

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.12.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.228 of 2019

Mrs.Alka A.Vijan Sole Proprietor of
Astavinyak Infrastructure residing at
Flat No.501 Circ Apartment
Plot No.4, N.S.Road, 6, Juhu
Opposite Juhu Police Station
Mumbai 400 056.

.. Petitioner

Vs.

M/s.Renewable Energy Generation Pvt. Ltd
A company registered under the
provision of the Companies Act
Having registered address at K.R.M.Plaza
North Tower, 7th Floor No.2, Harrington Road
Chetpet, Chennai - 600 006.

.. Respondent

This Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, praying to appoint a sole Arbitrator to adjudicate upon all the dispute raised by the petitioner and the respondent in relation to service of cranes and supply labour contract dated 18.07.2012 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice.

For Petitioner : Mr.Harihara Arun Somasankar
For Respondent : Mr.Ms.Varsha Raghavan for
M/s.Fox Mandal Associates

ORDER

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 qua a 'contract dated 18.07.2012' (hereinafter 'said contract' for the sake of clarity and convenience) between the petitioner and the respondent.

2. Instant OP is predicated on Clause 24 of said contract, which reads as follows:

'The arbitration if any shall be held at the Company's factory premises at TADA. The Arbitration shall be done by a person appointed solely by the Company. The Award by the Arbitrator shall be final and binding on both the parties.'

3. Mr.Harihara Arun Somasankar, learned counsel on record for petitioner and Ms.Varsha Raghavan of M/s.Fox Mandal Associates [Law Firm] on behalf of sole respondent are before this Court.

4. Considering the limited scope of instant OP, in the light of **Mayavati 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), short facts shorn of elaboration will suffice. Said contract, as mentioned supra, is dated 18.07.2012 and the same was signed by Mr.Ajay G Vijan, who was carrying on business in the name and style 'Astavinyak Infrastructure'. This Court is informed that the said Mr.Ajay G Vijan is no more and that the date of demise is 27.03.2017. This Court is further informed that Mrs.Alka A. Vijan has stepped into his shoes and is thereafter carrying on business as sole proprietrix in the same name and style i.e., 'Astavinyak Infrastructure'.

5. Said contract is *inter alia* for Hiring of Cranes and supply of labour by the petitioner to the respondent.

6. Learned counsel for respondent, notwithstanding very many pleadings in the counter affidavit very fairly submitted that only two points fall for consideration, which are as follows:

(a) said contract is for the period from 18.07.2012 to 17.07.2013 and the period has elapsed.

(b) A Work Order which forms the basis of the arbitrable disputes that have been raised and the claims that are being

made by the petitioner are post said contract.

7. Therefore, the existence of an arbitration agreement between the parties being an arbitration agreement within the meaning of Section 7 of A and C Act in the form of clause 24 i.e., a covenant in the said contract is not put in issue and there is no disputation or contestation in this regard.

8. In the aforesaid backdrop, this Court now proceeds to examine the two points raised by the respondent in the light of *Mayavati Trading principle*, being a judgment of Hon'ble Supreme Court in *Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman* reported in (2019) 8 SCC 714) which in turn reiterates *Duro Felguera SA principle* being a Judgment of Hon'ble Supreme Court in *Duro Felguera, S.A. versus Gangavaram Port Limited* reported in (2017) 9 SCC 729.

9. With regard to said contract having elapsed, the law is well settled that when an arbitration agreement between parties is in the form of a covenant/clause in a contract, the arbitration clause/covenant being an independent arbitration agreement within the meaning of Section 7 of A and C Act will survive/outlive the contract even post termination of said contract. Therefore, this Court has no difficulty in negating the first point in so far as

the instant OP is concerned.

10. With regard to second point, learned counsel for petitioner drew the attention of this Court to a Work Order dated 17.04.2017, bearing Work Order Number.P2/7100011353 and submitted that this Work Order has been raised post demise of aforementioned Ajay G Vijan, which would demonstrate that the contract continued and work orders were being raised qua said contract.

11. In the light of *Duro Felguera SA principle* reiterated in *Mayavati Trading principle* and in the light of sub-section 6-A of Section 11 of A and C Act, this Court has no difficulty in negating this point also in so far as instant OP is concerned, albeit leaving this issue open for the Arbitral Tribunal to adjudicate.

12. As both points raised by respondent qua instant OP have been negated, this Court proceeds to appoint a sole Arbitrator to constitute the Arbitral Tribunal.

13. Before writing the operative portion of this order, this Court deems it appropriate to write that, this Court has reminded itself of *Mayavati Trading principle* (cited supra). 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)

14. This takes us to **Duro Felguera SA principle** (Cited supra).

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. '*

15. Therefore, Mr.A.Abdul Hameed, Advocate, residing at D.No.144,VI Avenue, Anna Nagar West, Chennai - 600 040 [Mobile No.98410 60092] is appointed as sole Arbitrator. Learned sole Arbitrator is requested to enter upon reference and conduct arbitration qua arbitral disputes raised as between the petitioner and the respondent 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.

19.12.2019

Speaking Order/Non-Speaking Order

Index : Yes/No
Internet : Yes/No

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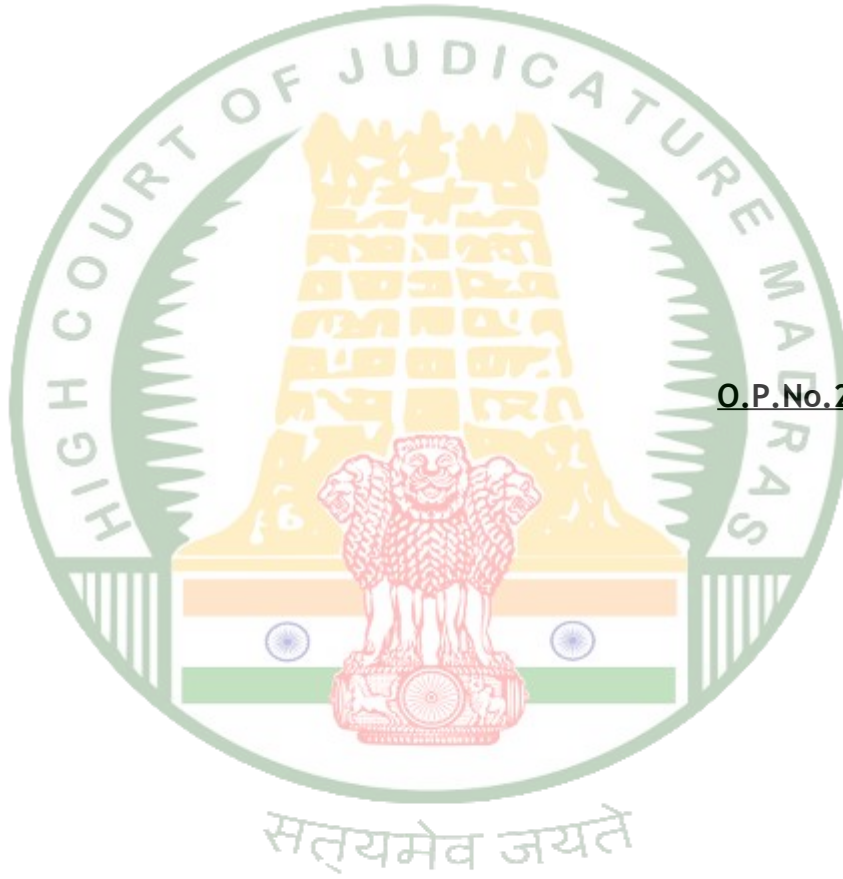
Note:Registry is directed to send a copy of this order to Mr.A.Abdul

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Hameed, Advocate, residing at D.No.144,VI Avenue, Anna Nagar West,
Chennai - 600 040 [Mobile No.98410 60092] forthwith

M.SUNDAR, J.

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