



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 31st DAY OF AUGUST 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

Arb.Appln.No.164 of 2021

In the matter of Arbitration &
Conciliation Act, 1996

and

In the matter of License Agreement
dated 17.10.2011 between the
parties.

Orient Flights Private Limited,
Rep by its Managing Director,
No.1/40-9, Mount Poonamallee Road,
St.Thomas Mount,
Chennai – 600 016.

... Applicant

-Versus-

1.The Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi – 110 003.

2.The Regional Executive Director,
Airports Authority of India,
Southern Region,
ATS Complex,
Chennai – 600 027.

3.Airport Authority of India,
Mysore Airport,
Mandakally Post,
Mysore – 571 311.

... Respondents



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Arbitration Application praying that this Hon'ble Court be pleased to pass an order of interim measure of protection, to direct the Respondent to resume operations of the flight school as well as all related services and facilities.

This Arbitration Application coming on this day before this court for hearing in the presence of Mr.T.R.Rajagopalan, Senior Counsel for M/s Surana and Surana, Advocates for the applicant herein, and Mrs.S.R.Sumathy, Advocate for the respondents 1 to 3 herein, and upon reading the Judges Summons and the affidavit of Dr.Anand Jacob Verghese filed herein, **the court made the following order:-**

This application has been filed for a direction to the respondent to permit the applicant to carry out the flying operations without any interruption pending disposal of the arbitration proceedings.

2. It is stated in the application that the applicant is a pilot training establishment. In this regard, a license agreement dated 17.10.2011 was entered between the parties. Though the agreement was entered in the year 2016, the applicant commenced operation only from January 2016.



There is a delay of 4 years caused by the respondent and it is beyond the control of the applicant. Despite such a delay, the applicant had paid considerable amount from 2011 to 2015. Now the respondent has raised an invoice dated 19.07.2021 for payment of licence fee and loyalty amount for the financial year 2021 – 2022. Due to lock down, the amount could not be paid. The applicant has also sought waiver of the interest and gave a representation to the Settlement Advisory Committee [SAC] which was formed by the authority for settlement of the dispute in one time settlement. Therefore, it is his contention that unless the applicant is permitted to carry out flying operation, they would be put to irreparable hardship. The learned Senior Counsel further submitted that as on 12.08.2021, a sum of Rs.1,88,00,000/- is due by the applicant and the rest of the amount payable is towards interest. According to the learned Senior Counsel, the issue as to interest waiver is already pending before the Settlement Advisory Committee. Hence, he submitted that as far as the principal amount is concerned, the applicant is prepared to deposit a sum of Rs.1,88,00,000/- on or before 30.09.2021. Thereafter, the applicant is also ready to pay the interest as Ordered by the Settlement Advisory Committee.

3. Whereas, it is the main contention of the learned counsel for



payable by the applicant including interest. It is the contention of the respondent counsel that as far as Puducherry flying school licence is concerned, there was a due by the applicant the same lead to referring the dispute to the arbitration, which culminated in to an award. Hence, the primary concern of the respondent is that such a situation should not happen in this matter and hence, submitted that they have no objection to renew the flying operation of the applicant, if the entire amount is deposited before this Court.

4. The dispute is pertaining to the payment of the licence fee and loyalty amount of Rs.1,88,00,000/- and the remaining amount is towards the interest. Admittedly, the Settlement Advisory Committee has been formed by the Airport Authority of India for one time settlement. A copy of the proceedings has also been placed before this Court to show that such a committee is in existence. It is the contention of the applicant that he has also made his complaint seeking waiver of interest before the Committee. Though several factors have been pleaded and the delay has been attributed on the respondent, this Court is of the view that the same is not germane for consideration at this stage.



2021 – 2022, it is an admitted fact that the applicant was not carrying out the flying operations from 03.08.2021. As the amount is for the current year and the dispute is also pending before the settlement advisory committee for one time settlement, considering the nature of the relief sought and the nature of the contract and the prevailing pandemic situation, which made the operations stand still, this Court is of the view that if the petitioner deposits the entire principal amount of Rs.1,88,00,000/- as admitted, on or before 30.09.2021 to the authority, the authority shall permit the applicant to carry out flying operations. The rest of the amount, which pertains to the interest, is the subject matter of dispute before the Settlement Advisory Committee and the decision of the Settlement Advisory Committee will bind the applicant.

6. At this stage, the learned Senior Counsel submitted that immediately they are prepared to pay a sum of Rs.94,00,000/- towards the principal amount of Rs.1,88,00,000/- and the remaining principal amount will be deposited before 30.09.2021.

7. In such view of the matter, on receipt of a sum of Rs.94,00,000/- by the applicant, the authority shall permit the applicant to carry out the flying operations. If the remaining amount of Rs.94,00,000/-,



towards the principal amount, is not paid on or before 30.09.2021, the airport authority can discontinue the flying operations of the petitioner. It is made clear that if the remaining amount is not paid on or before 30.09.2021, the applicant is not entitled to continue the flying operations.

8. According, this application is disposed of.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
31st DAY OF AUGUST 2021.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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17.09.2021

Arb.Appln.No.164 of 2021

ORDER

DATED : 31.08.2021

THE HON'BLE MR. JUSTICE
N.SATHISH KUMAR

FOR APPROVAL: 20.09.2021

APPROVED ON: 20.09.2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Date 31.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Arb.Appl.No.164 of 2021

Orient Flights Private Limited,
Rep. by its Managing Director,
No.1/40-9,Mount Poonamallee Road,
St.Thomas, Chennai – 600 016.

. . . Petitioner

Versus

1. The Airports Authority of India,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi – 110 003.
2. The Regional Executive Director,
Airports Authority of India,
Southern Region, ATS Complex,
Chennai – 600 027.
3. Airport Authority of India,
Mysore Airport,
Mandakally Post, Mysore – 571 311.

. . . Respondents

PRAYER : Petition filed under Order XIV Rule 8 of the O.S.Rules and Read with Section 9[1] [e] of Arbitration and Conciliation Act, 1996 for interim measure of protection, to direct the respondent to resume operations of the file school as well as all related services and facilities.



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For respondents : Mrs.S.R.Sumathy

ORDER

This application has been filed for a direction to the respondent to permit the applicant to carry out the flying operations without any interruption pending disposal of the arbitration proceedings.

2. It is stated in the application that the applicant is a pilot training establishment. In this regard, a license agreement dated 17.10.2011 was entered between the parties. Though the agreement was entered in the year 2016, the applicant commenced operation only from January 2016. There is a delay of 4 years caused by the respondent and it is beyond the control of the applicant. Despite such a delay, the applicant had paid considerable amount from 2011 to 2015. Now the respondent has raised an invoice dated 19.07.2021 for payment of licence fee and loyalty amount for the financial year 2021 – 2022. Due to lock down, the amount could not be paid. The applicant has also sought waiver of the interest and gave a representation to the Settlement Advisory Committee [SAC] which was formed by the authority for settlement of the dispute in one time settlement. Therefore, it is his contention that unless the applicant is permitted to carry out flying operation, they would be put to irreparable hardship. The learned Senior Counsel further submitted that as on 12.08.2021, a sum of Rs.1,88,00,000/- is due by the applicant and the rest of the amount payable



is towards interest. According to the learned Senior Counsel, the issue as to interest waiver is already pending before the Settlement Advisory Committee. Hence, he submitted that as far as the principal amount is concerned, the applicant is prepared to deposit a sum of Rs.1,88,00,000/- on or before 30.09.2021. Thereafter, the applicant is also ready to pay the interest as Ordered by the Settlement Advisory Committee.

3. Whereas, it is the main contention of the learned counsel for the respondent that as on 12.08.2021, there is a due of Rs.2,70,00,000/- payable by the applicant including interest. It is the contention of the respondent counsel that as far as Puducherry flying school licence is concerned, there was a due by the applicant the same lead to referring the dispute to the arbitration, which culminated in to an award. Hence, the primary concern of the respondent is that such a situation should not happen in this matter and hence, submitted that they have no objection to renew the flying operation of the applicant, if the entire amount is deposited before this Court.

4. The dispute is pertaining to the payment of the licence fee and loyalty amount of Rs.1,88,00,000/- and the remaining amount is towards the interest. Admittedly, the Settlement Advisory Committee has been formed by the Airport Authority of India for one time settlement. A copy of the proceedings has also been placed before this Court to show that such a



committee is in existence. It is the contention of the applicant that he has also made his complaint seeking waiver of interest before the Committee.

Though several factors have been pleaded and the delay has been attributed on the respondent, this Court is of the view that the same is not germane for consideration at this stage.

5. With regard to the amount payable towards the financial year 2021 – 2022, it is an admitted fact that the applicant was not carrying out the flying operations from 03.08.2021. As the amount is for the current year and the dispute is also pending before the settlement advisory committee for one time settlement, considering the nature of the relief sought and the nature of the contract and the prevailing pandemic situation, which made the operations stand still, this Court is of the view that if the petitioner deposits the entire principal amount of Rs.1,88,00,000/- as admitted, on or before 30.09.2021 to the authority, the authority shall permit the applicant to carry out flying operations. The rest of the amount, which pertains to the interest, is the subject matter of dispute before the Settlement Advisory Committee and the decision of the Settlement Advisory Committee will bind the applicant.

6. At this stage, the learned Senior Counsel submitted that immediately they are prepared to pay a sum of Rs.94,00,000/- towards the principal amount of Rs.1,88,00,000/- and the remaining principal amount



will be deposited before 30.09.2021.

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7. In such view of the matter, on receipt of a sum of Rs.94,00,000/- by the applicant, the authority shall permit the applicant to carry out the flying operations. If the remaining amount of Rs.94,00,000/-, towards the principal amount, is not paid on or before 30.09.2021, the airport authority can discontinue the flying operations of the petitioner. It is made clear that if the remaining amount is not paid on or before 30.09.2021, the applicant is not entitled to continue the flying operations.

8. According, this application is disposed of.

Sd./-N.S.K.J.
31.08.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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