

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2020

CORAM :

THE HONOURABLE MR. JUSTICE P.T. ASHA

O.P.No.447 of 2020

Nexus Links

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Petitioner

versus

1.A.S. Cargo Movers (P) Limited,
9th Floor,
Block B, Navins Presidium,
173, Nelson Manickam Road,
Aminjikarai,
Chennai - 600 029.

2.INDOSPACE AS Industrial Park Pvt. Ltd.,
One Indiabulls Center, 11th Floor,
Tower 2A, Senapati Bapat Marg,
Mumbai City – 400 013.

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Respondents

Prayer: Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint a sole Arbitrator from the panel of Arbitrators of this Court as per provisions of the Act and to adjudicate all disputes between the petitioner and the respondents with costs.

For Petitioner : Ms.Deepika Murali

For Respondents : Mr.J.V. Niranjan
for M/s.Niranjan & Associates
for R1

Mr.AR.L.Sundaresan,
Senior Counsel for R1

ORDER

The above application is filed for appointing a sole Arbitrator to adjudicate the disputes between the petitioner and the respondents.

2.The petitioner's case is that they had entered into a Memorandum of Understanding dated 21.03.2012 with the 1st respondent in and by which the petitioner was to identify the lessees for the space owned by the 1st respondent herein. M/s.Caterpillar India Private Limited has agreed to take the space belonging to the 1st respondent for the purpose of storing spare parts, etc., As per the Memorandum of Understanding, the proprietor of the petitioner's

concern could bring the clients to utilize the space. In consideration of the petitioner identifying the lessee, the 1st respondent was to pay professional charges exclusive of Service Tax every month to the petitioner on the rates as agreed to between the parties.

3.The Memorandum of Understanding also contained an arbitration clause in and by which the parties shall refer all their disputes and differences to arbitration. The Arbitration clause further stated that if the 1st respondent at any time during the term of the Lease Agreement between the lessee and the 1st respondent sells and or transfers its right in the schedule property as a whole or in part to one person/persons then in that event the new owners shall be bound over to the same terms and conditions of the Memorandum of Understanding.

4.It is the contention of the petitioner that thereafter, the property was transferred to the 2nd respondent. Though the 2nd respondent had

assured that a formal Agreement would be entered into, however, they had not done so. But, the monthly charges were being remitted to the petitioner believing the assurance of the respondents the petitioner had not insisted on the formal agreement. However, the petitioner would submit that after March 2017, payments were not made. On 31.10.2017, a sum of Rs.1,63,63,877/- was due and payable by the respondents. The petitioner therefore issued a legal notice to the 1st respondent with a copy marked to the 2nd respondent. The 1st respondent issued a letter stating that the Memorandum of Understanding got terminated along with the Lease Agreement and therefore, since the properties have been sold to the 2nd respondent, the 1st respondent was not bound to pay any amount to the petitioner.

5.The petitioner had moved a suit C.S.No.64 of 2018 before the Commercial Court in the City Civil Court at Ahmedabad against the respondent herein for recovery of money. The 1st respondent herein took out an application under Section 8 of the Act stating that since

there was an Arbitral Agreement, the parties have to refer the parties to arbitration. The 2nd respondent resisted the above application, but however, by an order dated 15.04.2019, the Commercial Court had allowed the Section 8 application and referred the parties to the arbitration. Consequent to the said order, the petitioner had issued a Section 21 notice dated 14.01.2020 invoking the arbitration clause. Since the respondent had objected to the same the petitioner is before this Court.

6.The 2nd respondent has filed a counter *inter alia* contending that they are not the parties to the Memorandum of Understanding and therefore, the petitioner cannot seek to make them parties to an arbitration proceedings. They would further contend that there is no Contract between the parties and therefore, the petition should be dismissed as against them.

7.The learned counsel for the petitioner had reiterated the contentions in the petition and also relied upon the following Judgments to support her contentions:

(1)2017 SCC OnLine Del 8345

Sudhir Gopi v. Indira Gandhi National Open University and another

2.(2013) 1 SCC 641

Chloro Controls India Private Limited v. Severn Trent Water Purifications Inc.

3.2021 SCC OnLine Sc 13

N.N.Global Mercantile Private Limited v. Indo Unique Flame Limited and others

8.The subsequent Sale Deed executed by the 1st respondent in favour of the 2nd respondent would automatically bind the 2nd respondent to the Memorandum of Understanding and therefore, the 2nd respondent cannot contend that there was no privity of Contract between the petitioner and the 2nd respondent.

9.Mr.AR.L.Sundaresan, learned Senior counsel for the 2nd

respondent would contend that there is absolutely no contract between the petitioners and the 2nd respondent. The 2nd respondent is not a signatory to the Memorandum of Understanding. Based on which, the present petition has been filed. He would therefore contend that the petition as against the 2nd respondent should be dismissed.

10. Heard the learned counsels for the parties and perused the papers.

11. Under the Memorandum of Understanding dated 21.03.2012, the 1st respondent had undertaken that in the event of a sale or transfer the new owners would be bound by the terms and conditions of the Memorandum of Understanding. A Perusal of the Sale Deed executed by the 1st respondent in favour of the 2nd respondent would further indicate that the respondents had consciously incorporated the following clause in the Sale Deed.

“(d)The Vendor acknowledges and confirms that the Purchaser has purchased the Schedule property along with all the permits/approvals relating to development of the schedule property and the benefits of all the lease deeds, construction contracts and other contracts entered into by the Vendor with respect to the Schedule property.”

12. Therefore, it appears to be a *prima facie* case that the 2nd respondent was aware about the Memorandum of Understanding and had also agreed to take over the same. It is also admitted that the 2nd respondent after purchasing the property had continued to make payments to the petitioner. Further, it is also seen that when the petitioner has moved the suit before the Commercial Court in the City Civil Court at Ahmedabad, the 1st respondent has taken out an application under Section 8 of the Arbitration and Conciliation Act and to have the disputes referred to the arbitration. The 2nd respondent had objected to the same but however, the learned Judge had proceeded to

allow the Section 8 application by order dated 15.04.2019 and this order has not been challenged to date by the 2nd respondent. Therefore, they have tacitly bound themselves to the said order and consequently, they cannot at this stage oppose the appointment of the Arbitrator.

13. Consequently, this Court appoints the Hon'ble Mrs. Justice Prabha Sridevan (Retd), Judge of Madras High Court, as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

14. Accordingly, it is ordered as follows:

i) The Hon'ble Mrs. Justice Prabha Sridevan (Retd), Judge of Madras High Court, residing at No. 7, Krishnaswamy Iyer Avenue, Luz Church Road, Mylapore, Chennai-600 004, Mobile No. - 9444390920, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned 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 receipt of the order. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) 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.

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

03.03.2021

Speaking Order / Non-speaking Order

Index : Yes / No

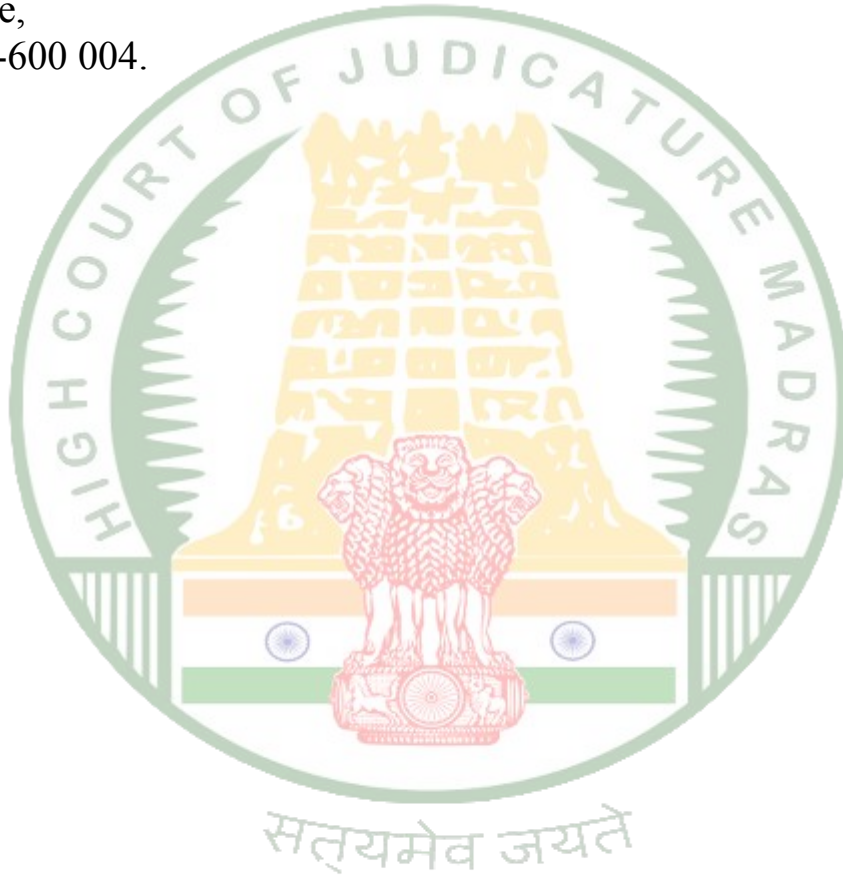
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To

The Hon'ble Mrs. Justice Prabha Sridevan (Retd),
Judge of Madras High Court,
No.7, Krishnaswamy Iyer Avenue,
Luz Church Road,
Mylapore,
Chennai-600 004.



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