

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.10.2020

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISHKUMAR

O.P.No.397 of 2020

1. M.R.Krishnan
2. M.R. Narayanan
3. M.R. Subramonian ... Petitioners

Vs.

M/s Topsgroup Services and Solutions Limited
Erstwhile, M/s Tops Security Limited,
having its office at 5, Royal Palms Golf & Country Club,
Aarey Milk colony, Goregaon (E), Mumbai 400 065
... Respondent

Prayer : Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint a Sole Arbitrator to adjudicate upon the disputes between the petitioner and the respondents arising out of the loan agreement dated 30.03.2012.

For Petitioners : Mr.Jerin Asher Sojan
for Mr.Salai Varun

For Respondent : No representation

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ORDER

This petition has been filed seeking for appointment of a sole Arbitrator to adjudicate the disputes that has arisen between the parties in respect of the loan Agreement dated 30.03.2012.

2. The contention of the petitioners is that they have jointly entered into a loan agreement with the respondent on 30.03.2012 and availed a sum of Rs.2,28,29,194/- and to secure the due repayment of the above said loan, they pledged their shares held in the Company in favour of the respondent. The further contention of the petitioners is that the above pledged shares have to be released on repayment of the above loan amount and subsequently, the loan agreement was amended.

3. It appears that, after amendment of loan agreement, a dispute was arose between the parties, and hence the petitioners filed applications in O.A.No.163 and 164 of 2020 seeking for interim injunction restraining the respondent from invoking the pledge in respect of the pledged shares and this court by order dated 13.03.2020 had granted interim injunction on condition to deposit a sum of Rs.4,02,00,000/- in any one of the nationalised bank under the interest bearing scheme and the above condition was also complied with. Further, during the pendency of the above applications, a memorandum of understanding dated 10.08.2020 was entered into between the parties for a one time settlement in respect of the loans, whereby settlement

was reached and a sum of Rs.1,25 Crores was paid by the petitioners in favour of the respondent on the very same day on 10.08.2020. In lieu of the balance sum of rupees three crores, the respondent agreed to receive Rs.8,89,944/- equity shares of Adtech systems Limited as consideration within 90 days from the date of execution of the Memorandum of Understanding i.e. on 10.08.2020. However, within two days i.e. on 12.08.2020, the respondent issued legal notice, calling upon the petitioners to pay a sum of Rs.6.33 Crores plus interest at the rate of 18% p.a. Therefore, the petitioners seek appointment of Arbitrator to enter upon the reference with regard to the above dispute.

4. Despite service of notice and name is printed in the cause list, none appeared on behalf of the respondent.

5. A perusal of the loan agreement dated 30.03.2012, entered into between the parties reveals that as per Clause 20, the parties are agreed to refer the matter before the Arbitrator, in the event of any dispute arose between them. The above said Clause reads as follows.

20. If any dispute, or claim between the Borrower and the Company arises this agreement including the breach, termination or invalidity thereof (" Dispute"), then, subject to the provisions of Clause 23 below, the dispute shall be referred to

the arbitration before a sole arbitrator appointed by the Company. The arbitration shall be subject to the arbitration and Conciliation Act, 1996 as amended from time to time. The arbitration shall be held in Chennai and language of the arbitration shall be English. "

6. From the above said clause, it is seen that the Arbitration shall be held in Chennai. Even this court while passing the order of injunction under Section 9 of the Arbitration and Conciliation Act in O.A.No.163 and 164 of 2020, the respondent remained absent. Subsequently, though the respondent had entered into a Memorandum of Understanding dated 10.08.2020 with the petitioners, they have not entered appearance before this court and finally by order dated 30.07.2020, the above injunction passed by this court was made absolute and the petitioners are directed to initiate the arbitration proceedings within three months from the date of receipt of the copy of the order. The above act of the respondent clearly shows that they have been watching the court proceedings very cautiously. Be that as it may, as per the loan agreement, the parties are agreed to refer the matter before the Arbitrator, in the event of any dispute arising between them.

7. Therefore, considering the nature of the dispute between the parties and also since the parties are governed by the agreement, this court is inclined to appoint Hon'ble Mr.Justice K.Venkatraman (Retired Judge), Madras High Court to enter upon the reference.

8. Accordingly, it is ordered as follows:

i) That ***Hon'ble Mr.Justice K.Venkatraman (Retired Judge), Madras High Court, L.Block, 125, 17th Street, East Anna Nagar, Chennai-102, Contact No.7708895435*** be and is hereby appointed as Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties.

ii) That the learned Arbitrator appointed herein, shall after issuing notice to the parties and after receipt of the claim petition filed by the applicant and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order.

iii) That the learned Arbitrator appointed herein shall be at liberty to fix his remuneration and other incidental expenses, which shall be borne by the parties equally.

9. It is open to the petitioner to file claim petition before the Arbitrator raising all the grounds and both the parties can agitate their respective pleas before the learned Arbitrator.

10. The Original Petition is ordered accordingly, leaving the parties to bear their own costs.

01.10.2020

Index: Yes/No

Internet: Yes/No

Speaking/non speaking Order
mst

Copy to

***The Hon'ble Mr.Justice K.Venkatraman (Retired Judge),
Madras High Court,
L.Block, 125, 17th Street,
East Anna Nagar, Chennai-102,***

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N. SATHISHKUMAR, J.

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