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O.S.A.Nos.274 & 275 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

O.S.A.Nos.274 & 275 of 2013
and M.P.Nos.1 & 2 of 2013

Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai – 600 002.

...Appellant
in both appeals

-Vs-

Chennai Water Desalination Ltd.,
No.30-A, South Phase, 6th Cross Street,
Thiru Vi Ka Industrial Estate, Guindy,
Chennai – 600 032.

...Respondent
in both appeals

Common Prayer:- Original Side Appeals filed under Order XXXVI Rule 1 of O.S. Rules read with Clause 15 of the Letters Patent against the common order and decretal order in A.S.Nos.5315 & 5316 of 2012 dated 25.04.2013.



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For Appellant
in both appeals

: Mr.R.Shunmugasundaram
Advocate General
assisted by
Mr.Gautham Raman

For Respondent
in both appeals

: M/s.Rahul Balaji

COMMON JUDGMENT

[Judgment of the Court was made by **S.S.SUNDAR, J.,**]

These appeals are filed by the appellant/Chennai Metropolitan Water Supply and Sewerage Board against the common fair and decreetal order of the learned Single Judge of this Court made in A.Nos.5315 and 5316 of 2012 dated 25.04.2013 filed under Section 9 of the Arbitration and Conciliation Act, 1996.

2.Ind set of Memo of Grounds in O.S.A.No.275 of 2013 is not available in the bundle.

3.The respondent/Chennai Water Desalination Limited in these appeals is the company incorporated under the Companies Act, 1956.



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4.The appellant is the Statutory Body established to meet the increasing demand of Water Supply and Sewerage Service in the Chennai Metropolitan Area. The appellant had entered into a Bulk Water Purchase Agreement (BWPA) on 13.09.2005 with the respondent/Chennai Water Desalination Limited regarding the supply of potable water in bulk for distribution in the Chennai Metropolitan Area. It is stated that the project is one by way of Public-Private Partnership. It is admitted that there is an arbitration clause in the agreement between the appellant and the respondent. Since a dispute arose regarding the supply of potable water and payment, the respondent filed applications in A.Nos.5315 and 5316 of 2012 under Section 9 of the Arbitration Act, 1996, to pass an interim direction to the appellant to forthwith release all payments against the invoices raised by the respondent from the commencement of commercial operations (i.e. from 25.07.2010 to 30.10.2012) and continue to make payments on the stipulated due date in the BWPA against the invoices raised in the future by the respondent.

5.The learned Single Judge of this Court allowed both applications in A.Nos.5315 and 5316 of 2012 dated 25.04.2013 and directed the appellant to forthwith release all payments against the invoices for the commencement of



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commercial operations as detailed in the order. Challenging the same, the appellant preferred the above appeals.

6.It is to be seen that the respondent filed applications under Section 9 of the Arbitration and Conciliation Act in the year 2013. It is now reported before this Court that the respondent did not initiate any arbitrary proceedings. The question is whether the orders passed under Section 9 of the Arbitration and Conciliation Act as such are maintainable. Since the respondent had not even sought for reference so far, the learned counsels appearing on either side has conceded that the direction of the learned Single Judge of this Court may be set aside. Though the learned counsel appearing for the respondent submitted that the respondent may still go for arbitration and seek further remedy and for liberty. However, the learned Advocate General appearing for the appellant objected to any liberty being given by this Court to the respondent to initiate arbitrary proceedings on the ground of limitation. This Court is of the view that the appeal can be allowed by setting aside the order of the learned Single Judge of this Court leaving it open to the respondent to work out its remedy if it is permissible in law.



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7.Having regard to the admitted facts, this Court is of the view that the respondent may seek further remedy by way of arbitration proceedings in accordance with law if it is not barred. However, it may be open to the appellant to raise its objections in case a fresh proceeding is initiated. This order is therefore without prejudice the right of parties to agitate their claim or defence.

8.In the result, the appeals are allowed. The order of learned Single Judge in A.Nos.5315 and 5316 of 2012 is set aside. No costs. Consequently connected miscellaneous petitions are closed.

(S.S.S.R., J.) (A.A.N., J.)
24.01.2023

cda

Internet : Yes

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Neutral Citation : Yes / No

S.S.SUNDAR, J.,



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AND

A.A.NAKKIRAN, J.,

cda

To

- 1.Chennai Metropolitan Water Supply
and Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai – 600 002.
- 2.Chennai Water Desalination Ltd.,
No.30-A, South Phase, 6th Cross Street,
Thiru Vi Ka Industrial Estate, Guindy,
Chennai – 600 032.
- 3.The Section Officer, VR Records,
High Court, Chennai.

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