

In the High Court of Judicature at Madras

Dated : 25.09.2015

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.344 of 2014

M/s.India Cements Capital Ltd.,
Rep. by its Vice President,
Mr.G.Radhakrishnan. .. Petitioner

-vs-

M/s.Ratnajeet Polycon Ltd.,
Flat No.14, 'Nitin Nivas',
Jawahar Nagar, Road No.3,
Goregaon West, Mumbai. .. Respondent

Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint a Sole Arbitrator to decide the dispute / claim between the Petitioner and the Respondent in accordance with Clause 33 of the Lease Agreement dated 20.07.1994.

For Petitioner : Mr.Aravind Subramaniam

For Respondent : No appearance

* * * * *

ORDER

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The petitioner under its original name and style M/s.Aruna Sugars Finance Ltd. is stated to have been engaged in the business of extending financial facilities to prospective customers with a good reputation in the market. The name was changed to the present description in the petition subsequently and notified vide notification

dated 24.06.1985.

2.The respondent is stated to have approached the petitioner to extend the lease financial facility of Rs.18,00,000/- towards acquisition of certain machineries and consequently, a lease agreement dated 20.07.1994 was entered into inter se the parties, providing for a repayment over a period of 60 months with quarterly lease rentals falling due every quarter for a total lease rental of a sum of Rs.25,90,250/- with quarterly lease rental of Rs.1,29,512.50.

3.The petitioner alleges that from the fifth quarterly instalment payable, there was a default and the payments remained irregular, position which is stated not to have been remedied despite various communications. It is the claim of the petitioner that as on 29.04.2014, the total amount towards lease rental stood at Rs.16,33,685/- as outstanding, apart from lease compensation charges at 36% for belated payments of Rs.1,03,15,599/-.

4.The aforesaid agreement contains an arbitration and jurisdiction clause Nos.33 and 34 respectively, which read as under:

'Arbitration.

33.All disputes, differences, claims and questions, which may arise during the subsistence of this Agreement between the Lessor and the Lessees touching any matter covered by this Agreement shall be referred to the arbitration of two Arbitrators one to be

appointed by each party to the dispute in accordance with the provisions of the Arbitration Act, 1940.

Jurisdiction.

34. Subject to the provisions of Clause 33 above, as a part of cause of action arises in Madras, it is agreed between the parties that in respect of any suit touching any matter, claims or disputes arising out of or in any way relation to this Agreement Madras City Courts alone shall have exclusive jurisdiction.''

5. In view of the aforesaid position, it appears that the matter was referred to the sole arbitration of Mr. K. R. Veeraswami, District and Sessions Judge (Retd.) as per letter dated 17.02.2009 and a claim statement was filed. The respondent participated in the same but raising certain objections, though no specific objection over the constitution of the Tribunal was raised, but what was stated was that the petitioner had acted unilaterally. The Arbitrator is stated to have reserved orders on 09.03.2010, but failed to deliver the award and subsequently, vide communication dated 13.03.2012 informed the parties that due to his ill-health, he was not in a position to continue to conduct the arbitration proceedings. The petitioner, faced with this position, vide letter dated 14.03.2012 sought to appoint Mr. N. C. Vijairagavan, as the substitute Arbitrator, but that was objected to by the respondent. In

view of the aforesaid, the petitioner has approached this Court by filing the petition under Section 11 (6) of the Arbitration and Conciliation Act, 1996, (for brevity 'the said Act').

6.The petitioner has also explained that though the parties were to be governed by the Arbitration Act, 1940, the arbitration commenced only after the said Act had come into force and thus, in view of the provision of Section 85 (2) of the said Act, the recourse available to the petitioner was to file the present petition for appointment of an Arbitrator.

7.The respondent had been served, but none has chosen to enter appearance, nor has any reply been filed. It is, thus, a case of no return with the allegations remaining unrebutted.

8.It is, thus, apparent that disputes have arisen inter se the parties, which are liable to be resolved through arbitration and the jurisdiction of this Court.

9.I, thus, appoint **Mr.R.Premkumar, a retired Judicial Officer,** as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested by the learned counsel, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

10.The original petition is, accordingly, allowed,
leaving the parties to bear their own costs.

sd/ (S.K.K., CJ.)
25.09.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/28.10.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of
the Order/Judgment Decree in this format.



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