IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2017

CORAM,

THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

O.P.No.476 of 2008

Parvenu Vanigam Private Limited,
Formerly known as Kamala Cattle
Feeds Private Limited, represented by
its Managing Director R.Selvarajan,
No.4, Suryanarayana Street,
Tollgate, Chennai-600 081. ..Petitioner

Vs.

1.M/s Integrated Finance Company Ltd.,
No.112, Thiyagarayar Salai,
T.Nagar, Chennai-600 017.

2.Sri V.Inbavijayan,
The Arbitrator,
D-103/A, Sowbagya Colony,
K.K.Nagar, Chennai-600 078. ... Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 04.02.2008 passed by the second respondent herein in the Arbitration Case No.2 of 2004 received by the petitioner herein on 06.02.2008.

For Petitioner : Mr.N.Baskaran

For Respondents : Mr.V.P.Raman for R1

ORDER

This petition has been filed by the petitioner, who was arrayed as the respondent before the learned Arbitrator, to set aside the Award dated 04.02.2008 passed by the second respondent herein in the Arbitration Case No.2 of 2004.

2. On 18.04.2001, a sanction letter was given by the first respondent in favour of the petitioner for factoring limit of Rs.50 lakhs. Accordingly, as per the aforesaid letter, a sum of Rs. 50 lakhs was sanctioned with a rider that the petitioner shall acknowledge to get a contract payment letter from the customer viz., M/s Goodfooods Dealers. The sanction letter dated 18.04.2001 forms part of the factoring agreement, which subsequently entered into between the parties on 27.04.2001. This could be seen from Clause 3(B) of the factoring agreement. As per the factoring agreement, the petitioner has been arrayed as a client and the first respondent is the company. Clause 8 of the agreement deals with the undertaking of the petitioner, which is as under.

8. CLIENT'S UNDERTAKINGS:

The Client undertaken to the Company that:-

(a) The Client shall pay to the Company forthwith, on demand, the debt if the customer rejects the

> goods/or fails to effect payment within the maturity date or declines or disputes its/his liability to pay that debt or any part thereof and/or gives as a reasons thereof any alleged by the client of the contract or for any reason whatsoever."

3. As per the aforesaid clause, the petitioner being the claimant, shall pay the company forthwith on demand the debt, in the event of the failure to effect payment by the dealer. It is also not in dispute that out of the total liability, which has arisen due to the non payment of M/s Goodfoods Dealers, a sum of Rs. 25,57,033/- was paid by the petitioner in favour of the first respondent.

4. A factoring agreement is the one by which the company makes the payment on the invoice raised by the client while dealing with the customer. In this process, the customer is not included as a party. Though the transaction was primarily between the claimant and the customer, as the payment schedule is for 90 days as could be seen from the sanction letter dated 18.04.2001 payable by the customer in favour of the claimant about 80% of the said payment will be paid in advance on the invoice by the company in favour of the client. At the time of repayment, the

company will get 100%. Normally, this payment would come from the customer. Now admittedly, the payment has not come from the customer. Therefore, in those circumstance, the petitioner being the claimant was directed to make payment as it is the one which received it from the first respondent.

5. Before the learned Arbitrator, the first respondent marked documents under Exs.A1 to A7. These documents would include sanction letter, factoring agreement, invoices, balance sheets and statement of accounts of course pertaining to the first respondent. These documents are not in dispute. On the contrary, the petitioner though made lot of reference to the communications made between the customer and the petitioner, they have not been marked as recorded by the Tribunal.

6. The Tribunal, after considering the relevant materials and after affording due opportunity, was pleased to pass an award in favour of the first respondent. Challenging the same, the present original petition has been filed.

7. The learned counsel appearing for the petitioner would submit that the Tribunal has not given sufficient opportunity and has not considered the

issues raised. There are no specific pleadings on the part of the petitioner. Even as per Clause 8 of the factoring agreement, the remedy open to the first respondent is to recover it in the manner known to law from the customer. Therefore, the petition will have to be allowed.

8. The learned counsel appearing for the first respondent would submit that sanction letter has to be read into the factoring agreement. The petitioner has not complied with the condition of direct payment as mentioned in the sanction letter from the customer. Even otherwise, as per Clause 8, in the event of non payment within 90 days, the liability is fastened on the petitioner. In this case, the documents filed by the first respondent are not denied as against no documents filed by the petitioner. The fact that the petitioner has made a sum of Rs.25,57,033/- itself would show that it has acknowledged its liability and there were transactions between the petitioner and the customer. This can also been seen from the counter affidavit which indicates the transaction *inter se* parties. Therefore, the petitioner will have to be dismissed.

9. As rightly submitted by the learned counsel for the first respondent the sanction letter dated 18.04.2001, which requires the petitioner to perform certain duties form part of the factoring agreement dated

27.04.2001. The Tribunal has given a finding that the petitioner has not perform his part. Clause 8 speaks about the liability of the petitioner. As per the aforesaid clause, the petitioner shall pay to the first respondent the debt which would accrue in the event of the customer failing to effect the payment within the maturity date. Perhaps, the petitioner wanted to fix the liability on the customer. That is the reason why, it had filed an application to implead, being not a party to the factoring agreement. The arbitration Tribunal has gives an interpretation on the provisions contained even if two views are possible, one which appears to be reasonable to the Tribunal requires to be approved by this Court while exercising power under Section 34 of the Arbitration and Conciliation Act. This Court does not find any perversity in the reasoning adopted by the Tribunal. After all two things are clear. One is with respect to the payment made in favour of the petitioner and the second is with respect to the payment made by the petitioner in favour of the first respondent being the part of the debt accrued due to the non payment by the customer. When these two factors are taken into consideration by the Tribunal resulting in an award, it does not require to be interfered with by the Tribunal. This Court does not find any opportunity being denied. The petitioner was set ex parte and thereafter, the matter was proceeded with. Though the petitioner raised several issues, they were are not backed by the documents. The documents filed by the first respondent are not in dispute. Therefore, this Court does not find any perversity in the award passed. Accordingly, the original petition stands dismissed. No costs.

07.12.2017

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M.M.SUNDRESH,J.
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