

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 12TH DAY OF SEPTEMBER 2017

THE HON'BLE DR. JUSTICE ANITA SUMANTH

A.No.3581 of 2017

AND

A.No.5380 of 2017

(In the matter of Arbitration
and Conciliation Act, 1996

and

In the matter of Arbitration
disputes between M/s.Garuda
Aviation Services Pvt. Ltd. and
Airports Authority of India
over License Agreement dated
01.04.2012.

M/s. Garuda Aviation Services Pvt. Ltd.
Rep. by its General Manager
Mr.Akbar Bashah,
Garuda House,
No.142, Upper Govind Nagar,
Mumbai 400097.

..Applicant

VS

Airports Authority of India,
Rep. by Airport Director,
Chennai Airport,
Chennai 600016.

..Respondent

Application praying that this Hon'ble Court be pleased
to grant an order of stay of the operation of the Letter
No.AAM/C.031/2013/2438 dated 22.06.2017 issued by the
Respondent, pending the arbitration.

A.No.5380 of 2017:

Airports Authority of India,
Rep. by Airport Director,
Chennai Airport,
Chennai 600016.

..Applicant/Respondent

-vs.-

M/s. Garuda Aviation Services Pvt. Ltd.
Rep. by its General Manager
Mr.Akbar Bashah,
Garuda House,
No.142, Upper Govind Nagar,
Mumbai 400097. ..Respondent/Applicant

Application praying that this Hon'ble Court be pleased to vacate the order of interim stay dated 7.7.2017 and made in A.No.3581 of 2017, pending the above application.

These Application coming on this day before this court for hearing the court made the following order:-

Application No.3581 of 2017 is filed seeking an order of stay of operation of Letter No.AAM/C.031/2013/2438 dated 22.6.2017 issued by the Respondent, pending proceedings for arbitration.

2. Application No.5380 of 2017 is filed by the respondent in A.No.3851 of 2015 to vacate the order of interim Stay dated 07.07.2017 granted therein.

3. The brief facts are as follows;

(i) The applicant in A.No.3581 of 2017, Garuda Aviation Services Pvt Ltd, had, subsequent to participation in a tender floated by the Airport Authority of India, ('AAI', in short), executed a licence

agreement dated 1.4.2012 in terms of which, it was awarded a licence for management of a car parking facility at the Anna International Terminal and Kamaraj Domestic Terminal of the Chennai Airport. The licence was originally granted for a period of one year from 1.4.2012 to 31.3.2013.

4. A dispute was raised by a third party, who had also sought the award of the same licence. A Writ Petition, W.P.No.8097 of 2014, was filed by the third party pointing out that the licence had been offered to the applicant (arrayed as the second respondent in the Writ Petition) at the reduced licence fee of Rs.1,25,00,000/- as against the substantially higher price of Rs.1,53,00,000/- at which it was offered to the third party.

5. The Writ Petition was ordered on 20.6.2014 and the following directions issued:

'7. In such view of the matter, this Court is inclined to pass the following directions:

(a) If the existing contractor, namely, the second respondent is ready and willing to pay a sum of Rs.1,53,00,000/- per month, which has been offered by the petitioner, the first respondent is directed to permit him to continue the contract till the new contract has been finalised at the rate of Rs.1,53,00,000/-.

(b) If the existing Contractor, does

not accept to pay such amount of Rs.1,53,00,000/-per month, the first respondent is directed to offer the contract to the writ petitioner till the new contract has been finalised.

(c) The petitioner shall also undertake that in the event of the contract is given to him for Rs.1,53,00,000/- per month, he will not claim any right to continue the contract or any right or equity for awarding future contract in his favour. This period of contract will be restricted till the new tender is finalised. The petitioner as well as the second respondent, who is the existing contractor, shall also participate in the new tender that may be floated by the first respondent.

(d) The first respondent shall take a decision on or before 30.06.2014 as the existing contract period will expire on 30.06.2014.'

(iii) Though the applicant had not chosen to enter appearance and participate in the proceedings in W.P.No.8097 of 2014, pursuant to the order passed on 20.6.2014, the applicant has been managing the car parking facility and remitting licence fee of a sum of Rs.1.53 crores every month enhanced to a sum of Rs.1.86 crores along with taxes thereupon, being presently paid.

(iv) The AAI appears to have accepted the position that the tenure of the agreement is till 30.09.2017 as seen from its letter dated 6.6.2017 to the applicant to the

following effect:

'Sir,

Please refer this office letter No.AAM/C 0321/2013/665-74 dt 20.02.2017 vide which the subject license has been extended for a period upto 31.03.2017.

It has been decided by the Competent Authority to extend the subject license for a further period of 30.09.2017 or finalization of regular tender whichever is earlier at Chennai Airport on the existing license fee.

The above extension is subject to clearance of all outstanding dues which may be complied with. The other terms and conditions of license shall remain unchanged.'

(v) While this is so, letter dated 22.6.2017, i.e., the trigger for the present applications under section 9 of the Arbitration and Conciliation Act, 1996 (in short, 'Act') was received from AAI by the applicant to the following effect:

'Dear Sir,

Please refer to this office letter AAM/C.3292/2011/695-705 dated 14.03.2012 vide which the subject license was awarded to you. The same is under extension upto 30.09.2017 or finalisation of regular tender for Vehicle Parking Rights at International & Domestic Terminal, whichever is earlier.

In this regard, the tender for the subject facility has been awarded to a new agency, you are requested to be in readiness to hand over

the area on short notice.'

(vi) In view of the proposed and sudden termination of the licence agreement, the applicant has approached this Court seeking interim protection in terms of section 9 of the Act. This Court, vide order dated 7.7.2017, granted an interim stay of the letter dated 22.6.2017 that is being extended from time to time.

(vii) Disputes have thus arisen between the parties. Pursuant to the aforesaid order of this Court, a request has been made by the applicant for initiation of proceedings for arbitration in terms of clause 29 of the Licence Agreement between the parties that, vide letter dated 16.8.2017, appears to have been summarily rejected by AAI in the following terms:

'Moreover, the baseless allegations and arguments being raised regarding reduced parking area was already replied vide this office letter No.AAM/C.031/2013/3217 dated 29.11.2016. As regarding appointment of Arbitrator, it is to bring to your kind notice that M/s. Garuda Aviation Private Ltd., has already preferred to move the Hon'ble Madras High Court challenging this office letter No.AAM/C.031/2013/2438 dated 22.06.2017, without adhering to clause No.29 of the General terms and conditions.

In view of the above, your request for appointment of Arbitrator is baseless and is summarily rejected. And the baseless allegation

and arguments are mere attempts to continue with the temporary contract, which is being viewed seriously by the competent authority and will have bearing on all future contracts with AAI.

This issues with the approval of the Airport Director'

6. However, Mr.Father Xavier Arulraj, learned counsel appearing for the Airports Authority of India would draw the attention of the Court to letter dated 31.7.2017, where the AAI has, infact, conveyed its decision to consider the appointment of Arbitrator as requested by the applicant. He would confirm before this Court the intention of AAI to accept the request for alternate dispute resolution as agreed to between the parties and as set out in the licence agreement dated 1.4.2012 in clause 29 as follows:

'29. All disputes and differences arising out of or in any way touching or concerning this Agreement (except those the decision whereof is otherwise herein before expressly provided for or to which the Public Premises (Eviction of Unauthorised Occupants) Act and the rules framed thereunder which are now enforced or which may hereafter come into force are applicable), shall, in the first instance, be referred to a Dispute Resolution Committee (DRC) setup at the airports, for which a written application should be obtained from the party and the points clearly spelt out. In case the dispute is not

resolved within 45 days of reference, then the case shall be referred to the sole arbitration of a person to be appointed by the Chairman/Member of the Authority. The award of the arbitrator so appointed shall be final and binding on the parties. The Arbitration and Conciliation Act 1996 shall be applicable. Once the arbitration clause has been invoked, the DRC process will cease to be operative.

It will be no bar that the Arbitrator appointed as aforesaid is or has been an employee of the Authority and the appointment of the Arbitrator will not be challenged or be open to question in any Court of Law, on this account.'

7. This Court thus records the undertaking and acceptance of the learned counsel on behalf of the Airport Authority of India to proceed in accordance with clause 29 of the licence agreement dated 1.4.2012 for resolution of disputes inter se the parties.

8. Coming to the interim protection of the subject matter of arbitration, it is an admitted position that there are arrears, as far as the remittance of the licence fee is concerned. Mr. Jenasenan, learned counsel appearing for Garuda Aviation Services, the applicant, would admit to the same, confirming that the applicant would remit the arrears of licence fee up to date on or before 18.09.2017

to the credit of these applications.

9. Let the amounts be held in an interest bearing fixed deposit, till the disposal of the proceedings for alternate dispute resolution to be commenced forthwith between the parties. The disbursal of the amounts shall be subject to the proceedings for Alternate Dispute Resolution.

10. Mr.Father Xavier Arul Raj would also point out that the Security Deposit to be furnished by way of a Bank Guarantee in terms of clause 7 of the licence agreement extracted below, has expired as on 31.1.2017 and despite regular reminders, there has been no move to revalidate the same.

'7. That the Licensee shall deposit a sum of Rs.5,88,00,000/- (Rupees Five Crore Eighty Eight Lakh only) i.e., an amount equal to last 4 months licence fee as Security Deposit in the form of Demand Draft/Pay order/Bank Guarantee from a Nationalised/Scheduled Bank in favour of Airport Director, AAI, Chennai Airport. In the event of the Licensee committing any breach of the terms and conditions of the licence agreement, the Authority may without prejudice to other rights and remedies be entitled to forfeit/adjust the total amount of Security Deposit or any part thereof.

11. The quantification of the security deposit is an amount equal to four months licence fee and is thus meant to cover non-payment of licence fee or any breach of the terms and conditions of the license agreement. A revision of the amount will now be called for in so far as the applicant undertakes to remit the licence fee as agreed to between the parties at a figure of Rs.1.83 crores per month along with service tax and other statutory levies, on or before 18.9.2017.

12. Mr. Jenasenan, appearing for the applicant would argue that no dispute has been raised by AAI till date to warrant the extension of bank guarantee. However, AAI appears to have received a representation from an employee alleging non-payment of statutory dues by the applicant. If this is indeed so, it might well constitute a breach of clause 6 of the General Terms and Conditions of the Licence Agreement dated 01.04.2012 casting an obligation to observe, perform and comply with all rules and regulations relating to labour as well as all other statutes.

13. Thus, without dilating further on this aspect of the matter, and solely as an interim measure, the applicant will furnish a bank guarantee forthwith for a sum of Rs.1 crore valid till 31.12.2017. Any further extension in

regard thereto shall be considered by the alternate dispute resolution panel/arbitrator at the relevant point of time.

14. In summary, the applications are closed by issuing the following directions:

1. The arrears of licence fee shall be remitted by the applicant on or before 18.09.2017 to the credit of these applications to be held in an interest bearing fixed deposit in a Nationalised Bank till the completion of proceedings for alternate dispute resolution.
2. The applicant shall furnish a bank guarantee for a sum of Rs.1.00 crore forthwith valid till 31.12.2017.
3. Proceedings, as agreed to by both parties, shall be immediately initiated before the Dispute Resolution Committee in terms of Article 29 of the Licence Agreement between the parties.

No costs.

Sd/-A.S.M.J

12/09/2017

//CERTIFIED TO BE A TRUE COPY//

DATED THIS THE

DAY OF

2017.

jj 13/09/2017

COURT OFFICER.

From 25th September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decree in this format.