



WEB COPY



O.S.A (CAD) No.55 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A (CAD) No.55 of 2024

&

C.M.P.No.12311 of 2024

in

O.S.A (CAD) No.55 of 2024

M/s.Toorq Media Services Pvt Limited
& M/s.S.S.Tech (Service Integrator)
Multi-Level Parking
No.33, Theyagaraya Road
Pondy Bazaar, T.Nagar
Chennai – 600 017

...Appellant

Vs

1. The Additional Chief Secretary/Commissioner
Greater Chennai Corporation
Ripon Buildings
Chennai – 600 001
2. The Deputy Commissioner (Revenue & Finance)
Greater Chennai Corporation
Ripon Buildings
Chennai – 600 003
3. The Superintending Engineering
Special Projects Department
Greater Chennai Corporation



O.S.A (CAD) No.55 of 2024

Rippon Buildings
Chennai – 600 001

... Respondents

WEB COPY

Original Side Appeal filed under Section 13(1A) of the Commercial Courts Act read with Section 37 of Arbitration and Conciliation Act read with order 36 Rule 1 of Original Side Rules to set aside the order dated 18.04.2024 in O.A.No.238 of 2024 on the file of Original Side of this Court.

For Appellant : Mr.Srinath Sridevan
Senior Counsel
for Mr.K.Sivasubramanian

For Respondents : Mr.P.S.Raman
Advocate General
instructed by Ms.Aswini Devi.K
Standing Counsel
for Greater Chennai Corporation

JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

Captioned intra-court appeal i.e., 'Original Side Appeal' ['OSA' for the sake of brevity] has been filed in this 'Commercial Appellate Division' ['CAD' for the sake of brevity] on 13.06.2024 assailing an order dated 18.04.2024 made in O.A.No.238 of 2024 by the Hon'ble Commercial Division of this Court. This '18.04.2024 order in O.A.No.238 of 2024' shall hereinafter be referred to as 'impugned order' and 'Commercial Division of this Court' shall be referred to as 'said



O.S.A (CAD) No.55 of 2024

Commercial Division', both for the sake of convenience and clarity.

WEB COPY

2. To be noted, aforementioned O.A.No.238 of 2024 is an application under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] with a prayer to restrain 'Greater Chennai Corporation' ['GCC' for the sake of brevity] from interfering with the operation of one 'Toorq Media Services Pvt. Limited and M/s.S.S.Tech (Service Integrator)' [hereinafter 'Service Provider' for the sake of brevity] qua a 'Concession Agreement dated 20.02.2019' [hereinafter 'said Agreement' for the sake of convenience and clarity].

3. Factual matrix in a nutshell i.e., short facts imperative for appreciating this order will suffice [owing to the trajectory the matter took before us in the Admission Board]. Short facts [shorn of granular particulars] are that the said agreement was entered into between GCC and Service Provider for Designing, Building, Financing, Operating and Transferring (DBFOT) qua street parking management and guidance system in GCC area over a period of five years; that said agreement is dated 20.02.2019 and five years therefrom elapses on 19.02.2024 and if the six months installation period is built into it, it will elapse on 19.08.2024; that on 27.11.2023, the service provider sent a



O.S.A (CAD) No.55 of 2024

communication to GCC requesting for extension of said agreement by a period of three years *inter alia* citing Covid-19 pandemic; that a letter dated 06.02.2024 (sent by the Authority concerned i.e., the Superintending Engineer, Special Projects Department of GCC on 14.02.2024) was sent in response *inter alia* saying that GCC has decided to not to consider the Service Provider's request for extension and has decided to close the said contract; that the Service Provider was also instructed to close all operations and to smoothly facilitate transition of project back to GCC with immediate effect; that assailing 06.02.2019 letter, the Service Provider filed a writ petition in this Court in W.P.No.4361 of 2024 along with W.M.P.No.4696 of 2024 thereat; that a Hon'ble single Judge of this Court in and vide order dated 05.03.2024 disposed of the writ petition *inter alia* keeping this 06.02.2024 communication in abeyance till 12.03.2024 so that the dispute resolution clause between the Service Provider and GCC in the said agreement can be taken recourse to; that the dispute resolution clause qua said agreement is Clause 14 consisting of sub-clauses 14.1, 14.2 and 14.3 and it provides for dispute resolution by a tiered arbitration i.e., by way of attempting resolution through joint discussion of authorised representatives of GCC and Service Provider and if resolution of dispute by such joint discussion



O.S.A (CAD) No.55 of 2024

does not happen, then the matter will be referred to adjudication by a sole Arbitrator; that Service Provider sent a communication dated 26.02.2024 triggering the first tier of dispute resolution clause i.e., joint discussion; that GCC responded to this trigger vide a communication dated 08.03.2024 *inter alia* fixing 11.03.2024 at 01.00pm as the date and time for joint discussion vide Tier 1; that the joint discussion did happen on 11.03.2024 but the dispute could not be resolved; that therefore, GCC sent a communication dated 23.05.2024 making it clear that there shall be closure of contract and there is no resolution of dispute; that in the *interregnum* on the date of the joint meeting i.e., on 11.03.2024 itself the Service Provider filed the aforementioned Section 9 application i.e., O.A.No.238 of 2024 with the aforementioned prayer seeking injunction against GCC from interfering with the operation qua said agreement; that after full contest, Hon'ble single Judge presiding over the Commercial Division of this Court dismissed the Section 9 application in and vide the impugned order [order dated 18.04.2024]; that captioned OSA has been preferred against this impugned order by the Service Provider; that captioned matter was thus in the Admission Board before this Bench.

4. Mr. Srinath Sridevan, learned Senior counsel appearing on behalf of Mr.K.Sivasubramanian, counsel on record for the



appellant/Service Provider submitted that in and vide the impugned order the Hon'ble Commercial Division has proceeded on the basis that Service Provider has sought extension of said agreement whereas the prayer is for an injunction restraining GCC from interfering with the operation of Service Provider qua said agreement dated 20.02.2019.

5. Issue notice.

6. Ms.Aswini Devi.K, learned Standing Counsel for GCC accepted notice for all three respondents.

7. This Bench deems it appropriate to write/record certain relevant aspects before proceeding further. As already alluded to supra, Clause 14 of the said Agreement i.e., Concession Agreement dated 20.02.2019 is the dispute resolution clause, it consists of three sub-clauses, namely Clause 14.1, 14.2 and 14.3 and the same read as follows:

'14.Dispute Resolution

14.1 Any disputes and or difference relating to this agreement or claims arising out or relating to this agreement or breach, termination or the invalidity thereof or on any issue whether arising during the progress of the service or after the completion or abandonment thereof or any matter directly or indirectly connected with this agreement will be resolved through joint discussion of the authorized representatives of both



WEB COPY



O.S.A (CAD) No.55 of 2024

the parties (GCC and Service Provider). If the dispute is not resolved by joint discussion, then the matter will be referred for adjudication to a sole Arbitrator appointed by the approval of Chairman/Chairperson/Commissioner GCC on receipt of written notice/ demand of appointment of Arbitrator from either party.

14.2 The award of the sole Arbitrator shall be final and binding on all the parties. The cost of Arbitration shall be borne by the respective parties equally. Arbitration proceedings will be held at premises of GCC, Chennai only.

14.3. Rules governing Arbitration proceedings : The Arbitrator Proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended from time to time including provisions in force at the time the references made. During the pendency of arbitration proceedings and currency of the Concession Agreement, the Service Provider shall continue to perform and make due payments to GCC as per the Concession Agreement.'



O.S.A (CAD) No.55 of 2024

8. As already delineated supra, it is a tiered arbitration and therefore, the commencement of arbitral proceedings, if at all and if that be so i.e., commencement of arbitral proceedings within the meaning of Section 21 of A and C Act can be only after the failure of Tier 1 which in this case was on 25.05.2024 (date on which aforementioned 23.05.2024 communication from GCC was received by Service Provider) {to be noted, 25.05.2024 is the date given by Service Provider counsel at the Bar in the hearing} when GCC communicated to the Service Provider that 11.03.2024 joint meeting did not fructify in terms of resolving the dispute. In other words on 25.05.2024, Tier 1 of Clause 14, which is an 'arbitration agreement' between the parties, came to an end. To be noted, when we write 'arbitration agreement', we mean that Clause 14 of said Agreement serves as an 'arbitration agreement' between GCC and Service Provider being 'arbitration agreement' within the meaning of Section 2(1)(b) read with Section 7 of A and C Act. Post 25.05.2024, 24 days have elapsed but the arbitral proceedings have not commenced within the meaning of Section 21 of A and C Act.

9. Therefore, in this matter, we leave open the question of manifest intention to arbitrate qua Section 9 of A and C Act as it can be tested either on the date of Section 9 application and / or on and from



O.S.A (CAD) No.55 of 2024

23.05.2024 which was post dismissal of Section 9 application on 18.04.2024. We shall embark upon a legal drill on that kind and take a decision in a matter where there is a contest by applying **Cholamandalam principle {Cholamandalam Investment and Finance Company Limited Vs. Harkhabhai Amarshibhai Vaghadiya [Arb.A.No.40 of 2022, etc. batch, dated 16.02.2022]}** which lays down the correct obtaining position of law as regards legal drills under Section 9 of A and C Act.

10. Be that as it may, it is clear from the narrative thus far that the disputes that have erupted as between Service Provider and GCC have to be now settled by a sole Arbitrator.

11. The matter was passed over for the learned counsel for Service Provider and the learned Standing counsel for GCC to get instructions and have a discussion. In the second call, learned Advocate General of State of Tamil Nadu Mr.P.S.Raman appeared on behalf of the Standing counsel for GCC. It was submitted by learned counsel on record for Service Provider Mr.K.Sivasubramanian and learned Advocate General for State of Tamil Nadu that notwithstanding appointment of Arbitrator modality and venue vide clause 14 of said agreement, the parties have agreed on a Arbitrator, have agreed to have all the disputes



O.S.A (CAD) No.55 of 2024

resolved by resorting to arbitration by the sole Arbitrator, have further agreed to pursue the aforementioned interim prayer vide O.A.No.238 of 2024 or any other interim prayer by way of an application under Section 17 of A and C Act before the sole Arbitrator and that the venue will be MHCAC, an adjunct of this Court {Madras High Court Arbitration Centre under the aegis of this Court} . It was submitted by both counsel i.e., learned counsel on record for Service Provider as well as learned Advocate General that they have taken the consent of the sole Arbitrator, a former Hon'ble Judge of this Court and Hon'ble Sole Arbitrator is also willing / available to have the first sitting either on 21.06.2024 or on 22.06.2024 at MHCAC.

12. In the light of the narrative thus far and in the light of consent and consensus that has been arrived at as between the Service Provider and GCC, which has been captured supra, we make the following consent order. We would be writing the operative portion infra. We make it clear that consent is a limited consent as regards appointment of Arbitrator, to have the disputes resolved through the sole Arbitrator, to pursue interim prayer/s by way of Section 17 application /s before the Arbitrator and MHCAC as Venue. Ergo the operative portion



O.S.A (CAD) No.55 of 2024

of the order is:

WEB COPY

i) Hon'ble Dr.Justice P.Jyothimani (Retd.),
residing at Plot No.C-9, AGS Colony, Beach 1st Cross
Street, Kottivakkam, Chennai – 600 041 [Mob:94980
20044] is appointed as sole Arbitrator by consent of both
sides;

ii) Hon'ble sole Arbitrator shall be referred to as
'Arbitral Tribunal' ['AT' for the sake of brevity];

iii)The first sitting of AT will be either on
21.06.2024 or 22.06.2024 at 'Madras High Court
Arbitration Centre' (MHCAC) ;

iv) All disputes, differences, claims arising out of
and/or relating to said agreement i.e., Concession
Agreement dated 20.02.2019 between Greater Chennai
Corporation and M/s.Toorq Media Services Pvt Limited &
M/s.S.S.Tech (Service Integrator) captioned 'DESIGN,
BUILT, FINANCE, OPERATE AND TRANSFER
(DBFOT) THE ON STREET PARKING
MANAGEMENT AND GUIDANCE SYSTEM IN
GREATER CHENNAI CORPORATION AREA (GCC)



O.S.A (CAD) No.55 of 2024

WEB COPY

FACILITY OVER A PERIOD OF 5 (FIVE) YEARS' shall be submitted to arbitration and Hon'ble AT shall embark upon the exercise of adjudicating upon the same;

v) It is open to the Service Provider to present the aforementioned O.A.No.238 of 2024 as a Section 17 application before the AT and AT shall decide the same on its own merits and in accordance with law *de hors* any observation in this order and / or any other judicial order including the impugned order made by a Hon'ble single Judge and order in the writ petition made by another Hon'ble single Judge of this Court;

vi) It is open to the Service Provider and/or GCC to file any other Section 17 of A and Cnapplication with any other suitable prayer if so advised and if so desired and such application/s shall be decided on merits and in accordance with law *de hors* any observation made in this order and / or any other judicial order thus far including the impugned order made by a Hon'ble single Judge presiding over Commercial Division and order in the writ petition made by a Hon'ble single Judge of this Court;



O.S.A (CAD) No.55 of 2024

vii) Hon'ble AT is requested to enter upon

WEB COPY

reference and render an award by following the Madras High Court Arbitration Proceedings Rules 2017 and learned Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017;

viii) The Director of Arbitration Centre (MHCAC) shall facilitate the sittings when approached;

ix) Expenses in terms of rent for Arbitration/Mediation Centre etc., shall also be borne by both parties in equal moieties;

Captioned OSA and captioned CMP thereat are disposed of in the aforesaid manner with the aforesaid directives. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
19.06.2024

Index: Yes/No

Neutral Citation: Yes/No

gpa

P.S. I: Upload forthwith

P.S.II : All concerned including the Registry of Madras High Court to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.

M.SUNDAR.J.,



WEB COPY



O.S.A (CAD) No.55 of 2024

and
K.GOVINDARAJAN THILAKAVADI, J.,
gpa

O.S.A (CAD) No.55 of 2024

19.06.2024