

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.01.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Q.P.No.14 of 2019

Ramky Enviro Engineers Limited
Ramky Grandiose - 12th & 13th Floors
Ramky Towers Complex
Gachibowli, Hyderabad - 500 032
Telangana, India
Represented by its Authorized
Signatory Mr.Srinivas Chadalavada ... Petitioner

vs.

Market Management Committee, Koyambedu
Represented by its Chief Administrative Officer
Koyembedu, Chennai - 600 107 ... Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to resolve the disputes arising out of the Concession Agreement dated 04.11.2009 between the petitioner and the respondent.

For Petitioner : Mr.W.M.Abdul Majeed
for Mr.M.Gireesh Kumar

For Respondent : Mr.M.Velmurugan

ORDER

Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity)

with a prayer for appointment of an arbitrator is under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' which shall hereinafter be referred to as 'A and C Act' for the sake of brevity.

2. In the light of **Mayavati Trading** principle and **Duro Felguera, S.A.** principle laid down by Hon'ble Supreme Court in **Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in (2019) 8 SCC 714) and **Duro Felguera, S.A. versus Gangavaram Port Limited** reported in (2017) 9 SCC 729 judgments, scope of instant OP is very limited as it turns on examination of existence of an arbitration agreement between the parties and this Court being prima facie satisfied that an arbitration agreement exists between the parties.

3. Relevant paragraph in Mayavati Trading case and **Duro Felguera, S.A.** are Paragraph 10 and Paragraphs 47 and 59 respectively, which read as follows:

'Mayavati Trading :

"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)

'Duro Felguera, S.A.: -

'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. '

4. In the light of fair and clear stand taken by learned counsel on both sides i.e., Mr.Abdul Majeed, learned counsel representing the counsel on record for petitioner and Mr.M.Velmurugan, learned counsel for sole respondent, task of disposal of instant OP has become fairly simple as both the learned counsel submit without any disputation or contestation that an

arbitration agreement being an arbitration agreement within the meaning of Section of 7 of A & C Act does exist between the petitioner and respondent in the agreement between the parties by way of a clause in an agreement between parties to instant OP captioned 'CONCESSION AGREEMENT' and dated 04.11.2009. The relevant clause is Article 15 and the same reads as follows:

'15. DISPUTE RESOLUTION

15.1 Amicable Resolution

a. Save where expressly stated to the contrary in this Agreement, any dispute arising after the transition period, difference or controversy of whatever nature between the parties, howsoever arising under, out of or in relation to this Agreement, including those arising with regard to acts, decision or opinion of the Independent Engineer (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in clause (b) below.

b. Either party may require such dispute to be referred to the Chairman of Chennai Metropolitan Development Authority for the time being, for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the dispute. If the dispute is not amicably settled within fifteen (15) days of such meeting between the two, either party may refer the dispute to arbitration in accordance with the provisions of Clause 15.2 below.

15.2 Arbitration

a. Arbitrators

Subject to the provisions of Clause 15.1, any dispute which is not resolved amicably shall be finally settled by binding arbitration under the Indian Arbitration Act, 1996 or any amendments or additions thereto. The arbitration shall be by a panel of three arbitrators, one to be appointed by each party and the third to be appointed by the two arbitrators appointed by the parties. The party requiring arbitration shall appoint an arbitrator in writing, inform the other party, about such appointment and call upon the other party to appoint its arbitrator. If within 15 days of receipt of such intimation, the other party fails to appoint its arbitrator, the party seeking appointment of arbitrator may take further steps in accordance with arbitration act.

b.Place of Arbitration:

The place of arbitration shall ordinarily be Chennai but by Agreement of the parties, the arbitration hearings, if required, may be held elsewhere within India.

c. English Language:

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

d. Procedure:

The procedure to be followed within the arbitration, including appointment of arbitrator/arbitral tribunal, the rules of evidence which are to apply shall be in accordance with the

Arbitration and Conciliation Act, 1996.

e. Enforcement of award:

The parties agree that the decision or award resulting from arbitration shall be final and binding upon the parties and shall be enforceable in accordance with the provision of the Arbitration act subject to the rights of the aggrieved parties to secure relief from any higher forum constitutionally mandated under the Indian jurisprudence.

f. Fees and Expenses:

The fees and expenses of the arbitrators and all other out of pocket expenses of the arbitration shall be initially borne and paid by respective Parties subject to determination by the arbitrators. The arbitrators may provide in the arbitral award for the reimbursement to the prevailing party of its costs and expenses in bringing or defending the arbitration claim, including legal Tariffs and expenses incurred by Party.

g. Performance during Arbitration:

Pending the submission of and/or decision on a Dispute, difference or claim or until the arbitral award is published, the Parties shall continue to perform all of their obligation under this Agreement without prejudice to a final adjustment in accordance with such award.'

5. Both the learned counsel also submit without any disputation or contestation that Clause 15.1 was resorted to, but an amicable resolution could not be arrived at. Besides this, both the learned counsel make a common request in unison to this Court that though clause 15.2.a. envisages a three member Arbitral Tribunal, the size of Arbitral Tribunal

may please be downsized and made an Arbitral Tribunal constituted by a sole Arbitrator. This submission made by both the learned counsel, on instructions, from their respective clients is recorded.

6. This Court, therefore, appoints Hon'ble Mr.Justice K.P.Sivasubramaniam (Retd.), at No.47, Pulla Avenue, Shenoy Nagar, Chennai - 30 (Mob:9444701312) as sole arbitrator. Hon'ble Arbitrator is requested to enter upon reference regarding arbitral disputes that have arisen between the parties qua aforementioned concession agreement dated 04.11.2009, adjudicate upon the same and pass an award in accordance with A and C Act. Hon'ble Arbitrator is free to fix arbitral fees and venue.

Instant OP stands disposed of on above terms. No costs.

06.01.2020

Speaking order: Yes/No

Index: Yes/No

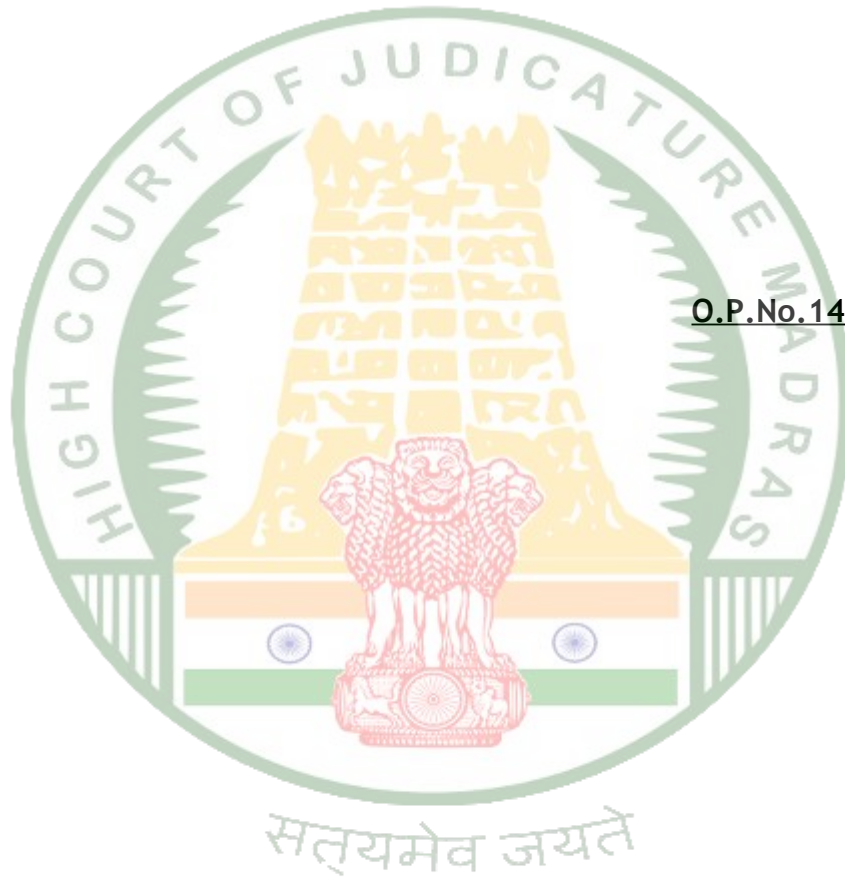
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Note: Registry is directed to communicate this order to Hon'ble Mr.Justice K.P.Sivasubramaniam (Retd.), at No.47, Pulla Avenue, Shenoy Nagar, Chennai - 30 (Mob:9444701312), forthwith

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M.SUNDAR.J.,

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