

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.01.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.929 of 2019

Teleperformance Business Services India Ltd.
(Formerly known as Sparsh BPO Services Ltd)
Teleperformance Tower
Plot CST No.1406-A/28
Mindspace, Goreganon (West)
Mumbai - 400 104
Represented by its Authorised Representative
Mr.Biju Karthikeyan

.. Petitioner

Vs.

1.V.Jayakumar

2.J.Anbarasi

.. Respondents

This Original Petition filed under Section 11 (6) (a) & (c) of the Arbitration and Conciliation Act, 1996, read with Rule 2 of the Appointment of the Arbitrators of Madras High Court Scheme, 1996 praying to appoint a sole arbitrator to adjudicate all the disputes between the petitioner and respondents arising out of or in connection with the Lease Deed dated 22.10.2008 executed between the parties and subsequent extensions and pass such further or other orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

For Petitioner : Ms.Shloka Narayanan

For Respondents : Ms.L.Fathima Fabiola

ORDER

There is one petitioner and two respondents in Instant 'Original Petition' (hereinafter 'OP' for the sake of brevity).

2. Ms.Shloka Narayanan, learned counsel on record for petitioner and Ms.L.Fathima Fabiola, learned counsel on record for both the respondents are before this Court.

3. Instant OP is *inter alia* under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, clarity and convenience with a prayer for appointment of an arbitrator.

4. In the light of the stated positions of the respective parties (as it unfurled in the hearing today) disposal of instant OP has become a fairly simple exercise.

5. There is no dispute or contestation that there is an arbitration agreement between the parties to instant OP i.e., petitioner and respondents. There is also no dispute that the said agreement qualifies as an arbitration agreement under Section 7 of A and C Act and that this arbitration agreement is in the form of a clause in the agreement between the parties i.e., clause 16, which reads as follows:

'16. Arbitration

If any dispute or difference shall at any time arise between the parties to this Lease Deed or under any Clause or their respective rights, claims or liabilities hereunder or otherwise in any manner whatsoever, in relation to or arising out of or concerning this Lease Deed, or its termination, the parties shall promptly and in good faith negotiate with a view to its amicable resolution and settlement. In the event no amicable resolution or settlement is reached within a period of ten (10) working days from the date on which the dispute or, difference arose, such disputed and/or differences shall be referred to a mutually nominated sole arbitrator for arbitration in accordance with the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be held at Pondicherry and the findings of the sole arbitrator shall be final and binding on the parties. The sole arbitrator shall have the powers to pass such interim orders as may deemed fit, including for the handing over of; possession of the Demised Premises, payment of charges for use and occupation of the Demised Premises, or any arrears of rent or refund of the Security Deposit etc. It is agreed that the cost of the arbitration proceedings shall be borne by the parties in equal proportion.'

6. Though arbitration clause talks about the venue (Pondicherry) both learned counsel submit that it would be appropriate and desirable to have arbitration conducted in Madras High Court Arbitration Centre under the aegis of this Court. This consent on instructions/submission is recorded.

7. This Court reminds itself of ***Duro Felguera principle*** reiterated in ***Mayavati Trading principle***. ***Duro Felguera principle*** is a principle laid down by Hon'ble Supreme Court in ***Duro Felguera, S.A. versus Gangavaram Port Limited*** reported in (2017) 9 SCC 729. Relevant paragraphs in ***Duro Felguera principle*** 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. '

8. **Mayavati Trading principle** is a principle laid down by Hon'ble Supreme Court in **Mayavati Trading Pvt. Ltd., Vs. Pradyut Deb Burman** reported in **(2019) 8 SCC 714**). Relevant paragraph in **Mayavati Trading principle** 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. In the light of **Mayavati Trading** and **Duro Felguera principles**, the task of disposing of instant OP has become fairly simple as both the learned counsel submit that there is no disputation or contestation about the existence of an arbitration agreement between the parties.

10. This Court appoints Ms.R.Rathna Thara, Advocate, having office address at No.244, New Additional Law Chambers, High Court, Chennai - 600 104, [Mobile No.9840451276] as sole Arbitrator to enter upon reference regarding arbitral disputes that have arisen between the parties. Learned sole Arbitrator is requested to enter upon reference and pass an award in accordance with A and C Act, more particularly in accordance with the Madras High Court Arbitration Proceedings Rules, 2017 and the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules, 2017, in the Madras High Court Arbitration Centre under the aegis of this Court.

11. OP is disposed of on above terms. There shall be no order as to costs.

09.01.2020

Speaking/Non-Speaking order

Index : Yes/No

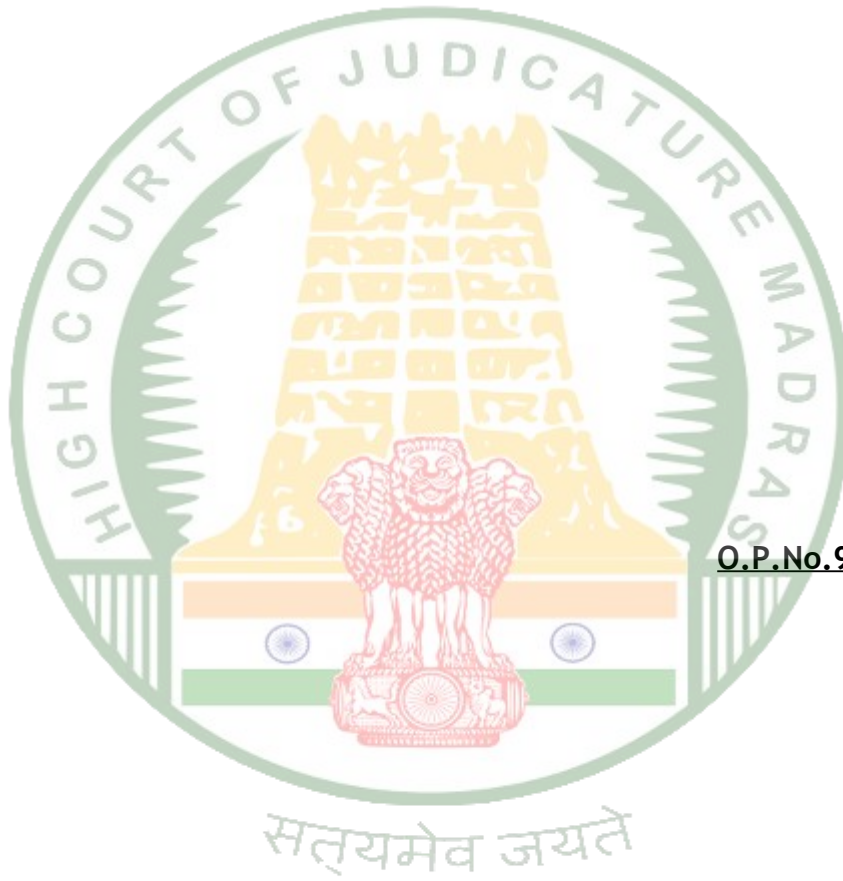
Internet: Yes/No

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Note: Registry is directed to communicate this order to Ms.R.Rathna Thara, Advocate, having office address at No.244, New Additional Law Chambers, High Court, Chennai - 600 104, [Mobile No.9840451276], forthwith.

M.SUNDAR, J.

vsm



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