CHAITANYA ASHOK JADHAV
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 40 OF 2023

Walchandnagar Industries Ltd. ...Appellant

Versus

MFC Transport Pvt. Ltd. ...Respondent

Mr. Aditya Bapat, *Counsel a/w Joshua D'Souza, Asid Lampwala, Chirag Sancheti, Hriday Karia, Saad Memon i/b Bullock Solicitors for the Appellant.*

Mr. Vishal Kanade *a/w Mr. Sanath Warkar i/b Mr. Tejas Deshpande for Respondent*

CORAM: SOMASEKHAR SUNDARESAN, J.
DATE: SEPTEMBER 1, 2026

<u>JUDGEMENT :</u>

<u>Context and Factual Background:</u>

1. The captioned proceedings are an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (*"**the Act**"*), directed against a Judgment and Order dated April 29, 2019 (*"**Impugned Judgement**"*) passed by the Learned District Judge-4, Baramati, District Pune, in Arbitration Petition No. 1 of 2016 (*"**Section 34 Petition**"*), setting aside an Arbitral Award dated August 25, 2016 *("**Arbitral Award**")* made by the

Learned Single-member Arbitral Tribunal, with an award of costs of Rs. 25,000.

2. The Appellant, Walchandnagar Industries Ltd. ("***Walchandnagar***"), was the Respondent in the arbitration and before the Section 34 Court. The Respondent, MFC Transport Pvt. Ltd. ("***MFC***"), was the Claimant in the arbitration and the Petitioner in the Section 34 Court.

3. The disputes and differences between the parties relate to a contract of carriage of equipment by MFC on behalf of Walchandnagar, which was required to move a "Calandria", an over-dimensional cargo item from its works in Pune District, Maharashtra, to Nuclear Power Corporation of India Limited ("***NPCIL***") atomic power plant site in Kota District, Rajasthan. Following a quotation dated July 10, 2012 and a revised quotation dated September 21, 2012, Walchandnagar issued a Purchase Order dated July 22, 2013 ("***Purchase Order***") in favour of MFC for a consideration of Rs. 3.60 crores, payable in seven tranches: Rs. 75 Lakhs as advance against a bank guarantee; Rs. 50 Lakhs on loading; Rs. 50 Lakhs on the vehicle reaching each of Ahmednagar, Dhule and Indore; Rs. 35 lakhs on the vehicle reaching the Rajasthan border; and Rs. 50 lakhs upon delivery at site.

4. The Purchase Order provided for a bonus at the rate of 1% of the Purchase Order Value per week, subject to a maximum of 5%, if the Calandria

was delivered within 90 days, and for liquidated damages at 1% per week of delay, subject to a maximum of 10%, if the delivery took longer than 135 days. It is common ground that the requirement of a bank guarantee to secure the advance was waived and an indemnity bond was furnished instead. Whether the Purchase Order comprised only two pages or also carried the general conditions of purchase was in dispute.

5. The vehicle was mobilised on February 5, 2014 with loading completed on February 12, 2014, but the vehicle remained at Walchandnagar until March 14, 2014. MFC's case is that Walchandnagar's failure to make the milestone payments as and when the milestones were reached was the reason for the halts in the movement of the Calandria. By e-mail dated April 15, 2014 MFC informed Walchandnagar that it would levy detention charges at Rs. 30,000/- per day.

6. A tripartite meeting among Walchandnagar, MFC and NPCIL was held on June 17, 2014, the minutes of which ("***Tripartite Agreement***") record, among other things, that Walchandnagar was to finalise the detention and bonus charges payable to MFC and pay them on the Calandria reaching NPCIL's gate, before delivery. The vehicle reached the gate on July 13, 2014 but MFC did not take it inside or deliver the consignment. Walchandnagar moved the District Court at Baramati under Section 9 of the Act, and the

Section 9 Court directed MFC to deliver the goods to Walchandnagar paying Rs. 50 Lakhs by demand draft and furnishing a bank guarantee for Rs. 70 lakhs (***"Section 9 Order"***).

7. MFC's Arbitration Appeal No. 29 of 2014 against the Order of the District Court at Baramati was dismissed on November 20, 2014, the Section 9 Order not having been stayed in the interim. Delivery was ultimately made on January 19, 2015, following a further meeting and a Memorandum of Understanding dated January 8, 2015 ("***MOU***"), under which, a bank guarantee of Rs. 90 Lakhs was furnished to MFC and the earlier guarantee of Rs. 70 Lakhs was returned.

8. In the arbitration, MFC claimed Rs. 1,03,20,000/- with interest, comprising Rs. 18 Lakhs as bonus and Rs. 87,20,000/- as detention charges at Rs. 30,000/- per day for a total of 284 days, made up of 30 days at Walchandnagar; 67 days in transit; and 187 days outside the gate. Walchandnagar made a counter-claim of Rs. 6,64,18,808/-, of which Rs. 36 Lakhs was towards Liquidated Damages; Rs. 83,17,134/- towards loss of interest on payments receivable from NPCIL; and Rs. 5 Crores towards loss of reputation.

Arbitral Award:

9. The Learned Arbitral Tribunal rejected the claims in their entirety and partly allowed the counter-claim. On detention charges, it was held that the Purchase Order contained no term providing for such payment, and that the case pleaded in the Statement of Claim was that such charges were payable on account of delay "*as per quotation submitted by the Claimant*". The Learned Arbitral Tribunal interpreted the Tripartite Agreement on which MFC relied to claim detention and bonus payments, to hold that a mere assertion that an agreement for payment of detention charges had been arrived at was not sufficient. It would have to be established by documentary and oral evidence when such amounts would become payable, at what rate or by what method they were to be determined, when they were meant to be paid, and what MFC could do if Walchandnagar failed to determine and pay them.

10. It was found that MFC's witnesses did not depose that a rate had been discussed or agreed at the meeting, and in fact one of its witnesses stated in cross-examination that the parties had been unable to settle the quantum during that meeting. In that light, the Learned Arbitral Tribunal held that the statement in the minutes constituting the "Tripartite Agreement", that detention charges would be finalised and paid was meaningless without the relevant aspects thereof being decided. In that context, the Learned Arbitral

Tribunal found substance in Walchandnagar's submission that the statement had been included under duress.

11. The three heads of detention charges claimed were then dealt with. On the 30-day detention at Pune, the Learned Arbitral Tribunal found that Rs. 25 Lakhs had been paid on the very day of loading; a further Rs. 25 Lakhs was paid within a week and a further Rs. 25 Lakhs was paid on March 8, 2014. Therefore, substantial payment had been made while the vehicle stood loaded even while neither the Purchase Order nor the quotation contained any stipulation that the vehicle would not be moved until the advance was paid in full or that detention charges could be claimed.

12. As to the 67 days in transit, the Learned Arbitral Tribunal held that even assuming MFC was justified in halting the vehicle, what it would be entitled to was compensation, which would have to be pleaded as an alternative case with proof of actual damages and loss suffered for each day of delay. Neither was any such case pleaded nor was evidence led to demonstrate loss and damages. The Learned Arbitral Tribunal held that there was nothing to show how the figure of Rs. 30,000/- per day had been arrived at.

13. As regards the 187 days detention outside the gate, the Learned Arbitral Tribunal held that no term of the Tripartite Agreement or provision of law had been shown that would entitle a carrier to retain the goods and refuse delivery

to the consignee on the ground that the consignor had committed a breach. It was held that the carrier ought to deliver and then sue for what is due. The Learned Arbitral Tribunal found MFC's conduct wholly unjustifiable and noted that it had not obeyed the Section 9 Order although it had not been stayed.

14. On the claim for bonus, the Learned Arbitral Tribunal held that since the 187-day period could not be excluded, delivery had not been made within 90 days of loading and no bonus was payable.

15. On the counter-claim, the Learned Arbitral Tribunal held that since delivery had taken well beyond 135 days, Liquidated Damages were justified at 10% of the consideration under the Purchase Order, that is Rs. 36 Lakhs, with interest at 9% per annum from the date of the award until realisation. The remaining heads of the counter-claim were not pressed. MFC was directed to return the bank guarantee of Rs. 90 Lakhs furnished under the MOU, and to pay costs of Rs. 17 Lakhs. The Learned Arbitral Tribunal indeed found that there had been delay on the part of Walchandnagar in making the milestone payments and that they had not been made exactly as per the Purchase Order.

<u>Impugned Judgement:</u>

16. The Impugned Judgement set aside the Arbitral Award. The Section 34 Court set out the scope of its jurisdiction. It recorded that the Learned

Arbitral Tribunal had found that the milestone payments had not been made in time by Walchandnagar. On the question of whether detention charges were payable, the Section 34 Court held that the Purchase Order was silent, and there had been no agreement entitling MFC to stop the goods in transit. The Section 34 Court agreed with the Learned Arbitral Tribunal that there was no term in the Purchase Order or in any provision of law entitling MFC to stop the carriage in transit or to claim detention charges.[1] The Section 34 Court also agreed with the Learned Arbitral Tribunal that the detention and bonus charges were to be finalised by Walchandnagar and were payable upon the Calandria reaching the gate before delivery.[2]

17. However, the Section 34 Court was pleased to set aside the Arbitral Award on two grounds – *first*, on the finding of duress; and *second*, on the facet of quantum of such charges. On the finding of duress, the Section 34 Court held that the case that the Tripartite Agreement had been agreed to under duress was neither the pleaded case of Walchandnagar nor supported by any evidence led by it. By accepting what had only emerged only in arguments, it was held that the Learned Arbitral Tribunal had travelled beyond the pleadings and the evidence. Had it been pleaded, MFC would have had the opportunity to meet it and therefore, the finding was perverse for denial of natural justice since MFC did not have notice of this proposition in

1 Paragraph 16 of the Impugned Judgement
2 Paragraph 19 of the Impugned Judgement

assessing the Tripartite Agreement. The Section 34 Court held that the Tripartite Agreement existed and had been acted upon, and Walchandnagar having thereafter made payment of the arrears, that the Learned Arbitral Tribunal's observation as to duress were without notice to MFC.

18. As regards the quantum of detention charges, the Section 34 Court held[3] that the question as to whether there was an agreement for payment of detention and bonus charges had been conflated with what the quantum of payment was meant to be. According to the Section 34 Court, the Learned Arbitral Tribunal had unnecessarily relied on the fact that the quantum of payment was not fixed, ignoring the fact that an agreement for payment had been in existence. Therefore, it was found that the Learned Arbitral Tribunal had failed to consider the contract between the parties. The Section 34 Court also found that the Learned Arbitral Tribunal had not considered the MOU, which the Impugned Judgement describes as an instrument dated January 19, 2015, which was held to be crucial for a just resolution of the case.[4]

Contentions of the Parties:

19. I have heard Mr. Aditya Bapat, Learned Advocate on behalf of Walchandnagar and Mr. Vishal Kanade, Learned Advocate on behalf of MFC. With their assistance I have examined the record.

3 Paragraphs 20 and 21 of the Impugned Judgement
4 Paragraph 22 of the Impugned Judgement

20. Mr. Bapat would contend that once the Section 34 Court had accepted the arbitral finding that the Purchase Order contained no term for payment of detention charges, and recorded the concessions of both counsel to that effect and that the detention charges had not been finalised in the Tripartite Agreement, the Section 34 Court just could not have held that MFC's claims could have succeeded. The Impugned Judgement does not engage with the issue of how to deal with the quantum of payment not having been agreed upon and not having been proved.

21. As regards the finding that there was no basis for the Learned Arbitral Tribunal to have found duress, Mr. Bapat would submit that the Arbitral Award did not decide the dispute on the footing that the Tripartite Agreement was entered into under duress and that the observation on duress was an aside. The Learned Arbitral Tribunal had held that the term about detention charges being payable as contained in the Tripartite Agreement was meaningless because it did not determine when or at what rate the charges were payable. The finding, in fact, was that even the Tripartite Agreement did not justify MFC detaining the carriage without delivery. The elaborate findings in the Arbitral Award were independent of the observations on duress, he would submit, and therefore, there was no basis to set aside the Arbitral Award on the ground of perversity since even if the finding on duress

were to be regarded as perverse, it was not a perversity that cut to the root of the matter.

22. Mr. Bapat would also submit that the Learned Arbitral Tribunal was the master of the evidence and was entitled to interpret the contract, which it has fairly done without any perversity of the nature that warrants an intervention under Section 34 of the Act. He would contend that the Tripartite Agreement had been considered in detail. The MOU too was about the adjustment of a bank guarantee and a commitment to deliver the Calandria before January 18, 2015 and about another purchase order relating to a different project in Tamil Nadu. Mr. Bapat would emphasise that there is no Memorandum of Understanding dated January 19, 2015 at all, that being the date of delivery, and that the Section 34 Court has therefore faulted the Learned Arbitral Tribunal for not considering a document that does not exist.

23. Mr. Kanade would submit that the milestone payments, the bonus payments, and the Liquidated Damages were reciprocal and interdependent obligations. Walchandnagar was to release each tranche as the vehicle reached the agreed points along the route, and only against performance of such payment obligations could MFC be held to the 90-day and 135-day deadlines. Mr. Kanade would submit that Walchandnagar defaulting on those payments is not in dispute and is the subject matter of concurrent findings by

the Learned Arbitral Tribunal as well as by the Section 34 Court. Once such default is established, the contractual equilibrium is disturbed and therefore, the award of Liquidated Damages is untenable. Correspondingly, MFC is entitled to detention charges and to relief in respect of bonus, which the Learned Arbitral Tribunal has failed to appreciate.

24. On quantification, Mr. Kanade would point to an e-mail dated June 12, 2014, in which Walchandnagar's request to reduce detention charges from Rs. 30,000/- per day to Rs. 15,000/- per day is recorded with MFC being agreeable to a reduction to Rs. 28,000/- per day. The Tripartite Agreement followed immediately after such exchange and must be read against it, even though the figures were not carried into the Tripartite Agreement. Walchandnagar was thus bound to finalise and pay the detention and bonus charges, to be quantified and paid upon the consignment reaching the gate, and payment was to precede the delivery thereof. NPCIL too had directed both parties to adhere to the Tripartite Agreement. MFC's refusal to deliver is contended to be supported by Section 170 of the Indian Contract Act, 1872 ("***Contract Act***"), under which a bailee may retain goods until charges lawfully due in respect of them are paid, and by Section 9 of the Carriage by Road Act, 2007 ("***Carriage Act***").

25. Therefore, Mr. Kanade would contend that the Section 34 Court correctly identified the errors in the Arbitral Award and rightly held that the Learned Arbitral Tribunal had failed to distinguish between the existence of an agreement for detention charges and bonus charges and the ascertainment of their quantum to reject the claim in its entirety. In a nutshell, Mr. Kanade would submit that the arbitral finding that delivery must precede recovery, ignored the Tripartite Agreement, the statutory lien, and overlooked the MOU. Therefore, the Arbitral Award was vitiated by perversity, patent illegality and breach of natural justice, as rightly held in the Impugned Judgement, necessitating dismissal of the Appeal.

Analysis and Findings:

26. I have examined the record and the submissions made on behalf of the parties. In my view, while the scope of jurisdiction of the Section 34 Court has been rightly noticed in the Impugned Judgement, the intervention is beyond the scope of what is permissible under Section 34 of the Act.

27. Merely because an alternative interpretation of the contractual terms may be possible, the Section 34 Court cannot intervene and set aside an arbitral finding. In the facts of this case, the Learned Arbitral Tribunal has come to the view that the Tripartite Agreement indeed contained a reference to payment of detention charges and bonus payments upon delivery but

clearly there was no agreed position on how such payments were to be computed. Indeed, between April 2014 and June 2014, the parties traded e-mails regarding the detention charges and thereafter executed the Tripartite Agreement without an actual rate being agreed. However, the claim in arbitration was of Rs. 30,000 per day, while the parties did not have consensus on the amount and had negotiated a range of Rs. 15,000 per day to Rs. 28,000 per day, which was left without a final agreement when the Tripartite Agreement was executed. Therefore, even without conflating the absence of agreed terms in the Tripartite Agreement with the existence of Tripartite Agreement, the position that would come about is that the parties had an 'agreement to agree'. That apart, the Learned Arbitral Tribunal is the master of the quantity and quality of evidence, and the Arbitral Award has clearly found that no evidence was led on detention charges having been agreed or on loss being suffered. On the contrary, there had been a positive deposition that the parties had not agreed upon the rates. Therefore, the parties had agreed to agree without having eventually agreed upon the rates payable. Therefore, even if the Section 34 Court was to be unhappy with the interpretation of the Learned Arbitral Tribunal, it lost sight of the fact that its perceived perversity was not one that cut to the root of the matter.

28. In ***Konkan Railway***,[5] the Supreme Court, dealing with the scope of the concurrent jurisdiction of the Section 34 Court and the Section 37 Court ruled thus:

> *"14. Analysis: At the outset, we may state that the jurisdiction of the Court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd., is akin to the jurisdiction of the court under Section 34 of the Act.* ***Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.***
>
> *15. Therefore,* ***the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal****. In Dyna Technologies Private Limited v. Crompton Greaves Limited (2019) 20 SCC 1, this Court held:*
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> > *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts.* ***We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award****. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate*

5 *Konkan Railway Corporation Ltd. Vs. Chenab Bridge Project Undertaking -* ***(2023) 11 SCR 215 | 2023 INSC 742***

dispute resolution would stand frustrated.

25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists. The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

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20. ***The principle of interpretation of contracts adopted by the Division Bench of the High Court that when two constructions are possible, then courts must prefer the one which gives effect and voice to all clauses, does not have absolute application. The said interpretation is subject to the jurisdiction which a court is called upon to exercise.*** *While exercising jurisdiction under Section 37 of the Act, the Court is concerned about the jurisdiction that the Section 34 Court exercised while considering the challenge to the Arbitral Award.* ***The jurisdiction under Section 34 of the Act is exercised only to see if the Arbitral Tribunal's view is perverse or manifestly arbitrary. Accordingly, the question of reinterpreting the contract on an alternative view does not arise. If this is the principle applicable to exercise of jurisdiction under Section 34 of the Act, a Division Bench exercising jurisdiction under Section 37 of the Act cannot reverse an Award, much less the decision of a Single Judge, on the ground that they have not given effect and voice to all clauses of the contract. This is where the Division Bench of the High Court committed an error, in re-interpreting a contractual clause while exercising jurisdiction under Section 37 of the Act.*** *In any event, the decision in Radha Sundar Dutta (supra), relied on by the High Court was decided in 1959, and it pertains to proceedings arising under the Village Chaukidari Act, 1870 and Bengal Patni Taluks Regulation of 1819. Reliance on this judgment particularly for interfering with the concurrent interpretations of the contractual clause by the Arbitral Tribunal and Single Judge* *under Section 34 of the Act is not justified."*

[Emphasis Supplied]

29. The scope of jurisdiction of the Section 34 Court is the subject matter of numerous judgements and to avoid prolixity, I do not intend to load this judgement with extracts from a range of these judgements. Suffice it to say, apart from ***Konkan Railway***, cited above, that the law is well declared in ***Dyna Technologies***,[6] ***Associate Builders***,[7] ***Ssangyong***[8] and ***OPG Power***.[9] The arbitral proceedings commenced prior to the amendments effected to the Act in 2015 but even without reference to the further narrowing of the scope of interference after these amendments, the interference in the Impugned Judgement falls foul of the parameters of the scope of the Section 34 jurisdiction. The law declared in ***Konkan Railway*** and in ***Dyna Technologies*** related to the un-amended provisions of Section 34 of the Act.

30. In fact, even implied reasons that are discernible and may be inferred to support the outcome of an arbitral award can be the basis for not interfering with the arbitral award. To my mind, the implied reason writ large on the face of the record is that the Tripartite Agreement was indeed executed and it is indeed true that it did not quantify the detention charges and the bonus payments, and therefore the provision in this regard contained in it, was only

6 *Dyna Technologies Private Limited v. Crompton Greaves Ltd – **(2019) 20 SCC 1***
7 *Associate Builders vs. Delhi Development Authority – **(2015) 3 SCC 49***
8 *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India – **(2019) 15 SCC 131***
9 *OPG Power vs. Enoxio – **(2025) 2 SCC 417***

an agreement to agree. Evidence not being led to demonstrate an agreement, in my view, affirms the interpretation of contract by the Learned Arbitral Tribunal read with its appreciation of evidence, and thus cannot have been interfered with.

31. I have also given anxious consideration to Mr. Kanade's submission of a statutory lien under the Carriage Act and the Contract Act. Section 9 of the Carriage Act cited on behalf of MFC does not stipulate any provision for a statutory lien, but instead deals with the obligation to issue a goods receipt. The provisions of the Carriage Act and rules made thereunder do not entail any statutory lien. At best a common law right or a right under Section 170 of the Contract Act, asserting the rights of a bailee could be resorted to.

32. I also find that no case of a statutory lien was ever urged in the proceedings. Section 9 of the Carriage Act was indeed pleaded and an issue was framed on whether MFC is a public carrier, but that issue was answered in the negative because no argument was advanced and no material was placed on record before the Learned Arbitral Tribunal. The Arbitral Award records more than once that no provision of law entitling MFC to retain the goods was pleaded. The Impugned Judgement too records that advocates for neither party pointed to any such provision. Section 170 of the Contract Act finds no mention anywhere in the proceedings. Indeed, a transporter is a bailee and

Section 170 of the Contract Act provides for an entitlement to retain the goods until he receives due remuneration for services rendered. However, whether anything was due is a matter of dispute sought to have been addressed in the Tripartite Agreement and in the MOU. It is a plausible finding that the parties did not finalise and agree on the terms of such payment although they can be said to have 'agreed to agree' on the same. After a full-blown trial, if it is found that no evidence of an agreement has been led, and indeed evidence points to the absence of an agreement on the detention charges (with a wide-ranging negotiation that did not culminate in an agreement), there is not much the Learned Arbitral Tribunal could have done. It would not have been open to the Learned Arbitral Tribunal to stipulate any rates. In this regard, the Learned Arbitral Tribunal reasonably held that damages could have been claimed and proven but nothing of that nature had been done.

33. Indeed, Walchandnagar did not pay its due instalments in time, but the parties resolved their differences and reset their positions, first under the Tripartite Agreement and then under the MOU. That apart, the Section 9 Court directed interlocutory preservation measures, which were not complied with by MFC and a lot more time was lost even after the appeal against the Section 9 Order was dismissed. Therefore, I am not inclined to revisit and interfere with the Arbitral Award, which represents a justifiable and plausible reading of the evidence and contract.

34. In the circumstances, in my view, the Arbitral Award does not brook any interference. Therefore, the Appeal is ***allowed***, and Impugned Judgement is hereby set aside, reinstating the Arbitral Award. I am satisfied in the facts of the case, that costs need not follow the event.

35. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]