

In the High Court of Judicature at Madras

Dated : 18.06.2015

Coram :

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

O.P.No.184 of 2015

Nashika Industries India Ltd.
Rep. By its Managing Director,
Mr.Harish N.Patel.

.. Petitioner

-VS-

1.Palkudiar Threads P. Ltd.,
Coimbatore District.

2.N.Chandrasekaran
3.N.Purushothaman
4.Krishnaveni
5.P.Chandra

.. Respondents

Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to decide the disputes which have arisen between the petitioner and the respondents in pursuance to the agreement dated 05.02.2011.

For Petitioner : Mr.R.Sreedhar

For Respondents : Mr.K.Myilsamy

* * * * *

ORDER

The parties entered into a Memorandum of Agreement and Indemnity dated 05.02.2011 for taking over the entire land, building, plant and machinery of the textile mill belonging to the first respondent free from encumbrance. The shareholding of respondents 2 to 5 was also to be transferred to the petitioner for stated consideration. This Memorandum of Agreement contains a Dispute Resolution Clause 14 as under:

"14.Any dispute, difference or claim arising out of or in relation to this MOU shall be referred to Arbitration to be conducted in accordance with the provisions of the Arbitration & Conciliation Act 1996. The venue of Arbitration shall be at Coimbatore."

2.Disputes arose under the agreement, which resulted in a notice being issued by the petitioner to the respondents through counsel dated 04.02.2014 invoking the arbitration clause. On merits, this was disputed through a legal reply dated 14.02.2014 by the respondents, though nothing is mentioned qua the arbitration clause.

3.The respondents filed a injunctive suit being O.S.No.440 of 2014 before the Additional Sub Judge, Tiruppur, in which certain interim ordres are passed.

4.The petitioner states that on receipt of the ex parte order in the suit, the Civil Court not having jurisdiction, the petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking reference of disputes to arbitration.

5.The respondents were served through private service and counsel has entered appearance. But, no reply has been filed for over a little less than three months, despite the order dated 27.03.2015 issuing notice calling upon them to file reply within three weeks of service of notice. It is, thus, a case of no return.

6.Learned counsel for the respondents, however, makes oral submissions that the alleged defaults of the respondents are disputed and it is, in fact, the petitioner, which failed to perform its obligation. It is also stated that the Memorandum was terminated on 16.04.2012, while the arbitration was invoked on 04.02.2014. Surprisingly, in the reply to the notice of the petitioner dated 14.02.2014, there is admittedly no whisper of this termination and the case canvassed today by the learned counsel for

the petitioner is that there is no such notice or at least no notice was ever served on the petitioner. If such a notice would have been sent, it would have found mention in the reply dated 14.02.2014.

7.I am unable to accept the plea of the respondents that the claim is ex facie barred by time. This is so as firstly the invocation is within two years of the alleged termination. Secondly, there is grave doubt on the alleged termination, as there is nothing produced on record to show that such a notice was despatched or received, more so in view of the reply dated 14.02.2014 of the respondents not containing such an averment.

8.It is, thus, not in doubt that there is an agreement inter se the parties containing an arbitration clause and disputes have arisen inter se the parties with the jurisdiction of this Court. Though the designated place of arbitration is Coimbatore, by consent and at request of learned counsel for parties, the venue of arbitration is changed to Chennai.

9.In view of aforesaid, as proposed and agreed, I appoint **Mr.Justice P.P.S.Janarthana Raja**, a retired Judge of this Court, as the Sole Arbitrator, to enter upon reference and adjudicate the disputes inter se the parties. As agreed by the learned counsel for the parties,

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.

(S.K.K., CJ.)
18.06.2015

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Note: Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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