

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 114 OF 2016

M/s. Global Veetra Helicorp Ltd. }	Petitioner
versus	
Airports Authority of India }	
and Anr. }	Respondents

Mr. Rafique Dada - Senior Advocate with
Mr. Vishwajit Sawant, Ms. Tanya
Patankar i/b. Mr. Prabhakar M. Jadhav
for the petitioner.

Mr. Ajay Khaire with Ms. Deepali
Kantharia and Roopadaksha Basu i/b.
M/s. The Law Point for respondent no. 1.

Mr. N. R. Bubna with Mr. Ajay Khairnar
i/b. Mr. D. A. Nalawade for respondent
no.2.

**CORAM :- S. C. DHARMADHIKARI &
DR. SHALINI PHANSALKAR-JOSHI, JJ.**

DATED :- APRIL 29, 2016

P.C. :-

We have heard both sides and we find that the writ petition should not be kept pending in this court for resolving a dispute under a licence agreement for paved surface for porta cabin and an agreement, copy of which is at page 34 of the paper book, between the Airports Authority of India and the petitioner before us, in relation to the licence so as to construct hanger on build, operate and transfer basis to operate non scheduled air

transport services. The land was allotted in terms of this licence and we are concerned with the dispute which emanates from an interpretation and of clause 4 of this agreement. The petitioner has a definite version and interpretation with regard to this clause and a similar clause in the further agreement, copy of which is at page 53 of the paper book. It would submit that their obligation and if at all to pay would not be from the date specified in a document annexed as Annexure 1 to the affidavit in reply of respondent no. 1 Airports Authority of India. That is the policy decision dated 20th October, 2014.

2) When we put to the parties as to why such a dispute should be a subject matter of the writ petition and why it cannot be resolved by contractual terms, reliance was placed by Mr.Khaire learned counsel appearing for respondent no. 1 on a clause in the agreement and which is styled as an arbitration clause. That clause reads as under:-

“26. All disputes and differences arising out of or in any way touching or connecting this Agreement (except those decision whereof is otherwise herein before) expressly provided for or to which the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and the rules framed there under are now in force or which may hereafter come into force are applicable, shall be referred to the sole arbitration of person to be appointed by the Chairman of the Authority or in case the designation of the Chairman is changed or his office is abolished by the person for the time being entrusted, whether or not, in addition to other functions with the functions of the Chairman, Airports Authority of India

by whatever designation such person may be called and if the arbitrator so appointed and willing to act, to sole arbitration of some other person to be similarly appointed and willing to act a such arbitrator. Licencee shall have no objection to any such appointment that the arbitrator so appointed is a servant of the Authority and that he had to deal with the matter to which this Agreement relates and that in the course of his duties as such servant of the Authority he had expressed views on all or any of the matters in dispute or difference. The award of the arbitrator so appointed shall be final and binding on the parties and shall not be challenged in any Court of Law. The arbitrator may, with the consent of the parties, extend from time to time the time for making the publication of the award.”

3) We brought to the notice of Mr. Dada appearing for the petitioner this clause and Mr. Dada, on instructions, agrees that the petitioner would approach this named arbitrator and in terms of this clause and would have no objection to the reference of this dispute, which is subject matter of this petition, to the arbitrator. We record the statement of both, Mr. Dada and Mr. Khaire that the jurisdiction and the competence of the arbitrator and the arbitral tribunal will not be questioned by the parties. Mr. Dada then addresses us on the point of an ad-hoc and emergent measure. He relies upon our order passed on 25th April, 2016 and reiterates the statement that the sum of Rs.84,50,100/- would be deposited within the time stipulated in this order without prejudice to the rights and contentions of both sides.

4) Mr. Khaire would submit that this is not a sum which should be determined as finally payable or even ad-hoc and

interim measure. However, what we have noted is the petitioner's urgent request and which would mean that if the petitioner does not comply with the clauses of the agreement referred in the petition, it would invite consequences including causing breach of the distinct contract which it has with a public entity. Mr. Dada submits that the petitioner has been informed by the Airports Authority of India that until and unless it complies with the terms and conditions of the agreement as understood by them, it would not be permitted to park their helicopters or utilise the facilities including at an airport at Madurai.

5) We have taken care of one part of the dispute in relation to porta cabin. Mr. Dada submits that for the time being and without prejudice to the rights and contentions, the petitioner is advised to pay such sums as are determined in relation to porta cabin. However, in respect of the dispute referred above under the licence agreement, since the petitioner has sought time to comply with its statement recorded on 25th April, 2016 so also brought in substantial sums, namely, 50% of the amount demanded, we direct the Airports Authority of India, purely as an ad-hoc and interim measure to grant the no-objection certificate to enable the petitioner to park its helicopters or to

utilise the services at the airport. However, that does not mean that the petitioner is relieved of its obligations in terms of the other conditions. The petitioner shall be granted such a conditional and without prejudice no-objection within a period of four weeks from today. Pending such grant, the Airport Authority and its officials shall permit landing and parking of the helicopters on compliance with other terms and conditions.

6) Our order and direction shall be subject to the petitioner making a proper application invoking the jurisdiction of the arbitrator under section 17 of the Arbitration and Conciliation Act, 1996. Once this arbitration is under the said Act, then, all measures, interim or otherwise, can be obtained and by proper application. Any such application shall be proceeded and decided in accordance with law uninfluenced by the tentative and ad-hoc arrangement made by us. All contentions on the contractual disputes are kept open.

7) The writ petition is disposed of in the above terms. There would be no order as to costs.

(DR. SHALINI PHANSALKAR-JOSHI, J.) (S.C.DHARMADHIKARI, J.)