



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 13th DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

O.P. No.394 of 2020

In the matter of Arbitration and
Conciliation Act 1996,

And

In the matter of Arbitration
Agreement and Arbitration Dispute
arising under and in connection
with the Lease Deed dated
13.08.2013 clause-16 Between Late
C.Sendil & CNIL-1st Respondent
now merged with 2nd Respondent.

1.Mrs. Selvasundari,
W/o Late Mr.C.Sendil,
No.3A/1, First Street, Sri Sakthi Vijayalakshmi Nagar,
Velachery, Chennai – 600 042.

2.Mrs.S.Kiruthiga,
D/o Late Mr.C.Sendil,
Door No.I, Venkatraman Street, Syndicate Bank Colony,
Pallikarani, Chennai – 600 100.

3.Mr.S.Rathan Machendra,
S/o Late Mr.C.Sendil,
No.3A/1, First Street, Sri Sakthi Vijayalakshmi Nagar,
Velachery, Chennai – 600 042.

...Petitioner

-Versus-

1. M/s Chennai Network Infrastructure Limited,
Rep. by its Managing Director,
City Centre 3rd Floor, 232/77 (186/303),



Purasaiwalkam High Road, Kilpauk,
Purasaiwakkam, Chennai – 600 010.

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2. M/s GTL Infrastructure Limited,
rep. by its Managing Director,
City Centre 3rd Floor, 232/77 (186/303),
Purasaiwalkam High Road, Kilpauk,
Purasaiwakkam, Chennai – 600 010.

..Respondents

Original Petition praying that this Hon'ble Court be pleased to

a) appoint an independent sole arbitrator to adjudicate the disputes arising between the petitioner and the Respondents in connection with or relating to the license agreement dated 16.08.2013; Clause-16.

b) Directing the respondent to pay the cost of this petition;

This original petition coming on this day before this Court for hearing in the presence of Ms.N.Shalini for Mr.S.Jaganathan, Advocates for the petitioner herein and Mr.C.Sakthi Manikandan, Advocate for the respondents herein, and upon reading the petition filed herein, and the order dated 27.01.2021, **it is ordered as follows:-**

That Mr.Pawan Jhabhak, learned Advocate, No.115, Luz Church Road, 1st Floor, Mylapore, Chennai – 600 007, Mobile No.9176663600 be and is hereby appointed as Sole Arbitrator.

2. That the learned sole arbitrator appointed herein be and is hereby requested to enter upon reference, adjudicate arbitrable disputes that have arisen between the parties i.e., Licence Agreement dated 16.08.2013



and make an award by conducting arbitration in the 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017.

3. That the fee of the learned sole arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

4. That there shall be no order as to costs.

WITNESS THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 13th DAY OF APRIL 2022.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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22.04.2022

O.P. No.394 of 2020

ORDER

DATED: 13.04.2022

THE HON'BLE MR.JUSTICE

M.SUNDAR

FOR APPROVAL: 22.04.2022

APPROVED ON : 22.04.2022

Copy to :

1.Mr.Pawan Jhabhak,
learned Advocate, Sole Arbitrator
No.115, Luz Church Road,
1st Floor, Mylapore,
Chennai – 600 007,
Mobile No.9176663600

2. The Director,
Tamil Nadu Mediation and Conciliation
Centre -cum-Ex Officio Member,
Madras High Court Arbitration Centre,
Chennai- 104.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

O.P.No.394 of 2020

1. Selvasundari
W/o.Late C.Sendil

2. S.Kiruthiga
D/o.Late C.Sendil

3. S.RathanMachendra
S/o.Late C.Sendil

... Petitioners

VS.

1. M/s.Chennai Network Infrastructure Limited
Rep. by its Managing Director
City Centre 3rd Floor, 232/77 (186/303)
Purasaiwalkam High Road, Kilpauk
Purasaiwalkam, Chennai-600 010.

2. M/s.GTL Infrastructure Limited
Rep. by its Managing Director
City Centre, 3rd Floor, 232/77 (186/303)
Purasaiwalkam High Road, Kilpauk
Purasaiwalkam, Chennai-600 010.

... Respondents

Original Petition filed under Section 11(6) of the Arbitration and
Conciliation Act, 1996 praying to

(a) appoint an independent sole arbitrator to adjudicate the

disputes arising between the petitioner and the respondents in connection



with or relating to the License Agreement dated 16.08.2013;

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(b) directing the respondent to pay the cost of this petition;

For Petitioners : Ms.N.Shalini
for Mr.S.Jaganathan
For Respondents : Mr.C.Sakthi Manikandan

ORDER

This order will now dispose of the captioned 'Original Petition' [hereinafter 'OP' for the sake of convenience and clarity] which has been presented in this Court on 02.09.2020 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] with a prayer for appointment of a sole Arbitrator.

2. Ms.N.Shalini, learned counsel representing the counsel on record for the three petitioners and Mr.C.Sakthi Manikandan, learned counsel for both respondents are before this Court.

3. Before proceeding further it is necessary to extract and reproduce paragraph No.5 of counter affidavit filed by second respondent. I do so and the same reads as follows:

'5. I submit that during the subsistence of the above said license agreement, Chennai Network Infrastructure Ltd., (CNIL) has been merged with GTL Infrastructure Ltd., (the 2nd respondent herein) through a Scheme of Arrangement sanctioned/approved by the National Company Law Board at Chennai Bench order dated



13.12.2017 and National Company Law Board at Mumbai Bench order dated 15.12.2017. As per the above orders, all the CNIL sites/towers have been merged with GTL Infrastructure Ltd., Hence the respondent herein (GTL) stood substituted in the place of CNIL in the above said license agreement. Now certain disputes have arisen between the petitioners and the respondent herein, for which the petitioners herein have invoked the Arbitration Clause contained in the principal agreement (Lease Deed) dated 01.05.2004 and the license agreement dated 16.08.2013 and had filed this present application under Sec.11(6)(a) of the Arbitration and Conciliation Act.'

4. Mr.C.Sakthi Manikandan, learned counsel reiterates the aforesaid position of merger and submits that he now represents both the respondents. Therefore, all the three petitioners and two respondents in captioned OP are represented by counsel.

5. Learned counsel for petitioners submits that the captioned OP is predicated on a 'Licence Agreement dated 16.08.2013' [hereinafter 'primary contract' for the sake of convenience and clarity] and clause 16 thereat is a arbitration clause and the same reads as follows:

'16. Any dispute or claim between the parties hereto arising out of or relating to this agreement or its implementations and / or its effect, or the breach, termination, due to efflux of time or otherwise or invalidity thereof, either during its subsistence or after its termination, shall be referred to the arbitration of a sole arbitrator in accordance with the provisions of Arbitrations and



Reconciliation Act 1996. The Arbitration shall be held at Chennai.'

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6. Aforementioned clause 16 in the primary contract serves as an 'Arbitration Agreement' between the petitioners and respondents i.e., Arbitration Agreement between the parties within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

7. Arbitrable disputes erupted qua primary contract, arbitration agreement was triggered but it did not culminate in appointment of an arbitrator necessitating presentation of captioned OP in this Court. To be noted, there is no dispute or disagreement between the counsel before me in captioned OP on this aspect of the matter i.e., existence of arbitration agreement. To be more precise, that aforementioned clause 16 of primary contract serves as arbitration agreement between the parties is not subjected to either dispute or contestation. However, to be noted, claims/arbitrable disputes are disputed/contested and the same have to be adjudicated by an Arbitrator who is to be appointed by this Court.

8. Captioned OP (as already mentioned supra) is under Section 11(6) of A and C Act. A Section 11 legal drill has to perambulate within a tiny legal landscape limited by sub-section (6A) legal perimeter thereat. This principle has been laid down by Hon'ble Supreme Court in oft-quoted *Mayavati Trading* case law i.e., *Mayavati Trading Pvt. Ltd vs Pradyuat*



paragraph No.10 and the same reads as follows:

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'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. Aforementioned paragraph No.10 of **Mayavati Trading** case law takes this Court to **Duro Felguera** principle i.e., **M/s.Duro Felguera S.A. Vs M/s. Gangavaram Port Limited** reported in **2017 (9) SCC 729**, relevant paragraphs in **Duro Felguera** case law are paragraph Nos.47, 59 and the same read as follows:

'47. What is the effect 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



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1996 Act was considerably wide in view of the decisions in SBP and Co. and Boghara Polyfab. 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 Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.'

10. As there is no dispute, disagreement or contestation about the existence of arbitration agreement between the three petitioners and two respondents, Mr.Pawan Jhabhak, learned Advocate, No.115, Luz Church Road, 1st Floor, Mylapore, Chennai-600 007, Mobile No.9176663600 is appointed as sole Arbitrator. Learned sole Arbitrator is requested to enter upon reference, adjudicate arbitrable disputes that have arisen between the parties i.e., Licence Agreement dated 16.08.2013 and make an award by conducting arbitration in the 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of the learned sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.



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11. Captioned OP is disposed of in the aforesaid manner. There shall be no order as to costs.

Sd./-M.S.J.

13.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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