

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Original Petition No.480 of 2018

- 
1. Airports Authority of India
Represented by its Regional Executive Director,
Southern Region,
Chennai Airport, Chennai - 600 027.
2. The Dispute Resolution Committee,
By its Regional Executive Director Southern Region,
Airports Authority of India,
Southern Region,
Chennai Airport, Chennai - 600 027.
3. The Airport Director, Managlore Airport,
Kenjar, Managalore - 574 142. ...Petitioners
- VS.
- M/s.Sai Balaji Food and Beverages (India) Pvt Ltd,
Door No.1-8-450, MIG - B.70, 1st Floor,
Indian Airlines Employees Colony,
Begumpet, Hyderabad - 500 016. ...Respondent

Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Award dated 14.10.2017.

For Petitioners : Dr.Fr.A.Xavier Arulraj

For Respondent : Mr.I.Jayasingh Manohar

* * * * *

ORDER

Petitioners have filed the present Original Petition, challenging the Arbitration Award dated 14.10.2017 with regard to Issue Nos.1 to 3.

2. The sum and substance of the issue on hand is that unless there is a foreclosure, there cannot be deposit of demurrage charges and in this case, the claimant before the Arbitrator, who is the respondent herein, after initial deposit, did not make any further payment barring the payment of license fee every month for the occupation of the place in question, and that the Arbitrator had directed refund of the amount after adjusting the amount paid by the Respondent/claimant initially, as if the claimant had deposited demurrage charges along with the initial deposit.

3. Learned counsel for the Petitioners/Airports Authority of India submitted that on the wrong presumption that there was deposit of demurrage charges, which was not the case of the Respondent/claimant, the Arbitrator has granted the relief. He further submitted that no deposit was made barring a sum of Rs.4,99,222/- apart from a deposit of Rs.4,42,000/- towards Security

Deposit on electricity charges.

4. It is the contention of the learned counsel appearing for the Respondent herein that the parties are governed by the clauses in NIT and there was no Exit Clause at all, at the time of initial understanding/signing of Agreement and that having taken place, which is within the security limit, that could not go into operation because of various security clearances. Learned counsel further submitted that the Respondent/claimant cannot be blamed for non-operation and that he has operated during the notice period of 180 days, even assuming such Exit Clause applies.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. This Court is of the view that if the Award has to stand, the Respondent/Claimant will have to pay money to the Petitioners/Airports Authority of India, however, he has not challenged the Award insofar as the observation made against him is concerned.

7. Further, I am not in agreement with the contention of the learned

counsel for the Respondent/claimant that the Exit Clause has been incorporated subsequently, which he was made to sign. The NIT comprised of certain clauses which cannot be said to be exhaustive and it is open to the Petitioners/Airports Authority of India to include such other clauses for the purpose of execution of work by the parties. In this case, there was an additional clause by way of Exit Clause in the Agreement, which has been duly signed by the Respondent/Claimant and the Arbitrator has held that the Respondent/Claimant is bound by the Agreement including the Arbitration Clause.

8. On a reading of the Award insofar as Issue Nos.1 to 3 and counter-claim are concerned, it is seen that there has been an arithmetical/clerical mistake taking into account the notice period of 180 days, as if the Respondent/Claimant did not function in the said place and demurrage charges of Rs.13,76,544/- have been imposed. Apart from imposing the said demurrage charges, the Respondent/Claimant has been asked to pay the license fee for the notice period of 180 days. Admittedly, the Respondent/Claimant has paid their licence fee and this Court is of the view that such demand is not correct, even though the Respondent/Claimant has not filed separate Original Petition challenging the Award.

9. Similarly, in terms of Clauses in the Agreement, the claim was there for 180 days and after adjustment of demurrage charges, excess amount lying with the Airports Authority of India will have to be refunded to the Respondent/claimant. Since the claim was there for 180 days, there is no need for the Respondent/Claimant to pay any demurrage charges and also there is no need for the Petitioners/Airports Authority of India to refund the demurrage charges, which are said to have been deposited along with the initial deposit. As admitted by the parties in terms of the Award, a sum of Rs.9,41,222/- (Rupees Nine Lakhs Forty One Thousand and Two Hundred and Twenty Two Only) which is lying with the Airports Authority of India, is alone payable to the Respondent/Claimant.

10. With regard to Issue No.3 of the Award, admittedly, the Respondent/Claimant has to continue the contract for a period of 7 years and as of now, he has completed less than 50% of the term. If the Respondent/Claimant intends to exit the contract without completing 50% of the contract, he has to pay certain damages as per the Exit Clause.

11. Even though, it has been pointed out by the learned counsel appearing for the Respondent/claimant that in the Award, there has been a categorical finding that the Respondent has not filed certain documents, when

there is a specific clause that has been accepted by the Arbitrator, certainly, the Respondent/Claimant will have to pay the liquidated damages, which is arrived at Rs.3,00,000/- (Rupees Three Lakhs Only) and the balance amount lying with the Airports Authority of India, if any, shall be refunded to the Respondent/Claimant, within a period of 30 days from the date of receipt of a copy of this order.

This Original Petition is disposed of accordingly. No costs.
Consequently, connected Application No.4379 of 2018 is closed.

19.12.2018

Index : Yes/No

Speaking Order : Yes/No

maya/tsg/aeb

सत्यमेव जयते
WEB COPY

S.VAIDYANATHAN.J.,

maya/aeb



Original Petition No.480 of 2018

WEB COPY

19.12.2018