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Arb.O.P (Com.Div.) No. 304 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P (Com.Div.) No. 304 of 2021

M/s.Trans Pacific Logistics Pvt. Ltd.,
Rep By its Director, Mrs.Kusuma Kumari,
W/o.Late.M.Dhanraj,
No.150/126, 4th Floor,
Cisons Complex,
Montieth Road, Egmore,
Chennai 600 008.

... Petitioner

Vs.

M/s.Joraj Shipping Service Pvt.Ltd.,
Rep by its Manager,
No.24, Landons Road,
Kilpauk,
Chennai 600 008.

... Respondent

Arbitration Original Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 to appoint an Arbitrator to

(a) direct the respondent to name or appoint an Arbitrator on his side to adjudicate all the disputes between the petitioner and the respondent arising out of the equipment lease agreement dated 11.06.2018 in accordance with the provisions of Arbitration and Conciliation Act, 1996;

(b) to direct the Respondent to pay the costs;



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For Petitioner : Mr.R.S.Mohan

For Respondent : No appearance

ORDER

Captioned 'Arbitration Original Petition' [hereinafter 'Arb OP' for the sake of convenience and clarity] has been presented in this Court on 23.08.2021 under Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity] *inter alia* with a prayer for appointment of an Arbitrator.

2. Mr.R.S.Mohan, learned counsel for sole petitioner who is before this Court submits that notice was issued by Hon'ble Predecessor Judge and notice has been duly served on the lone respondent. To be noted, name of the lone respondent together with full/complete address is shown in the cause list but there is no representation. This Court is informed that the lone respondent has not entered appearance through any counsel.



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3. Be that as it may, learned counsel for petitioner submits that captioned Arb OP is predicated on Clauses 26 and 27 in an 'agreement captioned EQUIPMENT LEASE AGREEMENT and dated 11.06.2018' [hereinafter 'primary contract' for the sake of convenience and clarity].

4. Clauses 26 and 27 of primary contract read as follows:

'26.ARBITRATION: In the event of any dispute or difference of opinion arising out of or in respect of this agreement or the commission of any breach of any terms thereof or of compensation payable thereof or in any manner whatsoever in connection with it, the same shall be referred to arbitration of three arbitrators (Each party shall select an arbitrator and both such selected arbitrators will select the third arbitrator) and such arbitration shall be governed by the UNCITRAL Arbitration Rules as at present in force. The decision or award so given shall be binding on the parties hereto.

27.GOVERNING LAW: This Lease Agreement shall be governed by and construed under the laws of India and subject to Arbitration Clause the Courts in Chennai shall have jurisdiction.'



5. The aforementioned clauses 26 and 27 in the primary contract serve 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 is learned counsel's say.

6. Learned counsel also submits that the arbitration agreement contemplates arbitration by a three member Arbitral Tribunal but the same can be downsized and made a sole Arbitral Tribunal considering the arbitrable disputes that have arisen between the parties qua primary contract. Learned counsel submits that according to petitioner lease amount for the equipment taken on lease has not been paid but this is disputed by respondent and this is one of the primary disputes between the parties.

7. Captioned Arb OP is under Section 11 of A and C Act and as already alluded to supra, in a Section 11 legal drill, legal perimeter is largely drawn by sub-section (6A) thereat. This principle has been laid down by Hon'ble Supreme Court in *Mayavati Trading* case law {*Mayavati Trading Private Limited Vs. Pradyut Deb Burman* reported in (2019) 8 SCC 714},



relevant paragraph in **Mayavati Trading** case law is paragraph 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 judgments, 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 judgment in Duro Felguera SA.'

*(underlining made by this Court
to supply emphasis and highlight)*

8. Paragraph 10 of **Mayavati Trading** case law takes this Court to **Duro Felguera** principle [**Duro Felguera, S.A. versus Gangavaram Port Limited** reported in (2017) 9 SCC 729]. To be noted, relevant Paragraphs in **Duro Felguera** case law are paragraphs 47 and 59, which read as follows:

'47. What is the effects 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. (supra)* and *Boghara Polyfab (supra)*. 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 Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in [Section 11](#) (6A) ought to be respected. '*

9. In the case on hand, lone respondent has not chosen to come before this Court and dispute the existence of arbitration agreement in spite of being duly served with notice and in spite of name together with full/complete address being duly shown in the cause list. This means that there is no disputation or contestation before this Court about the existence of arbitration agreement. Expeditious disposal being the sublime philosophy qua ADR mechanism it is not desirable to adjourn captioned Arb. OP more so as it is a Section 11 legal drill that perambulates within a limited landscape {to be noted, 'ADR' stands for 'Alternate Dispute Resolution'} Therefore, if the aforementioned *Mayavati Trading* and *Duro Felguera* principles are applied, this Court can proceed to appoint an Arbitrator.



There is no difficulty in accepting the submission that a Section 11 Court can downsize the Arbitral Tribunal i.e., number of Arbitrators. Therefore, the plea of petitioner to downsize the Arbitral Tribunal and appoint a Sole Arbitrator is acceded to.

10. In the light of narrative thus far, Mr.Adithya Reddy, Advocate with address for service at D2, Vasanth Apartments, Avvai Shanmugam Salai, Chennai 600 018 (Mobile No:98848 11101) (E-mail: reddy.adithya@gmail.com) is appointed as Sole Arbitrator. Learned Sole Arbitrator is requested to enter upon reference and adjudicate arbitrable dispute that have arisen between the petitioner and respondent qua aforementioned primary contract by conducting arbitration in the 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' (MHCAC) as per Madras High Court Arbitration Proceedings Rules 2017 and fee of the learned Sole Arbitrator shall be in accordance with the Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.



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

28.03.2022

Speaking/Non-speaking order

Index : Yes / No

gpa/nsa

Note: The Registry is directed to communicate this order forthwith to

1. Mr.Adithya Reddy,
Advocate,
D2, Vasanth Apartments,
Avvai Shanmugam Salai,
Chennai 600 018
(Mobile No:98848 11101) (E-mail: reddy.adithya@gmail.com)
2. The Director
Tamil Nadu Mediation Conciliation Centre
-cum- Ex-Officio Member
Madras High Court Arbitration Centre
Chennai - 104.



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M.SUNDAR.J.,

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