

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM:

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER

C.M.A.No. 2434 of 2016
and
CMP No.17128 of 2016

1. M/s. Sri Purvikaa International
No.56/04, BT Market Road,
Gandhi Bazaar Street
Bargur, Krishnagiri
Tamil Nadu - 635 107
 2. Sujeeth Traders
No.56/04, BT Market Road,
Gandhi Bazaar Street
Bargur, Krishnagiri,
Tamil Nadu - 635 107
 3. B.V.Shanmugam
No.56/04, BT Market Road,
Gandhi Bazaar Street
Bargur, Krishnagiri,
Tamil Nadu - 635 107
 4. S.Porkodi
No.56/04, BT Market Road,
Gandhi Bazaar Street
Bargur, Krishnagiri,
Tamil Nadu - 635 107
- .. Appellants

-vs-

1. Religare Finvest Limited
Rep.by its Authorized Representative
Mr.Mukesh Kumar Choduhary
Having its Registered office at
D-3, P3B, District Centre
Saket, Delhi - 110 017
- .. Respondent

Civil Miscellaneous Appeal filed to set aside the exparte award passed by the Arbitrator in Arbitration Case No.RFL/L-1/17- 2016 dated 25.07.2016.

For Appellant : Mr.C. Samivel

For respondent : Mr. S.Namasivayam

J U D G M E N T

1.Mr.S.Namasivayam, who appears for the respondent, has drawn my attention to Clauses 20.1 and 20.2 of the agreement obtaining between the parties. The said Clauses are extracted herein below for the sake of convenience:

"... .. 20.1. Any and all disputes, claims, differences arising out of or in connection with this Agreement and the schedule/s attached hereto or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the RFL and the award thereupon shall be binding upon the Parties to this Agreement. The Arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The place of the arbitration shall be in Delhi. The proceeding of Arbitration tribunal shall be conducted in English language. Each Party shall bear cost of representing its case before the Arbitrator. Costs and charges of Arbitrator to be shared equally unless otherwise provided for in the award.

20.2. The Borrower(s) further agree that all claims, differences and disputes, arising out of or in relation to dealings/ transaction made in pursuant to this Agreement including any question of whether such dealings, transactions have been entered into or not, shall be subject to the exclusive jurisdiction of the Courts at Delhi only.

IN WITNESS WHEREOF the Parties thereto have signed this Agreement in acceptance of all the terms and conditions stated hereinabove on the day, month, year and place mentioned herein below."

(emphasis is mine)

1.1. Based on the aforesaid clauses, Mr. Namasivayam, says that the place of arbitration being Delhi, only Delhi would have jurisdiction, in view of the parties having agreed to exclude jurisdiction of all other Courts.

1.2. Furthermore, in support of his submission, learned counsel relies upon the judgment of the Supreme Court, in the case of Bharat Aluminium Co.Ltd., & Others v. Kaiser Aluminium Tehnical Service, Inc., and Others, CDJ 2012 SC 624.

1.3. It is, thus, the submission of Mr.Namasivayam, that this Court would not have jurisdiction, despite the fact that the agreement is executed in Chennai.

1.4. Learned counsel says that, while there is no dispute that the subject property is located outside the Delhi, however, given the fact that the seat of arbitration is Delhi, the place of execution of the agreement and, the location of the subject property, would not be relevant factors in the instant case.

1.5. Mr. Namasivayam, says that, in fact, the subject property, qua, which the receiver has been appointed, is located at Krishnagiri, which is geographically located on the border of State of Tamil Nadu and Karnataka.

2. I may only note that the counsel for the appellants asserts that the loan agreement was executed in Chennai and, the property, qua which the receiver was appointed, is situate within the state of Tamil Nadu.

3. Be that as it may, it is quite evident that the parties have agreed that Courts in Delhi, where the seat of arbitration is located, will have exclusive jurisdiction.

4. The impugned order was passed by an Arbitrator at Delhi.

5. Having regard to the facts and, submissions made before me, to my mind, the observations made by the Supreme Court in paragraph 96 of the judgment in the case of Bharat Aluminium Co.Ltd., would apply. For the sake of convenience, the observations made therein are extracted herein after:

" 96. We are of the opinion, the term subject matter of the arbitration cannot be confused with subject matter of the suit. The term subject matter in Section 2(1)(e) is confined to Part I. It has a reference and connection with the process of dispute resolution. Its purpose is to identify the courts having supervisory control over the arbitration proceedings. Hence, it refers to a court which would essentially be a court of the seat of the arbitration process. In our opinion, the provision in Section 2(1)(e) has to be construed keeping in view the provisions in Section 20

which give recognition to party autonomy. Accepting the narrow construction as projected by the learned counsel for the appellants would, in fact, render Section 20 nugatory. In our view, the legislature has intentionally given jurisdiction to two courts i.e. the court which would have jurisdiction where the cause of action is located and the courts where the arbitration takes place. This was necessary as on many occasions the agreement may provide for a seat of arbitration at a place which would be neutral to both the parties. Therefore, the courts where the arbitration takes place would be required to exercise supervisory control over the arbitral process. For example, if the arbitration is held in Delhi, where neither of the parties are from Delhi, (Delhi having been chosen as a neutral place as between a party from Mumbai and the other from Kolkata) and the tribunal sitting in Delhi passes an interim order under Section 17 of the Arbitration Act, 1996, the appeal against such an interim order under Section 37 must lie to the Courts of Delhi being the Courts having supervisory jurisdiction over the arbitration proceedings and the tribunal. This would be irrespective of the fact that the obligations to be performed under the contract were to be performed either at Mumbai or at Kolkata, and only arbitration is to take place in Delhi. In such circumstances, both the Courts would have jurisdiction, i.e., the Court within whose jurisdiction the subject matter of the suit is situated and the courts within the jurisdiction of which the dispute resolution, i.e., arbitration is located.

6. Based on the aforesaid legal position, counsel for the appellants seeks to withdraw the appeal and approach the appropriate forum in accordance with law.

7. Learned counsel for the appellants expresses only one apprehension, which is that, since the appellants require some time to approach the appropriate forum, they should not be faced with precipitative action, in the interregnum.

8. Mr. Namasivayam, the learned counsel for the respondent, fairly states before me that the respondent will not take any precipitative action for a period of four weeks from the date of receipt of a copy of the order.

9. The appellants are, accordingly, permitted to withdraw the appeal and make endorsement in that behalf.

10. The respondent counsel's statement that no precipitative action will be taken for a period of four weeks from the date of issuance of a copy of the order is taken on record.

11. The appeal and the pending application are, accordingly, closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ga
To

1.Mr.Arvind RATHAUR, Advocate
Sole Arbitrator,
Chamber No.330, Western Wing,
TIS HAZARI Court, Delhi-110054/

2.The Sub Assistant Registrar,
Original Side,
High Court, Madras-104.

सत्यमेव जयते

C.M.A.No.2434 of 2016

msm[co]
srg 26/10/2016

WEB COPY