



Arb.O.P(Com.Div) No.162 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2022

CORAM

THE HON'BLE Mr.JUSTICE M.SUNDAR

Arb.O.P(Com.Div) No.162 of 2022

Hallmark Foundations Limited,
Hallmark Towers,
No.35(SP) Developed Plot Estate,
Guindy, Chennai-600 032, Tamil Nadu.

... Applicant

Vs.

Techstar Software Development India Pvt. Ltd.,
3rd Floor, 2-50/22/PH, Bhavyasree Building,
JP Valli Old Mumbai Highway, Gachibowli,
Hyderabad, Tenlangana, 500 032.

... Respondent

Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator in terms of the Agreement dated 23.10.2020 entered into between the Applicant and the Respondents, for the purpose of adjudicating upon the disputes that have arisen between the Applicant and the Respondents.

For Petitioner : Ms.Anita S.
for Mr.Srinath Sridevan

For Respondent : Mr.D.Venkateswara Rao



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ORDER

This order will now dispose of the captioned matter.

2. Proceedings made by this Court in the captioned matter in the previous listings on 07.04.2022, 28.04.2022 and 29.04.2022 read as follows:

'Proceedings dated 07.04.2022

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 04.03.2022 under Section 11(6) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter referred to as 'A and C Act' for the sake of convenience, clarity and brevity] with a prayer for appointment of an Arbitrator.

2. Ms.Aishwarya S Nathan, learned counsel on record for petitioner who is before this Court submits that the captioned Arb OP is predicated on clause 25 of a lease agreement dated 23.10.2020 pertaining to a 'property in Thiru.Vi.Ka Industrial Estate, Chennai-600 032' [hereinafter 'demised property' for the sake of convenience and clarity].

3. Lease Agreement dated 23.10.2020 shall be referred to as 'primary contract'. Aforementioned clause 25 of primary contract reads as follows:

'25. JURISDICTION

In the event of any dispute between the parties, they shall on good faith first discuss mutually and endeavour to arrive at an acceptable solution. If they are unable to do so, the dispute may be referred to arbitration by a sole arbitrator to be mutually



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appointed by the parties. In case of the parties fail to arrive at consensus for appointment of a sole arbitrator within a period of 15 days then the parties shall appoint an arbitrator each who in turn will appoint the third arbitrator. The decision arising out of the arbitration shall be final and binding on the parties. The arbitration shall be conducted in English language and the venue shall be Chennai.

Subject to the aforesaid, the parties hereto agree that any dispute arising in connection with this lease the Courts in Tamil Nadu will have exclusive jurisdiction.'

4. Learned counsel submits that the aforementioned clause 25 of primary contract serves as 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. Adverting to primary contract, learned counsel submits that the Venue and Seat are Chennai and therefore, this Court has jurisdiction. It is submitted that arbitrable disputes erupted between the petitioner and respondent qua primary contract and petitioner triggered/invoked arbitration agreement in and by a notice dated 20.07.2021. Adverting to paragraph No.12 of this notice, learned counsel submits that arbitrable disputes have been set out therein. To be noted, paragraph No.12 of this invocation notice reads as follows:

'12. Our client thus states that various issues have arisen between the parties, including without restriction, relating to:

a. Your continuing failure to pay the outstanding dues



towards monthly rental since March 2021;

b. Your unlawful attempt to terminate the lease during the lock-in period;

c. Your unlawful attempts to vacate the leasehold premises, in violation of the terms of the lease agreement, and without discharging your dues to our client.

Our client also wishes to express their deep distress at the manner in which you have been conducting yourselves by taking varied stances in your e-mails and your telephonic conversation with our client's representatives. Our client states that inspite of their best efforts in trying to find a mutually acceptable amicable solution, you have not co-operated with them. Our clients are of the view that your are not acting in good faith, and that you have left them with no option but to believe that the issues that have arisen are not capable of being resolved amicably.'

*6. It is submitted by learned counsel that the aforementioned disputes are arbitrable notwithstanding primary contract being lease agreement dated 23.10.2020 if **Vidya Drolia** principle is applied i.e., **Vidya Drolia & Ors. Vs.Durga Trading Corporation** reported in **2019 SCC OnLine SC 358**.*

7. It is brought to the notice of this Court that the trigger notice met with a reply dated 16.08.2021 from the respondent inter alia not consenting for arbitrator suggested. This was followed by some exchange of correspondence which necessitated the



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presentation of the captioned Arb OP in this Court on 04.03.2022 is learned counsel's say.

8. Prima facie case made out for issue of notice.

9. Issue notice to respondent returnable in three weeks i.e., returnable by 28.04.2022. Private notice permitted.

10. List on 28.04.2022.'

'Proceedings dated 28.04.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 07.04.2022.

2. Ms.Aishwarya S Nathan, learned counsel for petitioner, advertng to aforementioned earlier proceedings dated 07.04.2022, submits that the lone respondent has since been served and Affidavit of Service has been filed. To be noted, name of the lone respondent together with full/complete address as in the short and long cause titles has also been shown in cause list. Registry to verify if any counsel has entered appearance for the lone respondent. To be noted, learned counsel for petitioner submits that no counsel has taken noted endorsement in the vakalatnama from the petitioner's counsel.

3. List tomorrow i.e., list on 29.04.2022.'

'Proceedings dated 29.04.2022

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 28.04.2022.

2. Ms.Aishwarya S.Nathan, learned counsel for petitioner is before this Court. The respondent has been duly served and the respondent has not chosen to represent the matter before this Court. Therefore, an opportunity was given vide proceedings made in the



aforementioned earlier listing. Notwithstanding opportunity being given, the position is no different today. In other words, there is no representation for the respondent, though the respondent has been duly served and the name of the respondent company together with full/complete address as in the short cause title is shown in the cause list.

*3. However, learned counsel for petitioner requests for a short accommodation stating that there is a possibility of the lis itself getting settled. Ideally, such situations should be avoided owing to sub-section (13) of Section 11 of the Arbitration and Conciliation Act, 1996 (Act No.26 of 1996, which says that this Court shall dispose of Section 11 petition '**as expeditiously as possible**').*

4. Owing to the fervent plea made by the learned counsel for petitioner, citing possibility of a settlement, list this matter immediately after summer vacation.

5. List on 07.06.2022.'

3. It is made clear that aforementioned earlier proceedings shall be read as an integral part and parcel of this order. It is also made clear that the abbreviations, short forms and short references used in the earlier proceedings shall continue to be used in the instant order for the sake of convenience and clarity.

4. Aforementioned earlier proceedings are telltale qua factual matrix, the trajectory the matter has taken and the scope of the matter on hand.



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Therefore, it is not imperative to dilate much on these aspects of the matter.

5. Lone respondent has been duly served and Mr.D.Venkateswara Rao, Advocate, who has entered appearance on behalf of lone respondent is before this Court. Ms.Anita S, learned counsel representing the counsel on record for the petitioner is also before this Court.

6. Adverting to aforementioned earlier proceedings both learned counsel submit that the *lis* between the petitioner and respondent is likely to be settled. To be noted, this was the submission made in the previous listing (on 29.04.2022) also which was more than a month ago. In this regard, paragraphs 3 and 4 of earlier proceedings dated 29.04.2022 are of relevance. This Court reminds itself of the recent order of Hon'ble Supreme Court made in ***M/s.Shree Vishnu Constructions Vs. The Engineer in Chief, Military Engineering Service & Ors*** being order dated 19.05.2022, wherein expeditious disposal of Section 11 petitions was emphasised. This Court reminds itself of sub-section (13) of Section 11 also which stipulates 60 days time frame for disposal of Section 11 petitions.



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7. In the light of the narrative thus far, even if the matter is heading for settlement, it is well open to the parties to resort to Section 30 of A and C Act before the learned Arbitrator.

8. Be that as it may, there is no disputation or disagreement about the existence of arbitration agreement i.e., Clause 25 of Primary Contract. In this scenario, both learned counsel submitted that Mr.P.Subramani, Advocate may please be appointed as sole Arbitrator. In the light of the consensus about the sole Arbitrator, this Court deems it appropriate to appoint Mr.P.Subramani, Advocate with address for service at No.9, 2nd Floor, Parsn's Trade Plaza, Dr.Nanjappa Road, Coimbatore-641 018 (Email:subri63@gmail.com) as sole Arbitrator. Learned Arbitrator is requested to enter upon reference, adjudicate the arbitrable disputes that have arisen between the petitioner and respondent qua primary contract i.e., Lease Agreement dated 23.10.2020 and render an award. If there is a settlement, it is always open to the learned Arbitrator to resort to Section 30 of A and C Act. The fee of learned Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017 or Schedule IV of A and C Act.



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Captioned Arb.OP disposed of in aforesaid manner. There shall be no order as to costs.

07.06.2022

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Note: The Registry is directed to communicate this order forthwith

To

Mr.P.Subramani,

Advocate

No.9, 2nd Floor, Parsn's Trade Plaza,

Dr.Nanjappa Road,

Coimbatore-641 018.



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