

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15/4/2021

C O R A M

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Original Petition No.550 of 2020

1. T. Sivashankar
Partner
M/s. SAS Industries
New No.11, Old No.25
CP Ramasamy Road
Alwarpet
Chennai 600 018.

2. Sharavanashankar
Partner
M/s. SAS Industries
New No.11, Old No.25
CP Ramasamy Road
Alwarpet
Chennai 600 018.

3. S. Anusaya
Partner
M/s. SAS Industries
New No.11, Old No.25
CP Ramasamy Road
Alwarpet
Chennai 600 018.

... Petitioners

Vs

GTL Infrastructure Limited
Global Vision Electronic Sadan
II MIDC TTC Industrial Arwa
Mahape
Navi Mumbai 400 710

...

Respondent

(formerly known as Chennai Network
Infrastructure Ltd)

Prayer: Original Petition filed under Section 11(4) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator, on behalf of the petitioner and to resolve the disputes that have arisen between the petitioner and respondent.

For Petitioners : Mr.V. Suresh
for M/s. Shivakumar & Suresh

For Respondent : Mr.C.Sakthimanikandan

सत्यमेव जयते

ORDER

This Original Petition has been filed to appoint an Arbitrator, on behalf of the petitioners, to resolve the disputes that have arisen between the petitioners and respondent.

2. Heard Mr.V.Suresh, learned counsel for the petitioners and Mr.C.Sakthimanikandan, learned counsel for the respondent through video conferencing.

3. The learned counsel appearing for the petitioners submitted that a license agreement, dated 24/12/2014 was entered into between the petitioners and respondent. The main contention put forth by the applicants is that after entering into agreement, the respondent failed to perform his part of the license and in view of the same, the matter has been referred for arbitration, as per Clause 13 of the agreement. It is the contention of the respondent that lease agreement and amenities agreement were entered into between the parties in the year 2005 with an option for renewal, as provided for in the lease agreement. It is the submission of the respondent that the lease deed and license agreement have to be read in conjunction and treated as a whole for adjudicatory purposes and the said defects have to be cured and the lease deed having not been properly stamped, the present petition for appointment of arbitrator is not maintainable, as the whole gamut of facts is covered by the principle agreement dated 23rd March 2009.

4. While it is the stand of the petitioner that there is a clause in the agreement, which provides for referring the matter for arbitration by appointing an Arbitrator, however, it is resisted by the respondent submitting that the Agreement is insufficiently stamped and cannot be enforced.

5. In a similar issue, this Court, in O.P.No.961 of 2019 (1. M.Kamalakannan and another Vs. GTL Infrastructure Limited, Chennai), has held as follows:-

“9(iv) Learned counsel for respondent drew the attention of this Court to the judgment of Hon'ble Supreme Court in Garware case (***Garware Wall Ropes Limited Vs. Coastal Marine Constructions and Engineering Limited*** reported in ***(2019) 9 SCC 209***). The most relevant and instructive paragraph in Garware is Paragraph 22 and the same reads as follows:

'22. When an arbitration clause is contained "in a contract", it is significant that the agreement only becomes a contract if it is enforceable by law. We have seen how under the Stamp Act, an agreement does not become a contract, namely, that it is not enforceable in law, unless it is duly stamped. Therefore, even a plain reading of Section 11(6-A), when read with Section 7(2) of the 1996 Act and Section 2(h) of the Contract Act, would make it clear that an arbitration clause in an agreement would not exist when it is not enforceable by law. This is also an indicator that SMA Tea Estates has, in no manner, been touched by the amendment of Section 11(6-A).

9(v) While Garware principle read in the context of *Duro Felguera* as well as *Mayavati Trading* principles makes it clear that the question regarding an instrument being duly stamped (when there is an arbitration agreement (arbitration agreement within the meaning of Section 7 of A and C Act) in the form of a covenant in an instrument) clearly falls within the contours of sub-section 6-A of Section 11. In the light of facts of this case, Garware principle does not help the respondent as the petitioners have restricted instant OP to be one predicated on clause 16 of said licence agreement, which is not compulsorily registrable and which is undisputedly sufficiently stamped. As already alluded to supra, Section 17 of the Registration Act and entry 5(j) of Schedule I of Indian Stamp Act makes this position very clear.

9(vi) Now that Garware principle does not help the respondent in the instant case owing to the peculiar facts and circumstances of case on hand, this Court shall follow ***Duro Felguera*** principle reiterated by Hon'ble Supreme Court in Mayavati Trading case law, which has already been alluded to supra.

9(vii) There is one other aspect of the matter (though not projected) which this Court reminds itself about and that question pertains to an arbitration clause in a lease deed or in other words, the question as to whether arbitration agreement qua a lease or in other words whether disputes arising out of a lease deed are arbitrable is one which a larger Bench of Hon'ble Supreme Court is in seizin of, as Himangni case (***Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia*** reported in (2017) 10 SCC 706) has been referred to a larger Bench vide ***Vidya Drolia & Ors. Vs.Durga Trading***

Corporation reported in ***2019 SCOnline SC 358***.

However, in the instant case, as the petitioners have abridged the scope of instant OP to one predicated on an arbitration clause in said licence agreement alone and not the lease deed, it may not be necessary to advert to these aspects of the matter any further detail in this order.

9(viii) This Court, therefore, proceeds to appoint Mr.M.SenthilKumaran, Advocate, Flat No.A, Jayam Villa, No.11, East Circular Road, Mandaveli, Chennai-28 (Mobile No.7550111110) as sole arbitrator to enter upon reference qua said licence agreement i.e., licence agreement dated 16.04.2015 and decide the arbitrable issues between the parties and pass an award. While entering upon reference and conducting arbitration, learned sole arbitrator shall bear in mind the observations made by this Court in this order.

Instant OP disposed of on above terms.”

6. In view of the above cited judgment, this Court, therefore, proceeds to appoint Mr.J.Krishnamoorthy, District Judge (Retd), 2 D, First Floor, “Nutech Krishna”, No.37, Soundararajan Street, T. Nagar, Chennai 600 017 (Mobile No.94420 92363) as sole arbitrator to enter upon reference qua said licence agreement i.e., licence agreement dated 24/12/2014 and decide the arbitrable issues between the parties and pass an award. While entering upon reference and conducting arbitration, lease sole arbitrator shall bear in mind the observations made by this Court, in this order.

7. Instant Original Petition is disposed of on the above terms.

15/4/2021

Speaking Order / Non-speaking Order

Index : Yes / No

Internet : Yes

Note: Registry is directed to communicate this order to Mr.J.Krishnamoorthy, District Judge (Retd), 2 D, First Floor, “Nutech Krishna”, No.37, Soundararajan Street, T. Nagar, Chennai 600 017 (Mobile No.94420 92363) forthwith.

N.SATHISH KUMAR, J



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