

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2019

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

O.P.No.123 of 2018

1.M/s.Strap Automobiles,
487/1, 200 Feet Inner Ring Road,
Madhavaram to Manali Expressway,
Manjampakkam,
Chennai-600 060.

2.M.Ramamoorthi

.. Petitioners

Vs.

1.M/s.TVS Automobiles Solutions Private Limited,
represented by its Authorised Signatory,
Mr.M.K.Rama Krishna,
No.58, Eldams Road,
Teynampet,
Chennai-600 018.

2.Mr.K.V.Sajeev Kumar,
Sole Arbitrator,
B-3, Shaw Wallace Building,
No.336, Thambu Chetty Street,
Chennai-600 001.

.. Respondents

This original petition is preferred under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the award dated 30.9.2017 passed by the second respondent and to direct the first respondent to pay the costs of this petition.

For Petitioners : Mr.Suchit Anant Palande
For Respondents : Mr.Krishna Srinivasan
for M/s.Ramasubramaniam
Associates for R-1

ORDER

There are two petitioners and two respondents in the instant 'Original Petition' (hereinafter 'O.P' for brevity). To be noted, section 34 of 'The Arbitration and Conciliation Act, 1996' (hereinafter 'A and C Act' for brevity) which is slotted under chapter VII captioned 'Recourse Against Arbitral Award' refers to legal proceedings for setting aside an arbitral award as 'application', however this Registry is giving the nomenclature 'Original Petition' to such challenges to arbitral awards and therefore, I shall refer to the instant proceedings as 'O.P' for the sake of convenience and clarity.

2 Be that as it may, instant O.P is under Section 34 of A and C Act.

3 Instant O.P is a challenge to an arbitral award made by an Arbitral Tribunal constituted by a sole Arbitrator and this arbitral award which is called in question in the instant O.P is dated 30.09.2017. This arbitral award which dated 30.09.2017 made by a sole arbitrator (second respondent before me), who constituted the Arbitral tribunal, shall hereinafter be referred to as 'impugned arbitral award' for the sake of convenience and clarity.

4 Petitioners 1 and 2 before me in instant O.P are respondents 1 and 2 respectively before Arbitral tribunal. Contesting first respondent before

me is the sole claimant before Arbitral tribunal. To be noted, claimant is a company, i.e., a juristic person.

5 As already mentioned supra, second respondent is the sole arbitrator, who constituted the Arbitral tribunal.

6 A perusal of case file placed before me reveals that instant O.P has been admitted and notice has been issued on 09.02.2018. Post service of notice, contesting first respondent (claimant before Arbitral tribunal) has entered appearance through counsel and instant O.P is listed under the caption 'For final disposal / arguments', today.

7 On behalf of two petitioners, Mr.Suchit Anant Palande, counsel on record for petitioners and on behalf of first respondent, Mr.Krishna Srinivasan of M/s.S.Ramasubramaniam Associates (Law Firm) are before me.

8 I heard both learned counsel with regard to challenge to impugned arbitral award made by the Arbitral tribunal. Learned counsel for petitioners submitted that his challenge to the impugned arbitral award is essentially under sections 34(2)(a)(iii) and 34(2)(a)(iv) of A and C Act. Adverting to the aforesaid two provisions, learned counsel for petitioners submitted that petitioners were not given proper notice of appointment of Arbitrator and the impugned arbitral award deals with disputes not contemplated by or not falling within the terms of submission to arbitration. It is his specific plea that arbitral tribunal has travelled beyond the terms of submission to arbitration.

9 Before I deal with the aforementioned two pronged challenge to the impugned arbitral award that is being advanced before me by way of arguments by learned counsel for petitioners, it may be necessary to set out a thumbnail sketch of facts, which are imperative for appreciating and understanding this order. Considering the narrow scope of an application (O.P) under section 34 of A and C Act, it will suffice to give a thumbnail sketch containing bare minimum facts as mentioned supra. This is done so under the caption 'Factual Matrix in a Nutshell', infra.

10 **FACTUAL MATRIX IN A NUTSHELL :**

(a) It is not in dispute or in other words, it is a matter of undisputed factual position as between the parties in contest before me that there are two franchise agreements. One franchise agreement is dated 01.10.2014 and the other is dated 01.04.2016. The common party qua these two franchise agreements are two petitioners before me. The petitioners before me have entered into a franchise agreement with a company which goes by the name 'T.V. Sundram Iyengar & Sons Limited'. It is not in dispute that this franchise will continue until termination. This company is franchisor and petitioners are franchisees. The second franchise agreement has been entered into by petitioners with another company, which goes by the name 'T V S Automobile Solutions Limited'. It is not in dispute that aforesaid second franchise agreement is dated 01.04.2016, but is with effect from 01.11.2015. It is also not in dispute that second franchise agreement will also continue until termination.

(b) What is of relevance in the instant O.P is that the aforesaid two entities, namely, 'T V Sundaram Iyengar & Sons Limited' and 'T V S Automobile Solutions Limited' on the one side as franchisors and petitioners before me as franchisees were having a commercial franchise arrangement. Be that as it may, before I proceed further, it is necessary to record that it is not in dispute before me that Strap Automobiles, though prefixed 'M/s' is a sole proprietary concern and that Mr.M.Ramamoorthi, son of Mr.P.Molagu is carrying on business in the name and style of 'Strap Automobiles' as sole proprietor.

(c) As it is not in dispute before me that Mr.M.Ramamoorthi (second petitioner) who is a natural person, carrying on business in the name and style 'Strap Automobiles', as its sole proprietor, suffice to say that showing two petitioners is of no consequence, as sole proprietary concern is not an entity or juristic person. However, description in the cause title shows 'Strap Automobiles' and M.Ramamoorthi as two petitioners. In the light of the admitted factual position that M.Ramamoorthi is carrying on business as sole proprietor in the name and style 'Strap Automobiles', it is not necessary to go any further or delve more into this aspect of the matter, more so the crux and gravamen of the dispute before this Court being in a different realm. Suffice to say that certain disputes arose with regard to franchise arrangement between parties and such disputes resulted in the franchisor company making a claim under two heads. One head of claim made by franchisor company is amount outstanding towards purchase of spare parts for the period from

31.7.2015 to 10.05.2016 and the second head is amount outstanding on account of franchisee fee for the period from 31.7.2015 to 31.8.2016. The details of the claim, as can be culled out from the claim petition reads as follows :

Details of Claim

(a) Amount Outstanding towards purchase of parts (for the period from 31.07.2015 to 10.5.2016).	Rs.36,87,341/-
(b) Amount outstanding on account of Franchisee Fees (31.07.2015 to 31.08.2016) :	Rs. 85,825/-
Interest @ 18% on (a) upto 10/05/2017:	Rs.7,52,582/-
Interest @ 18% on (b) upto 10.05.2017:	Rs.2,396/-
Total amount due :	Rs.45,28,144/-

(d) It is also not in dispute that there is a valid arbitration agreement between the parties being arbitration agreement within the meaning of Section 7 of A and C Act which is in the form of a clause in the franchise agreement. Now that arbitration agreement between parties is not in dispute, suffice to say that second respondent was appointed as sole Arbitrator and as mentioned supra, he constituted the Arbitral tribunal.

(e) Arbitral Tribunal issued notice and held as many as six sittings, the details of which will be alluded to infra. Documents were placed before the Arbitral tribunal and the same were marked as exhibits. Oral evidence was also let in. After six such sittings, Arbitral tribunal passed the impugned arbitral award, acceding to the claim of franchisor company in its entirety with regard to first head of claim, namely towards outstanding for purchase of spare parts for the aforesaid specified period together with interest. With

regard to second head of claim made by franchisor company, pertaining to outstanding amount towards franchisee fees for the period specified supra together with interest, the Arbitral tribunal had awarded a sum of Rs.45,000/- for three quarters for the period from 01.11.2015 to 31.07.2016, besides Rs.5000/- for the month of August 2016. To be noted, this outstanding on account of franchisee fees was also awarded together with interest. Besides this, costs and arbitral fees also form part of the impugned arbitral award. Having set out a thumbnail sketch of facts under the caption 'Factual Matrix in a Nutshell', I now proceed to deal with the two pronged challenge to the impugned arbitral award made before me under the caption 'Discussion and Dispositive Reasoning' infra.

11 **DISCUSSION AND DISPOSITIVE REASONING :**

(a) As mentioned supra, learned counsel for petitioners submitted that his two pronged attack neatly fit into the two pigeon holes under Section 34 of A and C Act. One is, Section 34(2)(a)(iii) and the other is, Section 34(2)(a)(iv) of A and C Act. Elaborating on Section 34(2)(a)(iii), learned counsel for petitioners submitted that petitioners were not given proper notice of appointment of Arbitrator. It was the specific submission of learned counsel for the petitioner that notice contemplated under Section 21 of A and C Act had not been issued. The other submission made with regard to first limb is that disclosure made by the sole arbitrator has not been duly signed.

(b) The third argument which also fits into Section 34(2)(a)(iii) is that impugned arbitral award shows the name of the franchisor company as

T.V.S. Automobile Solutions Private Limited, while petitioners' franchise agreement is with a public limited company, namely, T.V.S. Automobile Solutions Limited. The last submission which is the second head of attack, namely Section 34(2)(a)(iv) is to the effect that the Arbitral tribunal has awarded more than what has been claimed under the second head, i.e., towards unpaid franchisee fees. It is on this basis, it was submitted that Arbitral tribunal has travelled beyond the scope of reference.

(c) Responding to the aforesaid submissions made by learned counsel for petitioners, learned counsel for first respondent submitted that Section 21 is not a mandatory notice and the language in which section 21 is couched makes it clear that it is only an indicator, wherein and whereby the date on which the commencement of arbitral proceedings can be ascertained. Learned counsel also submitted that there are a long line of authorities to the effect that section 21 is for the purpose of ascertaining the date of commencement of arbitral proceedings for the purpose of limitation. In the instant case, there is no issue regarding limitation. This takes us to the question as to whether the petitioners have been put to any prejudice in this regard.

(d) As mentioned supra, there were as many as six sittings of the Arbitral tribunal which were on 29.04.2017, 01.07.2017, 05.08.2017, 19.8.2017, 02.09.2017 and 16.09.2017. To be noted, minutes of each of the six sittings have been placed before me and I had the benefit of perusing the same. It may not be necessary to extract the proceedings ad verbatim and I refrain from doing so to avoid prolixity and to avoid this order becoming

unnecessarily verbose. Suffice to say that a perusal of six minutes of meetings / sittings of Arbitral tribunal reveals that sufficient opportunities have been given to petitioners. Petitioners have certainly been put on notice about arbitral proceedings and therefore, the plea of petitioners that they were not given proper notice of appointment of arbitrator, does not hold water as notice of appointment of arbitrator has been given albeit by the arbitral tribunal itself.

(e) The submission that Arbitrator has communicated his appointment rather than franchisor company writing to them and invoking the arbitration clause, does not hold water as Section 34(2)(a)(iii) deals with the issue as to whether a party making the application was given proper notice of appointment of Arbitrator. In the instant case, records reveal that petitioners have been put on notice about appointment of Arbitrator albeit by Arbitrator himself. Whether Arbitrator himself should have written or should the franchisor company have sent this communication is a question which does not require examination in the light of the narrow scope on which this petition turns, more so in the light of the fact that it is not the petitioners' case that any prejudice much less grave prejudice has been caused to the petitioner owing to such communication from Arbitrator. The fact of the matter is that petitioners were given notice of appointment of Arbitrator. This douses the heat in the challenge predicated on section 21 of A and C Act. To be noted, section 21 of A and C Act deals with request for dispute to be referred to arbitration. In any event, the scope of section 21 of A and C Act has been alluded to supra.

(f) This takes us to the disclosure made by Arbitrator not being signed. There is disclosure by the arbitrator and there is no dispute about the contents of disclosure, that it does not have the signature of arbitrator could well be a secretarial error. Nothing prevented petitioners who were respondents before Arbitral tribunal and who participated in arbitration proceedings from bringing to the notice of Arbitral tribunal that there is no signature in the disclosure. In any event, the contents of disclosure are not put in issue before this Court and therefore, it follows as a sequitur that no prejudice has been caused to the petitioner. As a consequence, it does not qualify as a ground on which a Section 34 petition can be successfully predicated at least in the factual matrix of the instant case.

(g) This takes us to the next point pertaining to name of the claimant company.

(h) With regard to the name of claimant company, learned counsel for first respondent drew my attention to a certificate issued by the jurisdictional 'Registrar of Companies' ('ROC' for brevity) being ROC, Chennai. This certificate is dated 06.05.2016. This certificate reads as follows:

“Corporate Identity Number: U34100TN2009PTC071439
 Fresh Certificate of Incorporation Consequent upon Conversion
 from Public Company to Private Company
 IN THE MATTER OF TVS AUTOMOBILE SOLUTIONS
 LIMITED
 I hereby certify that TVS AUTOMOBILE SOLUTIONS LIMITED
 which was originally incorporated on Twenty fourth day of April
 Two thousand nine under the Companies Act, 2013 as MY

AUTOMOTIVE INTEGRATED SERVICES PRIVATE LIMITED and upon an intimation made for conversion into Private Limited Company under section 18 of the Companies Act, 2013; and approval of Central Government signified in writing having been accorded thereto by the RoC – Chennai vide SRN C82550203 dated 08.05.2016 the name of the said company is this day changed to TVS AUTOMOBILE SOLUTIONS PRIVATE LIMITED.

Given under my hand at Chennai this Sixth day of May Two thousand sixteen.”

(i) A perusal of the certificate reveals that it is a fresh certificate of incorporation consequent upon conversion of public company into private limited company. Therefore, Arbitral tribunal mentioning the name of TVS Automobile Solutions Private Limited cannot be faulted. Be that as it may, this certificate is dated 06.05.2016 and claim statement is dated 11.05.2017. There could have been a mention about the certificate in the claim statement, but that does not in any manner prejudice the petitioners. It is not anybody's case before me that when there is a name change, particularly when a fresh certificate of incorporation is issued consequent upon conversion of public company into private company, all contracting parties need to be heard before such change is made. In any event, this certificate issued by the jurisdictional ROC, which is not in dispute, is an official document and that all official acts are presumed to have been done adhering to correct official parameters, in the absence of any contest with regard to the contents of the same. This Court fails to see what kind of prejudice if at all could have been caused to petitioners. This Court is clear in its mind that no prejudice has

been caused to petitioners owing to change in the name of the company, more so this being a case of a public limited company becoming a private limited company and a fresh certificate of incorporation being issued.

(j) The only argument that was advanced before me in this regard by learned counsel for petitioners is that the franchisor company has not chosen to place this before Arbitral Tribunal. Ideally, this could have been placed before the Arbitral tribunal, but the fact that it was not placed before the Arbitral tribunal has not in any manner vitiated the impugned arbitral award and it is not certainly a ground on which a section 34 petition can be predicated much less predicated successfully.

(k) Learned counsel for first respondent drew my attention to an order made by this Court dated 05.02.2019 in O.P.No.852 of 2018 [**J.Saravana Moorthy Vs. Kotak Mahindra Bank Limited**]. The facts of this case are completely different and it does not apply to the instant case on hand is my considered opinion and view as it was a case where protagonist of challenge to arbitral award did not respond to notices from the arbitral tribunal.

(l) Be that as it may, while testing the impugned arbitral award, I do not find any ground to interfere under section 34 of A and C Act, particularly under the two pigeon holes, namely Sections 34(2)(a)(iii) and 34(2)(a)(iv) of A and C Act, on which this petition is predicated (as it unfurls in the hearing today). Having set out discussion and dispositive reasoning, I deem it appropriate to set out the 'Conclusion'.

12 CONCLUSION :

Owing to all that have been set out supra, this Court is of the considered view that no ground has been made out by petitioners for judicial intervention under section 34 of A and C Act qua impugned arbitral award.

13 DECISION :

O.P.No.123 of 2018 is dismissed, leaving the parties to bear their respective costs.

04.03.2019

Speaking order

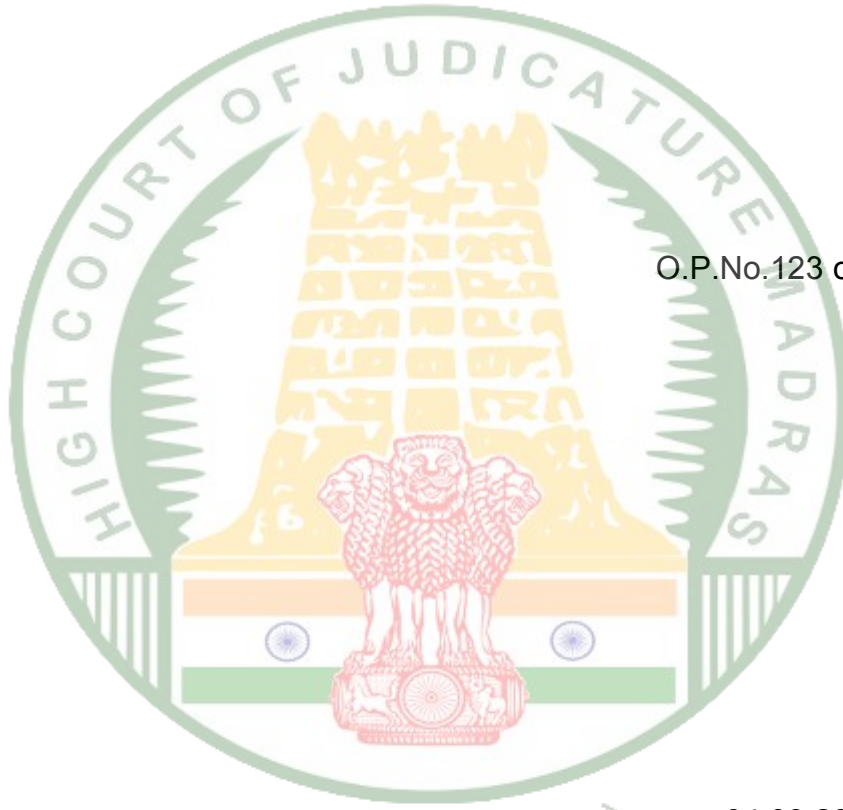
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M.SUNDAR, J.

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