IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.02.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.250 of 2020
&
O.A.No.1083 of 2019 & A.No.9274 of 2019

1.Vijay Cotton & Fibre Co, a registered partnership Firm
Having its Office at
Ground Floor, Cotton Exchange Building,
S-25 & S-27, Cotton Green (East),
Mumbai – 400 033

2.Vijay Cotton & Fibre LLP
Limited Liability Partnership Having its Office at
Ground Floor, Cotton Exchange Building,
S-25, S-27, Cotton Green (East)
Mumbai – 400 033

3.Satyam Agro Industries
A Partnership Firm
having its place of business at
Main Road, Ozhar, District Barwani – 451 449

4.Sundaram Industries
A Partnership Firm
having its place of business at
3, Pratapganj, Sendhwa – 451 666

5.Shivam Cot Fibers Pvt Ltd
A Private Limited Company
Having its Office at
Maulana Azad Marg, Sendhwa – 451 666

6.Satyam Cotex Pvt Ltd.
A Private Limited Company
Having its Office at
1, Pratapganj, Sendhwa – 451 666

7.Shivam Cotton Corporation
A Partnership Firm
having its place of business at
Maulana Azad Marg, Sendhwa – 451 666

8.Natraj Cotton Pvt Ltd
A Private Limited Company
383, AT Post, Tasma, Tq.,
Hadgaon – 431 713
Maharashtra

9.Satyam Fibres
A Sole proprietorship
having its place of business at
Main Road, Ozhar, District Barwani – 451 449 ... Petitioners

Vs.

India Envelopes Limited
Represented by its Managing Director
Mr.B.Ramachandran
Having its office at No.14, Venugopal Pillai Road,
Chidambaram – 608 001 ... Respondent

Prayer: The Petition is filed under Section 11 (6) A of the Arbitration and Conciliation Act, 1996 to constitute Single Member Arbitral Tribunal to adjudicate / resolve the disputes between parties, in accordance with provisions of Section 11 (6) of the Arbitration and Conciliation Act.

For Petitioners : Mr.N.P.Vijay Kumar

For Respondent : Mr.R.Murali

ORDER

The above petition is filed to appoint a sole arbitrator to adjudicate the disputes arising out of a Tripartite Agreement dated 03.08.2017 between the petitioners and the respondent herein. The petitioners would seek the appointment of an arbitrator for the following reasons.

2. The petitioners who are traders in Cotton bales had entered into an agreement with the National Sewing Thread Company Limited, herein after referred to, for the sake of brevity as the NSTCL.

3. The petitioners have been supplying cotton bales to the NSTCL for a very long period and from 2014 – 2015, the NSTCL started delaying the payment of the dues to the petitioners. The petitioners have learned that the NSTCL have borrowed heavily from the Banks and Financial institutions to which huge amounts were due.

4. As on 30.06.2017, the NSTCL owed a sum of Rs.8,33,58,974/- to the petitioners herein. Each of the petitioners were entitled to specified sums of money. In order to repay these amounts, a Tripartite Agreement was entered into between the petitioners, the NSTCL and the respondent herein, which is the sister concern of the NSTCL. The respondent had undertaken to sell their properties and discharge the amounts to the petitioners. The agreement also contained an arbitral clause under which the parties had agreed to resolve their dispute through medium of arbitration. The petitioners would submit that the assurance given in the Tripartite Agreement was observed in the breach. Therefore, the petitioners had invoked the arbitration clause by their letter dated 28.10.2019 and had appointed Mr.Yashod Vardhan, Senior Counsel as the

sole arbitrator. However, the respondent had not sent any response to the said appointment.

5. Meanwhile, the petitioners have filed O.A.No.1083 of 2019 and A.No.9274 of 2019 seeking for an interim protection against the respondent. Since the respondent had not come forward to agree to the name of the arbitrator suggested, the petitioners have filed an instant Original Petition. This Court had passed an interim order of injunction dated 10.03.2020 restraining the respondent from alienating or encumbering the properties referred to in the Tripartite Agreement. This interim order has been extended till date.

6. The respondent has filed a counter stating that the petitioners have filed their claim before the Insolvency Resolution Professional who has been appointed by the NCLT and having chosen to move the NCLT, the petitioners cannot seek to have the arbitrator appointed. They had also raised a plea that the Tripartite Agreement is not stamped and therefore no claim can be made on the basis of the said deed.

7. Mr.N.P.Vijay Kumar learned counsel appearing on behalf of the petitioners would submit that as per the Tripartite Agreement the respondent was bound to sell the property and pay the dues to the debtors. In case there were no buyers, the property could also be purchased by the petitioners or their nominees and the sale consideration be used towards dues of the petitioners and the balance to be handed over to the respondent. The learned counsel would submit that this assurance has been observed in the breach and further the respondent has not made any arrangement to repay the amounts to the petitioners.

8. Mr.R.Murali, learned counsel appearing on behalf of the respondent would submit that though it is a Tripartite Agreement the petitioners have not chosen to show the NSTCL as a party. Further, a reading of clause 16 of the Tripartite Agreement would clearly demonstrate that the sale in favour of the petitioners was not mandatory since in the event of the respondent refusing to execute the sale deed then the petitioners are entitled to be repay the sum assured. He would

therefore argue that the respondent has not offered to sell the property.

9.The learned counsel would further argue that since the Tripartite Agreement refers to the properties it has to be necessarily stamped and being an unstamped document, the petitioners cannot rely upon the same. He would rely upon the Judgment in ***N.N.Global Mercantile Private Limited Vs. Indo Unique Flame Limited and others*** reported in ***2021 SCC Online SC 1018.***

10. Mr.Vijay Kumar would reply that considering the fact that no right is sought to be exercised on the suit property and as the agreement does not grant any right to the property, the argument that the document has to be stamped is puerile. He would submit that the agreement is simplicitor for the recovery of money.

11. Heard the learned counsels and perused the papers.

12. The two defenses put forward by the respondent is as follows:

(i) Claim already pending before the NCLT

(ii)Tripartite Agreement not stamped.

13. The proceedings before the NCLT does not in any manner bar the petitioners from exercising the rights to have their disputes resolved through arbitration. The parties under the agreement had agreed that any dispute would be resolved through Arbitration. The dispute has now arisen regarding repayment as agreed.

14. The second defense that the documents in question is not adequately stamped cannot be countenanced since no right in favour of the petitioners is created over the immovable properties in this agreement. On the contrary it is only an agreement under which the respondent had undertaken to pay the amounts due by NSTCL, their sister concern. The agreement details how the respondent would clear the outstanding.

15. The respondent have themselves stated in their counter in

O.A.No.1083 of 2019 that there was no intent to create a security when the said agreement was created. The agreement merely quantifies the amount payable and states that the respondent would sell the property and repay the dues of each petitioners and the remaining amount was to go to the respondent. Clause 16 of the agreement provides that in case the respondent fails to execute to sell the property to the third party then the petitioners would be entitled to purchase the property and after adjusting their outstanding pay the balance sale consideration to the respondent.

16. In the light of these recitals, it is very clear that the documents in question does not create any right in the immovable properties and therefore does not required to be stamped. Admittedly, there is a dispute between the petitioners and the respondent with regard to the very payment. The case of the respondent is that having moved the claim before the Insolvency Resolution Professional the petitioners cannot initiate arbitral proceedings. However, the petitioners would contend that it is the NSTCL which is before the NCLT and in respect of which the IRP has been appointed. The petitioners are seeking to invoke the arbitration

clause in the Tripartite Agreement since the respondent has failed to honour their commitment under this agreement. Therefore, the petitioners would submit that the pendency of the proceedings before the Insolvency Resolution Professional would not be a bar for arbitral proceedings. They have also dispelled the claim that a right in property has been created under the memorandum of understanding.

17. Therefore, considering the fact that parties have agreed to resolve the disputes through arbitration I appoint Mr.Yashod Vardhan, Senior Counsel as the arbitrator. This arbitrator was named by the petitioners and the learned counsel for the respondent would submit that in the event of the Court rejecting his contentions then he has no objection to the appointment of Mr.Yashod Vardhan, Senior Counsel as the arbitrator. Since this Court has rejected the contentions of the respondent regarding the arbitral tribunal, I hereby appoint Mr.Yashod Vardhan, Senior Advocate, No.21 (8), VII th Main Road, Raja Annamalaipuram, Chennai – 600 028, Mob: 9841075397, as the Arbitrator.

i) The arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of entering reference. It is open to the respondent to raise all legal objections as to the validity of contract.

ii) The arbitrator is at liberty to fix the remuneration and other incidental expenses as per law.

iii) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

16. The Original Petition is ordered leaving the parties to bear their own costs. Interim order already granted shall continue till the arbitral proceedings conclude. Consequently, the application in A.No.9274 of 2019 is closed giving liberty to the applicants to move the arbitral Tribunal. No costs.

22.02.2021

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
kan

P.T. ASHA. J,

kan

O.P.No.250 of 2020

22.02.2021