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Arb.O.P (Com.Div).No.128 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div).No.128 of 2022

Ms.Hemalatha Kesavan
D/o.L.S.Parthasarathy
3/364, 9th Street
Venkateshwara Nagar, Kottivakkam
Thiruvanmiyur, Chennai – 600 041.

... Petitioner

vs.

1.Mr.P.Ravindran
S/o.Parthasarathy
No.6, 9th Cross Street
Indira Nagar, Adyar
Chennai – 600 020.

2.M/s.SARC Exports
Represented by its Partner
Mr.Albert Raj
S/o.Cheladurai
110, Raja Garden
Vanagaram, Chennai – 600 095.

... Respondents

Prayer:

Arbitration Original Petition filed under Section 11(5) of Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to resolve the dispute



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between the Petitioner and the Respondents arising out of and in connection with the Memorandum of Understanding dated 24.03.2018.

For Petitioner : Mr.Sashidhar Sivakumar,
for Ms.V.Pavitra

For Respondent : Mr.C.K.M.Appaji

ORDER

This order will now dispose of the captioned Arb OP.

2.The proceedings made by this Court in the previous listing of captioned Arb OP on 21.03.2022 is as follows:

'Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court inter alia under Section 11(5) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] with a prayer for appointment of an arbitrator.

2.Mr.Sashidhar Sivakumar learned counsel appearing on behalf of Ms.V.Pavitra counsel on record, who is before this Court submits that the captioned Arb OP is predicated on clause 4 of a 'memorandum of understanding' ['MOU'] dated 24.03.2018 which shall hereinafter be referred to as 'primary



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contract' for the sake of convenience and clarity.

3.Learned counsel submits that the transaction is one of hand loan, inter alia owing to alleged default in repayment and disputation of the same arbitrable disputes have arisen, therefore a trigger notice dated 18.12.2021 was issued and this trigger notice met with a reply from respondent dated 22.01.2022 not accepting the nomination of arbitrator necessitating the presentation of captioned Arb OP in this Court on 28.02.2022.

4.Issue notice to respondents returnable in three weeks i.e., returnable by 11.04.2022. Private notice permitted.

5.List on 11.04.2022.'

3.The short forms and abbreviations used in the aforementioned earlier proceedings (extracted and reproduced supra) shall continue to be used in this order also for the sake of convenience and clarity. To be noted, the earlier proceedings (reproduced supra) shall be read as an integral part and parcel of this order.

4.Today, Mr.Sashidhar Sivakumar, learned counsel appearing on behalf of Ms.V.Pavitra, learned counsel on record for the sole petitioner is before this Court. Mr.C.K.M.Appaji, learned counsel with address for



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service at No.225, NSC Bose Road, Chennai – 600 001 who is before this Court submits that he has instructions to file vakalatnama for both the respondents and that he will file vakalatnama before the close of working hours day after tomorrow i.e., before close of working hours on 13.04.2022.

5.Be that as it may, from the submissions made before this Court today, it is clear that there is no dispute regarding existence of Arbitration Agreement i.e., Clause 4 of Memorandum of Understanding (MOU), dated 24.03.2018. This by itself is good enough to appoint a sole arbitrator to dispose of the captioned Arb OP, owing to sub section (6A) of Section 11 of A and C Act and elucidation of the same vide ***Mayavati Trading case law i.e., Mayavati Trading Pvt. Ltd vs Pradyuat Deb Burman*** reported in ***2019 (8) SCC 714***. Sub section (6A) of Section 11 of A and C Act reads as follows:

'The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.'



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6.The above sub section was elucidatively explained by Hon'ble Supreme Court vide **Mayavati Trading Pvt. Ltd vs Pradyat Deb Burman** reported in **2019 (8) SCC 714**. The relevant paragraph is paragraph No.10 and the same which is instructive 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'

7.Aforementioned excerpted portion of Mayavati Trading case law refers to Duro Felguera case law. To be noted, prior to **Mayavati Trading case law** in **M/s.Duro Felguera S.A. Vs M/s. Gangavaram Port Limited** reported in **2017 (9) SCC 729**, the same principle was laid down and the relevant paragraphs in **Duro Felguera case law** are paragraph Nos.47, 59



and the same read as follows:

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'47. What is the effect of the change introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (hereinafter referred to as "the 2015 Amendment") with particular reference to Section 11(6) and the newly added Section 11(6-A) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act") is the crucial question arising for consideration in this case.

.....

59. The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. and Boghara Polyfab. This position continued till the amendment brought about in 2015. After the amendment, all that the Courts need to see is whether an arbitration agreement exists – nothing more, nothing less. The legislative policy and purpose is essentially to minimize the Courts intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected."

8. **Mayavati Trading** and **Duro Felguera** principles are elucidative, instructive and they clearly set out the legal perimeter within which a legal drill under Section 11 of A and C Act should be performed. This legal



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perimeter is short and the legal landscape is limited. It is limited to examination of existence of Arbitration Agreement. In the case on hand, there is no dispute about existence of Clause 4 of Memorandum of Understanding (MOU), dated 24.03.2018 as already captured and alluded to supra. Therefore, in the case on hand, legal drill under Section 11 qua captioned Arb OP can be concluded by appointing a sole arbitrator.

9.Considering the narrative thus far, this Court appoints *Mr.R.Palaniandavan, Advocate having office at No.770-A, Lower Ground Floor, Dewa Towers, Anna Salai, Chennai – 600 002 [Mobile: 9884110509]* as sole arbitrator to enter upon reference, adjudicate the arbitrable disputes that have arisen between the parties qua Memorandum of Understanding (MOU), dated 24.03.2018. Learned sole arbitrator is requested to enter upon reference, adjudicate arbitrable disputes that have arisen between the petitioner and the respondents by holding sittings at Madras High Court Arbitration Centre under the aegis of this Court [MHCAC] in accordance with the 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



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Arbitrator's Fees) Rules 2017.

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10.Captioned Arbitration O.P is disposed of in the aforesaid manner.

There shall be no order as to costs.

11.04.2022

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

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

1.Mr.R.Palaniandavan, Advocate
No.770-A, Lower Ground Floor,
Dewa Towers, Anna Salai,
Chennai – 600 002 [Mobile: 9884110509]

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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