

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A. No.2449 OF 2018

and

CMP Nos.19774 and 19777 of 2018

M/s.Renaissance RTW Asia (P) Ltd.,
(Formerly known as 'Renaissance
Creations India (P) Ltd.),
Rep. by its Managing Director,
Shri C.Anandhakumar,
Son of S.P.Chinnasamy, aged 48 years,
277-B, Kuppandamapalayam, Veerapandi (PO),
Tirupur 641 605.

...Appellant

Vs

M/s.New Tirupur Area Development Corporation Ltd.,
37, Rassi Towers, Ground Floor,
JG Nagar, Kumarandapuram,
60 feet Road,
Tirupur 641 602.

..Respondent

PRAYER: Appeal is filed under Clause 15 of Letters Patent Act, to set aside the order dated 11.09.2018 passed by this Court in W.P.No.4126 of 2013 and allow the writ appeal.

W.P.No.4126 of 2013 calling for the records in communication dt 28.12.2012 on the file of the respondent and quash the same and further direct the respondent to restore the water supply service to the petitioner.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Mr.P.Giridharan

JUDGMENT

[Judgment of the Court was delivered by DR.VINEET KOTHARI, J.]

The Appellant, M/s.Renaissance RTW Asia (P) Ltd., (Formerly known as 'Renaissance Creations India (P) Ltd.), is aggrieved by the order dated 11.09.2018 passed by the learned Single Judge in W.P.No.4126 of 2013, filed by the Petitioner against the

Respondent M/s.New Tirupur Area Development Corporation Ltd., a Company, which was expected to give water supply to the Petitioner Industrial Unit.

2.Learned counsel for the Appellant, Mr.M.P.Senthil Kumar, submitted that the Dyeing Textile Unit of the Petitioner has been closed, in pursuant to the order passed by the Division Bench of this Court in paragraph 53(i) of Contempt Petition Nos.1013 and 1068 of 2010, M/s.Noyal River Ayacutdars Protection Association vs S.Ramasundaram and therefore, the Respondent Corporation could not take the water charges for the period of closure, after the aforesaid orders of the High Court. Therefore, the learned Single Judge has erred in rejecting the Writ Petition, filed by the Petitioner to challenge the levy of water charges by the Respondent.

3.Per contra, the learned counsel for the Respondent Mr.P.Giridharan, submitted that under the contract between these two parties, a copy of which has been produced on record, it not only provides for Resolution of Disputes in clause 12 of the Agreement, but also one of the clauses of the said Agreement "Take or Pay Charges" permitted the Respondent Corporation, which works on commercial considerations, to realise the water charges, even though the stipulated water content was not made by them during the said period. He also submitted that for some period after the orders of the High Court, the Petitioner Unit has worked and taken the water supply from the Respondent Corporation.

4. On the other hand, the learned counsel for the Appellant, Mr.M.P.Senthil Kumar urged that in view of the 'Force Majeure' Clause 7 of the Agreement between the parties, since on account of the Court order, the Petitioner Unit has been closed down, no water charges were realisable from the Petitioner/Appellant Company.

5.Having heard the learned counsel for the parties, we are of the opinion that the matter involved in the writ petition required determination of the questions of facts as to whether the Petitioner/Appellant Company had actually remained closed or not after the Court Order and if so, for how much period and whether during the closure period, any water supply has been actually taken from the Respondent Corporation or not and what is the effect of "Take or Pay Charges" clause in the Agreement between the parties, etc., are the questions of facts to be determined by the competent body or Tribunal. Writ jurisdiction was an ill conceived remedy for these circumstances.

6.In view of the Arbitration Clause contained in the Agreement between the parties, we are of the opinion that the

parties should make efforts for resolving the dispute through the Arbitral Tribunal as per the said clause 12 of the Agreement between the parties, which provides for resolving any dispute or difference relating to deficiencies in the service may approach the appropriate Tribunal. Therefore, we relegate the parties to the alternative dispute redressal mechanism of arbitration and we expect the Arbitral Tribunal to decide the dispute between the parties expeditiously. The Arbitral Tribunal shall decide the dispute without being influenced by the observations made by the learned Single Judge. With these directions, the Writ Appeal is disposed of. No costs. The connected miscellaneous petitions are also closed.

vri

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

+1cc to Mr.P.Giridharan, Advocate, SR.No.70461/19
+1cc to Mr.G.Baskar, Advocate, SR.No.71034/19

W.A.No.2449 of 2018

Kak(04.10.2019)