IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2018

CORAM

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

O.P.No.129 of 2016

1.Max Value Learning Technologies and
Consulting Private Limited,
rep., by its Managing Director
Mr.Austin P.Mathuranayagam
No.17/4, Jgannathan Road,
1/A Jamals Musfira Chambers,
Nungambakkam, Chennai-600 034.

2.Mr.Austin P.Mathuranayagam,
S/o P.J.Mathuranayagam,
No.17/4, Jgannathan Road,
1/A Jamals Musfira Chambers,
Nungambakkam, Chennai-600 034. ..Petitioners

Vs.

1.Vellore Institute of Technology-
Technology Business Incubator,
Rep., by its Secretary Mr.T.S.Thiagarajan,
Registrar, VIT University,
Vellore-632 014.

2.Mr.M.R.Ravisankar, B.A.LLB,
(Sole Arbitrator),
Door No.576, 17th Cross Phase I,
Sathuvachari, Cellore-9. .. Respondents

Original Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 24.10.2015 made in Arbitration Case No.2 of 2013 passed by the second respondent.

For Petitioners : Mr.S.Sethuraman

For Respondents : Mr.A.Saravanan for R1

ORDER

The first respondent was providing assistance to start-up companies and technology entrepreneurs for technology development and commercialisation. Thus, a scheme was started by name "Seed Support", by which, financial assistance at the early stage is to be provided for the start-up units. The petitioners sought for soft loan assistance under the scheme. Accordingly, a Loan Agreement was entered into on 01.07.2009. The agreement thus indicate the mode of payment and the availability of an arbitration clause.

2. As the petitioners did not make the payment, the first respondent invoked the arbitration clause. As per the arbitration clause, the Tribunal shall be constituted by the chairman of the first respondent or his nominee.

3. Before the Tribunal, among other things, the petitioners made a statement in writing, which is as under.

> "requested grant of 12 months time to repay the entire amount including interest as per the agreement dated 01.07.2009".

4. After framing the issues and on consideration of the pleadings as well as the documents, an award was passed against the petitioners, which is put into challenge in this original petition.

5. The learned counsel appearing for the petitioners would submit that the Tribunal was constituted unilaterally. The DST Guidelines for "Seed Support System" has not been taken into consideration. The business of the petitioners got into rough weather as it has suffered heavy loss in dealing with M/s Bharathiar University.

6. The learned counsel appearing for the first respondent would submit that in view of the admission made by the petitioners, the Tribunal has rightly passed an award. There is no dispute on the existence of the arbitration clause. Hence, no interference is required.

7. The fact that loan agreement entered into between the parties on 01.07.2009, which contains an arbitration clause is not in dispute. It is too late in the date for the petitioners to contend that its consent was not obtained. The arbitration clause clearly specifies, as contained in Article -IX with specified clause in 9.1, that a dispute shall be referred to a sole Arbitrator, who would be either Chairman of the first respondent or his nominee. The petitioners have not raised any plea that the learned Arbitrator is biased. On the contrary, the petitioners did agree to make the payment in instalments. This would show that the petitioners also did not challenge the loan agreement and its liability to pay. After all an admission made and that too, in writing is the best form of evidence. The scope and applicability of DST guidelines was also not raised. Even otherwise, this Court is of the view that those guidelines do not have any application though such an issue has been raised for the first time before this Court in this proceedings, that too, when the petitioners have agreed to pay the loan in instalments as per the DST guidelines, we are not concerned with clause 8 also. When Clause 13 does not apply to the petitioners, then there is no necessity to go into Clause 8, which issue is also sought to be raised before this Court for the first time. The admission in writing was given by the petitioners to repay it in the instalments. The statement was filed to the effect that by the petitioners in the year 2013 and now, we are

in the year 2018. The petitioners are yet to comply with their own statement. Hence, looking from any perspective, this Court does not find any merits in this original petition and the same is dismissed. No costs.

12.02.2018

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M.M.SUNDRESH,J.

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