



O.P.No.3



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
19.09.2024

PRONOUNCED ON
19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

O.P.Nos.32 & 219 of 2018
and A.No.1944 of 2018

Arb.O.P.No.32 of 2018

International Aviation Academy (P) Ltd.,
Rep., by its Chief Executive Officer,
Mr.Kannan Aiyar
No.60, III Floor, Jai Durga Complex,
Ashok Nagar First Avenue,
Ashok Nagar, Chennai – 600 083.

... Petitioner

Vs

1.M/s.Suguna Aviation Academy
Rep., by its Proprietor,
Mr.V.Lakshminarayanawami
707, Avanashi Road,
Coimbatore – 641 018.

2.Mr.K.C.Samuel
Chairman, Hindustan Aviation Academy
P.B.#3776, Marathahalli (Po)
Bangalore – 560 037.

... Respondents

PRAYER:- Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to set aside the award dated 05.09.2017 passed by the learned Sole Arbitrator and pass an order dismissing the claims filed by the first respondent/claimant and allowing all the counter claims filed by the petitioner/first respondent before the Learned Arbitrator.



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For Petitioner : Mr.I.Jayasingh Manoharan

For Respondents : Ms.Sadhana V.Shankar for
M/s.Ramani & Shankar for R1

Mr.Av.Arun for
M/s.Sheela Venkatesh for R2

Arb.O.P.No.219 of 2018

1.Mr.K.C.Samuel

Chairman, Hindustan Aviation Academy
P.B.#3776, Marathahalli (Po)
Bangalore – 560 037.

... Petitioner

Vs

1.V.Lakshminarayanaswami

Proprietor,
M/s.Suguna Aviation Academy,
Coimbatore – 641 018.

2.International Aviation Academy (P) Ltd.,
3rd Floor, Jai Durga Complex,
No.60, 1st Avenue, Ashok Nagar,
Chennai – 600 083.
Rep., by its Authorised Signatory

3.Mrs.K.Elaiya Rani

District and Session Judge (Retd)/
Sole Arbitrator,
No.29-A, First Main Road,
ERI Scheme, Mogappair,
Chennai – 600 037.

... Respondents

PRAYER:- Arbitration Original Petition filed under Section 34 of the

Arbitration and Conciliation Act, 1996 seeking to set aside the award dated

<https://www.mhc.tn.gov.in/judis>



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05.09.2017 passed by the Arbitral Tribunal namely the third respondent herein in A.F.No.20 of 2016 on O.P.No.887 of 2015 between the petitioner and the second respondent in the matter of the agreement dated 15.05.2013, and in the matter of Arbitration and Conciliation Act 1996, and pass consequential order in terms of the petitioner claim.

For Petitioner : Mr.Av.Arun for
M/s.Sheela Venkatesh

For Respondents : Ms.Sadhana V.Shankar for
M/s.Ramani & Shankar for R1

Mr.I.Jayasingh Manoharan for R2

COMMON ORDER

The present Original Petition had been filed by the respondents who had suffered an award by which the learned Arbitrator had directed the respondent in the Arbitral proceeding to pay a sum of Rs. 50 lakhs which represents the deposit made by the respondent herein.

2. Heard Mr.I.Jayasingh Manoharan, learned counsel appearing for the petitioner in O.P.No.32 of 2018 and 2nd respondent in O.P.No.219 of 2018, Ms.Sadhana V.Shankar, learned counsel appearing for the first respondent and Mr.Av.Arun learned counsel appearing for M/s.Sheela Venkatesh, learned counsel appearing for the 2nd respondent in O.P.No.32 of 2018 and petitioner in



O.P.No.219 of 2018.

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Arguments of the petitioner in O.P.No.32 of 2018

3. The learned counsel for the petitioner would submit that the respondents and the petitioner in O.P.No.32 of 2018 had entered into an memorandum of understanding on 15.5.2013. As per the object of the MOU, the petitioner in O.P.No.32 of 2019, which was running an institute of training for a commercial pilots with an internship, to utilise the services of the respondent herein for securing the admission of the students in which the respondent has also agreed to act as a marketing source for a period of two years. The said agreement also envisages the respondent to deposit a sum of Rs 50 lakhs for operational expenses which was supposed to be refunded within a period of 12 months or atleast by 31.05.2014 for which deposit of personal guarantee of one of the director, who is the petitioner in O.P.No.219 of 2018 was made. He would submit that the respondent herein had guaranteed recruitment of 20 students in 6 months which he had failed and therefore he had not performed the part of MOU and therefore he was not entitled for refund of the deposit sum. He would further submit that one of the executives sponsored by the respondent to be as a staff member, had misappropriated the funds of the institute for which no proper reply had come from the respondent. He would



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further submit that for the counter claim made by the petitioners without assigning any cogent reasons, the learned Arbitrator has also rejected the counter claim. He would further submit that the learned Arbitrator had erred in holding that Clause 5 of the agreement is independent and is not subject to other Clause under which the respondent had agreed to perform his obligations. He would submit that the Memorandum of Understanding should be read as a whole and Clause 5 should not have been segregated as a separate agreement by the learned Arbitrator. He would also further contend that the rejection of the counter claim made by the petitioners is wholly without non application of mind perverse which requires interference by this Court.

Arguments of the petitioner in O.P.No.229 of 2018

4. The learned counsel for the petitioner at the outset would submit that the petitioner could not be held to be jointly and severally liable for the refund of deposit as Awarded by the learned Arbitrator. He would firstly submit that a reading of Clause 5 of the agreement would only envisage that the petitioner had stood as a guarantee to the respondent for his commitment to make a deposit of Rs.50 Lakhs as envisaged in Clause 5 to the petitioner in O.P.No.32 of 2018. Had the respondent had not made the said deposit, it is only for the petitioner in O.P.No.32 of 2018 to make a claim against the petitioner for making good the deposit accepted to be made. Therefore he would submit that



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the petitioner had never stood as a guarantee for the return of the deposit made by the respondent. He would further submit that he was neither a party to the MOU nor has he signed the said MOU agreeing to extend his guarantee. The terms of the agreement that had been entered to between the respondent and the petitioner in O.P.No.32 without any acknowledgement by the petitioner herein cannot be put against the petitioner to hold him jointly and severally liable for the payment of a sum of Rs.50 Lakhs. Therefore, he would submit that the Award holding him jointly and severally liable is without any materials and therefore would have to be interfered by this Court.

5. Countering their arguments, the learned counsel appearing for the respondent would submit that the deposit made by the petitioner had been agreed to be made for the operational expenses of the petitioner in O.P.No.32 of 2018 and not for guaranteeing the performance of the obligations on the part of the respondent. He would further submit that only when the guarantee was given by the petitioner in O.P.No.219 of 2017, the respondent had deposited the said amount and therefore, the said Clause had been included in the contract. He would further submit that the petitioners cannot wriggle out of their liability to refund the amount which had been made for the operational expenses of the petitioner in O.P.No.32 of 2018. Therefore, he would submit that even though the term deposit had been shown it was to support the



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petitioner in O.P.No.32 of 2018 for running it's institution and therefore the same could be treated as only as loan and the same would not depend on the performance of the obligations in Clause 6 of the MOU. Therefore he would submit that the learned Arbitrator was right in Awarding the refund of the said amount by holding the petitioners jointly and severally liable to pay the said amount. He would further submit that the petitioner in O.P.No.32 of 2018 even though had filed a counter claim had not produced any documents to substantiate his counter claim. The learned Arbitrator had given a cogent reasoning as to why the counter claim could not have been entertained.

6. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

7. The following issues arise for consideration of this Court:-

(a) Whether the deposit under Clause 5 of the MOU was for guaranteeing the performance by the applicants of the respondent herein or otherwise?

(b) Whether the petitioner in O.P.No.218 of 2018 had guaranteed the payment in favour of the respondent or the respondent in O.P.No.32 of 2018?

(c) If issue (b) is answered in favour of the respondent then whether Clause 5 would bind by the petitioner in O.P.No.218



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of 2018?

(d) *Whether the petitioner in O.P.No.32 of 2018 is liable to refund the deposit?*

(e) *Whether the rejection of the Counter claim had been rightly made?*

ISSUE (a)

8. For better appreciation, the relevant Clause 5 is extracted hereunder:-

“... *Clause No.5*

SUGUNA agrees to deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) as required by the IAAPL for operational expenses, and shall be refundd to SUGUNA within a period of 12 months or latest by 31st May 2014, without interest. The deposit is personally guaranteed by Mr.K.C.Samuel (Director-IAAPL)... ”

9. A reading of the said Clause indicates that the respondent had agreed to deposit a sum of Rs.50 Lakhs as requested by the petitioner in O.P.No.32 of 2018 for its operational expenses which had been agreed to be refunded to the respondent within a period of 12 months or atleast by 31.05.2014 without interest. The plain reading does not indicate that the said deposit has been made



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by the respondent to guarantee performance of its obligations under the MOU as claimed by the petitioner in O.P.No.32 of 2018. Hence, I decide the said issue in favour of the respondent that the same would not be a deposit made in lieu of performance of respondents obligation performed under MOU. Hence, the finding of the learned Arbitrator that it is an independent Clause which is not covered by any other Clause in the MOU as a valid and reasonable finding.

ISSUE (b) & (c)

10. A further reading of Clause 5 extracted supra would indicate that the petitioner in O.P.No.218 of 2018 had personally guaranteed the deposit. A further reading of the Clause 5 would indicate that the respondent on the date of MOU had not made the deposit and had substantially made the deposit only in the month of June 2016 which had also been accepted to by the respondent. Hence, the said Clause would only indicate that the petitioner in O.P.No.218 of 2018 had guaranteed the deposit to be made by the respondent in favour of the petitioner in O.P.No 32 of 2018. This would imply that he had not stood as a guarantor for the refund of the deposit made by the respondent guaranteeing such refund from the petitioner in O.P.No.32 of 2018.

11. Further, even assuming that the petitioner in O.P.No.218 of 2018 had personally guaranteed the refund there is no independent deed of guarantee



executed by the petitioner in O.P.No.218 of 2018 and he is also not a party to the memorandum of understanding entered between the petitioner and the respondent in O.P.No.32 of 2018 and therefore, the same cannot be binding on the petitioner in O.P.No.218 of 2018.

ISSUE (d)

12. In issue (a) , I have held that the deposit made by the respondent was not in lieu of performance of obligations of the respondent and it was in the nature of aid to the petitioner in O.P.No.32 of 2018 for its operations expenses. When such deposit was made to aid the petitioner in O.P.No.32 of 2018 to meet its operational expenses and the petitioner in O.P.No.32 of 2018 having accepted to refund the said amount within the time prescribed in the said Clause is liable to refund the same. However, the contentions of the petitioner in O.P.No.32 of 2018 that the same had been made by the respondent for guaranteeing his performance of the obligation of the respondent would have to fall apart, in view of the reasoning given for such deposit under Clause 5. Therefore, the petitioner in O.P.No.32 of 2018 would have to definitely refund the deposit which had been allegedly made to cover the operational expenses of the petitioner in O.P.No.32 of 2018.

ISSUE (e)



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13. The learned Arbitrator had framed the issue Nos.10 & 11 as regards to the counter claim made by the petitioner in O.P.No.32 of 2018. The said issued had been dealt with by the learned Arbitrator and had given a finding that to substantiate the counter claim, the petitioner in O.P.No.32 of 2018 had not produced any documents or let in any evidence. I had also perused the list of documents that had been marked by the petitioner in O.P.No.32 of 2018. He had only filed a statement of Bank accounts and the extract of the ledger entries. He had not produced any documents to substantiate his claim that the respondent had failed to perform his part of obligation. The counter claimant even in record of statements or communications between the parties calling upon the respondent to make the payment of fees which he has alleged to have not received from the students admitted through the respondent has not given details. In such an event, I do not find any perversity or reasoning in the findings of the learned Arbitrator in rejecting the counter claim filed by the petitioner in O.P.No.32 of 2018.

14. For the aforesaid findings and reasonings I am inclined to interfere with the Award only with regard to the petitioner in O.P.No.218 of 2018. In fine, the Award holding that the petitioner in O.P.No.218 of 2018 also jointly and severally liable for the payment of Rs.50 Lakhs deposited is set aside. The petitioner in O.P.No.32 of 2018 is liable to refund the amount for a sum of



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Rs.50 Lakhs deposited by the respondent pursuant to the Clause 5 of the MOU.

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15. In fine, the O.P.No.32 of 2018 is dismissed and O.P.No.219 of 2018 is allowed. Consequently, connected application is closed. There shall be no order as to costs.

Gba
Index :Yes/No
Speaking Order/Non Speaking Order

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K.KUMARESH BABU, J.

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