

O.A.No.1006 of 2019
and
A.Nos.8480 & 8481 of 2019

M.SUNDAR, J.

This common order will dispose of all these applications.

2. Mr.Anirudh Krishnan, learned counsel for applicant in all these three applications and Ms.S.Harini, learned counsel on record for sole respondent are before this Court.

3. These applications are under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.20 of 1996)', which shall hereinafter be referred to as 'A and C' Act for the sake of brevity, clarity and convenience.

4. In one of these three applications i.e., O.A.No.1006 of 2019, an interim order was granted by Hon'ble predecessor Judge on 11.11.2019 and the same was extended until further orders on 09.12.2019. To be noted, this interim order is now operating.

5. Be that as it may, notwithstanding these applications being under Section 9 of A and C Act, the applicant as well as the respondent have filed

separate affidavits accepting/admitting existence of an arbitration agreement and agreeing for appointment of a sole Arbitrator and agreeing upon a Hon'ble sole Arbitrator also. The affidavit filed by the applicant in this regard (captioned 'additional affidavit'), reads as follows:

'Additional Affidavit of Mr.S.S.Sorot

I, S.S.Sorot, S/o.Late Shri Siri Chand, aged about 53 having my office at Flat No.618, 6th Floor, Hemkunt Chamber, Nehru Place, New Delhi – 110 019, presently having come to Chennai, do hereby solemnly affirm and sincerely state as follows:

1. I am the authorised signatory of the applicant herein and I am well acquainted with the facts of this case and I am authorised to swear to this affidavit.

2. The above-mentioned applications came up for hearing before this Hon'ble Court on 11.11.2019 and an order of ex-parte interim injunction came to be passed in O.A.No.1006 of 2019. The same was extended until further orders on 09.12.2019 by this Hon'ble Court once the advocates for the Respondent entered appearance before this Hon'ble Court.

3. Subsequently, on 16.12.2019 the Applicant herein through their counsels issued a notice of arbitration under Section 21 of the Arbitration and Conciliation Act, 1996.

4. Thereafter, the parties herein above have mutually agreed to appoint Hon'ble Mr.Justice A.P.Shah (Retd.) as the sole Arbitrator to resolve the disputes that have arisen between the applicant and the respondent in connection with the Supply Agreement and Service Agreement dated 27.11.2014. Further, it has been agreed that the venue of arbitration proceedings shall at New Delhi, India.

It is humbly prayed that this Hon'ble Court may be pleased to record the above and pass any order as this Hon'ble Court may deem fit and thus render justice.

(sd/-)

*Solemnly affirmed at Chennai on
this the 20th day of December 2019,
and signed the name in my presence*

Before me

(sd/-)

Advocate, Chennai

6. Most relevant portion of the affidavit filed by the respondent in this regard is paragraph 4 and the same reads as follows:

'4. I submit as per the discussion with counsel of the applicant, the respondent is agreeable for appointment of Justice A.P.Shah (Retd.), as the Sole Arbitrator for the arbitration under the Supply Agreement dated 27.11.2014 and Services Agreement dated 27.11.2014 entered between the Applicant and Respondent.'

7. Both learned counsel on instructions from their respective clients reiterate the contents of the aforementioned affidavits. Therefore, it unfurls clearly from the hearing and the aforementioned affidavits that the parties have (a) agreed to downsize the Arbitral Tribunal from 3 to 1, (b) the parties have unanimously agreed on a sole Arbitrator and (c) parties agreed that the venue of arbitration at Delhi. To be noted, reference to 'parties' in a, b and c is reference in plural to 'party' within the meaning of A and C Act also.

8. Though rendered in a petition under Section 11 of A and C Act, this Court reminds itself of the **Mayavati Trading principle**, in which **Duro Felguera principle** was reiterated. Relevant paragraph in **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**) is Paragraph 10 and the same 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)

9. Relevant paragraphs in **Duro Felguera principle** being a judgment of Hon'ble Supreme Court in **Duro Felguera, S.A. versus Gangavaram Port Limited** reported in **(2017) 9 SCC 729** 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. '

10. In the instant case, there is no dispute or contestation between the parties about existence of Arbitration Agreement. Likewise, there is no dispute or contestation that the Arbitral Tribunal shall be downsized and shall be constituted by a sole Arbitrator, more particularly, both the parties i.e, parties to the arbitration agreement within the meaning of 2(1)(h) has also agreed on the sole Arbitrator and filed sworn affidavits to this effect, which have already been extracted and reproduced supra elsewhere in this order. As alluded to supra, the contents of these sworn affidavits are reiterated by the respective learned counsel, on instructions, from their respective clients in the hearing today.

11. In the light of the affidavits and in the light of reiteration of the same by learned counsel on both sides (on instructions, from their respective clients) following consent order is passed:

(a) interim order granted on 11.11.2019 by

predecessor Judge and continued until further orders on 09.12.2019 (now operating) in O.A.No.1006 of 2019, shall continue to operate for four more weeks from today i.e., upto 17.01.2020.

(b) Hon'ble Mr.Justice A.P.Shah (Retired), former Chief Justice of this Court and Delhi High Court, residing at F-15, Ground Floor, Hauz Khas Enclave, New Delhi-110 016, [Phone No:011-2656925] is appointed as sole Arbitrator qua the arbitral disputes that have arisen out of two agreements dated 27.11.2014 and addendum dated 14.05.2015 between the applicant and respondent.

(c) Though obvious, for the purpose of clarity and specificity, it is made clear that it is open to the parties to move suitable applications under Section 17 before the Hon'ble Arbitral Tribunal and the prayer therein can include the prayers that have been made in the instant three applications. If the parties choose to do so, Hon'ble Arbitral Tribunal shall consider the same on its own merits.

(d) The venue of arbitration shall be Delhi (as agreed by applicant and respondent)

(e) Hon'ble Arbitrator is free to fix fee at his discretion.

All these three applications are disposed of by this consent order on above terms.

vsm

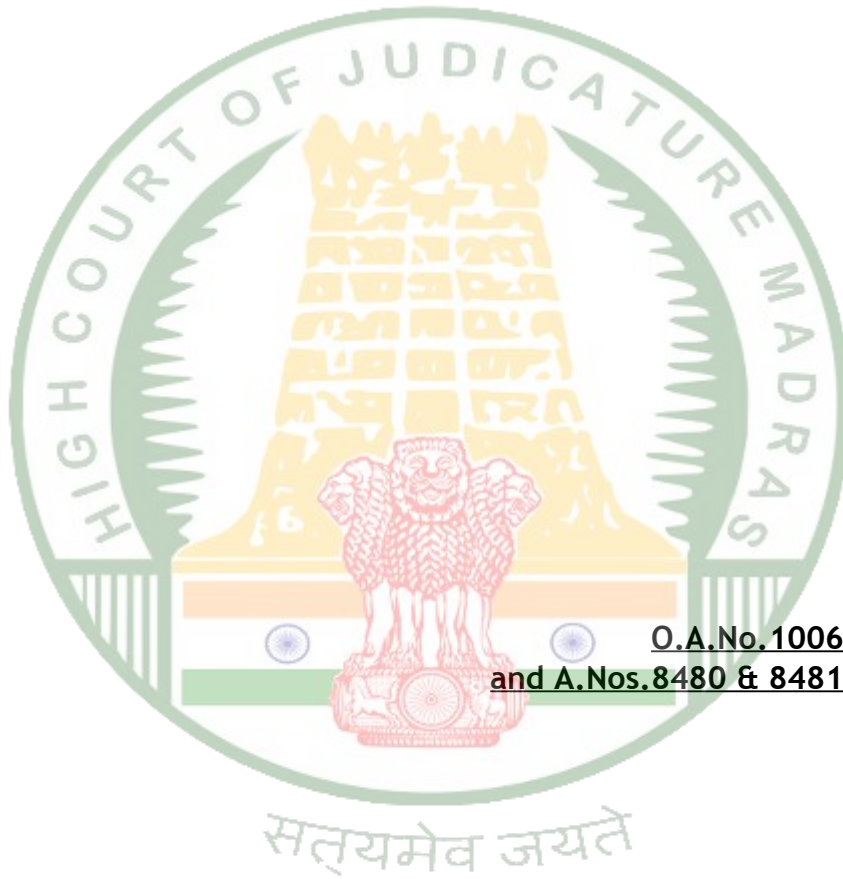
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