IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2020

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

O.A.No.1136 of 2019,
A.Nos.9720 & 9721 of 2019,
O.A.No.138 of 2020 and
A.No.269 of 2020

1.M/s.The Waterbase Limited,
A company registered under the
Companies Act, 1956
And having registered office at
Ananthapuram Village, Thotapalli,
Gudur Mandal, Nellore District – 524 344
Represented by its authorized signatory,
Mr.R.Suresh Kumar
Also at,
Thapar House, No.37,
Montieth Road,
Egmore, Chennai – 600 008. ... Applicant
in all the applications

Vs.

1.M/s.Rising Tide
Having office at
8/1 H Diamond Harbour Road,
Kolkata – 700 027
Represented by its Partner
Mr.Rohan Daniel Mukherjee

2.Rohan Daniel Mukherjee

3.Arnab Daniel Mukherjee ... Respondents
in O.A.No.1136 of 2019,
A.Nos.9720 & 9721 of 2019 and
A.No.269 of 2020

1.M/s.Rising Tide
Having office at
8/1 H Diamond Harbour Road,
Kolkata – 700 027
Represented by its Partner
Mr.Rohan Daniel Mukherjee

2.Rohan Daniel Mukherjee

3.Arnab Victor Mukherjee ... Respondents
in O.A.No.138 of 2020

Prayer in O.A.No.1136 of 2019 : Original Application filed under Order XIV Rule 8 of O.S. Rules read with Section 9 (1)(ii)(d) of Arbitration & Conciliation Act, 1996, to grant an injunction restraining the Respondent Nos.1, 2 and 3, their men, agents, servants and or assigns from alienating encumbering or creating any third-party interests in respect of any or all of their assets both movable and immovable.

Prayer in A.No.9720 of 2019 : Application filed under Order XIV Rule 8 of O.S. Rules read with Section 9 (1)(ii)(d) of Arbitration & Conciliation

Act, 1996, to direct the Respondent Nos.1 2 and 3 to deposit a sum of Rs.5,14,03,344/- (Rupees Five Crore fourteen lakhs three thousand three hundred and forty four only) towards admitted principal amount and a further amount of Rs.28,47,008/- (Rupees Twenty eight lakh forty seven thousand and eight only) towards interest calculated at 21% p.a (as on 16.11.2019) with this Court failing which direct Respondent Nos.1 2 and 3 to furnish a Bank Guarantee in favour of the Applicant for a sum of Rs.5,14,03,344/- (Rupees Five Crore fourteen lakhs three thousand three hundred and forty four only) towards principal amount and a further amount of Rs.28,47,008/- (Rupees Twenty eight lakh forty seven thousand and eight only) towards interest component calculated at 21% p.a. (as on 16.11.2019) and have the same renewed and in force until the completion of the arbitration proceedings.

Prayer in A.No.9721 of 2020 : Application filed under Order XIV Rule 8 of O.S. Rules read with Section 9 (1)(ii)(e) of Arbitration & Conciliation Act, 1996, to direct the Respondent Nos.1, 2 and 3 to submit details of their movable and immovable assets in the form of an Affidavit before this Honble court.

Prayer in O.A.No.138 of 2020 : Original Application filed under Order XIV Rule 8 of O.S. Rules read with Section 9 (1)(ii)(d) of Arbitration & Conciliation Act, 1996, to pass an order of Interim Injunction restraining the

Respondents, their men, agents, servants and or assigns to restrain them from alienating or creating encumbrances or any third party interests in respect of the shares held by them, in their capacity as Partners of M/s.ASF Exports (now known as the 1st Respondent herein), in Matara Aquaculture West Bengal Private Limited, mentioned in the Schedule below, pending disposal of arbitral proceedings.

Prayer in A.No.269 of 2020 : Application filed under Order XIV Rule 8 of O.S. Rules read with Order XVIII Rule 17 of CPC to recall the order dated 03.01.2020 in Application No.9721 of 2019.

For Applicant	:	Mr.M.S.Krishnan Senior Counsel for M/s.Anirudh Krishnan in all the applications
For Respondents	:	Mr.T.Saikrishnan in all the applications

COMMON ORDER

These applications have been filed seeking orders as an interim measure. O.A.No.1136 of 2019 has been filed for injunction restraining the respondent not to deal with any of their movable or immovable properties. A.No.9720 of 2019 has been filed for a direction to the respondents to furnish a Bank Guarantee to a tune of Rs.5,14,03,344/-. A.No.9721 of 2019 has been filed for a direction to the respondents to disclose the details of their movable and immovable properties and O.A.No.138 of 2020 has been filed for interim injunction restraining the respondents from alienating or creating encumbrances or any third part interest in respect of the shares held by them in their capacity as Partners of M/s.ASF Exports (now known as the 1st Respondent herein), in Matara Aquaculture West Bengal Private Limited, pending disposal of the arbitral proceedings.

2.The learned Senior Counsel appearing for the applicant in all the applications mainly contended that there is no dispute with regard to the business transaction and liability and the various correspondences by way of e-mail between the parties would clearly substantiate the same. The learned Senior Counsel further contended that the draft Partnership and Dealership Agreement was sent through e-mail by the applicant, which was, in fact, accepted by the respondents. The correspondences of the respondents clearly indicate that there is a contract between the parties accepting the terms of the agreement. The learned Senior Counsel would submit that

Clause 54 of the Dealership Agreement provides for reference to Arbitration. However, after accepting the terms of the draft Partnership and Dealership Agreement, the respondents have taken a defence as if the draft has not been finalised and the original draft did not contain the arbitration clause. Hence, the main contention of the learned Senior Counsel is that, having accepted the terms of the Dealership Agreement and signed the contract, such a contention of the respondent stating that the draft has not been approved is without any basis and prayed for grant of the relief sought for in these applications.

3.Though various contentions were raised by the learned counsel appearing for the respondents, the learned counsel mainly denied the very approval of the draft agreement by the respondents, and contended the Dealership Agreement, which is now mainly relied upon by the applicant, has been created only for the purpose of invoking the jurisdiction of this Court for arbitration at Chennai. It is his contention that the Dealership Agreement relied upon by the applicant is a forged document and signature therein is not that of the respondents. Hence, the learned counsel submitted that the contention of the learned Senior Counsel that the matter is arbitrable is false and prayed for dismissal of these applications.

4.Heard the submissions of the learned Senior Counsel for the applicant and the learned counsel for the respondents and also perused the entire materials on record.

5.On a perusal of the documents filed before this Court, it is apparent that, admittedly, respondents 2 and 3 are the partners of the 1st respondent company as could be seen from the statement of partnership available in the Typed Set of Papers. The draft Partnership Deed filed in the Typed Set of Papers makes it clear that the parties, in fact, entered into a contract for the purpose of doing business. Particularly, this can be seen from various correspondences between the parties. The e-mail dated 18.12.2018 also makes it very clear that consensus was arrived between the parties to share certain documents. Further, the e-mail dated 20.12.2018 addressed by the 3rd respondent makes it clear that he requested to send the draft agreement with necessary changes as suggested by the applicant. The above e-mail was also replied by the applicant at 02.53 p.m. on the same day. Further, the e-mail of the applicant of even date at 11.13 p.m. reads as follows :

> *"As discussed, if you can confirm the draft by tomorrow morning, we will be able to get the agreement signed from Mr.Akula by tomorrow, since he is travelling from this weekend."*

The above e-mail has been replied by the 3rd respondent on 21.12.2018 at 01.32 a.m., wherein, he has clearly stated that the agreement seemed to be fine, and he has also requested to print two copies of the same in stamp paper and post them so that they will sign and post one back to them. Other subsequent mails also clearly indicate that, as requested, Corporate Guarantee was also issued by the respondents.

6.Now, the main dispute raised by the respondent is that the draft signed by them did not contain an arbitration clause. Nonetheless, the correspondences between the parties make it clear that the draft signed by the applicant has been accepted by the respondents and in fact, the respondents have agreed to finalise the agreement. It is also obvious that there is no dispute with regard to the business transaction and the liability, and in fact, the applicant has demanded a full payment of overdue amount of Rs.5,26,52,064.50 (inclusive of interest) and in this regard, an e-mail was also sent by the applicant on 03.10.2019 and the same was also replied by the respondent admitting the liability and seeking time for payment. Having regard to the above facts, merely because one of the parties, in subsequent days, disputes the signature in the document prepared by them at their end in Kolkata, it cannot be said that there is no contract between the parties. It could be seen at Page No.93 of the Typed Set of Papers that the respondents have sent a message indicating that they would hand over the draft at Chennai. Similarly, the applicant has sent an e-mail on 31.12.2018 at 13.30 hours requiring the respondents to confirm if they have signed the documents. The 2nd respondent, while replying to the mail on the same day at 13.33 hours, has stated that they have signed the documents and since they have planned to visit Chennai on 3rd January, they would hand over the same to the applicant at that time.

7.All the above facts elucidate that there exists a contract between the parties. Therefore, merely based on the fact that one of the copies was prepared at Kolkata and handed over to the applicant at a later point of time and the signature therein was defective, it cannot be said that the documents have been forged. It is to be noted that the above documents were handed over by the respondents to the applicant after signing by the respondents. Therefore, at no stretch of imagination, it can be presumed that the applicant has forged the signature, particularly when those documents were actually handed over by the respondents. In such view of the matter, this Court is of the opinion that the contention of the respondents as to the allegation of forgery and fraud has no legs to stand.

8.Admittedly, the liability has not been disputed by the respondents. The respondents have filed an affidavit in pursuance of the earlier orders of this Court stating that they have no immovable properties standing in their name and they have also filed an affidavit stating that the shares held by them have already been driven. However, no details of the sales have been given in the affidavit. Since an affidavit has been filed by the respondents affirming that they have no immovable property standing in their name, this Court is of the view that, no purpose would be served by passing an order of interim injunction.

9.However, having regard to the fact that the liability has not been disputed, the respondents are directed to furnish a Bank Guarantee to a tune of Rs.5,14,03,344/- (Rupees Five Crores Fourteen Lakhs Three Thousand Three Hundred and Forty Four only) within a period of two months from the date of receipt of a copy of this order. It is also open to the applicant to ascertain as to whether any immovable property/properties still stand(s) in the name of the respondents and file an affidavit to that effect. If such facts are brought to the notice of this Court later, the respondents will be prosecuted for giving false affirmation before this Court and such property/properties will not convey any legal title to anyone and it will be thereafter subject to the orders of this Court. It is also open to the applicant to file an application for appointment of Arbitrator.

N. SATHISH KUMAR, J.

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With the above observations, all these applications are disposed of. No costs.

31.07.2020

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

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