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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.03.2021

Delivered on : 26.05.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.4551 of 2019
and C.M.P.Nos.25807 to 25810 of 2019

TVS Motor Company Limited
having its registered office at
"Jayalakshmi Estates", 5th Floor,
29, Haddows Road,
Chennai - 600 006
and its factory
at Harita, P.B.No.4 Hosur - 635 109,
Tamil nadu represented by its
General Manager (Legal)

...Appellant

Vs

1.Nakshatras Auto House Private Limited,
Plot No.1, Sai Complex,
Dindigul Main Road,
Karumandapam,
Trichy - 620 001,
represented by its Director

also at
Plot No.8, II Street, 8th Cross,
Thirunagar, Karumandapam,
Trichy, Tamil Nadu - 620 001.

2.Mr.S.Manivannan
3.Smt.K.A.Thenmozhi

...Respondents

Prayer: Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996, against the Order and Decreetal Order dated 22.04.2019 passed by the learned Principal District Judge, Krishnagiri in Arbitration Original Petition No.2 of 2018.

For Appellant : Mr.Satish Parasaran
Senior Counsel
for Mr.R.Parthasarathy

For Respondent : Mr.K. Priya For R2 and R3
Not ready in notice regarding R1



JUDGMENT

The above Civil Miscellaneous Appeal gives rise to an interesting question as to whether the Arbitration Agreement entered into between the parties in one contract can be invoked with reference to a dispute that has arisen in respect of another contract entered into between them. This question arises for consideration in an application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act').

2.The brief facts which has preceeded the invocation of Arbitration Clause as well as the filing of an application seeking interim measures is hereinbelow narrated:

3.The 1st respondent Private limited Company was originally a sole proprietary concern, called Nakshathra TVS and the sole Proprietor was one Mr.S.Manivannan. The records would reveal that the said Nakshathra TVS has been the stockists of the appellant/Company since the year 2006. It appears that the said proprietary concern had applied to be appointed as Stockists of the appellant for the District of Trichy. By Letter of Offer dated 22.06.2009, the appellant had offered the said proprietary concern the authorised stockistship of the appellant Company at Plot No.1, Sai Complex, Dindigul Main Road, Karumandapam, Trichy in respect of the sale of the genuine parts of the appellant Company. The said proprietary concern was authorised to sell the spare parts of the vehicles of the appellant Company. They were engaged to sell spare parts for two-wheelers as per the terms of the Letter of Offer. The proprietary concern was allotted an unique stockist Code bearing No.30102 which was directed to be quoted for all communications as well as for placing orders.

4.Clause 24 of the said Letter of Offer provided that in case of any dispute, difference and/ claims which arises between the two in respect of this arrangement with regard to the sale of parts by the appellant to the proprietary concern or relating to any other contract or arrangement between them in respect of this arrangement the same was to be settled through arbitration. The venue of Arbitration was agreed to be at Hosur and the Arbitrator was bound to pass the Award within a period of six months.

5.It appears that in the month of November 2011, the proprietary concern was incorporated as a private Limited Company in the name & style of Nakshathraa Auto House Private limited which is the 1st respondent in the above proceedings. The registered Office of the said Company was at Puducherry. By a Letter dated 25.04.2013, this information was given to the



appellant Company. Thereafter, it appears that the appellant Company by their letter dated 16.10.2013 was pleased to accept the request and the name of the proprietary concern was duly changed to the 1st respondent Company and a new Stockist Code was allotted, namely, Code No.30140. Under cover of the above letter, the appellant had also enclosed a cheque for Rs.1,12,475.15p drawn in favour of the proprietary concern towards full and final settlement of their dues as Stockist (Code 30102).

6.After the incorporation of the first respondent and its substitution in the place of the proprietary concern, the appellant had forwarded an application to the first respondent. The said application was also duly filled up and forwarded to the appellant Company. Thereafter a Letter of Offer dated 29.05.2013 was forwarded by the appellant to the 1st respondent. Under Clause 25 of the said Letter, the 1st respondent's new stockist code was shown as 30140. Clause 26 further provided that the duplicate copy of the said letter should be signed by the 1st respondent with their official seal as a token of their acceptance and forwarded to the appellant Company. The terms contained in the Letter of Offer was similar to the Letter of Offer issued to the erstwhile proprietary concern (22.06.2009). The Letter of Offer also contained an arbitration clause identical to the one found in the earlier letter dated 22.06.2009. The Letter of Offer clearly indicates that the area of operation was the same as under the earlier Letter of Offer dated 22.06.2009 with an additional godown area of 1800 sq.ft. in addition to the sales area. It is an admitted case that this Letter of Offer has not been accepted by the 1st respondent as they have neither signed the duplicate copy nor forwarded it to the appellant. The 1st respondent continued its operation from the same place where the proprietary concern conducted its business.

7.Meanwhile, the 1st respondent Company had submitted an application dated 26.08.2014 to the appellant company to be appointed as their authorised Stockist for Madurai District. The said application was considered and the appellant had issued a Letter of Offer dated 21.11.2014 permitting the first respondent to operate from No.7, Krishna Rao Tank, North Street, Madurai, and the area of operation was the sales area measuring 2800 sq.ft. with the additional godown area of 3200 sq.ft. Once again the terms of this letter of offer was similar to the Letter of Offer dated 22.06.2009 and the Letter of Offer dated 29.05.2013 (which was not signed by the first respondent as a token of their acceptance).

8.Under Clause 25 the first respondent was allotted the Stockist Code No. 30150 and they were directed to quote this

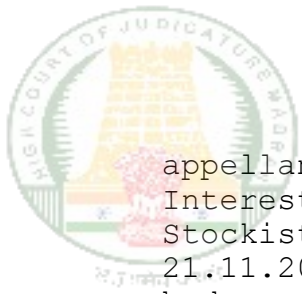


number in all their correspondences. The said letter was sent in duplicate and the first respondent was asked to sign the same with office seal as a token of acceptance and forwarded to the appellant. The said Letter of Offer has also been accepted by the first respondent unlike the Letter of Offer dated 29.05.2013. This Letter of Offer also contained an arbitration clause which was clearly restricted to include disputes, differences and/or claims that arose between the 1st respondent and the appellant with reference to the arrangement covered under this letter of offer, namely, the arrangement to operate as the stockists within the district of Madurai. The tabulated statement given below would give a bird's eye view of the agreement / arrangement between the applicant and the 1st respondent and the proprietary concern.

S.No	Date of Letter of Offer	Stockist Code	District
1	22.06.2009	30102	Trichy (Proprietary concern)
2	29.05.2013 (not signed by the 1st respondent)	30140	Trichy (1st respondent Company)
3	21.11.2014	30150	Madurai (1st respondent company)

9.It appears that the stockistship of Madurai District which was given to the 1st respondent was terminated in August 2016 and thereafter, one Popular Auto Distributors had been given the stockistship for Madurai and Thirunelveli. As on 31.12.2016, a sum of Rs.6,953.34p was said to be due by the appellant to the 1st respondent towards the work done by them at Madurai. A confirmation of this balance was requested by the appellant from the 1st respondent vide their letter dated 19.01.2017.

10.Meanwhile, by a letter dated 24.10.2016 the appellant had sent a letter to the 1st respondent asking them to confirm the outstanding of a sum of Rs.2,75,67,323.06 as on 30.09.2016 in respect of the stockist code 30140. The said outstanding was acknowledged by the 1st respondent. This was followed by a Notice of Demand dated 04.08.2017 issued by the appellant to the 1st respondent and the notice clearly described that the dues were in respect of Stockist Code No.30140. The demand was for a sum of Rs.3,24,84,967.11 together with interest @18% from 26.07.2017 till date of payment. The appellant had put the 1st respondent on notice that the non payment of the above amount would result in initiation of legal proceedings. Thereafter,



appellant had issued a notice of arbitration dated 06.11.2017. Interestingly, in this notice, the appellants had not quoted any Stockist Code, but, had quoted the Letter of Offer dated 21.11.2014 as the arbitration agreement. The arbitral notice had made reference to the demand notice dated 04.08.2017 referred supra.

11.The 1st respondent had not issued any reply notice. Thereafter, it appears that the appellant had filed Arb.O.P.No.2 of 2018 on the file of the learned Principal District Judge, Krishnagiri invoking the provisions of Section 9 of the Act for a direction to the respondents to jointly or severally furnish monetary security in the form of deposit of money or bank guarantee or any other valuable security for Rs.3,24,84,967.11p. After contest, this application has been dismissed by the learned Principal District Judge, Krishnagiri on the ground that there was no arbitral agreement between the parties and, the learned Judge had held that the appellant could take any other legal action except arbitral proceedings since there was no arbitral agreement between the parties. It is this order which is the subject matter of appeal before this Court.

12.In their petition filed under Section 9 of the Act the appellant had narrated the sequence of events starting from the signing of the Letter of Offer dated 22.06.2009 upto the confirmation of outstanding on 30.09.2016. However, the appellant had invoked the arbitral clause contained in the Letter of Offer dated 21.11.2014 though this letter of offer relates to Madurai District. The appellant had contended that the Arbitration clause would extend to cover all contracts between the parties.

13.The defense to the said petition was that there was no arbitration agreement between the parties in respect of Stockist Code No.30140 relating to Trichy Region since the respondent has not accepted the same by signing a duplicate copy of the Letter of Offer dated 29.05.2013. Further, the Letter of Offer for Stockist Code No.30150 was exclusively in respect of the dealership relating to the Madurai District. The said contract had come to an end in the month of October 2016 and therefore the appellant had committed a grave error in invoking the arbitral clause contained in an Agreement which is no longer in force. The first respondent contended that there was no arbitral agreement subsisting between the appellant and themselves.

14. SUBMISSIONS:

a) The counsels have extensively argued on the existence of an arbitral agreement and the invocation of the arbitration clause contained in an agreement which according to the first respondent had come to an end.



b) Mr.Satish Parasaran, learned Senior Counsel appearing on behalf of the learned counsel for the appellant would submit that the respondents had been appointed as a Stockist both at Trichy as well as at Madurai. He would submit that the arbitration agreement contained in the Letter of Offer dated 21.11.2014 would clearly encompass the disputes that have now arisen as the language of the arbitration clause expressly provides that it would cover all contracts or arrangement between the parties. Therefore, the argument of the respondents that the Letter of Offer dated 21.11.2014 would not cover the authorised stockistship at Trichy, is to say the least absurd. He would submit that the observation of the learned Judge that the non impleadment of Madurai Branch of the respondent Company was fatal to the case is absolutely baseless. The first respondent company is an independent entity having branches all around and therefore, it would suffice that if the first respondent is impleaded and therefore the finding that the claim is bad for non joinder of parties, is baseless. He would further argue that the respondents have not issued any reply to the notice dated 06.11.2017 issued by the appellant invoking arbitration under Section 21 of the Act. The learned Senior Counsel would further argue that the application under Section 16 of the Act filed by the respondent has been rejected by the Arbitral Tribunal and therefore, the finding of the learned District Judge, Krishnagiri, that there is no arbitral agreement is per se illegal. He would submit that the only ground on which the Section 9 application is dismissed is on the ground that the agreement dated 21.11.2014 does not cover the Stockistship at Trichy. This, according to the learned Senior Counsel is erroneous in the light of the provisions of Clause 24 of the Letter of Offer dated 21.11.2014.

c) Per Contra, Ms.K.Priya, learned counsel for the respondents 2 and 3 would at the outset submit that it is the practise of the appellant to enter into separate agreements with the stockists in respect of each District. She invited the Court's attention to the letter dated 29.05.2013 which is a Letter of Offer forwarded by the appellant to the respondents in respect of Stockist Code No.30140. This Stockist Code has been allocated to the respondents for the District of Trichy after the proprietorship concern had been converted into a private Limited Company. The earlier contract with the sole proprietary concern had been brought to an end with the repayment of monies by the appellant to the proprietary concern. The learned counsel would submit that a reading of Letter of Offer would itself show that for the offer being converted into a concluded contract the first respondent had to sign the duplicate copy of the letter of offer dated 29.05.2013 as a token of their acceptance of the offer of the appellant. Clause 26 of the said agreement would read as follows:



"This Letter of Offer is sent in duplicate. Please return one of a copy of this letter of offer duly signed with official seal as a token of acceptance on or before 10.06.2013."

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d) The learned counsel would submit that the Letter of Offer dated 29.05.2013 was not countersigned by the respondents and forwarded to the appellant. Therefore, the Offer letter remained only an Offer and had not culminated into a Contract. Therefore, there was no agreement between the parties to refer any disputes, differences or/and claims arising out of the stockist business at Trichy for Arbitration. She would further submit that it was a year later that the respondent was appointed as an authorised stockist for the District of Madurai. A Letter of Offer dated 21.11.2014 was forwarded by the appellant and the same had been accepted and countersigned by the first respondent which is clear from a perusal of Letter of Offer dated 21.11.2014. Though this Contract had come into existence after the respondents had been appointed at Trichy as Stockists, the Letter of Offer dated 21.11.2014 neither included the area of Trichy nor the Stockist code allotted to the respondent for Trichy. On the Contrary, the Letter of Offer very clearly states that the same was only in respect of the arrangement contained in the letter i.e., to operate the authorised Stockist outlet at Madurai with Stockist Code No.30150. She would therefore submit that in the absence of an arbitral agreement, in respect of the outlet at Trichy the invocation of the arbitral clause contained in the Letter of Offer in respect of Madurai is per se erroneous. This is all the more illegal since the Contract between the parties for the District of Madurai had come to an end in August 2016 and the appellant had appointed M/s.Popular Auto Distributors as Stockist at Madurai and Tirunelveli with effect from 01.08.2016. Therefore, invocation of an Arbitral clause contained in a terminated contract is void ab initio. That the agreement with regard to Madurai had come to an end is evident from the letter of the appellant dated 19.01.2017 stating that they were due and owing a sum of Rs.6,953.34p to the respondents as per their Books of Account ending 31.12.2016. In the said letter, the appellant has clearly stated that the amounts were due under the Stockist Code No.30150 and not for Stockist Code 30140. She would further submit that in the Demand Notice dated 04.08.2017, the appellant would refer to the stockist arrangement at Trichy and the original Letter of Offer dated 22.06.2009. However, the claim statement filed before the Arbitral Tribunal, is absolutely silent about the contract at Trichy under Stockist Code 30102 or 30140. She would therefore submit that the order under appeal is a well considered one and does not warrant any interference. She would further draw the attention of this Court to the oral evidence of the appellant's witness C.W.1,



who in very clear terms admitted that there are separate Letters of Offer for each District and that there is no arrangement in respect of Trichy after the proprietary concern was converted into a private Limited Company.

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15. Heard the elaborate arguments on both sides and perused the records produced before this Court.

16. The record would reveal that the appellant and the first respondent have been carrying on business since 2006 and in the year 2009, there was an agreement in the form of a Letter of Offer and Acceptance dated 22.06.2009 between the appellant and the respondents to enable the first respondent to run an authorised spare parts centre at Trichy. This arrangement contained an arbitral clause which is enshrined in Clause 24 therein which reads as follows:

"Clause 24:- All disputes differences and/or claims which have arisen between TVS Motor Company Limited and the stockist arising only of this arrangement in respect of Sale of parts by the Company to the Stockist or other contracts or arrangements between them shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendment thereof, any shall be referred to the arbitration of a sole Arbitrator nominated by the Managing Director for the time being a TVS Motor Company Limited. Such arbitration proceedings shall take place at Hosur and the same shall be conducted in English. The Arbitral Tribunal shall endeavour to give its Award within 6 months of appointment of Arbitrator."

17. The said Clause would read that all disputes, differences and/or claims arising between the appellant or the proprietary concern "only of this Agreement" would be settled through Arbitration. The Clause further clarifies that such disputes, differences and/or claims should be in respect of the sale of parts by the Company to the stockists or other contracts or arrangement between them arising out of this arrangement. Therefore, the said clause in very clear terms restricts the arbitration arrangement to the terms of the Letter of Offer dated 22.06.2009. This implies that in case of any dispute, difference and/or claim arising out of the Stockist business at Trichy both parties would resolve the same through the Arbitral process. This would include any contract/agreement that would parties may have to enter in respect of this Stockist outlet.



18. When intimation had been sent to the appellant about the proprietary concern converting itself into a Company in the year 2013 the appellant had accepted the same vide their letter dated 16.10.2013. Not only did the appellant acknowledge the conversion of the concern but they had also allotted a new Code number i.e., 30140 to the first respondent company for the business of stockists at Trichy. They had also refunded the amounts that was due to the proprietary concern as on that date. Thereafter, the appellant had forwarded a Letter of Offer on 29.05.2013 calling upon the respondents to sign the same as a token of their acceptance. Admittedly, this Letter of Offer has not been signed and returned to the respondents. Therefore, there is no concluded contract in terms of the Letter of Offer between the appellant and the respondents. Now this is very important as the Arbitral clause is contained in this Letter of Offer dated 29.05.2013 and without the acceptance by the first respondent the very agreement had not culminated in a concluded contract, particularly with reference to the Arbitration Clause. Section 7 (3) of the Act provides that the agreement should be in writing. In the instant case the letter of offer sent by the appellant had not been accepted by the first respondent. The Stockist arrangement at Madurai was entered between the appellant and the respondents a year and a half later vide a Letter of Offer dated 21.11.2014. This letter of offer was accepted by the first respondent giving rise to a concluded contract particularly with reference to the arbitral clause. Once again, Clause 24 of this Letter of Offer restricts the arbitration clause to only this arrangement i.e., the stockistship at Madurai. Although the stockistship at Trichy was prior in point of time, the Letter of Offer dated 21.11.2014 relating to Madurai did not include the stockistship at Trichy nor was the Stockist Code.30140 included in this Letter of Offer.

19. The records would also reveal that the contract had come to an end in the year 2016 itself and with that the clause containing the Arbitral agreement also came to an end. Further, the appellant has not denied the termination of the arrangement at Madurai. The first demand notice dated 04.08.2017, refers to the outstanding due under Stockist Code No.30140 which relates to the District of Trichy and not Madurai. The notice refers to the Authorised Parts Stockist Agreement and arrangement and not the Letter of Offer. However, when the notice invoking Arbitration under Section 21 of the Act was issued on 06.11.2017, the appellant had removed all references to the Stockist arrangement at Trichy and the Stockist Code 30140 but had simply referred to the notice dated 04.08.2017. This notice refers to Clause 24 of the Letter of Offer dated 21.11.2014. This astute drafting is further evident from a perusal of the contents of the Section 9 Petition which is the subject matter of this appeal wherein reference was made to the earlier



arrangement with the proprietary concern and later the conversion into a Pvt. Ltd. Company and the arrangement at Madurai in the year 2014.

20.To this petition under Section 9 of the Act the first respondent has taken a definite stand that there is no arbitration agreement between the parties with regard to the Stockist arrangement at Trichy. However, the appellant has still proceeded to constitute the Arbitral Tribunal by requesting their Chairman and Managing Director vide letter dated 13.11.2018 to nominate the Arbitrator. The Chairman and Managing Director had thereafter nominated the sole Arbitrator vide letter dated 15.11.2018. The process for appointing an Arbitrator has been initiated after the appellant had questioned the very existence of the arbitration agreement in their defense to the petition under Section 9 of the Act as set out in their counter. This is clearly evident from a reading of Paragraph 16 of the Claim filed by the appellant before the Arbitrator which reads as follows:

"16.Prior to the consittution of this sHon'ble Arbitral Tribunal, the claimant filed arbitration O.P.No.2 of 2018 before the Principal District Court, Krishnagiri, under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim orders against the respondent for furnishing security to the claim of the claimant, failing which to attach before Judgment, the properties belonging to the respondent, which were shown in the said O.P. The said O.P. Was dismissed by the Hon'ble Court citing lack of jurisdiction. It is humbly submitted that the reasoning contained in the said order is ex facie untenable and the claimant has filed an appeal against the same, which is pending before the Hon'ble Madras High Court."

When the respondent has questioned the very existence of the Arbitration Agreement they would definitely not consent for referring the disputes to Arbitration.

21.The appellant has not taken recourse the provisions of Section 11 despite the first respondent denying the existence of the Arbitral agreement. The evidence of C.W.1 would also support the case of the respondent. In response to a question as to whether separate Letters of Offer are issued for every dealership the witness has answered in the affirmative. In fact, in the Chief examination, in the form of proof affidavit, the witness has stated as follows:

"I further state that the 1st respondent stockistship business at Trichy was being run under an



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arrangement in the absence of Agreement. This admission would categorically prove that there is no agreement between the parties to refer the disputes to arbitration with regard to the stockistship at Trichy. In other words, there was no arbitral agreement in existence between the appellant and the 1st respondent."

22.The main ingredients for referring the parties to Arbitration is;

(i)The existence of a dispute which arises out of an Agreement between the parties

(ii)The Agreement further stipulating that this dispute would be resolved through arbitration.

Therefore, the dispute should relate or arise out of a Contract between the parties and such a Contract should provide for resolving this dispute through arbitration.

23.Admittedly, in the instant case, the dispute is with reference to the amounts due by the 1st respondent Company relating to its operation at Trichy under Stockist Code No.30140. This is clearly mentioned in the Notice of Demand dated 04.08.2017. The stockist arrangement in respect of Madurai (Stockist Code No.30150) was governed by the terms of the Letter of Offer dated 21.11.2014 which was terminated in the year 2016. Both parties have no demand against each other in respect of this Contract.

24.In the instant case, the Letter of Offer dated 29.05.2013 in respect of the Stockistship at Trichy was not accepted and counter signed by the respondent. The Letter of Offer dated 21.11.2014 was specific for the stockist arrangement at Madurai which came to an end in the year 2016. Therefore, the very commencement of the Arbitral proceedings is without jurisdiction.

25.The other factor which has drawn my attention is the fact that the appointment of the Arbitrator has been made by the Chairman and Managing Director of the appellant Company in a post 2015 arbitration proceedings. The procedure is against the principles laid down in the Judgment reported in (2017) 8 SCC 377 [TRF Ltd.,v. Energo Engg. Project Ltd.] and (2019) 8 MLJ 623 [Perkins Eastman Architects DPC V. HSCC (India) Ltd.,

26.The appeal deserves to be dismissed for the following reasons:

(a)No dispute has arisen in respect of the arrangement covered under the Letter of Offer dated 21.11.2014;



(b) There is no arbitration agreement between the parties in respect of the disputes which has arisen with regard to the stockist arrangement at Trichy under stockist code 30140;

(c) The arbitration clause in a contract which had come to an end as early as in 2016 by the appellant paying all the dues to the respondent has been invoked to resolve the disputes arising out of another contract;

(d) The Arbitral Tribunal has been constituted without taking recourse to the provisions contained in Section 11 of the Act despite the defence taken in the Section 9 application questioning the very existence of the arbitration agreement.

In fine, the Civil Miscellaneous Appeal is dismissed, however, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

mps

To

The Principal District Judge,
Krishnagiri.

Copy to:
The Section Officer,
V.R. Section,
High Court,
Madras.

+1cc to M/s.K.Priya, Advocate Sr.No.27304

C.M.A.No.4551 of 2019 &
C.M.P.Nos.25807 to 25810 of 2019

VSNII (CO)
PR (17/09/2021)