IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	**21.10.2024**
Pronounced on	**30.10.2024**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

O.S.A.(CAD).No.27 of 2022
C.M.P.Nos 3348 &16569 of 2022

M/s.Bhadra International (India) Pvt. Ltd.,
Rep. By its General Manager (Finance & Accounts)
Having its Branch Office at A-9, Airlines Office Gallery,
2nd Floor, Anna International Terminal,
Chennai Airport, Chennai 600 027,
And its Registered Office at No.42.
Rani Jhansi Road, New Delhi 110 055.

... Appellant

Vs.

1.Airports Authority of India,
Rep. By its Airport Director,
Having office at Chennai International Airport,
Chennai- 600 027.

2.The Chairman, Airports Authority of India,
Rajiv Gandhi Bhawan, Safdarjung Airport,
New Delhi 110003

... Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of the Original Side Rules read with Section 37(1) of the Arbitration and Conciliation Act, 1996 and read with Clause 15 of the Letters Patent 13(1) of Commercial Court Act, praying to set aside the judgment and decree dated 06.09.2021 made in O.P.No.903 of 2019 and to allow the appeal as prayed for.

For Appellant : Mr.P.R.Raman, Senior Counsel
for Ms.R.Maheshwari

For Respondents : Dr.Fr.A.Xavier Arul Raj, Senior Counsel
for Ms.A.Arul Mary for R1 & R2

J U D G M E N T

K.GOVINDARAJAN THILAKAVADI,J.

This is an Appeal under Section 37 of the Arbitration and Conciliation Act, 1996, (hereinafter 'the Act') against the order dated 06.09.2021 passed by the learned Single Judge of this Court in O.P.No.903 of 2019, whereby the application preferred by the appellant herein under Section 34 of the Act for setting aside the award dated 06.08.2019 of the Sole Arbitrator was rejected.

2.The claimant before the Arbitral Tribunal is the appellant and the respondents herein is the counter claimant before the Arbitral Tribunal.

3.In the statement of claim before the learned sole Arbitrator it was contended by the claimant that under Ex.C.1 dated 29.11.2010 a License Agreement came to be granted by the respondents granting license to the claimant to carry out the ground handling activities in the Chennai Airport. According to the claimant, Ex.C-1 was the parent license agreement. It was also stated that a revised ground handling policy called Airports Authority of India (General Management, Entry for Ground Handling Services) Regulations 2007 came into existence to provide world class Ground Handling Services at the Airports in India. It is also claimed that the said regulations form part of the tender documents, the award letter and the agreement. According to the Claimant, Ex.C-2 dated 05.01.2011 is the Subordinate License Agreement for lease of space/land/facilities accorded to the Claimant for

office/maintenance and parking of its equipments within the airport area. The said agreement was stated to have been subsequently renewed under Ex.C-3 dated 23.06.2014.

4. The Claimant would contend that the dispute arose when the Respondents issued the Circular Letter under Ex.C-5 dated 20.11.2014 by which the Lease Rental/License fee rates were revised with effect from 01.10.2014 in an astronomical manner. The main plank of attack of the Claimant on such astronomical increase in the lease rental was on the ground that Clause 4 of Ex.C-1 dated 29.11.2010 provides for entering into separate agreement, that based on Ex.C-1, Ex.C-2 dated 05.01.2011 which was entered into prescribing the monthly license fee of Rs.2,080.13 per square meter per annum along with 7.5% annual compounded increase, which agreement was subsequently renewed Under Ex.C-3 dated 23.06.2014 where again the license fee came to be fixed, by which the license fee was fixed at Rs.2,778 per square meter per annum along with 7.5% annual compounded increase.

5.It is claimed that both the agreements were acted upon and the rent was being paid at the revised rates. In the above referred two agreements, Ex.C-2 and C-3, Clause 20 is relied upon by the Claimant for the Arbitration reference. It is contended that Ex.C-1 dated 29.11.2010 did not provide for midterm arbitrary increase in the rate of license fee applicable to licensed land, that the midterm increase now made have been arbitrarily fixed providing for 272% increase with effect from 01.10.2014 as conveyed in the Respondent's letter dated 27.10.2014 Ex.R-9 and followed by the Circular dated 20.11.2014 Ex.R-10. The Claimant stated to have objected to Ex.R-10 dated 20.11.2014 under Ex.C-6 letter dated 08.12.2014 and that be so, the Respondents came forward and issued the notice dated 14.02.2017 under Ex.C-10 through the Eviction Officer for payment of Rs.12,36,92,506/-.

6.It is stated that the Claimant challenged the said notice by filing O.A.No. 197 of 2017 on the file of this Court and this Court by its interim order dated 28.02.2017 directed the Claimant to deposit Rs.1 Crore on or before 28.03.2017 while directing the Respondents to

maintain status quo. Thereafter, the Claimant by letter dated 25.05.2017 Ex.R-16, invoked the arbitration clause and subsequently filed O.P.No.602 of 2017 for appointment of an Arbitrator which led to the present reference in the Order dated 15.12.2017.

7.By way of a challenge to the higher rate of land lease rent demanded by the Respondents, the Claimant would contend that the astronomical increase in license fee is not provided for in the Parent License Agreement dated 29.11.2010 Ex.C-1, that the increase is not in line with the rental value in and around Chennai Airport, that such arbitrary increase came to be made in violation of the principles of natural justice and that is also hit by the principle of legitimate expectations of the Claimant. It is further contended that the Land License Policy has also not been finalized by the Airport Authority of India till date, that the Claimant cannot be compared with the other occupants of Chennai Airport, that, apart from the Claimant, others were also allowed to do ground handling services, namely, Air India and their partners which created an unfair competitive edge which resulted in curtailment of the

Claimant's business, that the Claimant's agreement with the Airlines was based on the anticipated 7.5% compounded increase and the present astronomical increase has created huge loss to the Claimant and the accumulated loss as of 31.03.2017 claimed to be Rs.245,94,85,946/-. It is also contended that the ground handling system being an exclusive activity, the equipments gathered by the Claimant cannot be deployed to any other business. The Claimant also relied upon Ex.C-15 dated 02.02.2018 by which the Respondents themselves have frozen the lease rent for a period of 4 years, which according to the Claimant was as a result of abnormal increase in the lease rent.

8.On the above pleadings, the Claimant has come forward with the following prayers:

(a) For a direction to the Respondents not to give effect to the Respondents circular dated 20.11.2014 Ex.R-10 in so far as the Claimant is concerned and consequently withdraw all invoices raised by the Respondents on the Claimant;

(b) To declare that the unilateral astronomical increase in base rent as per Ex.R-10 dated 20.11.2014 over and above 7.5% annual

increase as contemplated under the Parent License Agreement Ex.C-1 dated 29.11.2010 is unjustified, unreasonable, illegal and against the principles of natural justice.

9.As against the above stand of the Claimant, the Respondents in their Statement of Defence contended that Ex.R-10 dated 20.11.2014 is not pertaining to the Claimant alone and that it was a common circular applicable to all licensees which hold the field for the past 4 years. According to the Respondents, the Claimant while disputing Ex.R-10 has not challenged Ex.R-9 dated 27.10.2014 which prescribes the upward revision to which the Claimant was a party along with other licensees affixing its signature which forms part of the agreement.

10.It is further stated that when under Ex.C-6 dated 08.12.2014 the Claimant raised its objections to the revision, under Ex.R-13 dated 24.04.2015 it was rejected by the Respondents and the same has not been challenged till date and that it has become final. Referring to the dispute raised pursuant to the eviction officer's notice dated

14.02.2017, Ex.C-10, it is contended that the same can have no reference to the dispute now raised before this Arbitral Tribunal. The Respondents would contend that the Circular dated 20.11.2014 Ex.R-10 being a policy decision of the Respondents authority as a State falling under Article 12 of the Constitution, it tantamounts to a public policy, which cannot be challenged by the Claimant with particular reference to the Claimant alone when the said decision was applicable to all the licensees similarly placed like that of the Claimant.

11.It is further contended that the Claimant's stand with reference to the revision of the rent will become a dispute only in the absence of a contract/ agreement and when the policy decision could not be a subject matter of dispute before a private tribunal just because it is inconvenient to the party and that too after a delay of 4 years, it is contended that both the prayers of the Claimant are not maintainable. According to the Respondents, no Arbitral Tribunal can go beyond the terms of the contract agreed between the parties and any decision can only be within the terms of the contract and not outside.

12.It is also stated that under Chapter V-A of 1994 Act, as against the Show Cause Notice Ex.C-10 dated 14.02.2017 issued under Section 28 G of the Act, there is a statutory remedy of appeal available under Section 28 K of the Act and having regard to the special provisions under Chapter V A of the 1994 Act, the Civil Court Jurisdiction is barred. On the merits of the Claimant's rights, the Respondents contended that the Claimant was awarded a license for Ground Handling Services at Chennai and Kolkata Airports by Award letter dated 09.09.2009 Ex.R-1 and under Clause 5 of the Award letter, the Respondents were entitled to engage the services of other entities for ground handling operations. It is stated that under Ex.C-2 dated 05.01.2011, the License Agreement, initially the Claimant was given 2,200 sq.mts of land and due to subsequent allotments, the Claimant came to occupy 7,105 sq.mts of paved land + office space of 601.60 sq.mts and till date the Claimant has not submitted a composite license agreement encompassing the total extent of allotment and therefore the Respondents are not in a position to handover the copy of the agreement.

13.It is also submitted that the Claimant had neither renewed the license nor submitted a license agreement after 14.03.2013, inasmuch as the initial agreement dated 05.01.2011 under Ex.C-2 expired by 14.03.2013.

14.According to the Respondents, because of the interim protection given by another Tribunal, the Respondents have not taken any coercive steps against the Claimant and raised the land license rental invoices on the Claimant. It is stated that after repeated insistence, the Claimant applied on 20.08.2014 under Ex.R-7 and on 04.09.2014 under Ex.R-8, the Respondents renewed the license for a further period from 01.04.2014 to 31.03.2017 and the Claimant has not executed the license agreement in the prescribed format. It is stated that the Claimant was deliberately refraining from executing the license agreement to avoid the reference to the revised land rentals. It is, therefore, contended that after 01.04.2017, the Claimant is an unauthorized occupant of the Airport premises.

15.It is further contented that the Claimant having accepted the renewal letter dated 04.09.2014, Ex.R-8 with vital conditions which included the prevailing land rentals, the Claimant cannot agitate the same after lapse of 4 years. It is pointed out that though the next revision after Ex.C-2 dated 05.01.2011 fell due from 01.04.2011, the Respondents did not go for any revision but after 6 years, the base rate was revised taking into account various factors such as acute demand for land everywhere due to commercialization and expansion of the city and on other grounds. It is stated that such revised base rent was implemented only from 01.10.2014 under Ex.R-10 and that it was a policy decision of the Respondents' State. It is, therefore, contended that the revision of land rentals have become final and the arrears payable to the Respondents at the revised rate worked out to Rs.12,36,92,506/- as on February 2017 and, therefore, the Eviction Officer issued the notice under Ex.R-14 dated 14.02.2017 invoking Section 28 G of the Airports Authority of India Act 1994.

16.The Respondents would contend that under the proviso to Clause 3 (1) of the 2007 Regulations, the Respondents are entitled to

permit Ground Handling Services at Airport by third party agencies and further under Regulations 4 (b) and 5 of the 2007 Regulations, the third party participation in the services was permissible. It is also contended that the Claimant cannot be heard to say that it was surprised by the sudden revision in as much as the Claimant conducted a diligent survey before filing its BID and even going by Clause 19, 52 and 53 of the Agreement dated 29.11.2010, Ex.C-1, the Respondents were entitled to entrust the ground handling activities to similar such agencies like that of the Claimant.

17.According to the Respondents under Clause 4 of Ex.C-1 dated 29.11.2010, the Claimant is liable to pay the land rentals at the prevailing rate as fixed by the Authority from time to time apart from annual escalation of 7.5% and therefore it is too late in the day for the Claimant to raise a protest against the revision of land rental. The Respondents would also rely upon Clause 5 of the Award letter dated 09.09.2009 Ex.R-1, Clause 4 and 26 of Ex.C-1 dated 29.11.2010 and Clauses 4, 8 and 10 of Ex.C-2 dated 05.01.2011 as regards the power of the Respondents to go for a revision on the base rent. It is contended that

the revised rentals was as per the Contract and though it was permissible once in 3 years, in the case on hand it was done after 6 years i.e., from 01.10.2014 and such an upward revision was also reasonable. The Respondents would, therefore, contend that the Claimant is liable to pay the revised land rentals on par with other licensees. The Respondents also placed reliance upon Ex.R-16 dated 25.05.2017 which is a specimen agreement executed by one of the other licensees who accepted the revision and continued to pay revised rental. Reliance was also placed upon Ex.R-23, the payment challan by BPCL, in proof of payment of rent at the revised rate. It is claimed that airport premises are sensitive area, fully under security cover and cannot be compared with any other properties, in particular, the luxury apartments located in and around the Airport. As far as Ex.R-24 dated 02.02.2018 by which the land rentals were freezed for 4 years ending with 31.03.2022, apart from 25% reduction in the operational area, it is stated that it was due to slowdown of market and other valid reasons in the public Interest and the same cannot be called into question.

18.By way of Counter Claim the Respondents claimed that as per Ex.R-25 dated 25.10.2018, the Claimant is liable to pay Rs.20,28,37,461/- as on 25.10.2018 along with 18% interest per annum under Clause 13 of the general terms and conditions of Ex.C-2 dated 05.01.2011 and that the said amount was outstanding from 01.10.2014 as per circular Ex.R-9 dated 27.10.2014 and Ex.R-10 dated 20.11.2014, which the Claimant is liable to pay to the Respondents.

19.By way of Rejoinder and Reply to the Counter Claim, the Claimant would contend that the guideline value taken by the Respondents to fix the land rent was not proper since it related to sale of land and not rentals. According to the Claimant, the Respondents could only go by the registered lease deeds of vacant land in and around the Airport and cannot rely upon guideline value. It is, therefore, contended that there was no fairness in the claim of the Respondents. As far as the policy decision referred to by the Respondents is concerned, the Claimant would contend that such policy decisions cannot stand the test of law, if it is found to be arbitrary or malicious either in law or on fact. The Claimant would contend that the nature of contract between the Claimant

and the Respondents were entrustment of the functions of the Respondents itself with the Claimant unlike the other licensees who may run a restaurant or keep an office in the Airport premises to carry on their business which stands on a different footing.

20.The sole Arbitrator after hearing the respective parties pronounced the award dated 06.08.2019 which is extracted as hereunder:

> *(1)Both the prayers of the Claimant in the Statement of Claim as set out in Paragraph IX are rejected as not maintainable.*
>
> *(2) The Counter Claim of the Respondents for a direction to the Claimant to pay a sum of Rs.20,28,37,461/- as the amount pending outstanding and due as on 25.10.2018 covering the period up to 31.03.2019 is granted and the Claimant is directed to pay the same to the Respondents within 3 months from the date of receipt of copy of this Award.*
>
> *(3) The Claimant is also directed to pay the outstanding amount of Rs.20,28,37,461/- along with simple interest at the rate of 18% per annum as provided under Clause 13 of the general terms and*

conditions of Ex.C-2 = Ex.R-4 dated 05.01.2011 from the date it fell due. The interest amount is also directed to be paid by the Claimant to the Respondents within the said period of 3 months from the date of receipt of copy of this Award.

4) In the light of Ex.C-29 dated 02.02.2018, as the Respondents have frozen the base rates for a period of 5 years from 01.04.2017 to 31.03.2022 without any annual escalation and the next revision of base rates may be considered with effect from 01.04.2022, the Claimant is liable to pay the subsequent rents on and after 01.04.2019 also at the same rate at which it was calculated for the immediate preceding period i.e., ending with 31.03.2019. A direction to that effect is issued accordingly.

(5) In as much as the various contentious issues were dealt with elaborately and since the Claimant's stand cannot be held to be frivolous, I am of the considered view that the parties should be allowed to bear their respective costs including the fees, expenses and other charges of the Arbitral Proceedings and the Arbitrator. It is ordered

accordingly".

21.The award so made by the learned sole Arbitrator was challenged by the claimant under Section 34 of the 1996 Act before the Commercial Division. A vast variety of contentions urged on behalf of the parties were duly considered by the Court and the relevant points were answered in favour of the respondents and thereby, the award was upheld while rejecting the application under Section 34.

22.In challenge to the order dated 06.09.2021 passed by the Commercial Division, the claimant preferred Appeal in O.S.A.(CAD)No.27 of 2022 under Section 37 of the 1996 Act, before this Court. The issue involved in this appeal is whether the impugned judgment of the Commercial Division under Section 34 of the Arbitration and Conciliation Act, 1996 ("the 1996 Act"), liable to be set aside.

23.Before proceeding further, the scope of challenge to an arbitral award under Section 34 and the scope of appeal under Section 37 of the 1996 Act have to be looked into. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot

be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the Court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the Court under Section 34 and by the Court in an appeal under Section 37, Court must be extremely cautious and slow to disturb such concurrent findings.[Ref: ***MMTC Ltd., v. Vedanta Limited*** reported in ***(2019)4 SCC 163: Associate Builders v. DDA*** reported in ***(2015) 3 SCC 49]***

24.Keeping in view the aforementioned principle enunciated by the Hon'ble Supreme Court with regard to the limited scope of interference in an arbitral award by a Court in the exercise of its jurisdiction under Section 34 of the Act, we examine the rival submissions of the parties in relation to the matters dealt with by the sole Arbitrator and the learned Single Judge.

25.Mr.P.R.Raman, learned Senior Counsel instructed/assisted by Ms.R.Maheshwari, learned counsel for the claimant / appellant (hereinafter appellant) sought to argue that the award passed by the sole Arbitrator dated 06.08.2019 as well as the impugned order dated 06.09.2021 rejecting the application under Section 34 of the Act in O.P.No.903 of 2019 suffers from patent illegality, thus it is liable to be set aside.

26. It is being urged on the side of the claimant, that Clause 26 of Annexure 3 to the Notice Inviting Tender, namely, Ex.C-28 requires to be noted since under the said Clause it is provided that the prospective licensee would be required to pay rental for built up space and land as applicable from time to time subject to 7.5% annual escalation or as determined by Airport Authority of India from time to time and that it only provided for additional liability of payment of electricity and water charges as applicable. The learned Counsel would, therefore, contend that going by the said Clause there cannot be any other scope for the Respondents to enhance the rent on any other account other than what

has been specified in the specimen agreement enclosed along with the notice inviting tender. The learned Counsel would contend that when the Claimant submitted its tender based on the above provision suggested to it while inviting for tenders and the Claimant having become a successful bidder, any astronomical increase now effected would amount to a promissory estoppel on the part of the Respondents. It was then contended that under Clause 26 of Ex.C-1 dated 29.11.2010, it is stipulated that the Claimant as a licensee would only be required to pay rental for built up space and land as applicable from time to time subject to 7.5% annual escalation or as determined by Airport Authority of India from time to time other than electricity and water charges, the claim for escalation with compounded effect itself was not justified and the Claimant did not raise any objection to it, as it found to be a trivial one.

27.The learned Counsel for the Claimant pointed out that under Clause 4 of Ex.C-1, the Parent Agreement, under which the Claimant was awarded the contract for doing ground handling activities in the Airports of Chennai and Kolkata, it was only stated that the space

will be provided for in the respective Airports for office/maintenance and parking of equipments at the prevailing license fee as fixed by Airport Authority of India from time to time based on a separate agreement to be entered. The learned Counsel for the Claimant contended that the present demand of the Respondents over and above compounded increase at the rate of 7.5% per annum by way of the revision of the rent was astronomical and therefore it is arbitrary and will amount to unjust enrichment. The learned Counsel would contend that when the Parent Agreement Ex.C-1 provided for entering into a separate agreement with reference to the land/office space in the Airport, the purpose of such subordinate agreement was for the reason that the Parent Agreement related to 2 Airports, that the space to be allotted kept on changing, that the Parent Agreement need not be altered on that score and for other administrative reasons. The learned Counsel would, therefore, contend that the Parent Agreement Ex.C-1 and the subordinate agreement i.e., the land lease agreement under Ex.C-2 are inseparable and the rental agreement should be in consonance with the Parent Agreement and should not conflict with it. It is also contended that the activity which was

entrusted with the Claimant under the Parent Agreement was the mandatory regularity functions of AAI and in effect the Claimant was carrying on the statutory activity of the Respondents and therefore there cannot be a unilateral increase of land lease rent on such a high and abnormal basis. It is, therefore, contended that the Claimant has been pushed to the stage of unequal bargaining position after the investment of several Crores based on the Parent Agreement, which in effect would result in conflicting with the terms prescribed in the Notice Inviting Tender and on that score also the Respondents are estopped from claiming such huge rents. While attacking the provision Clause 4 of the land lease agreement Ex.C-2 dated 05.01.2011, it is contended that as against 7.5% escalation per annum, Ex.C-2 provided for compounded escalation which was not permissible. It is then contended that even as on date there is no land lease policy of Airport Authority of India and therefore the increase demanded was not justified. It is also contended that the very stipulation in Clause 4 and 8 of Ex.C-2 that the Claimant should pay any increase/revision in rent without any protest/demur and that the decision of AAI would be final and cannot be disputed in any

manner is a high handed provision which cannot form the basis for demanding a higher rent. It is also pointed out that after 2010 the rate was not revised in 2011 and till 2014 and that itself established that the rent that was originally fixed was quite adequate. It is then submitted that the sale value may be the guideline for sale of property and no reliance can be placed upon Ex.R-11 Series, as the same cannot be the basis in as much as the fixation of rent depended on the demand and supply of the property/land in the area and not based on the value of the land. It was also contended that the land which was given on lease to the Claimant was a barren land without any construction and the office space was comparatively low in market value and the argument that the other licensees accepted the increase cannot be a ground for insisting such astronomical increase by the Claimant.

28. It was further argued that the Claimant raised its protest in its letter under Ex.C-6 dated 08.12.2014 and in the reply under Ex.R-13 dated 24.04.2015, the objections of the Claimant were not properly considered and that there was no opportunity given to the Claimant while

dealing with its objections. It also contended that the revision was not based on any market analysis or Land Lease Policy and therefore on that ground as well the astronomical increase cannot be sustained. It was lastly contended that state activity in contractual matters must be supported by reasons and not by whims or caprice or personal predilections. It was further argued that the Respondents' claim for astronomical increase was also hit by the principle of legitimate substantive expectation of the Claimant. It was further contended that the doctrine of contra proferentem applies, inasmuch as there was an ambiguity in the language of payment and fixation of rent and the same should be interpreted against the respondents and that the said doctrine is often applied to situation involving standardised contract or for the parties who are in unequal bargaining power. Therefore, in the facts and circumstances of the case, the award passed by the learned sole Arbitrator is patently illegal and the learned Single Judge has committed a grave error in rejecting the 34 application filed by the claimant.

29. As against the above submissions, Dr.Fr.A.Xavier Arulraj,

the learned Senior Counsel appearing for the Respondents contended that at the outset when the Claimant's objection letter to the increase in land rent under Ex.R-12 dated 08.12.2014 as against the revision of land license fee under Ex.R-10 was considered and answered by the Respondents under Ex.R-13 dated 24.04.2015 and the said order not having been challenged by the Claimant, the same became final and therefore the Claimant cannot now raise a challenge after a lapse of 3 long years and at a time when under Ex.R-14 dated 14.02.2017 the Respondents sought for recovery of the arrears through Eviction Officer. It is, therefore, contended that the very arbitration proceedings should be held to have been vitiated due to lapse of time. It is then submitted that the dispute as raised before this Tribunal is not maintainable, as the Claimant cannot be meted out with special treatment when the revision of Land Lease Rent was applicable to all the licensees and when all the licensees accepted the same and continue to pay at the revised rates, the Claimant alone cannot be given a concession and that would result in violation of Article 14 of the Constitution. The learned Senior Counsel by drawing attention to Clause 5 of the award letter Ex.R-1, Clause 4 and 26

of the parent agreement Ex.R-3 dated 29.11.2010 and Clause 4 of the Land Lease Agreement dated 05.01.2011 under Ex.R-4 contended that the reading of the above said clauses not disclose any ambiguity in terms of the contract and the provisions clearly provided for annual escalation apart from upward revision which are 2 different conditions with clear implications. Since the award letter, the agreements and the general terms and conditions form part of the contract they are to be interpreted cumulatively and the Claimant cannot be permitted to dismember a particular clause or word to support its stand. On the above said submissions it was contended that the principle of contra proferentem does not apply to the interpretation of commercial contract apart from the fact that there was no ambiguity as claimed by the Claimant. It is also claimed that the upward revision of land rentals has been already decided in favour of the Respondents', Delhi Airport by the Competition Commission of India in Case No.75 of 2015 under Section 26 (2) of the Competition Act 2002, in order dated 17.11.2015. It was then contended that the dispute now raised by the Claimant questioning the revision of rent would amount to questioning the public policy of fixing the land rent

by a State Authority. It is contended that such a challenge cannot be made in a private arbitration. Reliance was placed upon the decisions of ***Balco Employees Union (Redg.) vs. Union of India*** reported in ***(2002) 2 SCC 333, Bajaj Hindutan Ltd., Vs. Sir Shadi Lal Enterprises Ltd., and others*** reported in ***(2011) 1 SCC 640, Aleo Manali Hydro Power Pvt., Ltd., Vs. State of Madya Pradesh and Others*** reported in ***2011 SCC Online HP 3778*** and ***A.J.C. Estates & Others Vs. The Coffee Board*** reported in (***2004)138 STC 557***. In his further submissions, the learned Senior Counsel contended that the Airport premises occupied by the Claimant cannot be compared with other premises in the locality, having regard to the special nature of the Airport premises and therefore the reliance placed upon by the Claimant on the rental values prevailing in and around Airport premises cannot be taken into account for the purpose of comparison and in support of his said submissions reliance was placed upon the decision of ***Ponds India Ltd., Vs. Commissioner of Trade Tax, Lucknow*** reported in ***(2008) 8 SCC 369.*** As far as the contentions on behalf of the Claimant that the Claimant had already suffered a huge loss in the ground handling contract and by projecting the

accumulative loss the plea now raised for challenging the revision of Land Lease Rent, it is contended that the same has no nexus with revision of land rental and therefore not relevant for the dispute. It is also contended that the said claim was already rejected in another arbitration proceedings and in the Award dated 30.07.2018.

30.The learned Senior Counsel also contended that the theory of legitimate expectation cannot be pleaded as against the terms of the concluded commercial contract, where the terms of the contract alone will be binding. Reliance was placed upon the decision of ***C.V.Enterprises Vs. Braithwaite & Co. Ltd.,*** reported in ***AIR 1984 Calcutta 306*** and ***Ester Industries Lts., Vs. U.P. State Electricity Board & 4 Others*** reported in ***(1996) 11 SCC 199***. It was then contended that the dispute is beyond the scope of the Arbitration Act, in as much as the licensee bound by the terms of the contract cannot assail the same, by relying upon the decision of ***Steel Authority of India Ltd., Vs. Gupta Brother Steel Tubes Ltd.,*** reported in ***(2009) 10 SCC 63***. It was then contended that by virtue of Chapter VA of the 1994 Act as amended by the Act of 2003, the

payment of arrears regarding the land rentals and the proceeding to collect the said arrears under Section 28 G of the said Act stand exempted under the terms of the contract as provided under Clause 78 of the agreement dated 29.11.2010 Ex.R-3 and Clause 20 of Annexure 1 to agreement dated 05.01.2011 Ex.R-4. It is contended that as against the notice for payment of arrears issued under Section 28 G (4) of the 1994 Act, there is a provision for appeal under Section 28 K of the said Act to the Tribunal and the Claimant having not preferred the appeal, the Claimant cannot be allowed to question the proceedings either under Section 28 M of the Act, which would include this Arbitration proceeding. Further, in the order of reference itself it is mentioned that "Whether the payment of rent and consequent eviction in default therefor would come within the ambit of exempted items under Clause 20 of the agreement". Hence, the very dispute having been viewed as eviction proceedings and is governed by Chapter VA of the 1994 Act, the scope of arbitration in this proceeding is not sustainable. Reliance was placed upon ***Booz Allen and Hamilton Inc. vs. SBI Home Finance Ltd & Ors*** reported in ***(2011) 5 SCC 532*** to support the above view. It was lastly

contended that the Claimant is liable to pay interest at the rate of 18% as per Clause 13 of the general terms and conditions of Annexure 1 read along with Clause 19 of the agreement dated 05.01.2011 Ex.R-4 on the arrears due and payable by the Claimant. Making the above submissions and relying upon various decisions, the learned Senior Counsel for the respondents would submit that, the learned Single Judge having found the award passed by the learned sole Arbitrator is reasonable and justifiable, rightly rejected the application filed by the claimant under Section 34 of the A and C Act, 1996 which requires no interference.

31.We have heard the learned counsel for the parties and perused the records carefully.

32.At the outset, it is required to be noted that by the impugned order a learned Single Judge of this Court in exercise of its power under Section 34 of the A and C Act, 1996 has confirmed the award passed by the learned Arbitrator. Nonetheless as regards an order passed under Section 34 of the Act (either setting aside the award or upholding the

award) an appeal is provided under Section 37 of the Act, however, the contours of the proceeding under Section 37 is more limited in terms of scope and ambit of challenge under Section 34 of the Act. Therefore, the short questions which is posed for consideration before this Court is, whether in the facts and circumstances of the case, the learned Single Judge is justified in confirming the award application by the learned Single Judge, in an application under Section 34 of the Arbitration Act.

33. While answering the aforesaid question, certain decisions of the Hon'ble Apex Court and the law declared on the jurisdiction for considering the award passed by the learned Arbitrator are required to be reiterated.

34.In ***Associate Builders*** reported in ***2015 (3) SCC 49,*** the Hon'ble Supreme Court had an occasion to consider in detail the jurisdiction of the Court to interfere with the award passed by the Arbitrator in exercise of powers under Section 34 of the Arbitration Act. In the aforesaid decision, the Hon'ble Supreme Court has considered the

limits of power of the Court to interfere with the Arbitral award. It is observed and held that only when the award is in conflict with the public policy of India, the Court would be justified in interfering with the Arbitral award. In the aforesaid decision, the Hon'ble Supreme Court considered different heads of "public policy of India" which, *inter alia*, includes patent illegality. After referring Section 28(3) of the Arbitration Act and after considering the decisions of this Court in ***McDermott International Inc. v. Burn Standard Co. Ltd.,*** reported in ***(2005) 10 SCC 353,*** and ***Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran,*** reported in ***AIR 2012 SC 2829,*** it is observed and held that an Arbitral Tribunal must decide in accordance with the terms of the contract, but if an Arbitrator construes a term of the contract in a reasonable manner, it will not mean that the award can be set aside on this ground. It is further observed and held that construction of the terms of a contract is primarily for an Arbitrator to decide unless the Arbitrator construes the contract in such a way that it could be said to be something that no fair-minded or reasonable person could do. It is further observed by the Hon'ble Supreme Court in the aforesaid decision in para 33 that

when a court is applying the "public policy" test to an Arbitration award, it does not act as a court of appeal and consequently errors of fact cannot be corrected. A plausible view by the Arbitrator on facts has necessarily to pass muster as the Arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his Arbitral award. It is further observed that thus an award based on little evidence or on evidence which does not measure up in quality to a trained legal mind would not be held to be invalid on this score.

35.Similar is the view taken by the Hon'ble Supreme Court in ***SAIL v. Gupta Brother Steel Tubes Ltd*** reported in ***2009 AIR SCW 7191.***

36.Applying the law laid down by the Hon'ble Apex Court, we have to examine whether the learned Single Judge of this Court was right in confirming the Arbitral award passed by the learned Sole Arbitrator.

37.The main contention of the claimant is that the Rental Agreement (Ex.C.2) must be in consonance with the Parent License

Agreement (Ex.C.1). According to the claimant, the Parent Agreement and the Land Lease Agreement are inseparable and therefore, there cannot be a unilateral increase of land lease rent on such a high and abnormal basis. The Parent Agreement under Ex.C.1 and the subordinate agreement i.e., the Land Lease Agreement under Ex.C.2 are inseparable and the Rental Agreement should be in consonance with the Parent Agreement and should not conflict with it. Such conflict would amount to promissory estoppel. Moreover, the said Land Lease Agreement was not finalized till date. Therefore, the astronomical increase of license fee under Circular dated 20.11.2014 cannot be sustained such manifold upward revision of licence fee is not justifiable, unreasonable and arbitrary. The upward division of the license fee is not in tune with the market rental value of the land licensed to the claimant.

38.The learned sole Arbitrator considering the above submissions observed that, in relation to fixation of rent both parties would be governed strictly as per the provisions contained in the Land Lease Agreement dated 05.01.2011 (Ex.C.2) and that the same remained

in force for prescribed period and that the claimant agreed under Ex.C.3 for renewal of Ex.C.2 agreement and submitted the same on 23.06.2014 without any protest. Since the claimant and the respondents having acted upon Ex.C.2 land lease agreement without any protest with regard to Clause 4 of the land lease agreement, the claimant cannot be permitted to raise a protest with reference to it at later point of time. The claimant with its eyes wide open having understood the terms and conditions of the contract under Ex.C.2 with its full implication on its enforcement and the financial impact to be suffered and having agreed to such terms and conditions contained therein has no right in law to question the relevant provision relating to fixation of license fee and its revision from time to time at this distant point of time. Therefore, the Clauses 4, 8 & 10 for upward revision of license fee in Ex.C.2 is not opposed to any law in force or public policy or in conflict with the legal principle of any concluded contract. Therefore, it not open to the claimant to question the terms and conditions, in particular the provisions relating to fixation of license fee and its revision from time to time. The learned sole Arbitrator further observed that the grievance of the claimant with regard to the

circular dated 20.11.2014 (Ex.C.5) was addressed by the respondents under Ex.R.13 dated 24.04.2015 by stating that land rates revised upwards cannot be reduced since the rates were adopted by the AAI after considering various factors and therefore, all the land licensees should settle the land dues at the revised rate to avoid payment of interest on delayed settlements. Therefore, the sole arbitrator held that the claimant has no other option left than to adhere to the terms of the agreement and pay the license fee as fixed under Ex.C.2. On the question of promissory estoppel, the learned sole Arbitrator referring to the decision of the Hon'ble Supreme Court reported in the case ***Ester Industries Ltd., Vs. State Electricity Board and Others.,*** reported in ***1996(11) SCC 199*** observed that, since there exists a contract duly executed under law between the petitioner and the Board which binds them, unless it is revised, the question of promissory estoppel does not arise. Further, held that since it is a policy decision of the respondents as a State Authority coming within the four corners of Article 12 of the Constitution seeking for enhancement of the base rent for the lands allotted to the claimant in the Airport premises, it will not in any way prevent the respondents

Authority from enforcing its right, after due consideration of various factors. The learned Sole Arbitrator further held that unless any illegality is committed in the execution of the policy or the same is contrary to law or malafide, there cannot be any interference in policy matters.

39.The learned sole Arbitrator allowed the counter claim made by the respondents Authority by stating that the claimant has not raised any good ground to reject the counter claim of the respondents.

40.The learned Single Judge in the impugned order categorically held as follows:

> *10. Admittedly the parties have entered into License Agreement on 29.11.2010. Clause 4 of the above agreement reads as follows:*
>
> *"4. The License shall be provided with space/land for its office/maintenance and parking of equipments within the Airport area subject to availability, at the prevailing license fee as fixed by the Authority from time to time. A separate license*

agreement shall be executed for the purpose at Chennai & Kolkata Airports respectively."

11. There is dispute with regard to the first Agreement which is the Parent License Agreement. Above Clause makes it very clear that the Licensees are bound by themselves for the License Fee as fixed by the Authority from time to time and separate License Agreement shall be executed for the purpose of Chennai and Kolkata Airports respectively. Thereafter, License Agreement dated 05.01.2011 came to be executed between the parties. Clause 4 of the License Agreement is as follows:

"4. NOW HEREBY it is agreed between the said U Authority and the Licensee that in consideration of the premises and on payment of Rs.2080.13 per square meter per annum upto 31.03.2011, the rate is subject to an annually compounded escalation at 7.50% on the first April of every subsequent year. The rate is also due for upward revision/rationalization w.e.f.01.04.2011 on finalization of land lease policy of AAI and the

Licensee should pay the same without any protest/demur. The Authority grants unto the Licensee and authorizes it to use the said plot of paved land for a period cited above.

12. The above Clause also makes it very clear that the Original rate of Rs.2080.13 per square meter per annum upto 31.03.2011 was agreed by the Claimant. Thereafter, the terms indicate that there will be upward revision with effect from 01.04.2011 on finalization of the Land Lease Policy of Airport Authority of India. Thereafter, there shall not be any protest, demur etc., Circular was issued on 20.11.2014 not only pertaining to the Claimant but also other Licensees who hold the field for the last 4 years. Prior to that in Ex.R.9 dated 27.10.2014, the parties have agreed for upward revision, wherein the Claimant was also one of the parties. It is also admitted that the objection raised with regard to increase of land rents by Circular was also rejected by the authority on 24.04.2015. These are all admitted facts.

13. As per the Original Agreement the Claimant was given 2,200 Sq. Mtr. of land. Thereafter he came to occupy more than 7,105 sq.mtr., and office space of 601.60 sq. and the Lease Agreement was renewed only on 04.09.2014 for a further period from 01.04.2014 to 31.03.2017. The Claimant agreed to pay the contractual rate including the revised rate as may be increased by the authorities from time to time. Now it cannot be said that such revision is not subject matter of the policy decision of the Airport Authority of India. It is relevant to note that the documents now sought to be relied on are the Minutes of 164th Board Meeting dated 26th March 2015. These Minutes passed much after the last agreement viz., Ex.C-3 dated 23.06.2014. On 04.09.2014 the License was renewed for a further period of 01.04.2014 to 31.03.2017 and the Minutes relied upon by the Petitioner is of the year 2015. The draft regulations sent to the Government indicates that the short title and commencement relates to the regulations to ensure that the land resources of the authority are put to optimum use as per the Act. These

regulations DICATURE Authority of India (Acquisition and Contract in shall be called the Airports s Authority of I relation to land) Regulations, 2014.

14. It is to be noted that only the Regulations require approval from the Union Cabinet as per Section 42 of the Airports Authority of India Act, 1994. Even assuming that the regulations touching upon the fixing of the License Fee such regulations would be valid only on the date of notification by the Government. Therefore, any subsequent regulations or draft sent to the Central Government, the same cannot be taken advantage by the Petitioner to nullify the very Contract itself wherein they have subjected to the terms of the Contract. When they have agreed to pay the rent as fixed by the Authority from time to time as per the Parent License Contract, they are bound to pay the rent as may be fixed by the Authority. Section 42 of the Act when carefully seen, Sub-Clause 42(a) to 42(0) though not deal with the fixation of the rents and increase of the

license Fees, However, the Regulations have been sent to the Central Government in this case after 2015 (for acquisition and contract in relation to the land) indicating the manner in which Airport Authority of India take into account various factors while fixing rates. Therefore till the Regulations are culminated as Gazette Notification, it cannot be said that earlier action of the authority to fix the rent or increase the rent as per the Contract agreed between the parties or increase by the Authority is not valid, such contention cannot be countenanced.

15. Learned Arbitrator from Paragraph 59, 60 and 76 has held that hike by the Authorities well within the Powers and there is no violation of any statutory provisions and also not violation of the provisions of the Contract or other statutory provisions and finally in Paragraph 83 the Learned Arbitrator has considered Ex.R-9, R-10, R-11 and R-13 and found that the Airport Authority of India considered the various factors which weighed with the Respondents while initially announcing the revision in the base rent under Ex.R-9 and negatived the Claimants contention in this regard.

16. Having regard to the above factors, the learned Arbitrator has also factually found that the rents are due and the notice issued by the Eviction Officer is also valid in the eye of law. At any event even any decision to bring the revision of the rents within the purview of regulations, such decision has been taken subsequent to the Contract and the parties have already agreed upon the contract and continue to pay the revised rent from the year 2010 and 2011, the JUDIO Petitioner cannot contend that they are not payable rent till the Regulations are finalized. Therefore, this Court is of the view that the contention lacks merit and the detailed Award passed by the Learned Arbitrator does not require any interference in any of the grounds contemplated under Section 34 of the Arbitration and Conciliation Act. Accordingly, the Original Petition is liable to be dismissed."

41.The learned Single Judge had also made a judicial appreciation of the impugned award which is not against the settled position of law or the principles of interpretation. There is no ground to

state that the award is against the public policy of Indian law or suffers patent illegality attracting the provisions of under Section 34 (2)(b)(ii) and 34 (2-A) of Arbitration and Conciliation Act of 1996, and the impugned order in O.P.No.903 of 2019 passed by the learned Single Judge is perverse.

42.The learned Arbitrator has passed the award on detailed scrutiny of facts, appreciating the evidence and in the context of the contemporary legal situation. The views of the learned sole Arbitrator cannot be found fault. The challenge to the impugned award is purely on merits which is also impermissible and there is no ground to state that the award is patently illegal and against the public policy of Indian Law. For the reasons aforesaid, in our view, no ground for challenge under Section 34 of the Act was made out in relation to the award passed by the learned Sole Arbitrator. Hence, the Hon'ble Single Judge of this Court has been right in confirming the arbitral award. We are impelled to reiterate what has been stated and underscored by the Hon'ble Supreme Court in ***Associate Builders*** and the principles laid down in ***Ssangyong Engineering & Construction Co. Ltd., v. NHAI*** reported in ***(2019) 15***

SCC 131 that restraint is required to be shown while examining the validity of arbitral award by the Courts, and interference with the award after reassessing the factual aspects would be defeating the object of the 1996 Act.

43.Resultantly, the appeal sans merit and is liable to be dismissed. Accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

[M.S.J.,] [K.G.T.J.,]

30.10.2024

vsn

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

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.

vsn

O.S.A.(CAD).No.27 of 2022
and C.M.P.Nos. 3348 &16569 of 2022

30.10.2024