IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION NO.415 OF 2024

Tata Consultancy Services Ltd. ....Petitioner
V/S
Inspira IT Products Pvt. Ltd. ....Respondent

WITH
ARBITRATION PETITION NO.372 OF 2024

Inspira IT Products Pvt. Ltd. ....Petitioner
V/S
Tata Consultancy Services Ltd. ....Respondent

Ms. Fereshte Sethna with Mr. Mohit Tiwari, Mr. Prakalathan Bathey, Ms. Naomi Ting, Ms. Sushmita Chauhan and Mr. Tarang Saraogi i/b M/s. DMD Advocates *for the Petitioner in CARBP/415/2024 & for Respondent in ARBP/372/2024.*

Mr. Rohan Savant with Ms. Vidhi Karia i/b Ms. Jayakar & Partners *for Petitioner in ARBP/372/2024 & for Respondent in CARBP/415/2024.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 20 **NOVEMBER** 2025.
PRONOUNCED ON : 02 DECEMBER 2025.

J U D G M E N T:

1. These are cross Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)** challenging the Award of the learned sole Arbitrator dated 30 March 2023. By the impugned Award, the Arbitral Tribunal has directed Tata Consultancy Services Ltd. **(TCS)** to pay to Inspira IT Products Private Ltd. (**Inspira**) sum

of Rs. 96,20,515/- alongwith simple interest at the rate of 9% per annum with effect from 1 March 2016 till payment and/or realization. The Arbitral Tribunal has also directed the TCS to pay to Claimant sum of Rs. 26,29,967/- towards costs along with simple interest at the rate of 9% per annum from the date of the impugned Award till payment and/or realisation.

2. The Commercial Arbitration Petition No.415 of 2024 is filed by TCS challenging the entire Award whereas Arbitration Petition No.372 of 2024 is filed by Inspira challenging the arbitral award to the limited extent of denial of claim of Rs.75,60,785/- by deducting the said amount from the total claim amount on the ground that Inspira did not provide support for 6.5 years for the products purchased under the Purchase Order.

FACTS

3. TCS is a listed public limited company engaged in the business of Information Technology **(IT)** Solutions including consultation in infrastructure services, business process outsourcing services, engineering, industrial services, global consulting and leveraged solutions. Inspira is a private limited company engaged in the business of supply of telecommunication, information technology and IT Solution products. Department of Posts, Government of India **(DOP)** had executed a contract with TCS and towards execution of the said contract, TCS issued three Purchase Orders to Inspira as under:

Sr. No.	Purchase Order Reference	Date	Delivery Schedule	Value (in Rs.)	Delivery Location
1.	01HW25974/107 Disaster Recovery Centre ("**DR PO**")	24.06.2013	20.07.2013	58,77,27,337	Nazarbad, Mysore
2.	01HW73112/62 Data Centre ("**DC PO**")	24.06.2013	20.07.2013	60,63,40,277	Koparkhairane, Navi Mumbai

3.	01HW73116/62 Edge Locations ("**Subject PO**")	24.06.2013	20.07.2013	4,08,82,385	Location details will be communicated to Inspira and HP with delivery schedule by Project Team

4. Out of the above three Purchase Orders, Purchase Order No.3 for supply of 207 units of HP Proliant Tower ML 350 Servers **(Edge Servers)** and 207 units of ProDisplay 191-18.5" TFT Monitors **(Edge Monitors)** is the subject matter of controversy between the parties. Under the Purchase Order dated 24 June 2013, the delivery of the subject equipment was to be made by 20 July 2013. According to Inspira, it placed an order with M/s. Avnet Technologies Solution India Pvt. Ltd. **(Avnet)** a distributor of Hewlett Packard **(HP)** for procurement of the items specified in Annexure-A to the Purchase Order (**PO**). Inspira did not deliver the equipment under the subject PO by 20 July 2013, which was the agreed date of delivery. On 21 October 2013, TCS sought delivery of 8 Edge Servers alongwith Edge Monitors at 8 different locations at Mumbai, Huliyar, Bangalore, Mysore, Chennai, Lucknow and Saharanpur. By email dated 23 October 2013, Inspira communicated inability to make piecemeal billing. Inspira also communicated to TCS that it expected TCS to arrange for warehousing. On 23 October 2013, TCS wrote to Inspira requesting it to explore the possibility of storing the products in Inspira's warehouse. Inspira wrote to TCS on 23 October 2013 that Servers were to be delivered in one go and at warehouses to be hired by TCS and that the pricing was worked out in that manner. On 27 November 2013, Inspira sent e-mail to TCS stating that it was holding on to Servers for five months and that therefore Inspira was left with no option but to reverse the material to HP (equipment manufacturer), after which they would not be in a position to fulfill the PO. TCS was requested to confirm if reversal could be done. On 28 November 2013 TCS informed Inspira that internal discussions were being made regarding delivery dates for the locations and that TCS would confirm the

same. On 28 November 2013, Inspira requested TCS to specify a timeline to close the issue as it was finding it difficult to hold on to the equipment.

5. It appears that delivery of the equipment to TCS did not occur and Inspira commenced correspondence with HP for taking back the Servers. When HP addressed an e-mail to TCS on 23 April 2014 inquiring as to whether TCS would take the delivery of equipment, TCS notified HP on 23 April 2014 that delivery of Edge Servers remained subject to completion of User Acceptance Testing **(UAT)** scheduled for mid-May 2014. Thereafter correspondence was made both by TCS and Inspira to HP for taking back the Servers. However, HP apparently refused to take back the Servers stating that the same was user specific for TCS. After a lot of correspondence and after HP refused to take back the Servers, Inspira finally sold 207 Edge Servers to Comprint Computers **(Comprint)** for Rs.2,23,14,600/-. In the above background, Inspira issued demand notice to TCS for amount of Rs.3,64,00,823/- claiming to be the difference between the sum allegedly paid by it to Avnet (Rs.5,87,15,423/-) and the sum received from Comprint (Rs.2,23,14,600/-) or alternatively Rs.1,85,67,785/- being the difference between the value of subject PO and amount received through sale of the Servers.

6. Inspira served winding-up notice on TCS on 30 March 2016, which was responded by TCS on 19 April 2016. Inspira filed Company Petition No.422 of 2016 in this Court, which was opposed by TCS. By order dated 12 February 2018 passed in the Company Petition No.422 of 2016, this Court referred the disputes to Arbitration by order dated 12 February 2018. Inspira filed Statement of Claim on 5 April 2018. TCS filed Application under Section 31(6) of the Arbitration Act raising preliminary issue of limitation. By interim Award dated 9 July 2018, the application of TCS under Section 31(6) of the Arbitration Act was rejected. TCS filed

Statement of Defence on 6 September 2018. TCS filed Commercial Arbitration Petition No.966 of 2018 challenging Interim Award dated 9 July 2018. By order dated 18 September 2018, this Court rejected Commercial Arbitration Petition No. 966 of 2018. TCS filed Appeal under Section 37 of the Arbitration Act challenging the order of the Single Judge dated 18 September 2018.

7. In the meantime, parties started leading evidence in support of their respective cases. The learned sole Arbitrator appointed by this Court resigned on 26 March 2019. Inspira therefore filed Commercial Arbitration Application No.147 of 2019 under Sections 14 and 15 of the Arbitration Act seeking substitution of the Arbitrator. By order dated 14 October 2019, new Arbitrator was appointed by this Court. Inspira filed Commercial Arbitration Petition (L) No.1355 of 2019 for extension of mandate which was extended till 17 August 2020. TCS has filed Commercial Appeal No.483 of 2018 seeking the stay of Arbitration proceedings, which request was rejected by this Court by order dated 23 September 2021. TCS filed Review Petition. Commercial Appeal No.483 of 2018 was later dismissed on 14 June 2022. The mandate of the learned Arbitrator was twice extended by this Court vide order dated 22 August 2022 and 2 March 2023.

8. In the meantime, evidence was completed before the new Arbitrator. After hearing the arguments canvassed by both the sides, the learned sole Arbitrator made Award dated 30 March 2023. The learned Arbitrator has awarded sum of Rs.96,20,515/- in favour of Inspira. The learned Arbitrator held that Inspira was entitled for award of difference between price of subject PO of Rs.4,08,82,385/- and amount recovered through sale of Servers of Rs.2,23,14,600/-, being the amount of Rs.1,84,85,400/-. The learned Arbitrator however held that said amount of Rs.1,84,85,400/- also included sum of Rs.75,60,785/- being support for 6.5

years towards equipment included in the subject PO, which support was not provided by Inspira to TCS. The learned Arbitrator therefore deducted amount of Rs.75,60,785/- from Rs.1,84,85,400/-. The learned Arbitrator also deducted amount of Rs.13,04,100/- being amount received by Inspira on reversal of Monitors. This is how the Arbitral Tribunal awarded claim in the sum of Rs.96,20,515/- in favour of Inspira. The learned Arbitrator has awarded interest at the rate of 9% per annum to Inspira with effect from 1 March 2016 on the awarded sum. The learned Arbitrator has also directed payment of costs of Rs.26,29,967/-.

9. TCS is aggrieved by the entire Award dated 30 March 2023 and has filed Commercial Arbitration Petition No.415 of 2024 whereas Inspira is aggrieved by the Award dated 30 March 2023 to the limited extent of deduction of amount of Rs.75,60,785/- towards support for 6.5 years and has accordingly filed Arbitration Petition No.372 of 2024. Since both the Petitions arise out of the same Award, they are taken up for analogous hearing.

SUBMISSIONS

10. Ms. Sethna, the learned counsel appearing for TCS in support of Commercial Arbitration Petition No.415 of 2024 would submit that the Arbitral Tribunal has erroneously taken into consideration terms of another Purchase Order while determining contractual obligations between the parties in respect of the Purchase Order for supply of eight Servers and Monitors. That 3 distinct Purchase Orders were subject matter of negotiations between the parties. That negotiations ultimately culminated into 3 distinct Purchase Orders for supply of DRC, DC and Edge Servers/Monitors. That Purchase Orders for supply of DRC and DC had nothing to do with Purchase Order for supply of Edge Servers and Monitors.

That the negotiated terms in respect of the subject PO for supply of eight Servers and Monitors contained specific condition for multiple location deliveries at the cost and risk of Inspira and also provided for partial delivery. That the condition for delivery at Koparkhairane location was restricted only for PO for supply of Primary Data Center (DC). That the Arbitral Tribunal erroneously mixed the condition for supply of DC at Koparkhairane with the terms and conditions for supply of Edge Servers and Monitors. That the Award thus suffers from the vice of perversity and patent illegality and the same is liable to be set aside. That the learned Arbitrator interpreted the terms of contract (PO) which was not subject matter of Arbitration, which constitutes patent illegality as held by the Apex Court in ***State of Chhattisgarh v. SAL Udyog (P) Ltd***[1]. That by considering the terms of inapplicable PO, the learned Arbitrator has rewritten the contract between the parties. In support of her contention that the Arbitral Tribunal cannot rewrite the terms of the contract, Ms. Sethna would rely upon the judgment of Apex Court in ***Indian Oil Corporation Limited (IOCL) vs. Shree Ganesh Petroleum Rajgurunagar*** [2]. That failure to adopt judicial approach in deciding the dispute, including the failure to act in terms of the contract, becomes vital to the Award constituting ground of patent illegality as held by the Apex Court in ***Associate Builders v. Delhi Development Authority***[3].

11. Ms. Sethna would further submit that the contract had expired with efflux of time. That the time for delivery had expired on 20 July 2013 in respect of the subject PO. That specific question was asked to TCS' witness, Mr. Tej Bhatla in cross examination about PO coming to an end and he emphatically replied in the affirmative. That this vital piece of evidence was ignored by the learned Arbitrator who has rendered a perverse

1 (2022) 2 SCC 275
2 (2022) 4 SCC 463
3 (2015) 3 SCC 49

finding that TCS has failed to terminate the contract. Ms. Sethna would submit that the subject PO was not novated or amended and no extension of time was ever granted. That the Arbitral Tribunal ignored absence of requirement to formally rescind the contract, which had already lapsed by efflux of time. That true construction of a contract depends on import of the words and not upon what parties choose to say. That subsequent conduct of parties to a contract cannot affect the true effect of clear and unambiguous words used in the contract as held in ***Bank of India & Anr. v. K. Mohandas & Ors***[4]. That subsequent conduct of parties to a contract is an irrelevant consideration as held in ***James Miller & Partners Ltd v. Whitworth Street Estates (Manchester) Ltd***[5].

12. Ms. Sethna would further submit that even if the contention of contract coming to an end with efflux of time is to be momentarily ignored, TCS clearly proved contractual breaches by Inspira. That the Arbitral Tribunal disregarded material evidence established in the background that the subject Servers were not procured until well-past time of delivery. She would draw attention of the Court to invoice of December 2013 relied upon by Inspira in support of its purported case of purchase of Servers from Avnet. That the invoice is clearly bogus as the same reflects amount of purchase at Rs.7.37 crores when the value of PO issued by TCS was only Rs.4.08 crores. That the Arbitral Tribunal also disregarded the position that Inspira did not pay its purported vendor (Avnet), who initiated contrived winding-up proceedings against Inspira. Inspira's claim of alleged warehousing cost is found to be unsubstantiated and rejected by the Arbitral Tribunal. That the very response of Inspira in refusing to deliver eight Servers at suggested locations in October 2013 clearly indicates that Inspira had not purchased the Servers.

4 (2009) 5 SCC 313
5 (1970) 2 WLR 728

13. Ms. Sethna would further submit that Arbitral Tribunal failed to appreciate inconsistent pleas raised by Inspira in winding-up proceedings initiated by Avnet and in arbitration proceedings initiated against TCS. That in the contrived proceedings of Avnet, Inspira took a specific defence that TCS had no obligation to take delivery of Servers, which stand is contrary to what Inspira contended in the arbitration proceedings.

14. Ms. Sethna would further submit that failure of Inspira to establish that 207 Servers were warehoused or delivery thereof was taken by Inspira conclusively proved breach of contract on the part of Inspira. That therefore Arbitral Tribunal's finding of readiness and willingness on the part of Inspira to perform its contractual obligations is contrary to not only the evidence on record but also the other findings in the Award. That overlooking material evidence on record constitutes patent illegality as held by the Apex Court in ***PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Ors***[6].

15. Ms. Sethna would further submit that the learned Arbitrator adjudicated mitigation defence raised by TCS without judicial approach. That the Arbitral Tribunal erroneously rejected mitigation defence by branding it as counterblast and afterthought overlooking the settled position of law in ***Kanchan Udyog Limited v. United Spirits Limited***[7]. That the learned Arbitrator ignored failure on the part of Inspira to follow due process and statutory requirement under Section 52(2) of the Sale of Goods Act, 1930 in not issuing notice to TCS while causing their alleged sale at heavily discounted price of Rs.2.23 crores to Comprint. That it is unbelievable that Servers bought at Rs.7.37 crores could be sold for Rs.2.23 crores. That the invoice of Comprint was not proved by production of Certificate required under Section 65B of the Indian Evidence Act, 1872 and the Arbitral Tribunal still proceeded to consider the same in evidence.

6 2021 SCC OnLine SC 508
7 (2017) 8 SCC 237

16. Ms. Sethna would further submit that the Arbitral Tribunal drew unwarranted and arbitrary inferences in the Award. That Arbitral Tribunal's inference of TCS's contract with Department of Posts falling through is sans any evidence on record. On the other hand, there is evidence on record relating to objections raised by the Department of Posts for non-delivery of Servers.

17. Petition of TCS is opposed by Mr. Savant, the learned counsel appearing for Inspira, who would submit that the grounds raised by TCS are factual in nature and beyond the scope of interference under Section 34 of the Arbitration Act. That TCS is seeking reassessment and re-evaluation of the evidence, which lies within the exclusive domain of the Arbitrator. That the grounds raised by TCS concern with interpretation of contract and all correspondence exchanged between the parties, which again is in the exclusive domain of the Arbitrator. He would rely upon judgments of the Apex Court in ***OPG Power Generation Private Limited v. Enexio Power Cooling Solutions India Private Limited and another***[8]. ***Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)***[9]. That the matters on merits relating to default, time being essence, quantum of damages, are all issues of facts and the learned Arbitrator was within his jurisdiction to decide the same as held by the Apex Court in ***Arosan Enterprises Ltd. vs. Union of India and Another***[10]. That construction of contract after taking into account correspondence exchanged between the parties is again within the exclusive domain of the Arbitrator as held by the Apex Court in ***McDermott International Inc. vs. Burn Standard Co. Ltd. And Ors***[11].

18. Mr. Savant would further submit that the findings recorded by the learned Arbitrator are correct and, in any case, a plausible view. That the

8 (2025) 2 SCC 417
9 (2019) 15 SCC 131
10 (1999) 9 SCC 449
11 (2006) 11 SCC 181

learned Arbitrator has extensively considered the correspondence exchanged between the parties and has thereafter recorded findings in the impugned Award. That the learned Arbitrator rightly concluded the readiness and willingness on the part of Inspira to make the deliveries. That the Arbitrator has rightly arrived at the conclusion that the PO did not prescribe 'piecemeal billing' and delivery of Servers. That therefore the request of delivery of eight Servers in four different states was clearly not contemplated in the contract. If at all partial delivery was permissible, it was at the option of the seller and not the buyer. In any case, partial delivery was permissible only at Navi Mumbai.

19. Mr. Savant would further submit that the Arbitral Tribunal has rightly concluded that the Servers were tailor-made for use of TCS and that HP had refused to take back the delivery. That TCS itself participated in negotiations for reversal of Servers by HP. That the Arbitral Tribunal has rightly appreciated the position that TCS never cancelled the Purchase Order.

20. Mr. Savant would submit that the Arbitral Tribunal has rightly appreciated the position where Inspira was left with no other option but to sell the Servers at a discounted price since the Servers were user specific. That Inspira took necessary steps to mitigate the losses. In any case, no evidence was led by TCS to prove that sale caused by Inspira is undervalued. Mr. Savant would accordingly pray for dismissal of Commercial Arbitration Petition No. 415 of 2024 filed by TCS.

21. In so far as Arbitration Petition No. 372 of 2024 filed by Inspira is concerned, Mr. Savant would submit that the Arbitral Tribunal has grossly erred in deducting Rs.75,60,785/- from the claim of Inspira. That the findings recorded by the Arbitral Tribunal that Inspira did not provide

support and that therefore the amount therefor was liable for deduction suffers from patent illegality as the Arbitral Tribunal failed to appreciate that TCS is found at default and therefore, the entire value of Purchase Order must be paid to Inspira after deducting the cost of sale of Servers and reversal of Monitors. That TCS did not take any stand in the pleadings or in the cross-examination on the aspect about provision of support. That since Inspira was prevented from providing support on account of defaults committed by TCS, the amount due under the contract cannot be denied to it. He would therefore pray for partial setting aside of the Award to the extent of deduction of amount of Rs.75,60,785/- by the learned Arbitrator.

22. Ms. Sethna would oppose Arbitration Petition No. 372 of 2024 contending that amount of Rs.75,60,785/- was payable only for providing support in respect of the Servers and Monitors for a period of 6.5 years. That since Servers and Monitors are not delivered, there was no question of providing any support and consequentially, Inspira is not entitled to be paid any amount agreed for.

REASONS AND ANALYSIS

23. Rival contentions of the parties now fall for my consideration.

24. The disputes between TCS and Inspira have arisen out of Purchase Order dated 24 June 2013 placed by TCS onto Inspira for supply of 207 HP Proliant Tower ML 350 Servers and 207 HP ProDisplay 191-18.5" TFT Monitors at the cost of Rs.4,08,82,385/-. The supply of Edge Servers and Monitors could ultimately not take place. Who is responsible for non-supply and whether Inspira is entitled to payment under the failed purchase order was the dispute before the Arbitral Tribunal.

25. Inspira claims that in pursuance of Purchase Order issued by TCS, it purchased user-specific Servers from Avnet at the cost of Rs.7,37,15,423.15/- vide invoice dated 27 December 2013. Inspira claims to have stored the Servers and incurred warehousing charges. As the transaction of supply of Servers ultimately did not fructify, Inspira claims to have sold the Servers to Comprint on 23 February 2016 at reduced cost of Rs.2,23,14,600/-. Inspira accordingly raised claim before the Arbitral Tribunal for Rs.3,64,00,823/- being the difference in cost of purchase of Servers and amount received towards sale thereof of Rs. 2,23,14,600/-. Alternatively, Inspira claimed amount of Rs.1,85,67,785/- being the difference in the value of Purchase Orders of Rs.4,08,82,385/- and amount received towards sale of Servers of Rs.2,23,14,600/-. Inspira also claimed amount of Rs.27,00,000/- towards storage/warehousing charges.

26. The learned Arbitrator has awarded the claim of Inspira in the sum of Rs. 1,85,85,400/- being difference in the cost of Purchase Order and amount received through sale of Servers. The learned Arbitrator has however deducted the amount of Rs.75,60,785/- from Rs.1,85,85,400/- holding that the said amount of Rs.75,60,785/- was payable for support for 6.5 years. The learned Arbitrator has further deducted amount of Rs.13,04,100/- being the amount received by Inspira towards reversal of Monitors. This is how the claim is granted in favor of Inspira for Rs.96,20,515/- with 9% interest. The claim of Inspira for warehousing charges is rejected. Inspira has not questioned rejection of warehousing charges. It has also not questioned deduction of amount towards reversal of monitors. It has however questioned the deduction of amount of Rs.75,60,785/-.

27. Thus, the learned Arbitrator has upheld the claim of Inspira to the limited extent of difference in the amount which Inspira would have

earned from TCS under Purchase Order and amount recovered by sale of Servers and Monitors after non-fructification of the PO.

ERROR IN IMPORTING TERMS OF UNRELATED PO

28. The first objection raised by Ms. Sethna is about importing of terms of another contract while deciding contractual obligations of parties arising out of Purchase Order for supply of Servers and Monitors. As observed above, three distinct Purchase Orders were issued by TCS to Inspira (i) for supply of items at disaster recovery center of Department of Post at Nazarbad, Mysore, (ii) for supply of items at Data center of Department of Post at Koparkhairane, Navi Mumbai and (iii) for supply of Servers and Monitors at locations to be provided by TCS. Thus, while the locations of the first two POs were identified, the locations at which 207 Servers and 207 Monitors were to be supplied were not decided and the locations were to be communicated to Inspira by TCS.

29. It is the case of TCS that Inspira failed to abide by the contractual obligations by refusing to supply Servers at the eight locations indicated in the email dated 21 October 2013. The said eight suggested locations were as under :

1	Mumbai G.P.O., Mumbai	Maharashtra
2	Huliyar S.O., Huliyar	Karnataka
3	Office of the Director of Accounts (Postal), Bangalore	Karnataka
4	Postal Training Centre Mysore	Karnataka
5	O/o the Chief PMG, Tamilnadu Circle, Chennai	Tamil Nadu
6	O/o the GM, PA & F, Chennai	Tamil Nadu
7	DAP Lucknow	Uttar Pradesh
8	Postal Training Centre, Saharanpur	Uttar Pradesh

30. Inspira responded on 22 October 2013 communicating that 'piecemeal billing' was not possible in respect of Purchase Order relating to

eight Servers. Inspira's email dated 22 October 2013 reads thus :

> Dear Pradeep,
>
> I believe I had conveyed to you in our discussion that piecemeal billing is not possible in the edge Servers. We have been waiting for the billing for more than 3 months now during which we were given to understand that warehousing will be arranged by TCS but are yet to get any feedback on the same and the current request is surprising.

31. The above conduct of Inspira was sought to be branded as refusal to perform contractual obligations by TCS before the learned Arbitrator. The Arbitral Tribunal has dealt with this aspect by holding as under :

> As the Respondent's witness is relying heavily on this email of 21st June 2013, it has very conveniently escaped the Respondent to mention that delivery was to be effected in Koparkhairane, Navi Mumbai:
>
> > "Delivery:
> > All the hardware / equipment for primary DC must be done on or before 28th June 2013 at address as below:
> > Reliance IDC Dhirubhai Ambani Knowledge City, Thane-Belapur Road, Koparkhairane, Navi Mumbai:400710."
>
> Nowhere in this email was there any stipulation that Servers or part thereof be delivered to Karnataka, Mysore, Tamil Nadu, Chennai, Uttar Pradesh. All these Servers were to be delivered in Navi Mumbai and Navi Mumbai alone, perhaps in different locations, but in Navi Mumbai. Therefore, the questions which arise are:
>
> (1) Was the Respondent justified in demanding that 8 Servers be delivered to Karnataka, Uttar Pradesh, Tamil Nadu, Chennai, Mysore, etc? My answer is NO.
>
> (2) Was the Claimant justified in refusing to deliver these Servers to these places, i.e. Karnataka, Mysore, Tamil Nadu, Chennai, Uttar Pradesh, etc? My answer is YES.

32. The Arbitral Tribunal does not appear to be entirely right in relying on the negotiated terms and conditions relating to second PO for delivery of items at Koparkhairane for assuming that even the Edge Servers covered by the third PO were required to be delivered at Koparkhairane. The Koparkhairane's address was apparently given for delivery of items relating to Data Center and the said transaction was governed by an altogether different Purchase Order. The Purchase Order relating to supply of Servers and Monitors clearly indicated that the location details will be communicated to Inspira and HP with delivery schedule by project team. Furthermore, even in the negotiated terms and conditions reflected in the email dated the 21 June 2013, it was specifically agreed that '*multiple locations deliveries will be at the cost and risk of the customers*' and that '*location and Delivery Schedule of Servers (207 quantity) would be provided by TCS*'. The Arbitral Tribunal therefore may not be entirely wrong in concluding that TCS was not justified in demanding delivery of eight Servers at different locations. However, whether this error committed by the Arbitral Tribunal would be a reason enough for setting aside the entire Award is the issue that falls for consideration.

33. In my view, the error in recording the finding that the TCS was not justified in demanding delivery of Servers at Karnataka, UP, Tamil Nadu, Chennai, Mysore, etc does not have much reflection on the ultimate conclusion in the Award. The error, upon being corrected, would lead to a finding that Inspira was not justified in refusing to deliver the 8 Servers at locations suggested by TCS. However, this reservation expressed by Inspira in delivering 8 out of 207 Servers has not affected the contract between the parties in any manner. TCS never treated the act of Inspira in not delivering the 8 out of 207 Servers as an end of contract. In fact the subsequent conduct and correspondence of TCS actually denotes that it never objected to such conduct of Inspira. There is also a reason why TCS did not object to

Inspira's act of not delivering only 8 Servers at the suggested locations. What Inspira objected to was not piecemeal 'delivery' but to piecemeal 'billing'. It desired to bill comprehensively for all 207 Servers and Monitors. And I do not find much objectionable in Inspira demanding billing for all 207 Servers and Monitors at one go. The PO was for supply of entire lot of 207 Servers and Monitors in short time of less than a month (*PO was issued on 20 June 2013 with delivery date of 24 July 2013*). TCS had not indicated any delivery location for about 4 months and communicated delivery locations for only 8 out of ordered 207 Servers and Monitors.

34. Also, it is not that after indication of delivery locations for 8 Servers by email 21 October 2013, TCS gave delivery locations for remaining 199 Servers and Monitors to Inspira ever. It is an admitted position that TCS did not indicate delivery locations for remaining 199 Servers and Monitors to Inspira. On the contrary, after noting Inspira's reservation for piecemeal billing for 8 Servers, TCS has made serious attempts to walk out of the contract, which part is discussed in latter part of the judgment. In my view therefore, not much capital can be made by TCS in respect of the Tribunal's error in assuming that the TCS was not justified in demanding delivery of Servers at locations indicated in email dated 21 October 2013. Therefore the allegation of erroneous mixing of conditions for supply of DC at Koparkhairane with the terms and conditions for supply of Edge Servers and Monitors raised by TCS does not ultimately assist its case in getting the entire or even part of the Award invalidated. No element of perversity or patent illegality has crept in the Award on account of this minor error, which needs to be ignored as being inconsequential. It therefore cannot be contended that the Award is based on terms of another contract or that the Arbitral Tribunal had foisted a new contractual bargain between the parties by rewriting the terms of contract. Therefore, reliance by Ms. Sethna on judgment of the Supreme Court in ***State of Chhattisgarh v. SAL***

Udyog (P) Ltd (supra) and *Indian Oil Corporation Limited (IOCL) vs. Shree Ganesh Petroleum Rajgurunagar* (supra) does not assist the case of TCS. As observed above, the refusal by Inspira to deliver the 8 out of 207 Servers at indicated locations is not treated as end of contract by TCS and TCS has thereafter failed to indicate the delivery locations despite showing interest in accepting the delivery of Servers and thereby treating alive the PO. Therefore, the error does not affect the ultimate finding of TCS's liability to pay for the ordered Servers and Monitors. Therefore, I find submission of Ms. Sethna of failure to adopt judicial approach by the Arbitral Tribunal in deciding the dispute by failing to act in terms of the contract to be compellingly acceptable. Therefore, her reliance on judgment of the Apex Court in *Associate Builders v. Delhi Development Authority* is not of much avail.

35. Also, though Ms. Sethna has attempted to take fullest advantage of the above error apparently committed by the learned Arbitrator, it is seen that her main stand ultimately is that TCS was not required to perform the contract as the same had expired with efflux of time. She is compelled to take this stand as TCS never terminated the PO. TCS neither treated reservation by Inspira to deliver 8 Servers at indicated locations as end of contract by its conduct nor issued any written communication to Inspira that the PO was terminated in any manner.

WHETHER CONTRACT ENDED BY EFFLUX OF TIME

36. Now I proceed to examine the main ground raised by Ms. Sethna about the contract coming to an end with efflux of time and TCS not having any liability to pay for ordered Servers. The argument hinges on the premise that the agreed date for delivery of Servers was 20 July 2013 and failure to deliver Servers by that date brought to an end the contract. Alternatively, it is suggested that refusal by Inspira to deliver the Servers at

indicated locations also ended the contract. It is also contended that since the delivery of Servers has ultimately not taken place, the contract ended by efflux of time.

37. Under the Purchase Order, the time for delivery of Servers and monitors agreed in the Purchase Order was 20 July 2013. However, the disclosure of eight locations was made by TCS on 21 October 2013. Thus, TCS itself expected delivery of only 8 out of 207 Servers after 21 October 2013. Therefore, TCS itself never treated time as the essence of contract. Even if Ms. Sethna's contention about Inspira's obligation to deliver eight Servers at different locations is to be upheld, disclosure of locations was not made by TCS before 20 July 2013. Such disclosure was made only in respect of 8 out of 207 Servers for the first time on 21 October 2013.

38. Moving further, the objection of Inspira was essentially to 'piecemeal billing', meaning thereby it did not want to bill for only eight Servers when 207 Servers were to be supplied through a common invoice. However, even if Inspira's response on 22 October 2013 is treated as its refusal to deliver at different locations, the next issue for consideration is whether TCS ever treated such an act on the part of Inspira as an end of contract? It appears that after 22nd October 2013, Inspira complained to TCS for non-seeking delivery of Servers by email dated 27 November 2013 which reads thus :

> Dear Rajesh,
>
> As you are aware we have been holding the 207 Servers under the above O for five months now. These Servers were ordered for delivery to be taken in June and warehousing at your end. However, we have not received any positive update in the matter.
>
> We have no option now but to reverse this material to HP. Please confirm the material reversal. Once the reversal is approved, we will not be able to fulfil the above PO at the rates quoted in the PO. However, we assure of our

> best support with whatever best price that may be available at the time this material is required.

39. If TCS ever believed that Inspira's email dated 22 October 2013 constituted its refusal to perform the contract and that the contract had ended, TCS ought to have either not responded to email dated 27 November 2013 or its response ought to have been plain and simple that the contract had ended and that there was no question of seeking delivery of Servers. Far from doing so, TCS responded to Inspira on 28 November 2013 stating as under :

> I have internal discussion for finalizing delivery dates for these locatinos Servers and would confirm the same to you. Request you to wait for confirmation before proceeding further.

40. Thus, on 28 November 2013, TCS showed willingness to take delivery of Servers and informed Inspira that internal discussions were taking place for finalizing delivery dates for the location of Servers. Inspira was requested to await further instructions. Thus, when Inspira inquired with TCS as to whether it should reverse the Servers to HP, TCS specifically instructed Inspira not to do so and await further instructions.

41. Inspira did not believe in the representation sought to be made by TCS and insisted for timeline for disclosure of locations by responding on 28 November 2013 with following email:

> Please specify a timeline by which you will close this issue.
> Without proper timeline commitment it will be difficult for us to hold this material.
> We have waited for 5 months already. This cannot be lefyt hanging endlessly.

42. Thus, Inspira requested for timeline within which the dates and locations for delivery would be finalized by TCS. It is an admitted position that in pursuance of its email dated 28 November 2013, TCS never indicated any delivery location to Inspira. The above correspondence would leave no manner of doubt that TCS was willing to take delivery of Servers even after noticing Inspira's objection to 'piecemeal billing' expressed with email dated 23 October 2013. It never treated the contract as having come to an end. Therefore, the defence of contract coming to an end raised by TCS is utterly baseless and has rightly been rejected by the Arbitral Tribunal.

43. What happened in the year 2014 is even more interesting. As observed above, Inspira had enquired with TCS as to whether it should reverse the Servers to HP. TCS failed to provide different locations as promised in the email dated 28 November 2013. Inspira therefore finally started corresponding with HP for reversal of the Servers as TCS was showing no interest in taking delivery of the Servers. After receiving reversal request from Inspira, it appears that HP made enquiries directly with TCS as to whether it would be taking deliveries of Servers or not. TCS gave interesting reply to HP on 23 April 2014 stating as under:

> In our last conversation, I did mention June as the likely date for us to have these delivered. We have UAT starting mid-May… expected to last 4-6 weeks.

44. Thus, even to HP, TCS communicated that June 2014 could be the likely date of delivery since it had scheduled User Acceptance Testing (UAT) in mid-May. This was again reiterated by TCS in its communication to Inspira on 13 May 2014 when it stated as under :

> As mentioned in my email below, our UAT is starting on Monday, 19th May. Hopefully things will progress as per plan and we can start taking delivery of these in June. I do appreciate that you have been holding these Servers for long and we sincerely appreciate you for the same. Request you to kindly bear with us.

45. Thereafter, TCS made several efforts to have the Servers reversed by HP by making numerous correspondence. If contract with Inspira had already come to an end, and if TCS had any obligation to pay for Servers purchased by Inspira, there was no reason for TCS to urge HP to take back the Servers. Furthermore, TCS engaging in correspondence with HP would also belie the theory sought to be canvassed by TCS that Inspira never really purchased any Servers. By email dated 5 June 2014, TCS wrote to HP informing that the program was badly delayed and that the need of Servers would be required at a timeline about which TCS did not have any visibility. TCS urged that the Servers were standard equipment and other clients of HP may require the same in India. TCS therefore urged to HP to divert the Servers to its other clients. TCS promised that it would procure the Servers from HP again possibly at cheaper rate as Dollar had fallen by that time. Email dated 5 June 2014 reads thus :

> Got your email on DOP CSI. The program is very badly delayed and the field Servers (High End PCs) will be required at a time line that we have no current visibility of. These are standard equipment and I am sure that you have a steady run rate requirement of these PCs from all other Clients of yours in India.
>
> **Please help us by freeing up these PCs and diverting these to other Clients** and we have a field roll out we will again indent the same and procure this lot from HP again and perhaps it may help us to get the same at a cheaper rate as the dollar is lower than where we bought these at.
>
> **We are hurting at the CSI program and your help will bring us some relief and this is a request that I have from you as our Partner in this large Program. Neelam and Som – Please help.**
>
> *(emphasis and underlining added)*

46. In the above email, TCS pleaded for 'help' from HP, which according to TCS would provide 'some relief' to TCS. The above correspondence exchanged by TCS with HP is contrary to its stand before the learned Arbitrator and before this Court that it had no liability to pay for

Servers since the contract had come to an end with efflux of time. The correspondence also exposes false plea raised by TCS that Inspira had never purchased the Servers.

47. HP refused to take back Servers and replied to the above email on 2 June 2014 stating as under :

> Tanmoy/Prakash: these shipments were made last year against a firm PO from Inspira, which also had a firm order form TCS for the material. It is not possible for us to take back this material. I suggest Both TCS and Inspira focus on customer and on executing this shipment to them. I understand the difficult situation, but solution lies with the customer.

48. The above correspondence has been considered, analysed and evaluated by the Arbitral Tribunal and it was not really necessary for this Court to go into the same all over again. However, for considering the ground raised by TCS of contract coming to an end by efflux of time, I have briefly gone through the correspondence, which clearly reflects that far from TCS treating the contract as having come to an end, always believed that it had liability to pay for the Servers for which it had placed orders.

49. Ms. Sethna has strenuously contended that subsequent conduct is immaterial for construction of terms of contract and has relied upon judgment of the Apex Court in ***Bank of India*** (supra) and English judgment in ***James Miller and Partners*** (supra). However, in ***McDermott International Inc*** (supra), the Apex Court has held that correspondence exchanged by parties is required to be taken into consideration for the purpose of construction of contract. The Apex Court held in para-112 as under:

> 112. It is trite that the terms of the contract can be express or implied. **The conduct of the parties would also be a relevant factor in the matter of construction of a contract**. The construction of the contract agreement is within the jurisdiction of the arbitrators having regard to the wide nature, scope and ambit of the arbitration agreement and they cannot be said to have misdirected themselves in passing the award by taking into

> consideration the conduct of the parties. **It is also trite that correspondences exchanged by the parties are required to be taken into consideration for the purpose of construction of a contract.** Interpretation of a contract is a matter for the arbitrator to determine, even if it gives rise to determination of a question of law. (See *Pure Helium India (P) Ltd.* v. *ONGC* [(2003) 8 SCC 593] and *D.D. Sharma* v. *Union of India* [(2004) 5 SCC 325] .)
>
> *(emphasis added)*

50. Thus, the learned Arbitrator has rightly taken into consideration the correspondence between the parties while arriving at the conclusion that subsequent conduct extended timelines for enforcement of contract. Therefore, even though Arbitral Tribunal may have committed an error in concluding in para-57 that TCS was not justified in demanding delivery of eight Servers at different locations, the said error would not *ipso facto* lead to a conclusion that Inspira either refused to deliver the Servers or that the contract came to an end on account of Inspira not delivering those eight Servers.

ALLEGATION OF BREACH OF CONTRACTUAL OBLIGATIONS BY INSPIRA

51. Without prejudice to its objection that the contract came to an end with expiry of time, it is contended by TCS that Inspira committed breach of contractual obligations and therefore it is not entitled to any payment under the Purchase Order. TCS contends that Inspira had never procured the Servers for being delivered to TCS. TCS wants me to draw the inference of non-procurement of Servers on account of (i) reliance by Inspira on purchase order of December 2013, which was well past the agreed delivery of 20 July 2013. (ii) alleged falsity in the invoice showing cost of purchase as Rs.7.37 crores though Purchase Order was for only Rs.4.08 crores, (iii) filing of winding-up proceedings by Avnet against Inspira showing non-payment for any procurement, (iv) rejection of claim of Inspira for warehousing charges proving non-procurement, (v) refusal by Inspira to deliver eight Servers in October 2013 showing that it never had

any Servers to deliver and (vi) non-leading of any evidence by Inspira to prove that 207 Servers were actually warehoused anywhere.

52. In my view, however, the surmise of possible non-procurement of Servers by Inspira, which TCS wants me to draw on the basis of above alleged factors is completely baseless and is clearly against the conduct exhibited by TCS. As observed above TCS was engaged in active correspondence with HP for reversal of the Servers. If Servers were not procured by Inspira, why TCS was urging HP to take back the Servers remains unexplained. The survey of correspondence between TCS, HP and Inspira leaves no manner of doubt that Inspira had procured the Servers. Even otherwise, there is invoice of purchase, as well as invoice of sale of Servers produced on record. If Inspira was so dishonest in claiming price of unpurchased Servers, it would not have stopped at claiming set-off of Rs. 2.34 crores towards sale of Servers to Comprint. The evidence on record thus clearly demolishes the case of TCS that Inspira had not procured the Servers for being delivered.

53. In fact, this Court does not appreciate the plea raised during litigation by TCS that Inspira actually did not procure the Servers from HP. Having made repeated efforts with HP for reversal of the Servers to avoid liability to pay, TCS has taken a *volte face* and has falsely accused Inspira before this Court that it is seeking payment for unpurchased Servers. Mere indication of purchase price of Rs.7.34 crores in Avnet's invoice cannot be a ground for presuming non-procurement of Servers by Inspira. Similarly, rejection of claim for warehousing charges on account of Inspira's failure to prove payment of warehousing charges can again not lead to a presumption that the Servers were never procured. Whether Inspira paid Avnet or not is again an irrelevant issue for deciding whether the Servers were procured or not. Refusal by Inspira to deliver eight Servers was due to its reservation for 'piecemeal billing' and cannot lead to a presumption that Inspira never procured the Servers.

54. In my view therefore, the Arbitral Tribunal has rightly rejected TCS's claim of Inspira committing breach of contractual obligations. The Arbitral Tribunal has also rightly held that Inspira was always ready and willing to deliver the Servers and it was TCS who refused to accept the same.

INSPIRA'S FAILURE TO TAKE MITIGATION MEASURES

55. It was contended by TCS before the Arbitral Tribunal that Inspira was obliged to commence mitigation efforts immediately after 20 July 2013 when supply transaction failed and that valid steps to mitigate were not proved by Inspira. Alternatively, it is contended that at least after 22 October 2013, mitigation steps in the form of sale of Servers to third parties ought to have been taken. The learned Arbitrator has disagreed with the contentions raised by TCS and held that the same are raised merely as a counterblast and afterthought. I fully agree with the findings of the Arbitral Tribunal. There was no occasion for Inspira to sell the Servers immediately after 20 July 2013. It is TCS's own case that delivery was supposed to take place at locations disclosed by TCS. The locations were disclosed for the first time on 21 October 2013, that too in respect of only 8 out 207 Servers. After Inspira objected to 'piecemeal billing', no further instructions were given for delivery of entire lot of 207 Servers by TCS to Inspira. At that stage, Inspira did show willingness to take mitigative steps by reversing the Servers to HP and wrote to TCS on 27 November 2013 as to whether it could go for reversal of Servers. However, rather than permitting Inspira to take mitigative steps of reversal of Servers, TCS requested Inspira not to do so and promised to indicate the dates and locations for delivery by email dated 28 November 2013. When Inspira requested for timeline within which locations would be disclosed, there was no response from TCS. Therefore, the stand taken by TCS before the learned Arbitrator that mitigative steps for sale of Servers ought to have been taken by Inspira at least after 22 October 2013 is again not *bona fide*.

56. After HP made enquiries with TCS about the delivery on 23 April 2014, TCS gave responses on 23 April 2014 and 13 May 2014 that delivery was likely upon completion of user acceptance testing which was scheduled mid-May (after 19 May 2014). By email dated 30 May 2014, TCS informed that a final decision would be taken by it by 2 June 2014. TCS thereafter engaged in direct dialogue with HP urging it to take back the Servers, which finally HP refused to accept stating that the Servers were user-specific.

57. TCS should consider itself lucky that Inspira was successful in selling TCS's user-specific Servers to Comprint on 20 February 2016. Otherwise, TCS would have been liable to pay the entire price indicated in the Purchase Order of Rs.4,08,82,385/- to Inspira. Inspira mitigated the losses by managing to sell the Servers at the costs Rs.2,23,14,600/-. It appears that Inspira also reversed the Monitors and recovered amount of Rs.13041000/-. In my view therefore sufficient and timely mitigative measures were adopted by Inspira to sell Servers and reverse the Monitors.

58. The objection of failure to give notice to TCS under Section 54(2) of the Sale of Goods Act, 1930 raised by TCS is rejected by the learned Arbitrator by recording cogent reasons in paras- 82 to 84 of the Award. Here again, I cannot resist but to observe that TCS, who was repeatedly urging HP to take back the Servers or to supply them to other users in India, could possibly have no objection for sale of Servers by Inspira to mitigate losses. Having not disclosed the locations for delivery of 207 Servers for substantial time and after trying its luck in seeking reversal of Servers to HP, TCS has raised rather bizarre defence that Inspira ought to have given notice to it before selling the Servers to Comprint. Therefore I do not find the defence of non-issuance of notice under Section 54(2) of Sale of Goods Act, 1930 raised by TCS to be too inspiring.

NO ERROR BY ARBITRAL TRIBUNAL IN AWARDING INSPIRA'S CLAIM

59. The conspectus of the above discussion is that the learned Arbitrator has rightly awarded claim in favour of Inspira by making TCS liable to pay difference in the amount of Purchase Order (Rs. 4,08,82,385/-) and the amount recovered by Inspira through sale of Servers and reversal of monitors. TCS has failed to make out even a single valid ground of challenge to the impugned Award. None of the findings recorded by the learned Arbitrator are found to be so patently perverse so as to invalidate the Award either partially or fully. Just one error on the part of the learned Arbitrator in reading delivery address meant for another Purchase Order is not a reason enough to hold that the overarching finding of continuation of contract beyond 22 October 2013 and TCS's liability to pay for Servers and Monitors it made Inspira to purchase is perverse. As observed above, the objection by Inspira was not to the delivery at suggested locations, but to piecemeal billing. Even if it is assumed that Inspira had any reservation in delivering only eight Servers at different locations, TCS never treated such refusal as end of the contract. On the contrary, after Inspira enquired with TCS on 27 November 2013 for possible reversal of Servers to HP, TCS called upon Inspira not to reverse the Servers and showed willingness to give details and locations for supply of Servers. It however never provided either date or location for supply of 207 Servers or monitors. Even to HP, TCS represented that it would accept delivery of Servers after UAT which was scheduled after 19 May 2014. It is only after June 2014 that TCS started making efforts to urge before HP to take back the Servers. The very act of TCS directly engaging into correspondence with HP for reversal of Servers contains an implied admission of obligation to pay for Servers. HP refused to take back the Servers and communicated to TCS on 20 January 2015 that the Servers were of specific built based on DOP specifications and the only solution left for TCS was to take the delivery of the Servers. HP thereafter

requested TCS to make payment to Inspira. After waiting for substantial period of time, where TCS showed no interest in taking delivery of the Servers, Inspira was left with no alternative but to sell the same at reduced value of Rs.2.23 crores. Luckily for TCS, the losses are mitigated by Inspira.

60. Considering the above position, the view taken by the Arbitral Tribunal that TCS must be made to pay the price of Purchase Order, less the amount recovered by Inspira by sale of Servers and reversal of Monitors does not suffer from any perversity or patent illegality. In fact, the learned Arbitrator has not awarded the entire value of purchase price to Inspira and has deducted amount of Rs.75,60,785/- on account of non-providing of support for 6.5 years. So ultimately TCS is not fastened with liability to pay substantial amount under the Arbitral Award.

INSPIRA'S CHALLENGE TO ARBITRAL AWARD

61. In its Petition, Inspira has raised a limited challenge to the impugned Award to the extent of deduction of amount of Rs.75,60,785/- being support price for 6.5 years. The Purchase Order dated 24 June 2013 included Rs.3,33,21,600/- towards costs of Servers and 207 monitors and Rs.75,60,785/- towards support for 6.5 years. Inspira was thus supposed to provide support in respect of the Servers and monitors for a period of 6.5 years, for which TCS was supposed to pay the amount of Rs.75,60,785/- to Inspira. In the present case, delivery of Servers and Monitors to TCS's clients (Dept. of Posts) has not taken place. Therefore, there was no occasion for Inspira to provide any support for undelivered Servers and monitors. The Arbitral Tribunal has rightly deducted amount of Rs.75,60,785/-. There is no perversity or patent illegality in such deduction effected by the Arbitral Tribunal.

CONCLUSIONS

62. In the light of the discussion made above, I am of the view that the Award of the Arbitral Tribunal does not suffer from any of the enumerated vices under Section 34 of the Arbitration Act. The learned Arbitrator has not ignored the terms or conditions of contract so as to constitute any patent illegality. The approach of the learned Arbitrator in making the Award is judicial as the findings recorded by him are based on contractual clauses and evidence on record and the same are plausible. The learned Arbitrator has not rewritten any contractual terms nor has overlooked any material evidence before it. Thus, reliance by Ms. Sethna on judgment of Apex Court in ***PSA SICAL*** (supra) is inapposite.

63. I therefore do not find any valid reason to interfere in the impugned Award. The Award, to my mind, appears to be unexceptionable. Since the Arbitral Tribunal has already awarded costs of arbitration in favour of Inspira with directions to pay interest @ 9% per annum with effect from 1 March 2016 till payment and/or realization, I deem it appropriate not to impose any further costs on TCS.

64. Both the Arbitration Petitions are accordingly dismissed with no further order as to costs.

(SANDEEP V. MARNE, J.)

NEETA SHAILESH SAWANT

Digitally signed by NEETA SHAILESH SAWANT
Date: 2025.12.02 19:03:09 +0530