



Arb O.P.(Com. Div.) No.107 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.03.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

Arb O.P.(Com. Div.) No.107 of 2022

Mr.P.Jeyakumar

... Petitioner

Vs.

Mr.A.Ragunathan

... Respondent

Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to appoint an arbitrator to resolve the disputes between the petitioner and the respondent in terms of Clause 6 of the MOU dated 19.01.2021 and clause 12 of another MOU dated 05.04.2021.

For Petitioner : Mr.M.A.Aruneshe

For Respondent : Mr.AR.M.Arunachalam

ORDER

Mr.M.A.Aruneshe, learned counsel on behalf of the sole petitioner and Mr.AR.M.Arunachalam, learned counsel on behalf of the lone respondent are before this Court.



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2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 15.03.2022 and 29.03.2022, which read as follows:

'Proceedings dated 15.03.2022

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 21.02.2022 inter alia under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity], with a prayer for appointment of an Arbitrator.

2. Mr.M.A.Aruneshe, learned counsel on record submits that the captioned Arb OP is predicated on a 'Memorandum of Understanding [MOU] dated 19.01.2021' [hereinafter 'primary agreement' for the sake of convenience and clarity] which is preceded by a 'partnership deed dated 06.02.2008'

3. Learned counsel submits that clause 6 of primary agreement (Page No.8 of the typed set of papers) is the arbitration clause and the same reads as follows:

'6. That in case of any dispute between the parties, the same shall be amicably settled and in case of failure thereon, the same shall be referred to an Arbitrator to resolve the problem. The provisions of Arbitration and Conciliation Act, 1996 shall apply. The venue of the Arbitration at Chennai.'

4. The above arbitration clause serves as an arbitration agreement between the petitioner and respondent i.e., arbitration



agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

5. Suffice to say that it is the case of petitioner that a trigger notice dated 31.12.2021 (page No.44 of the typed set of papers) was issued invoking the aforementioned arbitration clause that met with a reply dated 06.01.2022 (page No.48 of typed set of papers) and the petitioner has sent a rejoinder dated 22.01.2022 (page No.53 of the typed set of papers).

6. Adverting to the aforementioned reply from the respondent (dated 06.01.2022), learned counsel submits that existence of the arbitration agreement is not disputed but it has only been averred that settlement is nearing completion.

7. In the light of the narrative thus far, issue notice to the respondent returnable in a fortnight i.e., returnable by 29.03.2022. Private notice permitted. Private notice through all electronic modes of communications (subject to proof being demonstrated) also permitted.

8. List on 29.03.2022.'

'Proceedings dated 29.03.2022

Mr.A.V.Arun, learned counsel for sole petitioner is before this Court.

2. Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 15.03.2022.

3. Pursuant to 15.03.2022 proceedings, lone respondent has been duly served and name of lone respondent together with full/complete address as in the cause title is shown in the cause list.



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4. *Mr.Ar.M.Arunachalam, learned counsel with address for service at No.175, Thambu Chetty Street, Parrys, Chennai, who is before this Court submits that he has filed Vakalatnama on behalf of lone respondent in the Registry on 28.03.2022 vide D.No.9572 of 2022.*

5. *Registry to verify and show the name of counsel for respondent in the cause list if Vakalatnama is in order or otherwise, name of the lone respondent and name of the counsel for respondent together with Vakalatnama returned in parenthesis shall be shown in the cause list.*

6. *List on 31.03.2022.'*

3. Aforementioned proceedings are telltale qua crux and gravamen of captioned Arb OP and the trajectory it has taken before this Court.

4. Respondent has filed a counter affidavit. A careful perusal of the pleadings brings to light that the allegations and counter allegations are essentially on merits of the matter but there is no disputation or disagreement regarding the existence of arbitration agreement between the parties i.e., between the petitioner and respondent. To be noted, the same short forms and abbreviations used in the previous proceedings [extracted and reproduced supra] shall continue to be used in the instant order also.

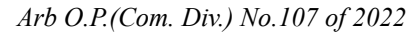


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5. As would be evident from the earlier proceedings, captioned Arb OP has been presented under Section 11(6) of A and C Act. A legal drill under Section 11 of A and C Act is confined to 'examination of the existence of an arbitration agreement'. This is ingrained in sub-section (6A) of Section 11 of A and C Act and the judgment of Hon'ble Supreme Court in **Mayavati Trading Pvt. Ltd vs Pradyut Deb Burman** reported in (2019) 8 SCC 714, relevant paragraph is paragraph No.10 and the same reads as follows:

'10. This being the position, it is clear that the law prior to the 2015 Amendment that has been laid down by this Court, which would have included going into whether accord and satisfaction has taken place, has now been legislatively overruled. This being the position, it is difficult to agree with the reasoning contained in the aforesaid judgement, as Section 11(6-A) is confined to the examination of the existence of an arbitration agreement and is to be understood in the narrow sense as has been laid down in the judgement in Duro Felguera'

6. Aforementioned paragraph No.10 of **Mayavati Trading** case law takes us to **Duro Felguera** principle being ratio laid down by Hon'ble Supreme Court in **M/s.Duro Felguera S.A. Vs M/s.Gangavaram Port Limited** reported in 2017 (9) SCC 729, relevant paragraphs in **Duro Felguera** case are paragraph Nos.47 and 59 and the same reads as follows:



• • • • •

7. In the light of the limited legal perimeter of a Section 11 legal drill, this Court deems it appropriate to not to delve or dilate into the merits of the matter. As there is no disputation regarding the existence of arbitration agreement, this Court proceeds to appoint a sole Arbitrator leaving open all questions including the rival contentions in the pleadings qua captioned Arb OP to be decided by the Sole Arbitrator.



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8. Ms.D.Nagasaila, Advocate, with address for service at Old No.123, New No.255, 3rd Floor, Hussaina Manzil, Angappan Naicken Street, Parrys, Chennai 600 001. (Mobile No:94440 83494) (E-mail: nagasailad@gmail.com) is appointed as sole Arbitrator.

9. Learned sole Arbitrator is requested to enter upon reference, adjudicate the arbitral disputes that have arisen between the petitioner and respondent qua Partnership Deed dated 06.02.2008, MOU dated 19.01.2021 [described as primary agreement in previous proceedings dated 15.03.2022] and a further MOU dated 05.04.2021 and render an award by conducting arbitration in accordance with Madras High Court Arbitration Proceedings Rules 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Captioned Arb OP disposed of in above terms. There shall be no order as to costs.

31.03.2022

Speaking/Non-speaking order

Index : Yes / No

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M.SUNDAR. J.,

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Note: Registry is directed to communicate a copy of this order forthwith to

1. Ms.D.Nagasaila,
Advocate,
Old No.123, New No.255,
3rd Floor, Hussaina Manzil,
Angappan Naicken Street,
Parrys, Chennai 600 001.
(Mobile No:94440 83494)
(E-mail: nagasailad@gmail.com)
2. The Director,
Tamil Nadu Mediation and Conciliation Centre -cum-
Ex-Officio Member,
Madras High Court Arbitration Centre,
Madras High Court,
Chennai 600 104.

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