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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.NO.3495 OF 2021

AND

CM.P.NO.20200 OF 2021

M/s.Evolve Business Ventures,
A Proprietary concern,
Represented by its Proprietor,
Mrs.MamtaLunked,
No.18/1, S.Kariappa Road,
Model House Cross Road,
Basavanagudi,
Bangalore - 560 004.

... Appellant/Claimant

.Vs.

The Airport Director,
The Airport Authority of India,
Chennai Airport,
Chennai - 600 016.

... Respondent/Respondent

PRAYER:-

Civil Miscellaneous Appeal filed under Section 37 (2) (b) of the Arbitration and Conciliation Act, 1996, to set aside the condition passed in the impugned order, dated 08.11.2021 in MA No.19 of 2021 in Arbitration O.P.No.9 of 2021 passed by the Hon'ble Arbitrator.Mr.Kannan (Rtd) as presiding sole Arbitrator.

For Appellant : Mr.N.R.Elango,
Senior Counsel
For Mr.S.Rajakumar

For Respondent : Mr.R.Sankaranarayanan,
Additional Solicitor General
Assist by
Mr.Ramaswamy Meyyappan



J U D G M E N T

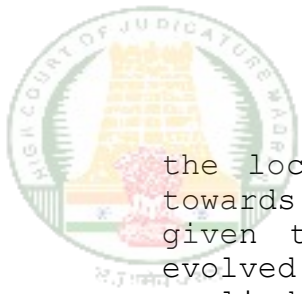
This appeal is directed against the interim order made by the Hon'ble Arbitrator under Section 17 of the Arbitration and Conciliation Act.

2. The matter relates to the payment of concessionaire fee payable by the appellant to the Airport Authority of India. The appellant was given a right to establish stalls in the Airport, let them out to individual entrepreneurs and collect charges from them. He was required to pay a particular fee for the said right. He was also required to furnish a security deposit by way of bank guarantee and liquid cash. The dispute arose between the parties and lock down imposed due to the pandemic also added to the plight of the parties. The dispute was referred to Arbitration and when the Arbitrator entered upon arbitration, the appellant sought for stay of the proceedings for termination that were launched by the respondent namely the Airport Authority of India. While granting stay, the Hon'ble Arbitrator imposed certain conditions regarding the bank guarantee, cash deposit towards security deposit as well as the amounts payable as concessionaire fee. Leaving aside the disputed amounts, the Hon'ble Arbitrator took the admitted amounts and directed the appellant to pay a sum of Rs.15.8 crores towards alleged arrears which consisted of the admitted liability of 10.8 crores and an assumed interest of Rs.5 crores. A further direction to replenish the bank guarantee for a sum of Rs.20,25,92,102/-, apart from a direction to make cash deposit of Rs.4,06,78,980/- was also made. The sum of Rs.1,65,00,000/- that remains after adjustment of alleged arrears due to the encashment of the bank guarantee, was also to be adjusted. Therefore, the total security that was to be provided was fixed at Rs.25,97,71,082/-.

3. Aggrieved by the conditions imposed by the Arbitrator, the claimant before the Arbitrator is on appeal under Section 37 of the Arbitration Act.

4. I have heard Mr.N.R.Elango, learned counsel appearing for the appellant and Mr.R.Sankaranarayanan, learned Additional Solicitor General appearing for the respondent.

5. While Mr.N.R.Elango, learned counsel appearing for the appellant would contend that the Hon'ble Arbitrator himself should have taken into account the pandemic and the effect of



the lock down imposed, while directing deposit of 15.8 Crores towards arrears. He would add that if the concession that was given to other concessioners under the scheme for concession evolved by the Airport Authority of India on 14.08.2020 is applied to the appellant, the amount payable by the appellant would be much less as there is a provision for waiver of 50 % of the security deposit. Relying upon the scheme for concession, dated 09.12.2020, Mr.N.R.Elango, would contend that if the concessions provided under Clause 3 are applied, he is required to maintain only 50% of the security deposit and hence, the direction of the Arbitrator to maintain 100% of the security deposit may not be appropriate.

6. Contending contra, Mr.R.Sankaranarayanan, learned Additional Solicitor General would submit that the benefits of the concession announced vide scheme, dated 09.12.2020 will not be available to the appellant since the scheme dated 09.12.2020 is only the extension of the original scheme dated 14.08.2020 which prohibits extension of the concession to persons who are in default. Therefore, according to learned Additional Solicitor General, the directions of the Arbitrator takes care of the interest of both the parties and considering the limited scope of appeal under Section 37 of the Arbitration and Conciliation Act, interference is not called for.

7. I have considered the submissions of the learned Senior counsels on either side.

8. The question whether the appellant would be entitled to concession or not, will have to be decided by the Arbitrator while he concludes the Arbitration. At the same time, the interest of the respondent namely the Airport Authority of India also be protected. No doubt, the pandemic had resulted in dislocation of business for various people. The Hon'ble Arbitrator had taken care to balance the interest of the parties by directing maintenance of the security deposit and payment of admitted arrears along with certain portion of the interest. While I find no ground to interfere with the direction of the Arbitrator to maintain the security deposit, that is to furnish bank guarantee for a sum of Rs.20,25,92,102/- and to make cash deposit of Rs.4,06,78,980/-, as regards the payment of the admitted arrears namely 10.8 crores along with assumed interest of Rs.5 crores, in my considered opinion, is a little harsh.

9. Without going into the merits and demerits, considering the nature of the dispute and the nature of the



business that is being carried out by the appellant which is very much dependent on the actual passenger traffic in the Airport, I am of the opinion that the interest portion namely the direction to deposit the assumed interest of Rs.5 Crores could be set aside and the appellant is directed to pay a sum of Rs.10.8 Crores under Clause 3(a) and comply with the directions in Clause 3 (b) of the order of the Arbitrator, dated 08.11.2021. I make it clear that I am not interfering with the discretion exercised by the Hon'ble Arbitrator.

10. This appeal is disposed of with the above modification. Pursuant to the modification of the interim order of the Arbitrator, the claimant shall pay a sum of Rs.10.8 crores which may be adjusted to the alleged arrears, replenish the bank guarantee to the extent of Rs.20,25,92,102/- and make a cash deposit of Rs.4,06,78,980/-. All this shall be done on or before 24.01.2022, failing which, the appeal will stand dismissed.

11. In view of the fact that I have extended the time for the compliance of the interim order of the Arbitrator, I request the Arbitrator to defer the arbitration proceedings till 24.01.2022 to enable the appellant to comply with the order and thereafter participate in the Arbitration. It is made clear that the appellant shall pay the current dues from 1st November 2021 and continue to pay current dues without default. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vum

To

1. Mr.Justice K.Kannan, (Arbitrator),
Former Judge of Pubjab & Haryana,
No.3/11, Lakshmi Colony,
North Crescent Road,
T.Nagar,
Chennai - 600 017.



2. The Proceeding Officer,
Arbitration Tribunal,
Chennai.

WEB COPY
Copy To:-

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EV(CO)
PBS/21/12/2021