in the document dated 07.05.2006, by virtue of which, the employment of the claimant with the respondent commenced from 18.05.2006. It ended with the letter of termination dated 27.12.2009 being served on the claimant by the respondent.

4. The Claimant sought to raise a claim for compensation, against the respondent, on the ground that he had suffered an injury during the course of his employment with the respondent and had to be compensated. The Claimant is said to have attempted, unsuccessfully, to file this claim before the courts in India. He had also enquired whether his claim could be filed before the international Court of Justice and was answered in the negative. Thereafter, he contends that, he had invited the Respondent, M/s Emirates NBD Bank, Dubai and it‘s branch in Mumbai to participate in Arbitration. After all these attempts, he had appointed the arbitrator, in the year 2017, and filed a claim for Rs. 95,08,28,973/- along with interest or in the alternative a sum of Rs. 81,49,06,089 along with interest against the respondent and the other two respondents in the claim petition. The arbitrator, after setting all the respondents in the claim petition, ex parte, had passed an award, on 20.08.2017, dismissing the claims of the claimant against the other two respondents and awarded a sum of Rs. 4,00,00,000/- against the respondent herein.

5. It is the case of the respondent that, it became aware of the said award, only when the Hyderabad Airport office of the respondent had received a show cause notice on 05.11.2018, issued by the erstwhile High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh in C.R.P.No.3897 of 2018. Upon coming to know of this Award, the respondent had addressed communications to the said sole Arbitrator who supplied a copy of the Award to the respondent. Thereafter, the respondent had filed ICOMA.O.A.No.2 of 2019, on 27.12.2018, under Section 34 of the Arbitration and Conciliation Act, 1996, (for short ‗the Act‘) to declare the Award dated 20.08.2017 is a nullity, nonest under law and without jurisdiction, and to set aside the same.

6. Ms. Ritu Singhmann appearing for Ms. T. Alekhya Reddy, learned counsel for the respondent assails the award on the following grounds:

a) There is no agreement of arbitration between the parties, much less, a written agreement of arbitration, as required under Section 7 of the Act.

b) The contract between the parties is contained in the letter of the respondent dated 07.05.2006 and the said document does not contain any provision for resolution of disputes between the parties by way of arbitration.

c) The respondent never received any notice of arbitration or appointment of Arbitrator prior to 05.11.2018. The assertion of the claimant that notices were served has to be negatived, even if notices had been sent by registered post, as India and the United Arab Emirates had entered into a bilateral treaty , dated 25.10.1999, which specifies that service of summons and other judicial documents shall be through the Ministry of Justice in the United Arab Emirates and not by direct service of notices by mail or otherwise.

d) The Award, passed by the Arbitrator states, in paragraphs 6 and 7, that a notice of arbitration had been sent to the respondent and the arbitration had been taken up as there is no response from the respondents.

e) Section 11 of the Act requires the consent of the parties before an Arbitral Tribunal can be constituted and in the event of either party to the arbitral agreement refusing consent, the aggrieved party would have to approach either the High Court or the Supreme Court, as the case may be, for appointment of an Arbitrator. Silence on the part of the respondent, even assuming that notices have been served on the respondent, does not give the Arbitrator any authority or right to proceed with the arbitration.

f) As there is no arbitration agreement and as the respondent had never consented for the appointment of the Arbitrator, the entire exercise is nonest in law and the Award is a void proceeding which can be set aside, de hors the provisions of Section 34 of the Act. She relies upon the judgments of the Hon'ble Supreme Court in **Dharma Prathishthanam v. Madhok Constructions (P) Ltd.**[1], (paragraph Nos.12 and 27); **Hindustan Zinc Limited vs. Ajmer Vidyut Vitran Nigam Limited**[2]; a Division Bench judgment of the Bombay High Court **JSW Steel Ltd., vs. Kamlakar V. Salvi, & Ors**., in W.P.No.12897 of 2016 dated 04.10.2021; Division Bench Judgments of the High Court of Delhi in **Smt. Savitri Goenka vs. Kanti Bhai Damani & Ors**., in FAO.(OS).No.183 of 2008 dated 03.02.2009; **KRR Infra Projects Pvt. Ltd. Vs. Union of India** in Rev. Pet.No.267 of 2018 dated 29.10.2018; and 1988 (3) AWC 2109 (paragraph 10); and a judgment of the High Court of Rajasthan in **M/s. Mehta Associates, Kishangarh vs. State of Rajasthan & Ors.**, in Civil.Misc. Arbitration Appln.No.36 of 2013 dated 02.12.2014.

g) The Arbitrator, in paragraph-4 of the Award, had held that the law of the land, where the arbitration proceedings are being conducted would apply, and applied Indian law. This is blatantly incorrect as Clause ―Other Conditions‖ in page 7 of the letter dated 07.05.2006, specifically stated that ―the Employment Agreement shall be construed in all aspects under the laws of Dubai, United Arab Emirates (U.A.E) and the Courts of Dubai shall have jurisdiction in all matters relating thereto.‖

h) In the face of this Clause, the Arbitrator could have applied only the law prevalent in Dubai, United Arab Emirates and not the Indian law. She relies upon the judgment of the Hon'ble Supreme Court in **Indtel Technical Services Private Limited vs. W.S. Atkins Rail Limited**[3](paragraph 36).

7. Ms. Ritu Singhmann, on the basis of the aforesaid contentions submits that the Award requires to be set aside.

---

[1] AIR 2005 SC 214
[2] (2019) 17 SCC 82
[3] (2008) 10 SCC 308

8. Sri Vedula Venkata Ramana, learned Senior Counsel appearing for Sri D. Pridhvi Teja, learned counsel for the claimant would submit as follows:

a) The respondent had received notice of the award dated 20.08.2017 when copies of the award had been sent to the respondent by both the claimant and the Arbitrator. In any event, the respondent itself admits the date of knowledge as 05.11.2018. However, the application for setting aside the Award, under Section 34 of the Act, had been filed only on 26.07.2019, which is beyond the time granted under the provisions of the Act and as such barred by limitation.

b) The contention of Ms. Ritu Singhmann that the Award can be set aside de hors Section 34 of the Act is not in accordance with the provisions of the Act itself. The grounds on which the Award is sought to be set aside, viz., lack of an arbitration agreement and lack of consent for appointment of Arbitrator are grounds which are contained in Section 34 itself, and as such the question of setting aside the Award without recourse to Section 34 of the Act is not permissible. The language of Section 34, which states that recourse to Section 34 is the ―only recourse available against an Award‖, makes it amply clear that there can be no application outside Section 34 of the Act to set aside the Award dated 20.08.2017.

c) Sri Vedula Venkata Ramana, learned Senior Counsel relies upon the judgment of the Hon'ble Supreme Court in **P. Radha Bai and Ors., vs. P. Ashok Kumar and Anr**.,[4] (paragraph 32). The Hon'ble Supreme Court went into the question of the applicability of section 17 of the Limitation Act, vis a vis section 34 of the Act and held that Section 17 is not applicable to applications filed under section 34 of the Act.

<u>Consideration of the Court</u>:

9. The Award, under challenge, is said to have been passed under the provisions of the Arbitration and Conciliation Act, 1996. The relevant provisions of the Act, for the purpose of this case, are Sections 7, 11 and 34, which are extracted below:

Section 7 Arbitration agreement.—(1) In this Part, ―arbitration agreement‖ means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;

(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract

11. **Appointment of arbitrators**.—(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.

[4] (2019) 13 SCC 445

(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.

(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.

(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court;

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure, a party may request the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision;

(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Supreme Court or the person or institution designated by that Court] may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub section (4) or sub-section (5) or sub-section (6), to it.

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, 7[different High Courts or their designates, the High Court or its designate to whom the request has been first made under the relevant sub-section shall alone be competent to decide on the request.

(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the —Supreme Court or, as the case may be, the High Court‖ in those sub-sections shall be construed as a reference to the —Supreme Court‖; and

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to —the Supreme Court or, as the case may be, the High Court‖ in those sub-sections shall be construed as a reference to the —High Court‖ within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case maybe, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.

Section 34 Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part

from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or (b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

10. Section 7 of the Act requires every agreement of arbitration to be in writing. This would mean that a written document containing the arbitration agreement is required before any arbitration proceedings can be initiated under the Act. In the present case, the claimant has not been able to show any such written agreement to this Court. In the circumstances, it must be held that there was no arbitration agreement, as required under Section 7 of the Act.

11. The procedure for appointment of an Arbitrator is contained in Section 11 set out above. The procedure that would have to be followed, in the present case would have been that the claimant has to invoke arbitration and seek the consent of the respondent for appointment of an Arbitrator. Thereafter, the Arbitrator, so appointed, would enter

reference. The consent required from the respondent is positive consent and not mere silence. In the event of the respondent either refusing to appoint an Arbitrator or remaining silent, the only recourse available to the claimant is to approach the relevant authority under Section 11 of the Act, for appointment of an Arbitrator. It is only an Arbitrator appointed in this manner, who would be competent and authorised to enter into reference and pass an award.

12. In the present case, the Award of the Arbitrator, more specifically at paragraphs 6, 7 and 12, specifically state that the respondent had not given any express or positive consent for the appointment of the Arbitrator and the Arbitrator arrogated the right to enter into a reference and decide the issue on the basis of the silence of the respondent.

13. It is clear from the above that the Award is in direct violation of Sections 7 and 11 of the Act and would have to be treated as a nullity and set aside.

14. The contention of the claimant is that such a declaration would have to be obtained by the respondent only through an application under Section 34 of the Act filed within the period stipulated under Section 34 of the Act itself. The claimant contends that the period provided under Section 34 of the Act is three months from the date of knowledge of the Award, which can be extended by a further period of 30 days. The respondent, on the other hand, contends that the award can be set aside De Hors Section 34 of the Act and as such the issue of limitation does not arise.

15. In the present case, according to the claimant, the respondent‘s date of knowledge of the Award is 20.08.2017 and the application filed on 26.07.2019, is hopelessly barred by limitation and as such the present application has to be dismissed.

16. The question, whether the Award can be set aside, De Hors Section 34 of the Act, on the ground that the award is a nullity, would have to be answered only if it is found that the application, under Section 34, is beyond the time prescribed therein.

17. A perusal of the petition, filed by the respondent, shows that the said petition had actually been filed on 27.12.2018 and not 26.07.2019 as contended by the claimant. It appears that the application was filed on 27.12.2018 before the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh. The High Court had been bifurcated with effect from 01.01.2019 and the bundle is shown to be received on 26.07.2019 by the High Court of Andhra Pradesh. However, the fact remains that the application had been filed by the respondent before the competent Court as on 27.12.2018. In the circumstances, it must be held that the application has been filed on 27.12.2018.

18. The said application, would be within time if the date of knowledge of the respondent is accepted as 05.11.2018. However, it would be beyond limitation if the date of knowledge of the respondent is 20.08.2017.

19. The claimant has filed certain postal receipts along with track reports to contend that the Award had been sent to the address of the respondent on 20.08.2017. Before dealing with these documents, the contention of the Respondent that service by post cannot be accepted, would have to be dealt with. Article III of the bilateral treaty relied upon by the Respondent reads as follows:

ARTICLE - III

1. Summons and other judicial documents in the Contracting Parties shall be served:

i. In the case of India, through the courts in whose jurisdiction the concerned persons reside;

ii. In the case of the United Arab Emirates, through the Ministry of Justice.

2. The service of summons and other judicial documents shall be \effected in accordance with the procedure provided for in the laws of the Requested State, or by a particular method desired by the Requesting State, unless such a method is incompatible with the law of the Requested State.

3. The summons and other judicial documents served in pursuance of this Agreement shall be deemed to have been served in the territory of the Requesting State.

4. The provisions of paragraph 1 of this Article shall not preclude the right of the Contracting Parties to effect such service, through its diplomatic or consular representatives, of summons and other judicial documents on its nationals residing in the territory of the other Contracting Party without application of any compulsion. Service in such cases shall entail no responsibility for the State of accreditation.

5. Subject to the provisions of paragraph 2 of this Article summons and other judicial documents may be served directly through postal channels or by delivery to an addressee who accepts it voluntarily without application of any compulsion.

6. Any claim about the addressee being a national of the State in whose jurisdiction the service is to be effected shall be determined in accordance with the law of the State.

20. Article III (5) provides that summons and other judicial documents may be served directly through postal channels or by delivery to an addressee who accepts it voluntarily without application of any compulsion. In the present service of notices by way of post cannot be treated as an irrelevant method of service. Accordingly, the question of whether service of a copy of the award was done or not would have to considered on the basis of the material before this court.

21. The track report filed as Annexure-1 along with I.A.No.3 of 2022 does not show the name of the respondent. The details of the addressee shown in the track report are:-

Name : Chairman and CEO

Address : EGHQ, AL GARH

City : Dubai – 686.

22. The address shown in the postal receipts placed in Annexure-1 shows that certain covers were sent from the post office near Srikakulam District Court to Emirates MBD Bank, Andheri East Mumbai; Emirates MBD Bank, Dubai; and Emirates International Airline, Dubai by the claimant himself, on 20.08.2017, between 10.13 am and 10.16 am. The address to which the cover was to be delivered is not available in the receipt, except Pin No.‖686‖. It is the contention of the claimant that the address of the respondent is a post box bearing No.686 in Dubai. The contention of the claimant is that the Pin No.686 is reference to post box No.686 and as such the receipt demonstrates that the award had been served on the respondent. Another fact which needs to be taken into account is that the weight of the cover sent under these receipts is 14 grams.

23. As far as the Arbitrator is concerned, he said to have sent two covers under two receipts to Emirates International Airline, Dubai and Emirates MBD Bank, Dubai at 10.15 am and 10.16 am from the post office of Srikakulam District Court. The cover addressed to Emirates International Airline has no address except Pin No.686. The weight of these covers is said to be 55 grams each.

24. From the above, it is obvious that the covers sent by the claimant did not contain the Award passed by the Arbitrator as any cover containing the Award of the Arbitrator would

weigh more than 14 grams. Similarly, the covers sent by the Arbitrator also do not inspire confidence as they weigh only 55 grams, and a cover containing the Award would weigh more than that. Apart from this, it can also be seen that the covers that are said to have been posted by the Arbitrator and the covers posted by the claimant were all sent together from the same post office, at the same time. This would mean that either both the claimant and the Arbitrator went together to the post office and posted the covers or the claimant had posted the covers which contain the name of the Arbitrator. In either event, these receipts and track consignment reports do not inspire any confidence in this Court to hold that the notice of the Award had been sent to the respondent on 20.08.2017.

25. It is the case of the respondent that it had obtained a copy of the Award from the Arbitrator after receiving the notice in C.R.P.No.3897 of 2018 on 05.11.2018. This Court does not find any reason to disbelieve the claim of the respondent.

26. In the circumstances, it must be held that the date of knowledge of the Award, as far as the respondent is concerned, is 05.11.2018 and consequently the application is within the period of limitation prescribed under section 34 of the Act. The question of whether an award can be set aside, De Hors, section 34 of the Act is left open. Accordingly ICOMA.O.A.No.2 of 2019 is allowed.

27. ICOMA.O.A.No.1 of 2019 is an application filed under Section 34 of the Act for setting aside the order of the District Judge, Srikakulam, dated 29.11.2018. It is stated that, after the award had been passed by the Arbitrator on 20.08.2017, an application, I.A. No. 1/2017 in ARC 01/2017, under section 33(1) (a) and 33 (4) of the Act was filed by the Claimant for further enhancement of compensation and the same was dismissed by the arbitrator on 16.01.2018. Aggrieved by the order of rejection, the claimant had filed A.O.P. No. 201 of 2018, under section 34 of the Act, against the order dated 16.01.2018, before the District Court, Srikakulam. This application was returned by the District Judge, by order dated 29. 11.2018, on the ground that the District Judge, did not have territorial jurisdiction.

28. The order dated 29.11.2018 is challenged, by way of the present application/appeal, under section 34 of the Act. It is apparent from a reading of Section 34 that the said provision provides for recourse against Arbitral Awards. It does not provide recourse against orders passed by a court in a proceeding under section 34 of the Act. Accordingly, this application is dismissed.

29. To sum up, ICOMA.O.A.No.2 of 2019 is allowed and the award of the arbitrator dated 20.08.2017 is set aside and ICOMA.O.A.No.1 of 2019 is dismissed.