

In the High Court of Judicature at Madras

Dated : 24.03.2015

Coram :

The Hon'ble Mr. Justice M.M.Sundresh

O.P.No.300 of 2013

Religare Securities Limited,
rep. by its Authorized Signatory
Venkiah Elumalai,
D3, P3B, District Center,
Saket, New Delhi-110 017. ... Petitioner

-vs-

- 1.Escrow Tech India Pvt. Ltd.,
'Creative Enclave' 3rd Floor,
148-150, Luz Church Road,
Mylapore,
Chennai-600 004.
- 2.Geodesic Limited,
B-3, Linic Industries,
Opposite State Bank of India,
Cross Road B, MIDC,
Andheri East,
Mumbai-93. .. Respondents

Petition filed under Sections 11 (5) and 11 (6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to resolve the disputes which has arisen between the Petitioner and the Respondents.

For Petitioner : Mr.R.Sunil Kumar

For Respondent : Mr.K.Harishankar for R1
No Appearance for R2

* * * * *

O R D E R

On 18.01.2013, a tripartite agreement has been entered into between the petitioner and respondent Nos,1 and 2. In pursuant to the said agreement, respondent No.2

deposited the Deposit Materials with respondent No.1. The agreement is with respect to the purchase order on sofewares. The agreement contains arbitration clause. Clause 17 of the agreement deals with the said arbitration, which is extracted hereunder:-

''17.Dispute Resolution. In the event of any dispute between the Parties relating to this Agreement or the Escrow, then any disputing Party may submit the dispute to arbitration, and if so submitted, such dispute shall be finally settled by arbitration conducted in accordance with the rules of the Indian Arbitrtion and Conciliation Act, 1996 in force when notice of arbitration is send as per these rules. The disputing Parties shall attempt to mutually agree upon a neutral arbitrator. If the disputing Parties cannot reach such agreement, they shall request the appropriate court where the arbitration is to be held to designate a neutral arbitrator. Any arbitration involving EscrowTech as a party shall be conducted in Chennai, Tamilnadu, India. Any arbitration to which EscrowTech India is not a party shall be conducted in Beneficiary's city as indicated at the beginning of this Agreement. The

institution of any arbitration proceeding hereunder shall not relieve any Party of its obligation to make payments under this Agreement. The decision by the arbitrator shall be binding and conclusive upon the Parties, their successors, assigns and trustees and they shall comply with such decision in good faith, and each Party hereby submits itself to the jurisdiction of the courts of the place where the arbitration is held, but only for the entry of judgment or for the enforcement of the decision of the arbitrator hereunder. Judgment upon the award may be entered in any court having jurisdiction."

2. The agreement also provides for procedures. The petitioner being the Beneficiary shall be entitled to receive the Deposit Materials if release condition described in Exhibit B occurs. As per Clause 9 of the agreement, notice is required to be given to respondent No.1. After receiving the said notice, under Clause 9(b), respondent No.1 shall then send written notice to respondent No.2 being the owner and make a request for release.

3. Sub-Clause (c) of Clause 9 deals with release of Deposit Materials and waiting period. Under Clause 9(d), if respondent No.1 receives a timely notice of dispute or objection, it has to conclude on a review of evidence provided by the said owner that it has got valid objection. Once such a conclusion is arrived, respondent No.1 is not required to release Deposit Materials immediately to the Beneficiary viz., the petitioner, until the dispute or objection is resolved between them in accordance with Clause 17 or by the order of the Court. Such resolution will determine whether or not the petitioner is entitled to receive the Deposit Materials from respondent No.1. It has also made therein that respondent No.1 has no obligation to determine whether or not the petitioner is entitled to the Deposit Materials.

4. Under Clause 21, if respondent No.1 is uncertain as to any duty, obligation, demand or right, it can hold the Deposit Materials and refrain from taking any action and wait for a final resolution under Clause 17 or a Court order.

5. Clause 29 speaks about the Governing Law and as per which, the laws of the Republic of India would govern the parties.

respondent No.1 seeking to receive the Deposit Materials in accordance with Clause 9, which was duly sent to respondent No.2. Unfortunately, an objection/dispute has been raised, based upon which, respondent No.1 has not released the Deposit Materials. After exchange of notices, the petitioner has appointed Hon'ble Mr. Justice K. Chandru (since retired) as a neutral arbitrator. Thereafter, the present petition has been filed.

7. Though respondent No.2 was served with notice and its name has been printed in the cause list, no one has entered appearance and there is no representation on behalf of respondent No.2.

8. In the counter-affidavit filed by respondent No.1, the following stand has been taken:-

'12. In keeping with the provision under Clause 9(d) it is clear that the Petitioner has to resolve the dispute with the 2nd Respondent arising out of the objections raised by the 2nd Respondent, and thereafter, subject to the arbitration award or court order as the case may be, this Respondent shall release the Deposit materials in terms of the Agreement. This Respondent is not a necessary party to the Arbitration proceedings and any Award passed by an Arbitral Tribunal duly constituted in

accordance with the Agreement shall be binding on the Respondent. Therefore, the presence of this Respondent in the arbitration proceedings is absolutely unnecessary. It is further submitted that so long as payments are being made by the Petitioner to this Respondent to keep the Deposit Material, in terms of the Agreement, this Respondent shall be bound to keep the Deposit Materials and release it upon resolution of the disputes."

9. The submissions made by the learned counsel for the petitioner merits acceptance. Applying the ratio laid down by the Hon'ble Apex Court in **National Insurance Company Limited v. Boghara Polyfab Private Limited, reported in (2009) 1 SCC 267**, there is no difficulty in holding the jurisdiction, existence of the disputes as well as arbitration clause between the parties, viz., the petitioner being the Beneficiary and respondent No.2 being the Owner. In view of the specific stand taken by respondent No.1 in paragraph 12 of the counter-affidavit filed read with Clause 9(d) of the agreement, there is no necessity to include respondent No.1 as a party to the arbitral proceedings. The undertaking given by respondent No.1 in the counter-affidavit is hereby recorded. It is,

however, taken note of that the appointment of Hon'ble Mr. Justice K.Chandru (since retired) as an arbitrator in this petition, is not objected to by respondent No.2. It is also made clear that respondent No.1 is bound by the undertaking given and thus, it has to act as per the award to be passed by the learned arbitrator.

10. Accordingly, **Hon'ble Mr. Justice K.Chandru**, retired Judge of this Court is appointed as sole Arbitrator to decide the dispute between the petitioner and respondent No.2 and after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix the remuneration and other incidental expenses, which shall be borne by the parties equally. In the event of respondent No.2 not entering appearance, the same may be borne by the petitioner at the initial stage to form part of the main case. Insofar as payment required to be made to respondent No.1 to keep the Deposit Materials, the same will have to be made in terms of the agreement entered into between the parties. It is also open to the arbitrator to pass appropriate orders pending arbitration in this regard.

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

sd/.M.M.S.J

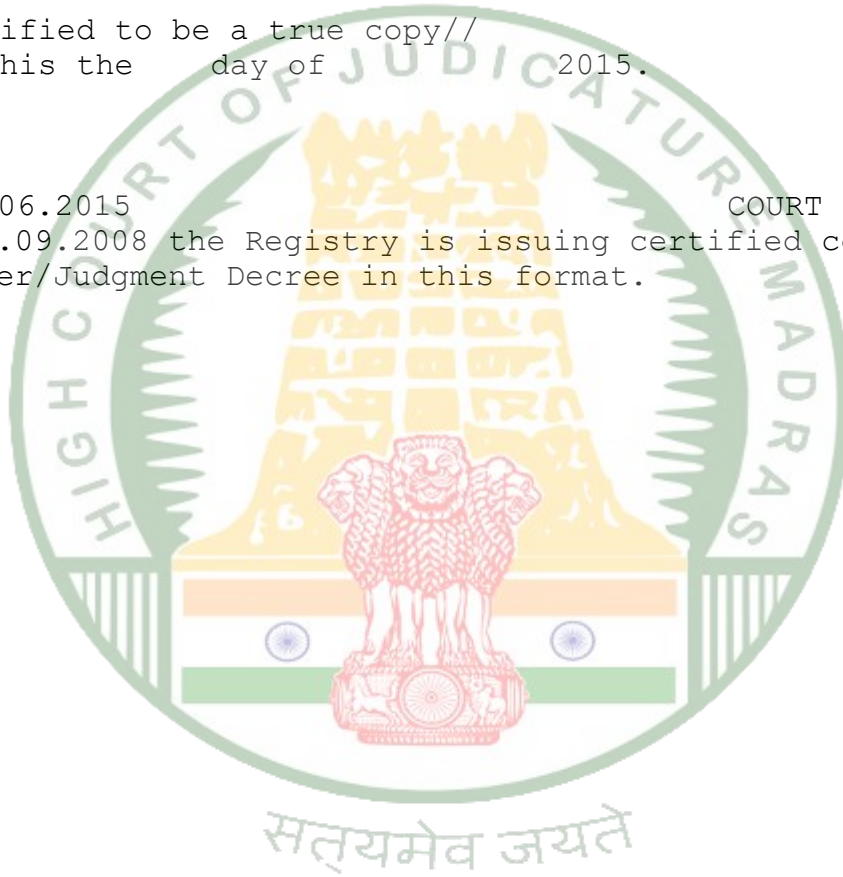
24.03.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/09.06.2015

COURT OFFICER

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



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