



Arb. Appln.Nos.117 & 118 of 2022

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WEB CO **M.SUNDAR, J.,**

Read this in conjunction with and in continuation of common proceedings made in the previous listing on 28.06.2022 in the captioned applications which reads as follows:

'In the captioned applications, Mr.M.S.Murali, learned counsel assisted by Ms.Gurmeet Kour, learned counsel of R & P Partners (Law Firm) on behalf of applicant is before this Court.

2. Learned counsel submits that the captioned applications are predicated on agreements captioned 'Agreement to Assign' dated 29.06.2015 and 15.12.2015 respectively [hereinafter 'primary contracts' for the sake of convenience and clarity]. It is submitted that clause 7 of primary contracts is the arbitration agreement between the parties i.e., Arbitration Agreement between the parties within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

3. In the primary contracts, Development Rights Certificates which are also known as 'TDR' [Transferable Development Rights] assigned to applicant in lieu of certain lands acquired from certain projects qua applicant have been further assigned by the applicant to respondent and arbitrable disputes have erupted when the primary contracts were operated is learned counsel's say.



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4. At the moment, it may not be necessary to dilate further in this direction as learned counsel requests for a short accommodation saying that he would be filing an application under Section 11 of The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996) and bring it on Board. To be noted, it is deemed appropriate to record that notice invoking arbitration clause i.e., trigger notice is dated 19.01.2022, respondent's reply is dated 28.01.2022 and applicant has sent a rejoinder dated 10.02.2022 in both the captioned applications.

5. Adjourned at the request of learned counsel for applicant. List in the Admission Board i.e., Motion List on Monday i.e., on 04.07.2022.'

2. Pursuant to the aforementioned common proceedings, Mr.M.S.Murali, learned counsel along with Ms.Gurmeet Kour (both) of M/s.R & P Partners (Law Firm) on behalf of applicant, submits that two separate Section 11 'Arbitration Original Petitions' [hereinafter 'Arb OPs' for the sake of convenience and clarity] namely, Arb O.P.Nos.288 and 289 of 2022 have been filed, processed and brought on Board today. To be noted, a sole Arbitrator has been appointed in this two Arb OPs by way of two separate orders today.



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3. In the light of the aforementioned scenario, learned counsel for applicant sought permission to withdraw the captioned applications. Learned counsel has also made endorsements in the case file and a scanned reproduction of the same are as follows:

I may be permitted to
withdraw the Sec.9 Application.
I request this Court to permit me
refund of Court Fee.
MS M
Counsel Applicant.
4/7/2022.

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MS M
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4. Reiterating the aforementioned endorsements in the case file, learned counsel requests for refund of Court fee.



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5. This takes us to amended Section 69-A of 'The Tamil Nadu Court-Fees and Suits Valuation Act, 1955 (Act No.XIV of 1955) as amended in 2017 (Act 6 of 2017)' [hereinafter 'TN Court Fees Act' for brevity and convenience] which reads as follows:

'Section 69-A. Refund on Settlement of disputes under Section 89 of Code of Civil Procedure:

Where the Court refers the parties to the suit to any of the modes of settlement of dispute referred to in Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908), the fee paid shall be refunded upon such reference. Such refund need not await for settlement of the dispute.'

6. A careful perusal of the aforementioned Section 69-A of TN Court Fees Act makes it clear that a party would be entitled to refund of Court fee when the Court refers the parties to one of the modes of settlement adumbrated under Section 89 of the Code of Civil Procedure, 1908 (Central Act V of 1908) [hereinafter 'CPC' for the sake of brevity].

This takes us to Section 89 of CPC which reads as follows:

'89. Settlement of disputes outside the Court.-

(1) Where it appears to the court that there exist elements of a



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settlement which may be acceptable to the parties, the court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observation of the parties, the court may reformulate the terms of a possible settlement and refer the same for—

(a) arbitration;

(b) conciliation

(c) judicial settlement including settlement through Lok Adalat; or

(d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authority Act, 1987 (39 of 1987) and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 (39 of 1987) shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;



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(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.'

7. A careful perusal of Section 89(1)(a) of CPC makes it clear that 'arbitration' is one of the modes of settlement adumbrated under Section 89 of CPC. This brings us back to Section 69-A of TN Court Fees Act. Section 69-A of TN Court Fees Act makes it clear that when the Court refers the parties to one of the modes of settlement under Section 89 of CPC, fee paid shall be refunded and such refund need not await settlement of dispute. Therefore, request for refund of the Court fee is acceded to.

8. Registry is directed to process the refund of Court fee by adhering to usual procedure by making standard Statutory deductions if any, if that be so and refund shall be made by way of an instrument drawn in favour of applicant-Company. Refund shall be made as expeditiously as the business of the Registry would permit and in any event, within six weeks from today i.e., on or before 22.08.2022.



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9. Though obvious, it is made clear that all the rights of the applicant are preserved for making same/similar prayer in the captioned applications before Hon'ble AT either under Section 17 of A and C Act or under any other appropriate provisions. If this course is adopted, Hon'ble Arbitrator shall deal with the same on its own merits and in accordance with law notwithstanding this judicial order.

10. Captioned applications disposed of as withdrawn in the aforesaid manner. There shall be no order as to costs.

04.07.2022

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