

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.9185 of 2019

and

W.M.P.Nos.9729 & 9731 of 2019

M/s. Global Port Solutions Private Limited,
Represented by its Director,
201, Jay Anthriksh Building,
Makawana Road,
Andheri East,
Mumbai - 400059.

....Petitioner

Vs.

1. The Chennai Port Trust,
Represented by its Financial Advisor
& Chief Accounts Officer,
Rajaji Salai,
Chennai - 01.

2. The Manager,
HDFC Bank Limited,
Trade Finance Department, IV Floor,
No.115, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 04.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent relating to the impugned letter dated 21.03.2019 in AO (Container)/GPSPL/2019/FR bearing 'Subject: Encashment of Bank Guarantee issued on behalf of M/s. Roadwings International Private Limited and quash the same and consequently direct the 1st respondent to constitute a Reconciliation Committee in furtherance to the Award of the Arbitral Tribunal in A.C.P. No.2/2015 dated 12.02.2019.

For Petitioner : Mr.S.Silambannan
Senior Counsel for
Mr.J.Vinoth

For Respondents : Mr.Richardson Wilson for R1
Mr.D.Saravanan for R2

O R D E R

This Writ Petition is filed challenging the proceedings of the 1st respondent dated 21.03.2019, addressing the 2nd respondent-Bank to encash the Bank Guarantee furnished by the petitioner to the extent of Rs.4,39,56,702/- (Rupees Four crores thirty nine lakhs fifty six thousand seven hundred and two only) and credit the amount to the account of the 1st respondent.

2. Heard Mr.S.Silambannan, learned Senior Counsel appearing for the petitioner, Mr.Richardson Wilson, learned counsel appearing for the 1st respondent and Mr.D.Saravanan, learned counsel appearing for the 2nd respondent.

3. Since this writ petition is being disposed of, without going into the merits and contentions raised by the parties, only by directing the petitioner to resort to the remedy by way of an arbitral proceedings, in view of such arbitration clause enumerated in the agreement entered between the parties, merits and contentions as pleaded before this Court are not dealt with in detail.

4. It seems that the petitioner was entrusted with a contract by the 1st respondent and the parties have also entered into two agreements. There is no dispute to the fact that such agreement contains an arbitration clause. Now, the present impugned order is issued for invoking the bank guarantee. According to the petitioner, such bank guarantee cannot be invoked, as the 1st respondent themselves are due and liable to the petitioner, as has been found by the Arbitrator in an award passed on 12.02.2019.

5. On the other hand, it is the contention of the 1st respondent that the present dispute between the parties, which has resulted in resorting to invoke the bank guarantee, is not the subject matter of the previous arbitral proceedings ended in passing the award and therefore, if the petitioner is having any grievance against invoking of bank guarantee, they have to resort to the remedy by way of arbitral proceedings.

6. When this Court, took up the matter for admission on 26.03.2019, after hearing both parties, directed the respondents to maintain status quo as on that date and posted the matter today for further hearing. This Court, has also noted the fact that the bank guarantee is alive only till 14.06.2019.

7. Today, after hearing both parties, as this Court feels that, it is the matter to be agitated by way of arbitral proceedings, in view of the specific clause in the agreement entered between the parties, it is for the petitioner to work

out their remedy by resorting to such proceedings. However, as it is apprehended by the petitioner that the 1st respondent will invoke the bank guarantee at any time, it is for the petitioner to work out even against such immediate threat by way of filing an application under Section 9 of the Arbitration Act before the appropriate forum.

8. Accordingly, this Writ Petition is disposed of, without expressing any view on the merits of the claim made by the respective parties only with a following directions :-

(i) As against the impugned action, it is for the petitioner to resort to the Arbitral proceedings to resolve the dispute.

(ii) The petitioner is granted time till 26.04.2019 to move appropriate application under the Arbitration and Conciliation Act, 1996, to seek interim relief if any.

(iii) The respondents are directed to maintain status quo already granted by this Court on 26.03.2019, for a further period till 26.04.2019.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

sni
To

1. Financial Advisor & Chief Accounts Officer,
The Chennai Port Trust,
Rajaji Salai, Chennai - 01.

2. The Manager,
HDFC Bank Limited, सतयमेव जयते
Trade Finance Department, IV Floor,
No.115, Dr.Radhakrishnan Salai,
Mylapore, Chennai - 04.

+1cc to Mr.D.Saravanan, Advocate SR.No.34497

+1cc to Mr.J.Vinoth, Advocate SR.No.33990

+1cc to Mr.Richardson Wilson, Advocate SR.No.34386

W.P.No.9185 of 2019

CA(CO)
GMY(10/04/2019)