

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: **24.01.2020**

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.438 of 2019

M/s.Cheran Properties Limited
Represented by its Director,
Mr.Samiyappa Gounder Subramani,
Cheran Tower,
78, Government Arts College Road,
Coimbatore-641 018.

.. Petitioner

Vs.

Steel Authority of India Limited,
Represented by its Branch Manager, Coimbatore
Cheran Towers, 2nd Floor,
81, Government Arts College Road,
Coimbatore-641 018.

.. Respondent

This Original Petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996, praying to appoint an Arbitrator to resolve the disputes arising out of Memorandum of Understanding dated 28.08.1998 between the petitioner and respondent.

For Petitioner : Mr.R.Arun and
Mr.Avinash Wadhwani
for Mr.V.Raghavachari

For Respondent : Mr.P.Raghunathan
of M/s.T.S.Gopalan & Co.

ORDER

Mr.Avinash Wadhvani, learned counsel for petitioner and Mr.P.Raghunathan of M/s.T.S.Gopalan & Co [Law Firm], learned counsel on record for sole Respondent are before this Court.

2. The instant 'Original Petition' (hereinafter 'OP' for the sake of brevity) 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 brevity, clarity and convenience.

3. The instant petition being one under Section 11 of A and C Act is obviously for appointment of an arbitrator. Prayer for appointment of arbitrator is predicated on an agreement dated 25.05.1990 between the parties (hereinafter 'said agreement' for the sake of brevity, convenience and clarity) and the arbitration agreement between the parties [Arbitration Agreement within meaning of Section 7 of A and C Act] is in the form of a covenant in the said agreement and that covenant is number 26 which reads as follows:

'26. If any difference of opinion between the promoters and the part of the second part arises either with regard to the implementation of the terms of this agreement, the same shall be referred to the arbitration of (i) Sri.S.Thirunavukkarasu, Advocate, Coimbatore (ii) Mr.C.S.K.Prabhu, Auditor, Coimbatore (iii) Mr.A.S.Ilango, Architect,

Coimbatore whose decision as sole arbitrators will be final and binding on the parties.'

4. Before proceeding further with this matter, it is necessary to set out that this Court is reminded itself of **Duro Felguera, S.A.** principle [**Duro Felguera, S.A. versus Gangavaram Port Limited** reported in **(2017) 9 SCC 729**] and **Mayavati Trading** principle [**Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in **(2019) 8 SCC 714**] laid down by the Hon'ble Supreme Court with regard to scope of petitions under Section 11 of A and C Act. Relevant Paragraphs in **Duro Felguera, S.A.** 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. '

5. **Duro Felguera, S.A** principle was reiterated by Hon'ble Supreme Court in **Mayavati Trading** case. Relevant paragraph in **Mayavati Trading** case 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)

6. **Duro Felguera, S.A** principle and **Mayavati Trading** principle are to the effect that in a petition under Section 11 of A and C Act, this Court will have to look at the matter with a hood and restrict itself to *prima facie* satisfying itself about the existence of an arbitration agreement between the parties. In the instant case, there is no disputation or contestation about existence of an

arbitration agreement between the parties, which is in form of clause 26 in said agreement i.e., afore mentioned agreement dated 25.05.1990.

7. Both the learned counsel also fairly agreed that a former Hon'ble Judge of this Court may please be appointed as sole arbitrator for entering upon reference and adjudicating upon all arbitral disputes that have arisen between the parties. Though instant OP is under Section 11 of A and C Act, for the purpose of completion of narration of facts and for setting out the trajectory this matter has taken before this Court, it is made clear that CRP.No.2056 of 2019 arising out of an order dated 09.07.2018 made in I.A.No.2351/2014 in O.S.No.1275/2014 on the file of Principal District Munsif Court, Coimbatore was also tagged with this OP. To be noted, this order of the Trial Court was under Section 8 of A and C Act. In the Civil Revision Petition, a civil miscellaneous petition in CMP.No.13310 of 2019 had also been moved by the respondent in the instant OP, besides CMP.No.821 of 2020 with a prayer for restoration of power supply to the respondent in the instant OP. It is agreed that all these issues will be decided by the sole Arbitrator. It is open to the respondent herein to present a copy of affidavit filed in support of CMP.No.821 of 2020 before the Hon'ble Sole Arbitrator with a prayer to treat the same as a plea under Section 17 of A and C Act. Therefore, CRP and CMPs therein tagged with instant OP will also stand closed for the present vide a separate order that is being made in CRP today.

8. In the light of the narrative thus far, instant OP is ordered by appointing Hon'ble Mr.Justice T.Sudanthiram (Retd.,) (former Hon'ble Judge of this Court) at Old No.39/2, New No.20, Anandavelu Street, Perambur, Chennai-600 011 (Mobile : **9841016353**, Land line : **25514447 & 25514494**), as Sole Arbitrator to constitute the Arbitral Tribunal. Hon'ble Sole Arbitrator is requested to enter upon reference and adjudicate the arbitral disputes between parties herein in accordance with A and C Act besides Section 17 of A and C Act plea at the earliest [as the plea pertains to restoration of power supply] subject of course to convenience of the Hon'ble Arbitrator.

9. It is open to the Hon'ble Arbitrator to fix his fees and venue.

Instant OP ordered on above terms. No costs.

24.01.2020
(1/2)

Speaking order: Yes/No

Index: Yes / No
kmi

Note: Issue Order Copy on 27.01.2020.

P.S.: Registry is directed to communicate this order by Special Messenger forthwith to Hon'ble Mr.Justice T.Sudanthiram (Retd.,), at Old No.39/2, New No.20, Anandavelu Street, Perambur, Chennai-600 011.

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M.SUNDAR, J.
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