

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.176 of 2019

M/s.Shine Medias, a partnership firm
Represented by its Partner Mr.R.Mahesh
No.66, ATT Colony, Near RTO Office
Coimbatore - 641 018.

.. Petitioner

Vs.

M/s.Trac Media Pvt. Ltd.
Rep. by its CEO
No.35, NP, 3rd Main Road
Kalaimagal Nagar
Ekkattuthangal
Chennai - 600 082.

.. Respondent

This Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, praying to

(i) appoint a Sole Arbitrator to enter upon reference and adjudicate the disputes between the petitioner and the respondent arising under the agreement dated 01.08.2016 and pass an award;

(ii) direct the respondent to pay the cost of the petition; and

(iii) pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For Petitioner : Mr.S.Ramesh

For Respondent : Mr.A.Thayaparan

ORDER

Mr.S.Ramesh, learned counsel on record for petitioner and Mr.A.Thayaparan, learned counsel on record for sole respondent are before this Court.

2. Instant 'Original Petition' ('OP' for brevity) is under Section 11 of 'The Arbitration and Conciliation Act, 1996' (hereinafter 'A and C Act' for brevity) with a prayer for appointment of Arbitrator.

3. Instant OP is predicated on an arbitration agreement, which is in the form of a clause/covenant in an agreement dated 01.08.2016 i.e., clause 20 and the same reads as follows:

'20. Any dispute arising between the parties hereto on account of breach in any of the terms of this Agreement, may be referred to an Arbitrator, selected for this purpose solely by both the parties amicably, whose decision thereon shall be final and binding on both the parties. The Arbitration shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996.'

4. For the sake of convenience and clarity, this 'agreement dated 01.08.2016' shall be referred to as 'said agreement-II'.

5. Though elaborate pleadings have been filed by both sides, sum and substance or in other words crux and gravamen of the issue in instant OP is, said agreement-II was signed by one Mayilsamy, on behalf of respondent company, but on the date of said agreement-II i.e., 01.08.2016, he was not a Director on the Board of respondent company.

6. Be that as it may, suffice to say that said agreement-II, pertains to a Talk show in a Tamil TV Channel, which goes by the name 'IDHU UNGHA MEDAI (இது உங்க மேடை)' (hereinafter 'said programme' for the sake of brevity and clarity)

7. What is of significance is, it is submitted without any dispute or contestation that prior to said agreement-II, there was another earlier agreement dated 20.04.2015 between the petitioner and the respondent with regard to said programme. This 'agreement dated 20.04.2015', shall hereinafter be referred to as 'said agreement-I' for the sake of convenience and clarity. There is no dispute or contestation that there is an arbitration clause in said agreement-I, that arbitration clause is also clause 20 and the same reads as follows:

'20. Any dispute arising between the parties hereto on account of breach in any of the terms of this Agreement, may be referred to an Arbitrator, selected for this purpose solely by both the parties amicably, whose decision thereon shall be final and binding on both the parties. The Arbitration shall be conducted as per the provisions of the Arbitration and Conciliation Act, 1996.'

8. Therefore, what unfurls with clarity and specificity is, there is an arbitration agreement between the parties with regard to production and payment for the same qua said programme. In other words, an arbitration agreement within the meaning of Section 7 of A and C Act, exists (undisputedly) between the petitioner and the respondent with regard to said programme.

9. This makes the task of disposal of this petition very simple owing to **Mayavati Trading** principle.

10. Before disposing of this petition, this Court deems it appropriate to set out that it reminds itself of Mayavathi trading principle being the principle laid down by Hon'ble Supreme Court in **Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in **(2019) 8 SCC 714**). Relevant paragraph is Paragraph 10, which reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgments, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgment in Duro Felguera SA.'

(underlining made by this Court to supply emphasis and highlight)

11. This takes us to Duro Felguera SA principle being Judgment of Hon'ble Supreme Court in ***Duro Felguera, S.A. versus Gangavaram Port Limited*** reported in **(2017) 9 SCC 729**. Relevant paragraphs are Paragraphs 47 and 59 and the same read as follows:

'47. What is the effects of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as 'the 2015 Amendment') with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.'

*'59. The scope of the power under **Section 11** (6) of the 1996 Act was considerably wide in view of the decisions in *SBP and Co.* (supra) and *Boghara Polyfab* (supra). This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in **Section***

11 (6A) ought to be respected. '

12. In the light of aforesaid **Mayavathi Trading Principle** and **Duro Felguera SA principle**, as the existence of an arbitration agreement between the petitioner and the respondent is confirmed or in other words as there is no dispute or contention in this regard, this Court appoints Mr.M.Nandan, District Judge, (Retd.), No.71, MIG IV Main Road, TNHB, Nolambur, Phase-II, Mugappair West Garden, Chennai - 600 031, as sole Arbitrator to enter upon reference and adjudicate upon all disputes, issues and questions that have arisen between the petitioner and the respondent regarding production, payment etc. qua said programme. Though obvious, it is made clear that all questions as between the parties qua said programme are left open to be decided by Arbitral Tribunal.

13. Sole Arbitrator is requested to enter upon reference and conduct arbitration in accordance with A and C Act, more particularly in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017, in the Madras High Court Arbitration Centre under the aegis of this Court and pass award as expeditiously as possible.

OP is disposed of on above terms. There shall be no order as to costs.

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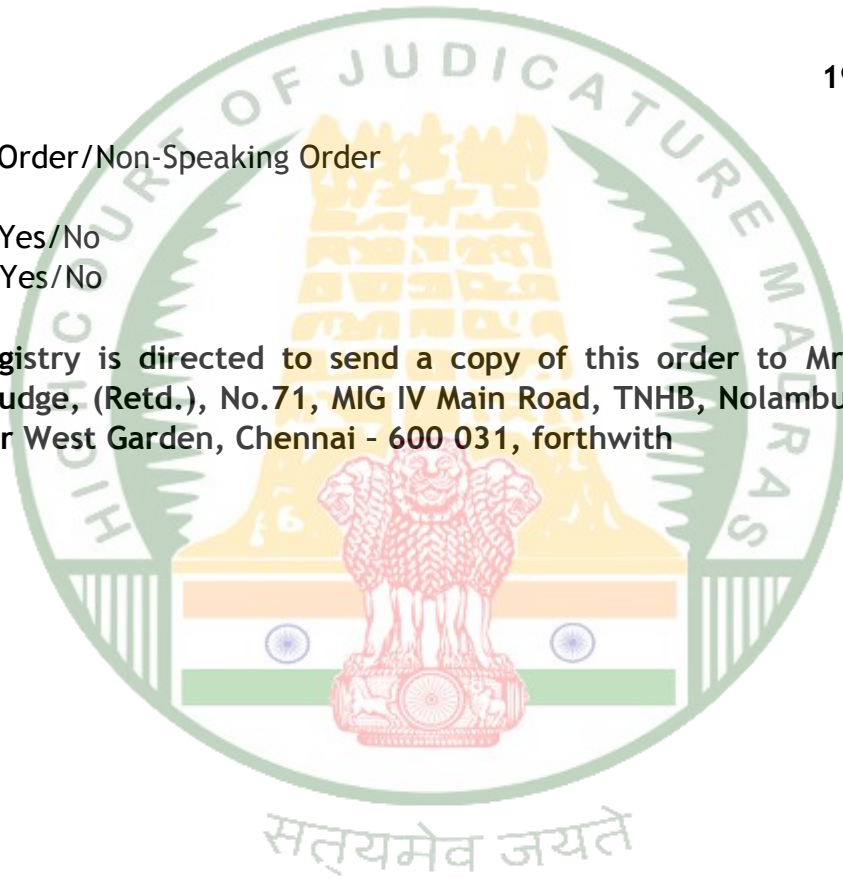
19.12.2019

Speaking Order/Non-Speaking Order

Index : Yes/No

Internet: Yes/No

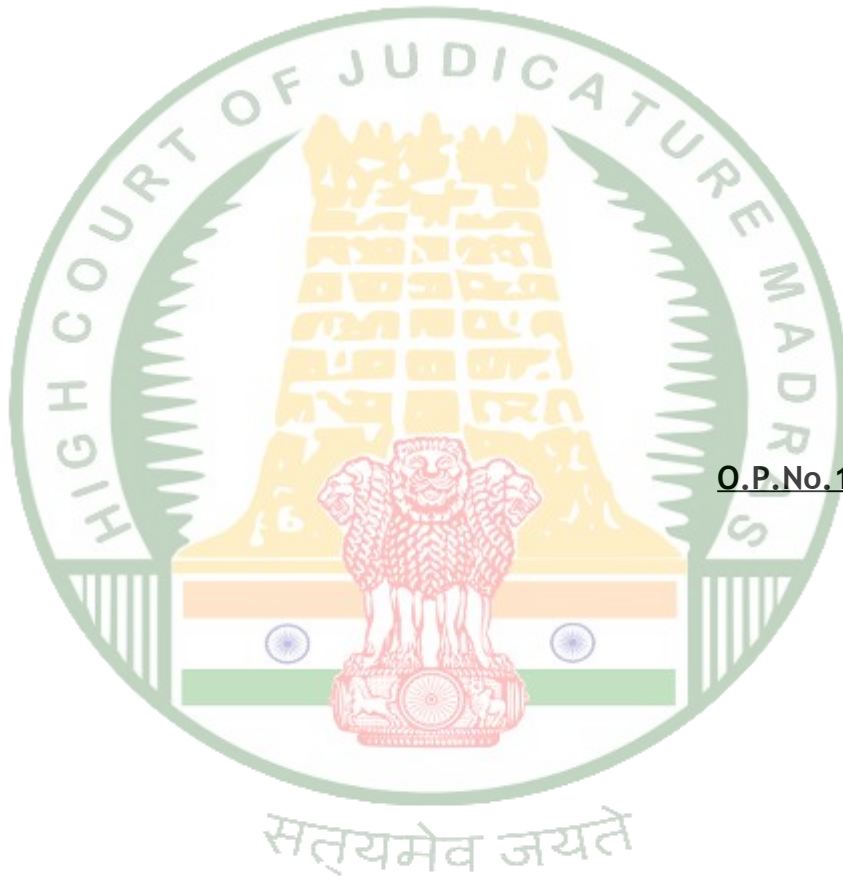
Note: Registry is directed to send a copy of this order to Mr.M.Nandan, District Judge, (Retd.), No.71, MIG IV Main Road, TNHB, Nolambur, Phase-II, Mugappair West Garden, Chennai - 600 031, forthwith



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M.SUNDAR, J.

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