

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.12.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.No.756 of 2019

M/s. S.S.Enterprises
represented by its Authorized Signatory
Mr.Sandeep Bholanath Shukla
having office at B-101, Jupiter Apartment
Poonam Sagar Complex, Mira Road (E)
Thane - 401 107 ... Petitioner

vs.

1. Airports Authority of India
Chennai Airport
rep. By Airport Director
Chennai Airport, Chennai - 600 027
2. Assistant General Manager (Commercial)
AAI, Chennai Airport, Chennai - 600 027 ... Respondents

Original Petition filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996, for appointing an impartial and independent Arbitrator in terms of Clause 29 of the NIT governing the petitioner and the Respondents read with the Award letter dated 20.11.2017 and to pay the costs of this petition.

For Petitioner : Mr.T.Gowthaman

For Respondents : Mr.S.Venkatesan

ORDER

Mr.T.Gowthaman, learned counsel on record for petitioner and Mr.S.Venkatesan, learned counsel for both the respondents are before this Court.

2. Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity) has been filed under sub-section (5) of Section 11 of 'The Arbitration and Conciliation Act, 1996' (hereinafter 'A & C Act' for the sake of brevity) with a prayer for appointment of an Arbitrator.

3. Considering the narrow compass on which instant OP now turns (owing to submissions made by learned counsel on both sides which makes it clear that there is no dispute or contestation qua instant OP) and considering the narrower legal scope of OP on hand (in the light of recent judgment of Hon'ble Supreme Court in **Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in **(2019) 8 SCC 714**), it is not necessary to dilate much on factual matrix.

4. Mayavati Trading principle has been succinctly set out by Hon'ble Supreme court in Paragraph 10 of **(2019) 8 SCC 714**. The same is instructive and it 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*.

5. Relevant paragraphs in *Duro Felguera SA* are paragraphs 47 and 59, which 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. '*

6. In the light of ***Mayavati Trading*** principle, without dilating

much on facts, suffice to say that arbitral disputes between the petitioner and respondents in instant OP have arisen qua an Award letter dated 20.10.2017 for a licence which is described as 'License for Management of Airport Admission/Entry Ticket at Chennai Airport'. This Award letter in turn emanates from a 'Notice Inviting Tender' ('NIT' for the sake of brevity).

7. Both the aforementioned learned counsel before this Court submit without any disputation or contestation that arbitration agreement between the petitioner and the respondents in the instant case i.e., arbitration agreement within the meaning of Section 7 of A & C Act is in the form of a clause in NIT i.e., Clause 29 and the same reads as follows:

'29.All disputes and differences arising out of or in any way touching or concerning this Agreement (except those the decision whereof is otherwise herein before expressly provided for or to which the Public Premises [Eviction of Unauthorised Occupants] Act and the rules framed thereunder which are now enforced or which may hereafter come into force are applicable) shall in the first instance, be referred to a Dispute Resolution Committee (DRC) setup at the airports, for which a written application should be obtained from the party and the points clearly spell out. In case the dispute is not resolved within 45 days of reference, then the case shall be referred to the sole arbitration of a person to be appointed by the Chairman/Member of the Authority. The award of the arbitrator so appointed shall be final and binding on the parties. The Arbitration & Conciliation Act, 1996 shall be applicable. Once the arbitration clause has been invoked, the DRC process will cease to be operative.'

(1) The case shall be referred to the sole Arbitrator by the Chairman/Member of the Authority subject to the condition that the licensee shall have to deposit the disputed amount with AAI as condition precedent before making reference to the Arbitration for adjudication of dispute.

(2) Similarly, before making a reference to Dispute Resolution Committee the licensee will have to first deposit the disputed amount with AAI and the consent shall have to be obtained from the licensee for acceptance of the recommendations of the Dispute Resolution Committee.

(3) During the arbitral and Dispute Resolution proceedings the licensee (s) shall continue to pay the full amount of licence fee/dues regularly as per the award/agreement and perform all covenants of the agreements.'

8. Both the learned counsel also submit in unison that when disputes erupted, some orders regarding invoking Bank Guarantees came to be made, the same were challenged by way of two writ petitions in W.P.Nos.22106 and 21430 of 2018 and both the writ petitions came to be disposed by a Hon'ble single Judge of this Court by common order dated 20.11.2018. Most relevant portion of this order is Paragraph 6 and the same reads as follows:

'6. Considering the facts and circumstances of the case and having regard to the submissions made by the learned Senior Counsel for the petitioner and the learned Additional Solicitor General appearing for the respondents and taking note of the fact that to protect the interest of the revenue, the petitioner furnished bank guarantee to the tune of Rs.11 Crores, which is valid

upto 19.12.2018, this Court directs the respondents to constitute a Dispute Resolution Committee, if not, already constituted, which shall consider all the claims of the petitioner and dispose of the same, on merits and in accordance with law, after affording an opportunity of personal hearing to the parties, within a period of four weeks from the date of receipt of a copy of this order. Till such time, status quo as obtaining today shall be maintained by the parties.'

9. It is submitted by both sides that pursuant to aforesaid order, 'Dispute Resolution Committee' ('DRC' for the sake of brevity) came to be set up on 24.07.2018, but the DRC could not resolve the disputes within 45 days therefrom. In other words, 45 days contemplated in Clause 29 (arbitration clause), which is also the arbitration agreement within the meaning of Section 7 of A & C Act elapsed necessitating reference to arbitration. This in turn has necessitated the filing of instant OP.

10. In the light of aforesaid common submission made in unison, both learned counsel also consented for appointment of a sole arbitrator to constitute the Arbitral Tribunal. Therefore to this extent and upto this point, this is a consent order.

11. In the light of narrative thus far, this Court appoints Hon'ble Mr.Justice K.Kannan (Retired), No.3/11, Lakshmi Colony, North Crescent Road, T.Nagar, Chennai-600 017 (Mobile : 97800 08145, Land line : **044-**

2815 4145). Sole Arbitrator is requested to enter upon reference and conduct arbitration proceedings in the Arbitration and Conciliation Centre under the aegis of this Court 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.

The instant OP is disposed of on above terms. No costs.

13.12.2019

Speaking order: Yes/No
Index: Yes/No
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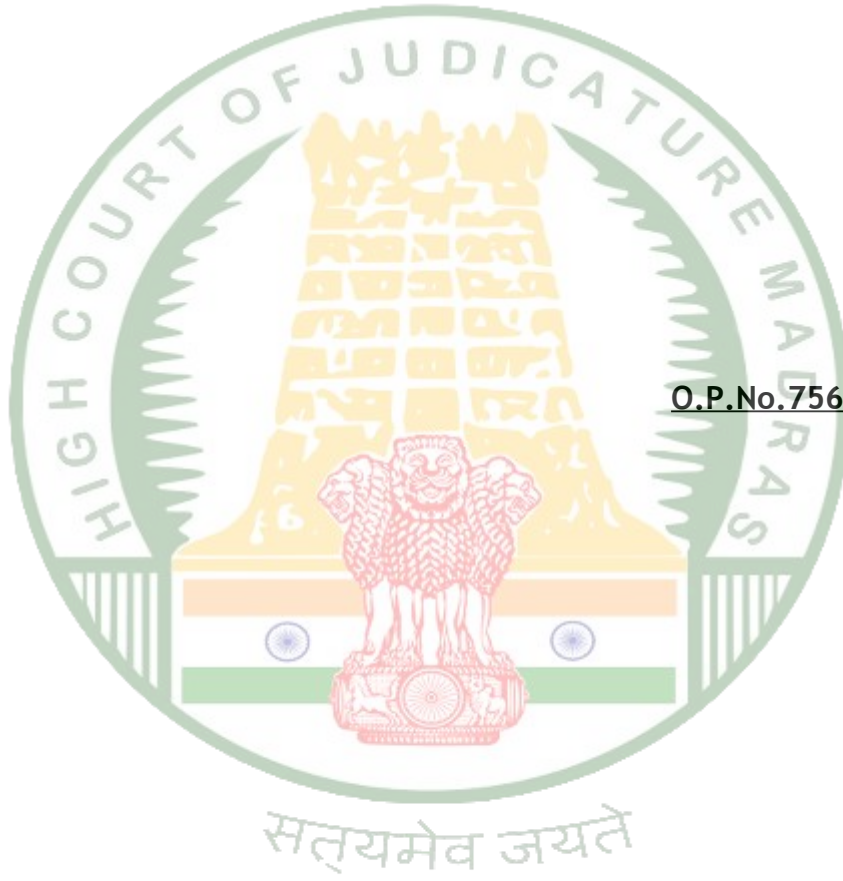
To

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