

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2021

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

O.P.No.944 of 2017

1. Mr.Dilip Kumar Chordia
Proprietor of M/s.Goutham Pharma Agencies
Old No.9, New No.30, Veerappan Street
Sowcarpet, Chennai, Tamil Nadu – 600 079
2. Mrs.Manjula Kumari
W/o.Mr.Dilip Kumar Chordia
Old No.9, New No.30, Veerappan Street
Sowcarpet, Chennai, Tamil Nadu – 600 079 ... Petitioners

Vs

M/s.Religare Finvest Limited
Having its Registered Office
at No.D-3, P38, District Centre
Saket, New Delhi – 110 017 ...Respondent

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside arbitral award dated 27.02.2017 passed by the learned Arbitrator in Arbitration Petition No.RG-023 of 2016 by allowing the above OP and to pass such other and other orders as this Hon'ble Court may deem fit and proper in the circumstances of this case and thus render justice.

For Petitioners : Mr.N.Nagu Sah

For Respondent : No appearance

ORDER

Mr.N.Nagu Sah, learned counsel on record for two petitioners in captioned 'Original Petition' ('OP' for the sake of brevity) is before this Virtual Court i.e., a web-hearing on a videoconferencing platform.

2. Captioned OP is an application under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity assailing an 'arbitral award dated 27.02.2017 made in Arbitration Petition No.RG-023 of 2016' (hereinafter 'impugned award' for the sake of convenience) by a sole Arbitrator, who constituted the 'Arbitral Tribunal' ('AT' for the sake of brevity). To be noted, petitioners 1 and 2 in captioned OP were Respondents 1 and 2 before AT and the sole claimant before AT has been arrayed as the lone respondent in captioned OP. Lone respondent in captioned OP has been duly served and the name of the sole respondent is shown in the cause list, but none appears. This Court is informed that lone respondent has not entered appearance through any counsel.

3. Be that as it may, adverting to a clause {clause 15(ii)} in a loan agreement, which serves as arbitration agreement between the two petitioners and lone respondent in captioned OP i.e., 'arbitration

agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act and the impugned award, learned counsel for petitioners very fairly submits that owing to the obtaining legal position, the supervisory Court with territorial jurisdiction to entertain captioned OP is in Delhi. Learned counsel for petitioners elaborated on this point by advertng to the arbitration agreement i.e., Clause 15(ii) of the loan agreement which reads as follows:

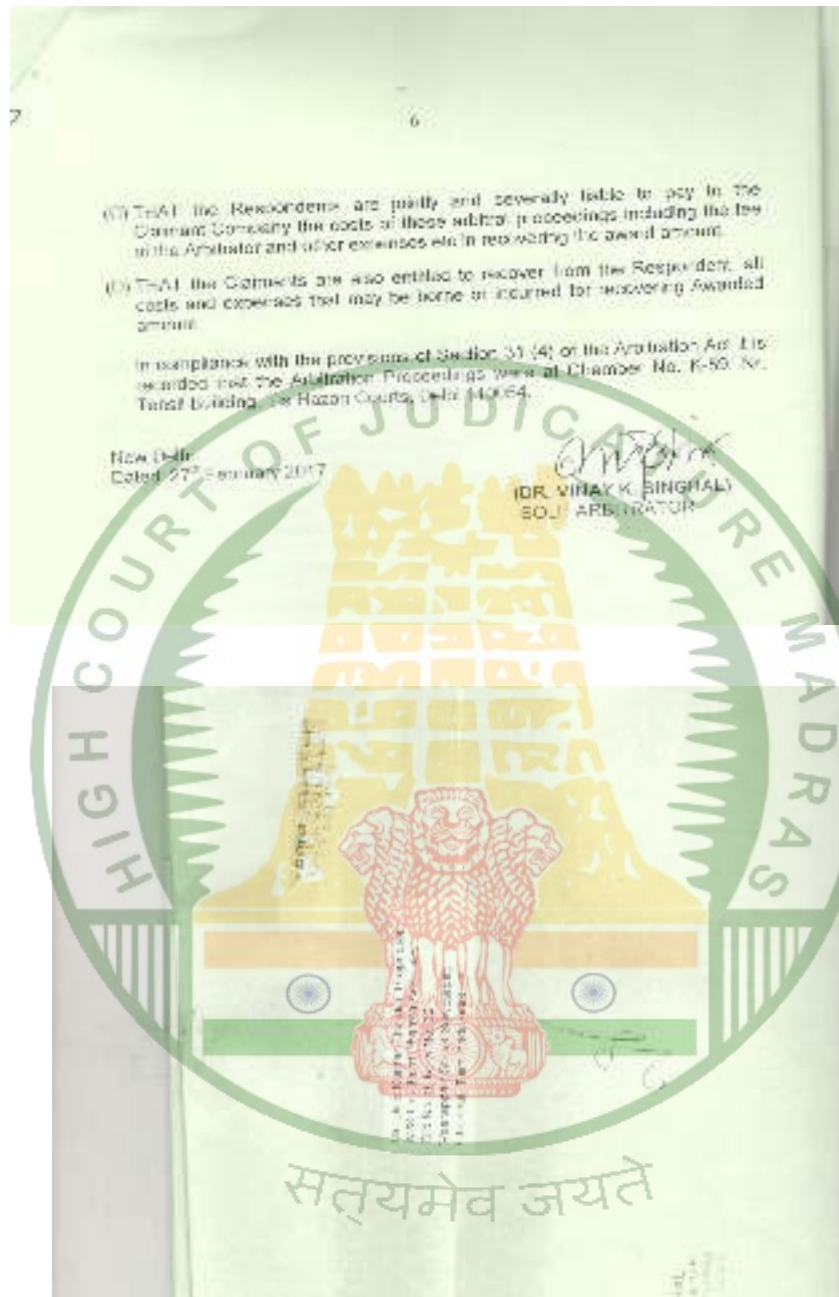
'If any disputes, difference, claim or controversy including the matter of damages if any (collectively referred to as "Dispute") arises between the parties about the validity, interpretation implementation or alleged breach of any provision of this Agreement, or anything connected or related to or incidental to this then either party may submit the Dispute to arbitration to be conducted in accordance with the provisions of the Indian Arbitration and Conciliation act 1996 as amended from time to time. Arbitration shall be held at Delhi, India. The dispute shall be referred to a suitably qualified Sole arbitrator to be appointed by RFL. The arbitration proceedings shall be conducted and the award shall be rendered in the English Language.'

(underlining made by this Court for ease of reference)

4. Thereafter, learned counsel referred to the impugned award as well as two envelopes in which signed copies of the impugned award was delivered to each of the petitioners. All these demonstrate without any doubt that the entire arbitral proceedings were held in Delhi, the

5. In this regard, this Court deems it appropriate to scan and reproduce infra the first and last pages of the impugned award as well as the aforementioned two postal envelopes:

[illegible]



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6. In the light of the narrative thus far, adverting to the **BGS SGS SOMA** principle i.e., law laid down by Hon'ble Supreme Court in **BGS SGS SOMA JV Vs. NHPC Limited** reported in (2020) 4 SCC 234, learned counsel submitted that both the seat and venue qua the impugned award is Delhi and therefore, Courts in Delhi have exclusive jurisdiction, more particularly Court having supervisory jurisdiction to entertain a challenge to impugned award under Section 34 of A and C Act.

7. Learned counsel for petitioners requests that the entire case papers in captioned OP may please be returned to the counsel for petitioners together with signed copies of impugned award for the purpose of presentation in the jurisdictional Court in Delhi. This request is acceded to.

8. Registry is directed to return the entire case papers together with signed copies of impugned award under due acknowledgement to the counsel on record for petitioners for the purpose of enabling the counsel for petitioners to present it in the jurisdictional Court (with supervisory jurisdiction qua impugned award) in Delhi.

9. Registry shall do the needful within four weeks from today i.e., by 26.04.2021.

O.P returned in the above manner owing to aforementioned narrative. There shall be no order as to costs.

29.03.2021

Speaking order: Yes
Index: Yes/No

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