

In the High Court of Judicature at Madras

Dated : 18.12.2015

Coram :

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

O.P.No.605 of 2015

- 1.M/s.Eurovanille S.A.S.France,
Company incorporated and existing
under laws of France,
Having principal business at
Gouy Saint Andre, France,
rep. herein by its President
Laurent Bourgois, through the
Power of Attorney Agent
Sandeep Suryanarayana Rao
- 2.M/s.Eurovanille India Private Limited,
Company incorporated under the Companies Act,1956
Having its registered office at,
Vadakkipalayam Road,
Pollachi, Tamil Nadu,
rep. by its Director Sandeep Suryanarayana Rao
.. Petitioners

-vs-

- 1.Dr.R.Mahendran
- 2.Explovan,
rep. by it is Power of Attorney Dr.R.Mahendran
- 3.Kamatchiammal .. Respondents
(3rd respondent impleaded as per the
order of the Court dt. 18.12.2015)

Petition filed under Section 11 (5) of the
Arbitration and Conciliation Act, 1996, to appoint an
arbitrator to resolve the dispute arising out of Memorandum
of Understanding (Agreement) dated 20.12.2014 raised

between the parties or otherwise in the arbitration proceedings.

For Petitioners : Mr.A.M.Ilango

For Respondents : Mr.AR.L.Sundaresan
Senior Counsel
for
M/s.T.K.Bhaskar
K.Harishankar for R1
Mr.V.C.Janardhanan for R2&R3

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ORDER

The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to the "said Act") on account of the disputes that had arisen inter se the parties in respect of the agreement dated 20.12.2014. The parties to the agreement are the first petitioner as the second party, the second petitioner as the third party and the first respondent herein Dr.R.Mahendran as the first party. It is not in issue that the agreement contains arbitration and jurisdictional clauses as under:-

"28.Any disputes between the Parties to this Agreement shall be referred first to a sole arbitrator to be mutually appointed by Eurovanille SAS and

Dr.R.Mahendran, failing which the appointment shall be made pursuant to the Arbitration and Conciliation Act, 1996. The Arbitration shall be conducted in English and the venue for arbitration shall be Chennai.

29.This Agreement shall be governed and interpreted in accordance with laws of India. The Courts at Chennai shall have exclusive jurisdiction over any matters arising in connection with this Agreement."

2. The aforesaid agreement makes a reference to the second respondent herein Expovan, represented through the first respondent Dr.R.Mahendran. There is also a Suppliers Agreement dated 20.12.2014 independently between the petitioners and Expovan, which has been made as an annexure to the first agreement. Surprisingly, it has not been set out as to what is the nature of Expovan as an entity and it is only subsequently it transpired that Dr.R.Mahendran who acted as power of attorney of Expovan, was actually acting in that capacity with Expovan being the sole proprietorship concern of the grand mother of Dr.R.Mahendran, namely, Kamatchiammal, whom

Mr.V.C.Janarthanan, learned counsel represents.

3. It is not in question that disputes arose inter se the parties really out of both the agreements and it is the stand of the petitioner that the second agreement being made annexure to the first agreement, a common reference can be made. It may also be noticed that even the second agreement contains arbitration clause 9.7, as under:-

"Any disputes between the Parties to this Agreement shall be referred first to a sole arbitrator to be mutually appointed by Eurovanille SAS and Expovan, failing which the appointment shall be made pursuant to the Arbitration and Conciliation Act, 1996. The Arbitration shall be conducted in English and the venue for arbitration shall be Chennai."

4. The learned counsels for respondents seek to take an advantage of their own non-disclosure by contending that Expovan is a separate entity. However, in my view, Expovan being the sole proprietorship concern is really only the trade name and style and it cannot be a separate entity, though the agreement on behalf of Expovan was signed by Dr.R.Mahendran as its power of attorney.

5. In view of the aforesaid, I consider it appropriate to implead Kamatchiammal, residing at No.15, Kamaraj Veedhi, Mahalingapuram, Pollachi, Coimbatore-642 002 (details furnished by the learned counsel for respondent Nos.2 and 3) as the third respondent in the present petition. Memo of parties be amended accordingly.

6. In the aforesaid given facts and circumstances, it is agreed that the matter would have to go to arbitration to resolve the disputes. As to what is the effect of the second agreement being made an annexure to the first agreement, whether the second agreement also has an independent status etc. are of the matters which should be examined by the arbitrator. The defence of non-arbitrality qua any claim would also naturally be considered by the arbitrator. Even if there are two separate agreements, there certainly cannot be an issue in appointing the same arbitrator in respect of both the agreements entered into separately, apart from the consequence of the second agreement being made an annexure to the first agreement. Similarly, the effect of the other agreements being annexure to the first agreement would also

be a matter to be examined by the arbitrator. In the conspectus, it is agreed that Mr. Justice E. Padmanabhan, a retired Judge of this Court may be appointed as the sole Arbitrator and the arbitration be governed under the ageis of Madras High Court Arbitration Centre.

7. I, thus, appoint Mr. E. Padmanabhan, a retired Judge of this Court as the Sole Arbitrator to enter upon the reference and adjudicate the disputes *inter se* the parties. The arbitration proceedings will be conducted under the ageis of Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Madras High Court Arbitration Centre (MHCAC) (Arbitration Proceedings) & (Administrative Cost and Arbitrators' Fees) Rules, 2014.

8. The Original Petition, accordingly, stands allowed, leaving the parties to bear their own costs.

Sd/ (S.K.K., CJ.)
18.12.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/05.02.2016

COURT OFFICER

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