IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.12.2017

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

O.P. No.533 of 2017

GTN Enterprises Limited
(formerly known as M/s.Packworth Udyog Limited)
3rd Floor, Palai Towers,
M.G.Road, Ravipuram,
Kochi - 682016 .. Petitioner

-vs-

M/s.Veejay Lakshmi Textiles Limited
Sengalipuram, N.G.G.O. Colony,
P.O., Coimbatore - 641 022. .. Respondent

Prayer: Petition filed under Section 11(5) of the Arbitration & Conciliation Act, 1996 to appoint a sole arbitrator to adjudicate upon the disputes between the parties.

For Petitioner : Mr.Rahul Balaji
For Respondent : Mr.S.Jayaraman

ORDER

This petition seeks the appointment of a Sole Arbitrator to resolve the disputes between the petitioner and respondent.

2. The admitted facts and sequence of dates and events is as follows:

i) The respondent was running a spinning unit in Udumalpet with an installed capacity of 8304 spindles.

ii) On 12.02.2003, the respondent issued orders discharging 12 employees from employment and the workers raised an Industrial dispute before the Labour Court, Coimbatore, challenging the same.

iii) A Memorandum of Understanding (MoU) was entered into by the respondent with the petitioner on 22.12.2004 under which the respondents' spinning unit was agreed to be sold as a going concern to the petitioner.

iv) The MoU documented the factum of existing disputes between the management and 12 employees and the undertaking of the respondent to settle all pending liabilities in this regard.

v) Thereafter, sale deeds dated 19.01.2005 and a Slump Sale Agreement dated 31.01.2005 were entered into between the parties.

vi) Simultaneously, the parties executed a deed of indemnity providing that should any liabilities transpire in relation to the sale effected by the respondent to the petitioner, then the respondent would unequivocally indemnify the petitioner in that regard.

vii) The petitioner was impleaded as a party to the labour dispute. On 27.11.12, the Labour Court, Coimbatore, set aside the termination of the services of nine workmen directing the reinstatement of the workmen with continuity of service and full backwages. The award was published on 02.07.13. The award was passed as against both the respondent as well as the petitioner holding the respondent liable upto the date of transfer of ownership being 31.01.05 and the petitioner liable for the period thereafter.

viii) The petitioner had been issued notice to appear before the Labour Court but, inspite of initially engaging counsel to represent it, did not pursue the matter further and had been set exparte.

ix) The respondent entered into a settlement with the workers on 27.08.13 in terms of section 18(1) of the Industrial Disputes (ID) Act.

x) A Computation Petition (CP) was filed by the workers before the Labour Court on 08.11.13.

xi) The respondent settled the workmen as per the award passed against it and the matter has attained finality as regards this aspect of the award.

xii) In December 2014, the petitioner filed a petition belatedly to set aside the award passed by the Labour Court that was dismissed on 06.07.15 making various adverse remarks about the conduct of the petitioner and the attempts made by it to avoid liability to the workmen.

xiii) Pending adjudication on the CP before the Labour Court, the petitioner filed writ petitions in W.P.Nos.24724 and 24725 of 2015 challenging award dated 27.11.12, arraying the respondent as the 11th respondent. A stay of operation of the award was granted by the Court on 11.08.15 upon condition that 50% of the back wages awarded be deposited in court on or before 25.10.2016.

xiv) Further negotiations took place with the unions representing the employees and an amount of Rs.32,00,000/- was arrived at as full and final settlement to the employees after efforts at mediation by the High Court.

xv) On 26.10.2015, the CP was withdrawn as settled and consequently, the writ petitions were withdrawn by the petitioner as well.

3. Mr.Rahul Balaji, appearing for the petitioner would state that the petitioner is entitled to the amount of Rs.32,00,000/- paid to the workers and has made several efforts to recover the same from the respondent. The petitioner, he would say, is bound to be reimbursed in the light of clause 18 of the MOU wherein the respondent specifically undertakes to settle all liabilities relating to and arising from the disputes with the workers terminated prior to transfer of the unit to the petitioner. The requests and demands of the petitioner in this regard were to no avail in the light of the categorical denial of the respondent in this regard. Since the efforts for resolution of the disputes failed, a request for arbitration was made in terms of the arbitration agreement, clause 11 of the MoU between the parties. There was no response from the respondent and the petitioner is thus before this court with the present prayer in terms of section 11(5) of

the Act for appointment of arbitrator.

4. Mr.Jayaraman for the respondent would argue that there was no dispute, much less an arbitral dispute, that existed as between the parties. The reinstatement of the workers had been ordered by the Labour Court in 2012 and as such the present petition is hopelessly barred by limitation. As regards clause 11 of the MOU, he would state that it applied only to 'pending dues' and such dues had been settled by the respondent. Any demand over and above the same would not, according to him, come within the ambit of the said clause.

5. He places reliance on the judgement of the Supreme Court in the case of *Anakapalle Co-operative Agricultural and Industrial Society Ltd vs Workmen and others* (AIR 1963 SC 1489) to the effect that the transferor company, in the case of transfer of a unit, would be liable to settle workmen's dues only till the date of employment and any liability ensuing thereafter, either in relation to the continuance of employment or compensation for loss thereof, will have to be fastened only upon the transferee company. The provisions of section 25FF of the ID Act are quoted and relied upon in this regard. Learned counsel would emphasize the position that the ID Act was a special enactment and would have to take precedence over the applicability of the Arbitration and Conciliation Act.

6. Heard learned counsel. The MOU between the parties

contains Clause 11 providing as follows:

> *11. All the employees of the industrial undertaking which is the subject matter of the sale, shall continue to be the employees of the said Undertaking, but will become employees of the Transferee Company from 31.1.2005. The Transferee Company is free to negotiate and arrive at any new settlement with the workers of the undertaking. If, as a result of such settlement, if the employees become eligible for any benefit under Section 25FF, then such liabilities will be on account of the Transferee Company.*
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> *The Transferor Company has agreed to settle any pending liabilities for workers of the Undertaking who have been discharged/terminated/dismissed before 31.1.2005. This will also include the claims relating to pending cases by 12 workmen who have been terminated before 30.1.2005.'*

7. The first argument of the respondent is that the dispute as between the petitioner and respondent on the one hand and the workers on the other has been decided by the Labour court applying the provisions of section 24FF of the ID Act and as such nothing further survives in the matter to be arbitrated upon so as to attract the arbitration agreement between the parties. The claim raised by the petitioner now relates to the reimbursement of a sum of Rs.32,00,000/- remitted by it to the workers as dues payable for the period after the date of transfer of undertaking of the unit to it, being 31.3.2005. According to Mr.Jayaraman, the question of reimbursement would not arise in the light of section 25FF of the Industrial Disputes Act as per which the respondent ceased to be an

employer of the terminated employees as on 31.3.2005 when the transfer of the mill to the petitioner was effected. Mr.Jayaraman would emphasize that the Industrial Disputes Act is a special enactment and the dispute as regards the parties stands resolved by the Labour Court. There can, according to him, be no further adjudication upon the issue and the award passed by the Labour court and the consequent settlement between the parties is the last word on the matter. He also relies on the judgment of the Supreme Court in the case of *A.Ayyasamy V. A. Paramasivam and others* ((2016) 10 SCC 386) to the effect that fraud has been played upon the parties by the petitioner herein and as such it is not entitled to the relief sought for by it in this petition.

8. There can be no quarrel upon the statement that the ID Act is a special enactment. However so is the Arbitration and Conciliation Act, both statutes having been enacted to serve a special and identified purpose. In the present case, I see no conflict between the two enactments in so far as, in my opinion, the application of the ID Act with reference to the matter in dispute has ceased with the award dated 27.11.15 and settlement between the parties and consequent withdrawal of the CP and WPs by the workmen and petitioner respectively. The stage of Industrial adjudication is over and closed. However, the dispute in the present case is entirely different and falls,

in my opinion, within the realm of a commercial dispute between the petitioner and the respondent that is certainly subject to the process of arbitration.

9. The respondent does not dispute the existence of the clause providing for arbitration as follows:

> *18. Any deeds or disputes arising out of this Slump Sale Agreement or any matter arising out of it either at the time of its execution or at the time of Transferee Company taking possession of the Industrial undertaking, such deeds or disputes, shall be settled by mutual discussions between the parties. If however, such a settlement be not possible, then and only then shall such disputes be referred to arbitration under Arbitration and Conciliation Act, 1996 and any amendments or re-enactments thereof.*

10. The applicability of the above clause to the dispute on hand is what is questioned by the respondent. A reading of the clause shows that it is worded widely and contains no exceptions of any nature. In the light of the discussion above I hold that the arbitration agreement is applicable to the resolution of the dispute raised by the petitioner and the same constitutes an arbitrable dispute.

11. Yet another defense raised relates to the claim of the petitioner being barred by limitation. The provisions of Section 11(6)(a) only require me to examine the existence of an arbitration clause as a pre-condition to the appointment of an Arbitrator and my

satisfaction in this regard is recorded above. The objection on limitation is however, one that impinges on the merits of the claim sought to be made and is reserved to be raised as an objection before the Tribunal, if the respondent so chooses.

12. Reliance of Mr.Jayaraman on the case of *A.Ayyasamy (supra)* does nothing to advance his case. No fraud, much less grievous and palpable fraud, has been established by the respondent in this matter. In *A.Ayyasamy's* case, the Supreme Court has expressed the view that except in cases of very severe fraud established by the party making the allegation that shall be addressed by the Court in an application under Section 8/Section 11 of the Act, such allegations shall be reserved to be raised before the Arbitrator. In line with the aforesaid conclusion of the Supreme Court, I reserve the right of the respondent to raise this issue before the Arbitrator.

13. I thus appoint, upon the suggestion of the learned counsel, such suggestion made by Mr.Jayaraman without prejudice to the defenses raised, Mr.Yashod Vardhan, Senior Advocate, having his office at 155, Linghi Chetty Street, III Floor, Chennai - 600 001 as the Sole Arbitrator to enter upon reference and adjudicate upon the disputes inter se the parties. He may, 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 a copy of the order. The Arbitrator is at liberty to fix his remuneration and other incidental expenses.

14. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

18.12.2017

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Dr.ANITA SUMANTH,J.

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