



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER, 2025

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

COMMERCIAL APPEAL NO.297/2024

BETWEEN:

ITW CONSULTING PRIVATE LIMITED
A COMPANY INCORPORATED UNDER
COMPANIES ACT, 1956
HAVING ITS OFFICE AT 16/1
1ST FLOOR, AVS COMPOUND
80 FEET ROAD, 4TH BLOCK
KORAMANGALA, BANGALORE 560 034
REPRESENTED BY ITS DIRECTOR
KUMAR MANOJ .S
AGED ABOUT 44 YEARS.



...APPELLANT

(BY SRI. LAXMIKANTHA K.B. ADV.,)

AND:

INTELLICOMM SOLUTIONS AND
ENTERPRISES PRIVATE LIMITED
REGISTERED OFFICE
FLAT NO.A1, 315, LLOYDS ROAD
ROYAPETTAH, CHENNAI 600014
REPRESENTED BY ITS DIRECTOR
SHAIK KHAIS AHMED.

ALSO AT:
CORPORATE OFFICE:
SECOND FLOOR



NO.19, TAYYARAH
NANDIDURGA ROAD
JAYAMAHAL EXTENSION
BANGALORE 560 046
REPRESENTED BY IS DIRECTOR
SHAIK KHAIS AHMED.

...RESPONDENT

(BY SRI. VISHNU HEGDE, ADV.,)

- - -

THIS COMAP/COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015 PRAYING TO CALL FOR RECORDS ON THE FILE ORDER DATED 01.07.2024 PASSED BY LXXXVII ADDL. CITY CIVIL AND SESSIONS JUDGE, (CCH-88 COMMERCIAL COURT) BENGALURU, IN COMAP NO.53/2022 AND SET ASIDE THE SAME & ETC.

THIS COMAP HAVING BEEN HEARD AND RESERVED ON 10.12.2025, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY **VIJAYKUMAR A. PATIL J.**, DELIVERED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL)

This appeal is filed under Section 13(1A) of the Commercial Courts Act, 2015, challenging the order dated 01.07.2024 passed by LXXXVII Additional City Civil and



Sessions Judge (CCH-88 Commercial Court), Bengaluru, in
Com.A.P.No.53/2022.

2. Sri.Lakshmikantha K.B., learned counsel appearing for the appellant submits that the dispute between the appellant and the respondent is before the Arbitrator. It is submitted that the appellant has filed a claim petition wherein the respondent has filed objections stating that Mr.Mohammad Shoaib is not authorized to execute the agreements on behalf of the respondent-Company. It is further submitted that the Arbitrator considered the said objections and has framed the preliminary issue and answered the said issue in favour of the claimant. Being aggrieved, the respondent filed an application for setting aside the order. It is also submitted that the Commercial Court, under the impugned order allowed the application by setting aside the order dated 20.04.2022. It is contended that the application filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), is not



maintainable as the order impugned before it was not the award. Hence, he seeks to allow the appeal.

3. *Per contra*, Sri.Vishnu Hegde, learned counsel for the respondent supports the impugned order of the Commercial Court and submits that under Section 34 of the Act, the Commercial Court has jurisdiction to consider the order passed by the Arbitrator at the interlocutory stage. In support of his contention, he placed reliance on the decision of the Bombay High Court in the case of **URBAN INFRASTRUCUTURE REAL ESTATE FUND Vs. NEELKANTH REALITY PRIVATE LTD. AND ORS.¹** and **NATIONAL INSURANCE COMPANY LIMITED Vs. BOGHARA POLYFAB PRIVATE LIMITED²**. Hence, he seeks to dismiss the appeal.

4. We have heard the arguments of the learned counsel for the appellant, the learned counsel for respondent and meticulously perused the material

¹ Com.A.No.37/2020 dt. 02.04.25

² (2009) 1 SCC 267



available on record. We have given our anxious consideration to the submissions advanced on both sides.

5. The appellant and the respondent entered into agreements dated 14.06.2018 and 27.06.2018. The respondent issued a Cheque duly signed by their Marketing Director-Mr.Mohammad Shoaib. The said Cheque was returned with endorsement 'funds insufficient'. The appellant filed CMP No.443/2019 seeking prayer to refer the matter to the Arbitrator. This Court appointed the Arbitrator and further ordered the Arbitrator to decide the issue with regard to the maintainability of the claim petition as to whether Mr.Mohammad Shoaib is authorized to enter into an agreement or not. The learned Arbitrator answered the preliminary issue vide order dated 20.04.2022 in favour of the appellant-claimant. The respondent assailed the order of the Arbitrator under Section 34 of the Act. The Commercial Court, under the impugned order set aside the order dated 20.04.2022 of



the learned Arbitrator. Being aggrieved, the claimant has filed this appeal.

6. The short issue which arises for consideration in this appeal is whether the order dated 20.04.2022 passed by the learned Arbitrator is an award or an interim award and the same can be challenged under Section 34 of the Act. It is not in dispute that the learned Arbitrator vide order dated 20.04.2022 has considered the preliminary issue as to whether Mr.Mohammad Shoaib is authorized to enter into an agreement or not and the said issue is answered in favour of the appellant-claimant holding that Mr. Shoaib is authorized to enter into the agreement. It would be useful to refer to some of the relevant Sections of the Act which are as under:

"2. Definitions.—(1) *In this Part, unless the context otherwise requires,—*
(c) *"arbitral award" includes an interim award;*

16. Competence of arbitral tribunal to rule on its jurisdiction.—



(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.



(5) The arbitral tribunal shall decide on a plea referred to in subsection (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

31. Form and contents of arbitral award.—

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

32. Termination of proceedings.—*(1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).*

37. Appealable orders.—*(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—*



(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court."

7. Section 2(c) of the Act defines the 'arbitral award' which includes an interim award. It is to be noticed that Section 31(6) of the Act also makes a reference with regard to the making of an interim arbitral award on any matters with respect to which it may make a final arbitral award. The language employed in Section 31(6) of the Act makes it very clear that the Arbitral



Tribunal has a power to make an interim award on any matter with respect to which it may make a final award. The words employed under sub-Section (6) of Section 31 of the Act is to make interim award on 'any matter' with respect to which it may make a final award. It is clear from the aforesaid Section that the Arbitrator may pass an interim award in respect of which it may make a final award which means the passing of the order on limitation can be termed as an interim award. If the Arbitral Tribunal passes an order on the issue of limitation, such an order would lead to termination of the arbitral proceedings. Hence, such orders can be termed as an interim award and not otherwise. In the case on hand, the issue is with regard to whether a particular Director of a respondent-Company is authorized to enter into an agreement or not and the learned Arbitrator has considered the said issue as a preliminary issue and held in favour of the appellant-claimant. Such an order of the learned Arbitrator cannot be termed as an interim award. We are of the considered



view that the order passed by the learned Arbitrator on a preliminary issue in the instant case is not an interim award. Consequently, the question of filing an application under Section 34 of the Act by the respondent would not arise. The scope and ambit of Section 34 is only against the arbitral award which includes interim award of the Arbitral Tribunal. In the instant case, entertaining of the application under Section 34 of the Commercial Court is without jurisdiction. This Court under Section 37 of the Act has a power to set right the error of the Commercial Court.

8. A simple reading of Sections 2(c), 16, 31(6), and 37 of the Act shows that an order can be called an “interim award” only if it finally decides an important part of the dispute between the parties—something that the Arbitrator could also decide in the final award. An interim award must settle a real issue in such a way that it could even end the arbitration, like a decision on limitation or jurisdiction.



9. The decisions relied on by the learned counsel for the respondent in the case of **URBAN INFRASTRUCUTURE REAL ESTATE FUND AND NATIONAL INSURANCE CO. LTD.**, referred *supra*, would not help the respondent in sustaining the impugned order of the Commercial Court and are distinguishable and inapplicable to the present case. Unlike **URBAN INFRASTRUCTURE REAL ESTATE FUND**, referred *supra* this matter does not involve a preliminary determination on limitation based on procedural infirmity or demurrer; the Arbitrator followed the procedure agreed by the parties and exercised the jurisdiction lawfully without leaving any matter undecided. Similarly, unlike **NATIONAL INSURANCE CO. LTD.** referred *supra*, the present order concerns a preliminary issue regarding the authorization of a Director to execute the agreements and is not a challengeable arbitral award or interim award under Section 34 of the Act. Therefore, the principles in those



judgments cannot be invoked to support the respondents' contention.

10. We are of the considered view that the Arbitrator's order dated 20.04.2022 merely resolved an incidental factual issue, i.e., whether Mr.Mohammad Shoaib was authorized to execute the agreements. This did not adjudicate any substantive claim nor terminate the arbitration. Under Sections 2(c) and 31(6) of the Act, only an order that conclusively determines rights, claims, or jurisdictional matters can be treated as an interim award. The impugned order does not fall within that category. Consequently, the respondent's petition under Section 34 of the Act was not maintainable and the Commercial Court had no jurisdiction to entertain the petition under Section 34 of the Act.

11. For the preceding analysis, the appeal is allowed. The impugned order of the Commercial Court



**NC: 2025:KHC:53464-DB
COMAP No.297/2024**

dated 01.07.2024 passed in Com.A.P.No.53/2022, is set
aside.

No orders as to costs.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

RV
List No.: 1 Sl No.: 1