

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petitions for Special Leave to Appeal (C) Nos.15336-15337/2021

(Arising out of impugned final judgment and order dated 08-08-2019 in OSA No. 59/2015 08-08-2019 in OSA No. 181/2015 passed by the High Court of Judicature at Madras)

GAYATRI BALASAMY

Petitioner(s)

VERSUS

M/S ISG NOVASOFT TECHNOLOGIES LIMITED

Respondent(s)

(FOR ADMISSION, FOR REPORTING COMPLIANCE AND I.A. No.42914/2024 for direction]

Date : 20-02-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE K.V. VISWANATHAN
HON'BLE MR. JUSTICE SANDEEP MEHTA

For Petitioner(s) Mr. Arvind Datar, Sr. Adv.
Mr. M.V Mukunda, Adv.
Ms. Hina Shaheen, Adv.
Mr. Mithun Shashank, Adv.
Mr. M.V Swaroop, Adv.
Mr. Hredai Sriram, Adv.
Mr. Nishanth Patil, AOR

Mr. K.Parameshwar, AOR

For Respondent(s) Mr. Siddharth Bhatnagar, Sr. Adv.
Mr. Debmalya Banerjee, Adv.
Ms. Manmeet Kaur, Adv.
Mr. Rohan Sharma, Adv.
Mr. Gurtej Pal Singh, Adv.
Mr. Abhishek Rana, Adv.
Ms. Ananya Khanna, Adv.
Mr. Aditya Sidhra, Adv.
M/S. Karanjawala & Co., AOR

UPON hearing the counsel the Court made the following
O R D E R

1. I.A. No.42914/2024 for direction stands dismissed. Time to comply with the order dated 19.10.2023 is extended by three weeks from date.

2. Whether or not the Courts in exercise of power under sections 34 or 37 of the Arbitration and Conciliation Act, 1996 are empowered to modify an arbitral award is a question which frequently arises in proceedings not only before this Court but also before the High Courts and the District Courts. While one line of decisions of this Court has answered the aforesaid question in the negative, there are decisions which have either modified the awards of the arbitral tribunals or upheld orders under challenge modifying the awards. It is, therefore, of seminal importance that through an authoritative pronouncement clarity is provided for the guidance of the Courts which are required to exercise jurisdiction under the aforesaid sections 34 and 37, as the case may be, day in and day out.

3. We are of the considered view that the following questions need to be referred to a larger Bench for answers:

“1. Whether the powers of the Court under section 34 and 37 of the Arbitration and Conciliation Act, 1996, will include the power to modify an arbitral award?

2. If the power to modify the award is available, whether such power can be exercised only where the award is severable and a part thereof can be modified?

3. Whether the power to set aside an award under section 34 of the Act, being a larger power, will include the power to modify an arbitral award and if so, to what extent?

4. Whether the power to modify an award can be read into the power to set aside an award under section 34 of the Act?

5. Whether the judgment of this Court in **Project Director NHAI vs. M. Hakeem**¹, followed in **Larsen Air Conditioning and Refrigeration Company vs. Union of India**² and **SV Samudram vs. State of Karnataka**³ lay down the correct law, as other benches

1 (2021) 9 SCC 1

2 (2023) SCC Online SC 982

3 (2024) SCC Online SC 19

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of two Judges (in **Vedanta Limited vs. Shenzden Shandong Nuclear Power Construction Company Limited⁴**, **Oriental Structural Engineers Pvt. Ltd. vs. State of Kerala⁵** and **M.P. Power Generation Co. Ltd. vs. Ansaldo Energia Spa⁶**) and three Judges (in **J.C. Budhraja vs. Chairman, Orissa Mining Corporation Ltd.⁷**, **Tata Hydroelectric Power Supply Co. Ltd. vs. Union of India⁸** and **Shakti Nath vs. Alpha Tiger Cyprus Investment No.3 Ltd.⁹**) of this Court have either modified or accepted modification of the arbitral awards under consideration?”

4. The special leave petitions may be placed before the Hon'ble the Chief Justice of India for an appropriate order.

(RAJNI MUKHI)
COURT MASTER (SH)

(PREETHI T.C.)
COURT MASTER (NSH)

4 (2019) 11 SCC 465
5 (2021) 6 SCC 150
6 (2018) 16 SCC 661
7 (2008) 2 SCC 444
8 (2003) 4 SCC 172
9 (2020) 11 SCC 685