



ARBITRATION AND CONCILIATION

Madras High Court Partly Sets Aside Arbitral Award for Exceeding Tribunal Jurisdiction in Applying ‘Alter Ego’ Doctrine: A Detailed Analysis

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Introduction

The Madras High Court in its recent decision in *Sugesan Transport Pvt. Ltd. v. E.C. Bose & Company Pvt. Ltd.*, delivered a significant ruling clarifying the limits of an arbitral tribunal's jurisdiction, particularly regarding the doctrines of lifting the corporate veil and alter ego, and the proper assessment of damages under Sections 73 and 74 of the Indian Contract Act, 1872. The Court also reaffirmed that arbitral awards must strictly adhere to the contractual framework and cannot extend obligations beyond the arbitration agreement. This judgment offers valuable guidance on the boundaries of arbitral discretion and reinforces the primacy of consent in arbitration proceedings.

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Factual Background

The dispute arose out of a Memorandum of Understanding dated 11 December 2015, under which the petitioner, M/s. Sugesan Transport Pvt. Ltd., advanced ₹2.50 crores to the respondent, M/s. E.C. Bose & Company Pvt. Ltd., for the limited purpose of enabling the respondent to furnish a performance bank guarantee of ₹3.52 crores to the Kolkata Port Trust (KOPT). The MoU stipulated that this financial assistance would be returned within 30 to 89 days. A promissory note and post-dated cheque were also issued as security. The respondent failed to return the amount, and the cheque was dishonoured. Consequently, arbitration was invoked.

Before the Arbitrator, the respondent alleged that the transaction was not merely financial; it claimed that the parties had agreed to jointly execute the KOPT contract and that the petitioner had failed to supply the required equipment, resulting in the termination of the tender and encashment of the bank guarantee. The respondent counter-claimed ₹75 crores as damages. The Arbitrator partially accepted both claims directing the respondent to repay ₹2.50 crores and simultaneously directing the petitioner to pay ₹6.51 crores as damages, treating the petitioner as having committed breach based on an alleged obligation to supply equipment. Aggrieved, the petitioner approached the High Court under Section 34 of the Arbitration and Conciliation Act, 1996.

Issues Before the Court

The High Court examined the following core issues:

1. Whether the Arbitrator erred in lifting the corporate veil and treating a separate entity, M/s. Collate Consultants Pvt. Ltd., as the alter ego of the petitioner.
2. Whether the MoU dated 11 December 2015 constituted an independent financial arrangement, or whether it was inseparable from the larger equipment-supply obligations alleged by the respondent.
3. Whether the Arbitrator's award of damages was sustainable in the absence of pleadings, evidence, or a contractual stipulation of liquidated damages.
4. Whether the findings of the NCLAT and Supreme Court regarding the nature of the MoU restricted the Arbitrator's jurisdiction.

Court's Observations

1. Arbitrator's Lack of Jurisdiction to Lift the Corporate Veil

The Court held that an arbitral tribunal is a creature of contract and derives jurisdiction only from the arbitration agreement as mandated under Section 7 of the Arbitration Act. It cannot extend liability to non-signatories, nor can it pierce the corporate veil powers that belong exclusively to courts. Relying on *Sudhir Gopi v. IGNOU*, the Court observed: “An Arbitrator does not have the power to pierce the corporate veil so as to bind another entity which has not consented to arbitrate. The doctrine of alter ego or lifting the corporate veil cannot be invoked by the Arbitral Tribunal.” Thus, the Arbitrator’s reliance on documents signed by Collate Consultants Pvt. Ltd. to impose obligations on the petitioner was held to be without jurisdiction.

2. MoU Was an Independent Financial Arrangement

The Court noted that the NCLAT had already ruled that the MoU was a stand-alone financial transaction and not interconnected with the alleged equipment-supply obligations. This finding had been affirmed by the Supreme Court. Consequently, the Arbitrator was bound to treat the MoU as a financial arrangement de hors any equipment obligations. The Court observed: “The MoU dated 11.12.2015 constituted an independent financial arrangement between the parties, and therefore, the petitioner cannot be fastened with obligations not contemplated under the MoU.”

3. Damages Not Proved Under Sections 73 and 74 of the Contract Act

The Court analysed the damages under Section 73 and observed that:

- a breach must be coupled with actual loss or damage;
- the respondent failed to plead or prove any real loss;
- the Arbitrator cannot award damages merely based on perceived fairness.

The Court held that “A breach without injury or loss is not actionable per se. The respondent did not establish the quantum or basis of damages, and hence the award of ₹3.52 crores as damages was unsustainable.” The Arbitrator’s reliance on encashment of the bank guarantee as a proxy for damages was found to be speculative and without evidentiary basis.

Judgment

Based on its detailed findings, the High Court partially set aside and modified the arbitral award. It held:

- The petitioner is entitled to recover ₹2.50 crores along with interest at 12% per annum from 11 December 2015 until payment.
- The award granting damages of ₹3.52 crores plus interest to the respondent is set aside.
- The invalid portion of the award is severable, following the Supreme Court judgment in *Gayatri Balasamy v. ISG Novasoft Technologies Ltd.*

The Court accordingly modified the award to the extent of eliminating the counter-claim award.

Conclusion

This judgment reaffirms the fundamental principle that arbitral tribunals must operate strictly within the contours of the arbitration agreement. By reiterating that the power to lift the corporate veil lies only with courts, the Madras High Court has provided clarity on the limits of arbitral jurisdiction. The decision also highlights that damages must be strictly proven within the framework of Sections 73 and 74 of the Contract Act and that arbitral awards cannot be founded on assumptions or sympathetic considerations. The ruling strengthens the predictability and contractual integrity of arbitration proceedings in India.

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