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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 07TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE P. VELMURUGAN

A.Nos. 3419 & 3420 of 2021

in

C.S.No. 194 of 2021

C.S.No. 194 of 2021 :-

SEPC Limited.,
(Formerly Shriram EPC Limited)
Represented by its authorized Signatory,
R. Sridharan, Sr.Vice President – Secretarial & Legal,
SEPC Limited, Bascon Futura B V,
IV Floor, No.10/1, Venkatanarayana Road,
T.Nagar, Chennai – 600 017.

... Plaintiff

-Vs-

1. Steel Authority of India Limited,
Durgapur Steel Plant,
Durgapur – 713 203
West Bengal.
Represented by its General Manager (IPM-MM)
2. Axis Bank Limited,
Corporate Banking Branch
New No.3 / Old No.2, Club House Road,
Near Taj Club House,
Anna Salai,
Chennai – 600 002.

... Defendants



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A.Nos. 3419 & 3420 of 2021 :-

Steel Authority of India Limited,
Durgapur Steel Plant,
Durgapur – 713 203
West Bengal.
Rep.by its General Manager (IPM-MM)

... Applicant / Defendant – 1
(in both applications)

-Vs-

1. SEPC Limited.,
(Formerly Shriram EPC Limited)
Represented by its authorized Signatory,
R. Sridharan, Sr.Vice President – Secretarial & Legal,
SEPC Limited, Bascon Futura B V,
IV Floor, No.10/1, Venkatanarayana Road,
T.Nagar, Chennai – 600 017.

... 1st Respondent / Plaintiff
(in both applications)

2. Axis Bank Limited,
Corporate Banking Branch
New No.3 / Old No.2, Club House Road,
Near Taj Club House,
Anna Salai,
Chennai – 600 002.

... 2nd Respondent / 2nd Defendants
(in both applications)

A.No. 3419 of 2021 :-

Application praying that this Hon'ble Court be pleased to return the
plaint of the above suit C.S.No. 194/2021 as the Hon'ble Court has no
territorial Jurisdiction to deal with the above suit and also in view of the
exclusion of territorial jurisdiction of this Hon'ble Court under Article 9 of
the Agreement, dated 11.12.2010.



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A.No. 3420 of 2021 :-

Application praying that this Hon'ble Court be pleased to refer the parties to Arbitration to resolve the dispute.

These Applications having been heard on 07.02.2022 in the presence of Mr.A.Ilango, Advocate for the applicant in both applications, and Mr.V.Suresh, Advocate for the 1st respondent in both applications and Mr.Chethan Sagar, Advocate for the 2nd respondent in both applications, and upon reading the Judges Summons and the Affidavit of Madhukar Agarwal, filed in both the applications and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto, and this Court having observed that the Bank Guarantee was issued by the Second Respondent / Second Defendant. Situated at Chennai and therefore, this Court has got territorial jurisdiction and the application filed by the Applicant / 1st Defendant is liable to be dismissed and that a Bank Guarantee is an independent and distinct contract between the beneficiary and the bank and the rights and obligations therein are to be determined on its own terms. More so, the Suit is not filed for settling any of the disputes as mentioned in the arbitration



agreement and the suit is filed for injunction restraining the Applicant / 1st

Defendant from invoking the bank guarantee for which issue, there is no provision in the contract for referring the parties to arbitration and the bank is also not a party to the contract and therefore the application filed by the Applicant / 1st Defendant is not maintainable, **It is ordered as follows :-**

That the A.Nos. 3419 & 3420 of 2021 be and are hereby dismissed.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 07TH DAY OF MARCH 2022.

Sd/-

ASSISTANT REGISTRAR (O.S-II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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29.03.2022

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A.Nos. 3419 & 3420 of 2021
in
C.S.No. 194 of 2021

ORDER

DATED : 07.03.2022

THE HON'BLE MR. JUSTICE
P. VELMURUGAN

FOR APPROVAL : 31.03.2022

APPROVED ON : 05.04.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 07.02.2022	Delivered on 07.03.2022
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THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.Nos.3419 & 3420 of 2021

in

C.S.No.194 of 2021

Civil Suit No.194 of 2021 is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure by the plaintiff against the defendants to grant permanent injunction restraining the first defendant, their men, agents, or any one claiming through or under them from in any manner invoking the Bank Guarantee No.11650100000207, dated 31.12.2010 for a sum of Rs.3,39,94,010/-, valid upto 31.10.2021, with claim period until 31.10.2022 and consequently restrain the second defendant from making any payment to the 1st defendant on the basis of the Bank Guarantee.

2. Before filing the Suit, the plaintiff filed an application in

A.No.1974 of 2021 seeking to grant leave to sue the first respondent/1st

<https://hcservices.ecourts.gov.in/hcservices/>

defendant. This Court by its order dated 12.05.2021 granted leave to sue



the first respondent/1st defendant and the first respondent/1st defendant was directed not to invoke the Bank Guarantee till 19.05.2021. It was made clear that if no application is filed for interim injunction, interim order passed by the Court will stand revoked automatically with effect from 20.05.2021.

3. After the suit was numbered and interim injunction application was filed by the plaintiff, the 1st defendant in C.S.No.194 of 2021 has taken out two applications viz., A.No.3419 of 2021, seeking to return the plaint of the above suit as this Court has no territorial jurisdiction to deal with the above suit and also in view of the exclusion of territorial jurisdiction of this Court under Article 9 of the Agreement dated 11.12.2010 and A.No.3420 of 2021, seeking to refer the parties to Arbitration to resolve the dispute.

4. The case of the applicant/1st defendant is that Steel Authority of India Ltd, is a Government of India company incorporated under the provisions of Companies Act, 1956, having its registered office at Ispat Bhavan, Lodi Road, New Delhi. On 11.12.2010, the applicant/1st defendant had awarded a contract to the first respondent/plaintiff and an agreement between the parties was entered into for “De-bottlenecking of Coal Handling Plant at Durgapur Steel Plant”. The second defendant Bank had



issued the Bank Guarantee in favour of the applicant/1st defendant at the behest of the plaintiff, where the plaintiff is carrying on business, where payments had been received, correspondence have been exchanged, contract was accepted, the plaintiff had paid margin monies to the applicant/1st defendant and the Bank Guarantee had been extended from time to time. Subsequently, the first respondent/plaintiff had encountered various unforeseen hindrances executed additional/extra works at Durgapur, entailing extra costs and delays, due to which the applicant/1st defendant had granted extension of time on many occasions to the plaintiff. The first respondent/plaintiff had successfully completed the works awarded by the applicant/1st defendant, for which Preliminary Acceptance Certificate was issued by the Applicant/1st defendant on 30.07.2016, but minuscule portion of the work has to be completed at Durgapur. Thereafter, the first respondent/plaintiff had repaid part advance amount of Rs.3 crores to the applicant/1st defendant and balance amount of Rs.2 crores of advance had been recovered by the applicant/1st defendant during 2020 from the bank guarantees submitted by the first respondent/plaintiff. In 2015, the first respondent/plaintiff has submitted its claims of Rs.2.45 crores for extra works and Rs.75 lakhs for reimbursement of Service Tax. Without releasing the aforementioned claims, the applicant/1st defendant has issued



work at Durgapur. In reply, the first respondent/plaintiff had addressed the letters dated 02.03.2020 and 29.06.2020, mentioning about the pandemic situation and steps taken for the project. The Government of India vide announcement dated 15.05.2020, directed to give six months extension in contracts due to covid pandemic. Thereafter, without considering the replies submitted and claim made by the plaintiff, the applicant/1st defendant issued termination letter dated 28.04.2021 without any reason. Further the applicant/1st defendant has unjustly enriched itself to take action by invocation of Bank Guarantee. For the act of applicant/1st defendant, the first respondent/plaintiff has filed an Original Application No.333 of 2021 to grant an interim injunction restraining the 1st defendant, its men or any one claiming through or under them from in any manner invoking the Bank Guarantee for a sum of 3,39,94,010/- which is valid upto 31.10.2021 with claim period until 31.10.2022 and consequently, injunct the second defendant from paying any money to the applicant/1st defendant.

5. It is stated in the application that in respect of the disputes between the parties arising out of the contract agreement, the applicant/1st defendant has filed yet another Application in A.No.3420 of 2021, seeking to refer the parties to Arbitration to resolve the dispute.



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6. The learned counsel appearing for the applicant/1st defendant would submit that the applicant/1st defendant and the first respondent/plaintiff had entered into the works contract and an agreement was entered on 11.12.2010. Further, the learned counsel submitted that if any dispute arises between the parties, the parties have to resolve the dispute as per clause 9.1 of the agreement. As per the said clause, “unless otherwise mentioned, the Arbitration shall be held at Durgapur, West Bengal, India. The Court of Durgapur, West Bengal, India shall have exclusive jurisdiction over all matters of dispute”.

7. It is also contended that the disputes can be resolved in a forum at Delhi, where the registered office of applicant/1st defendant is located. Therefore, this Court has no territorial jurisdiction to entertain the Suit and therefore, the plaint has to be returned for want of jurisdiction.

8. The learned counsel appearing for the first respondent/plaintiff would submit that the issue relating to Bank Guarantee is an independent of the contract between the banker and the beneficiary therein and it is to be worked out independently of the dispute arising out of the works agreement or works contract between the parties to the application. Therefore for the



Bank Guarantee issued in Chennai, the Suit is filed only to restrain invocation of Bank Guarantee in Chennai. The issue is not with regard to breach of contract and it is only regarding the invocation of Bank Guarantee and therefore, it is only a contract between the bank and the beneficiary and therefore this Court has got jurisdiction and the Suit is within territorial jurisdiction.

9. Further, the learned counsel appearing for the 1st respondent/plaintiff submitted with regard to the application filed under Section 8 of the Arbitration and Conciliation Act, the Suit has been filed only for a bare injunction restraining the applicant/1st defendant from invoking the Bank Guarantee and to restrain the 2nd defendant from releasing the Bank Guarantee amount to the applicant/1st defendant, and not for adjudication of any disputes or differences arising out of the contract or termination of contract.

10. Further, the learned counsel submitted that the 1st respondent/plaintiff has not questioned the termination of contract or defaults on the part of the applicant/1st defendant in the Suit, but seeking to only restrain the invocation of Bank Guarantee. The learned counsel submitted that the Bank Guarantee issued by the 2nd defendant/2nd



respondent at the behest of the first respondent/plaintiff in favour of the applicant/1st defendant is an independent of contract. As such, the applicant/1st defendant cannot make the 2nd respondent/2nd defendant as a party to any proceedings based on the arbitration clause in the contract. Further, the learned counsel submitted that the arbitration clause referred by the applicant/1st defendant is only between the applicant/1st defendant and the first respondent/plaintiff and the Bank which has issued the Bank Guarantee which is the subject matter of the above Suit is not a party to the same and hence the application filed under Section 8 of the Arbitration Act, has no application to the present case.

11. Heard the learned counsel appearing for the parties and perused the materials placed on record.

12. Admittedly, the applicant/1st defendant and first respondent/plaintiff had entered into an agreement on 11.12.2010. The first respondent/plaintiff has filed the Suit against the defendants 1 & 2 to grant permanent injunction restraining the applicant/1st defendant from in any manner invoking the Bank Guarantee and consequently restrain the second defendant from making any payment to the 1st defendant on the basis of the



defendant seeking to return the plaint of the above suit, as this Court has no territorial jurisdiction to deal with the above suit; and to refer the parties to Arbitration to resolve the dispute.

13. Clause 9 of the agreement says as follows :

Article 9 : Arbitration (Reference GCC Clause 6)

9.1 Conciliation and Arbitration

Any disputes, differences, whatsoever, arising between the parties out of or relating to the construction, meaning scope, operation or effect of this Contract shall be settled between the Employer and the Contractor amicably. If however, the Employer and the Contractor are not able to resolve their disputes/differences amicably as aforesaid the said disputes/differences shall be settled by Conciliation, failing which, through Arbitration.

Conciliation shall be resorted to prior to invoking Arbitration. The Arbitration Clause is to be invoked by the parties to the Contract only on failure of conciliation proceedings to amicably settle the dispute.

The Arbitration shall be governed in accordance with the Arbitration and Conciliation Act 1996 (hereinafter referred to as the “Act”) of India. The language of Arbitration shall be English.

Subject to the stipulations made hereinabove, Arbitration shall be governed by the Rules of Indian Council of Arbitration (ICA)/“SCOPE Forum of Conciliation and Arbitration”(SCFA) as agreed by the



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party. The venue shall be New Delhi.

During the pendency of the Conciliation or Arbitration proceedings both the parties (i.e., the Contractor and the Employer) shall continue to perform their contractual obligations.

The arbitral tribunal shall give reasons for its award. The tribunal shall apportion the cost of arbitration between the parties, the award rendered in any arbitration hereunder shall be final and binding upon the parties, the parties agree that neither party shall have any right to commence or maintain any suit or legal proceeding concerning any dispute under this agreement until the dispute has been determined in accordance with the arbitration proceeding provided for herein and then only to enforce or facilitate the execution of an award rendered in such arbitration.

Unless otherwise mentioned, the Arbitration shall be held at Durgapur, West Bengal, India. The Court of Durgapur, West Bengal, India shall have exclusive jurisdiction over all matters of dispute.

14. However, this suit is not with regard to the disputes between the parties to the contract and the issue involved in the suit is independent of the contract, i.e., to restrain the applicant/1st defendant from invoking the Bank Guarantee, which was issued by the second defendant/second respondent, at the behest of the first respondent/plaintiff. It is seen that the



Bank Guarantee was issued by the second respondent/second defendant, situated at Chennai and therefore, this Court has got territorial jurisdiction and the application filed by the applicant/1st defendant is liable to be dismissed. Accordingly, application in A.No.3419 of 2021 is dismissed.

15. As per Section 8 of the Arbitration and Conciliation Act, if agreement provides for an arbitration clause, after filing the suit before filing the first statement by the defendant, they can file an application under section 8 to refer the matter for appointing an Arbitrator and the Tribunal can enquire the matter and file the report.

16. Though the agreement provides for arbitration and the applicant/1st defendant has taken out an application for referring the parties to arbitration to resolve the disputes, as rightly pointed out by the learned counsel for the first respondent/plaintiff, the dispute is not with regard to the contract between the parties, but is independent of the contract, as the relief sought for in the suit is only not to invoke the Bank Guarantee.

17. It is a settled proposition of law that a Bank Guarantee is an independent and distinct contract between the beneficiary and the bank and the rights and obligations therein are to be determined on its own terms.

More so, the Suit is not filed for settling any of the disputes as mentioned in



the arbitration clause in the agreement and the bank is not also a party to the said agreement.

18. The suit is filed for injunction restraining the applicant/1st defendant from invoking the bank guarantee for which issue, there is no provision in the contract for referring the parties to arbitration and the bank is also not a party to the contract. Therefore the application filed by the applicant/1st defendant is not maintainable. Therefore, the application is liable to be dismissed and accordingly, the same is dismissed.

In the result, the Application Nos.3419 & 3420 of 2021 are dismissed.

Sd./- P.V.J.,
07.03.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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