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OSA (CAD) No.56 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED: 24.09.2024

CORAM:

THE HON'BLE MR. JUSTICE M. SUNDAR  
AND  
THE HON'BLE DR. JUSTICE A.D. MARIA CLETE

O.S.A. (CAD) No.56 of 2024 and C.M.P. No.12717 of 2024

Globe Ground India Private Limited  
E-9 Connaught Place  
New Delhi 110 001

Appellant

v

1 Airports Authority of India  
Rajiv Gandhi Bhawan  
Safdarjung Airport  
New Delhi

2 The Airport Director  
Airport Authority of India  
Chennai Airport  
Chennai

Respondents

Original Side Appeal filed under Section 13(1-A) of the Commercial Courts Act, 2015, read with Section 37(1)(c) of the Arbitration and Conciliation Act, 1996, seeking to set aside the judgment and decree dated 29.04.2024 passed in Arb.O.P. (Com. Div.) No.312 of 2023 by setting aside the award dated 18.05.2023 passed by the Sole Arbitrator.

|                 |                                                              |
|-----------------|--------------------------------------------------------------|
| For appellant   | Mr. Anirudh Krishnan<br>along with<br>Mr. Adarsh Subramanian |
| For respondents | Ms. Preeti Mohan<br>along with<br>Mr. Rajkumar Jhabakh       |



## JUDGMENT

(made by M. SUNDAR, J.)

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Captioned intra-Court appeal has been presented in this Commercial Appellate Division (hereinafter referred to as 'CAD' for the sake of brevity, clarity and convenience) on 18.06.2024 assailing an order dated 29.04.2024 made in Arb.O.P. (Com. Div.) No.312 of 2023 by the Commercial Division of this Court. This '29.04.2024' order shall hereinafter be referred to as 'impugned order' and the 'Commercial Division' which made the impugned order shall hereinafter be referred to as 'Section 34 Court', both for the sake of clarity and convenience.

2. Owing to the trajectory the matter has taken before us, the factual matrix in a nutshell will suffice.

2.1 Short facts are that a licence agreement dated 27.07.2016 was entered into between 'Globe Ground India Private Ltd.' ('GGIPL' for the sake of brevity, clarity and convenience) and 'Airports Authority of India' ('AAI' for brevity); that this licence agreement is for provision of services, which we are informed, is styled 'Meet and Greet services' in commercial parlance; that this 'Meet and Greet services' is to aid and assist passengers from the time



they alight from their car in the porch to check-in and boarding the aircraft; that it is not necessary to delve more into this aspect of the matter; that it will suffice to say that this 'Meet and Greet services' *vide* licence agreement was not as pleasant as the name by which the service goes, it ran into rough weather resulting in termination on 07.02.2018; that it is to be noted that the licence agreement was originally for a period of three years from 27.07.2016 to 27.07.2019; that this licence agreement contained an arbitration clause which serves as an arbitration agreement between the parties within the meaning of Section 2(1)(b) read with Section 7 of 'Arbitration and Conciliation Act, 1996 {Act 26 of 1996}' ('A & C Act' for the sake of brevity); that post termination, the arbitration clause was triggered *vide* trigger notice dated 09.02.2022; that thereafter, 'Arbitral Tribunal' {'AT' for the sake of brevity} was constituted *vide* a Sole Arbitrator on 21.06.2022; that the Sole Arbitrator entered upon reference and rendered an award dated 18.05.2023 (this Arbitral award dated 18.05.2023 rendered by AT shall hereinafter be referred to as 'impugned Arbitral award' for the sake of convenience); that the impugned Arbitral award made by AT was assailed by GGIPL (obviously, award went against GGIPL) by way of a petition under Section 34 of A & C Act *vide* Arb. O.P.No.(Com.Div.) No.312 of 2023; that Section 34 Court, after full contest, dismissed the Section 34 petition



sustaining the impugned Arbitral award; that GGIPL is now before this CAD *vide* captioned OSA (intra-Court appeal) assailing the impugned order of Section 34 Court; that the matter was taken up and heard out and the trajectory which the matter took before us will be captured *infra*.

2.2 In addition to the aforementioned factual matrix, proceedings made in the listing on 25.06.2024 can be usefully referred to and the same is as follows:

**'O.S.A.(CAD)No. 56 of 2024**

**M. SUNDAR,J.**

**AND**

**K. GOVINDARAJAN THILAKAVADI,J.**

(Order of the Court was made by **M. SUNDAR,J.**)

Captioned 'Original Side Appeal' ['O.S.A.' for the sake of brevity] has been presented in this 'Commercial Appellate Division' ['CAD' for the sake of brevity] on 18.06.2024 as a statutory appeal under Section 37 of 'The Arbitration and Conciliation Act, 1996' ('A & C Act' for the sake of brevity) assailing an order dated 29.04.2024 made in Arb.O.P. (Com.Div.)No. 312 of 2023 & Application No. 3478 of 2023 by a Hon'ble Single Judge of this Court (Section 34 Court) {hereinafter 'impugned order' for the sake of convenience and clarity}. To be noted, in and by the impugned order, Section 34 Court has dismissed a challenge to a arbitral award dated 18.05.2023 made by a 'Sole Arbitrator' (hereinafter sole arbitrator shall be referred to as 'AT' denoting 'Arbitral Tribunal' for the sake of convenience).

2. The genesis of the matter is a License Agreement dated 27.07.2016 and Arbitration Agreement between Licensor and



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Licensee, being Arbitration Agreement within the meaning of Section 2(1) r/w Section 7 of A&C Act. This Arbitration Agreement within the meaning of Section 7 of A&C Act is in the form of a clause in General Terms and Conditions annexed to the Licence Agreement and the relevant clause is clause 30, which reads as follows:

*'30. All disputes and differences arising out of or in any way touching or concerning this Agreement (except those the decision whereof is otherwise herein before expressly provided for or to which the Public Premises [Eviction of unauthorized Occupants] Act and the rules framed thereunder which are now enforced or which may hereafter come into force are applicable) shall, in the first instance, be referred to a Dispute Resolution Committee (DRC) setup at the airports, for which a written application should be obtained from the party and the points clearly spelt out. Before making a reference to dispute resolution to dispute resolution committee, the licensee will have to first deposit the disputed amount with AAI and the consent shall have to be obtained from the licensee for acceptance of the recommendations of the dispute resolution committee. In case the dispute is not resolved within 45 days of reference, then the case shall be referred to the sole arbitration of a person to be appointed by the Chairman/Member of the Authority subject to the condition that the licensee will have to deposit the disputed amount with AAI as condition precedent before making reference to the arbitration for adjudication of dispute. The award of the arbitrator so appointed as aforesaid is or has been an employee of the Authority and the appointment of the Arbitrator will not be challenged or be open to question in any Court of Law, on this account.'*

3. Before we proceed further, we deem it appropriate to



write that a company, which goes by the name 'GLOBE GROUND INDIA PRIVATE LIMITED' [hereinafter 'Globe' for the sake of brevity, convenience and clarity] is the Licensee and 'AIRPORTS AUTHORITY OF INDIA' [hereinafter 'AAI' for the sake of brevity, convenience and clarity] is the Licensor. The arbitrable disputes primarily pertain to claim by Globe/Licensee for refund of advance licence fee, being a little over Rs.14.98 lakhs [Rs.14,98,961/- to be precise]; return of Bank Guarantee furnished by Licensee/Globe to Licensor/AAI towards Security Deposit, being a little over Rs.1.2 crores [Rs.1,20,41,977/- to be precise]; a direction to AAI not to encash the Bank Guarantee; refund of electricity deposit of Rs.1 lakh; damages of a little over Rs.31.11 lakhs [Rs.31,11,7223/- to be precise]; 12% interest per annum on the award besides Rs.5 lakhs towards costs.

4. Suffice to say at this *prima facie* stage that AT made an award in favour of AAI/Licensor and it would also suffice to say that the award amount is principal sum of a little over Rs.1.20 crores [i.e., Rs. 1,20,41,977/- to be precise] with 18% interest per annum.

5. The Licensee/Globe assailed the award [hereinafter 'impugned award' for the sake of convenience and clarity] in and by aforementioned Arb.O.P.(Com.Div.) No.312 of 2023 in Section 34 Court on two grounds i.e., one under Section 34(2)(a)(ii) (validity of Arbitration Agreement) and the other under Section 34(2)(b)(ii) (Public Policy) of 'A&C Act'. To be noted, as regards Section 34(2)(b)(ii) of 'A & C' Act, there are three clauses under Explanation I but the clauses have not been set out with specificity in the captioned appeal and for the present, at this *prima facie* stage, we leave it open for the future legal drill that is to ensue.

6. Mr.P.V. Balasubramaniam, learned Senior Counsel instructed by Mr.R. Palaniandavan, learned counsel for appellant submitted that he would predicate his 37 appeal more on Section 34(2)(a)(ii) of 'A&C Act' as according to him, appointment of Sole Arbitrator by AAI is in violation of *Perkins Eastman* principle rendered on 26.11.2019 (*Perkins Eastman Architects DPC and Another Vs. HSCC (India) Limited* reported in (2020) 20 SCC 760) and that waiver as pleaded by AAI is not in consonance with the procedure laid down in the judgment rendered by Hon'ble Supreme Court in *Bharat Broadband Network Limited Vs. United Telecoms Limited* reported in (2019) 5 SCC 755.



7. *Prima facie* case for issue of notice made out. Issue notice to respondents.

8. Ms.Preeti Mohan, learned counsel, who is on caveat for both respondents accepts notice and requests for some time to argue the main appeal though this Bench is ready to take up the main appeal today in the Admission Board.

9. List on 08.07.2024.'

3. In the hearing today, Mr. Anirudh Krishnan along with Mr.Adarsh Subramanian, learned counsel for GGIPL and Ms.Preeti Mohan along with Mr.Rajkumar Jhabakh, learned counsel for AAI were before us.

4. In the memorandum of grounds of appeal, myriad grounds have been raised but at the outset, learned counsel for GGIPL focussed his submission on the interest component. Adverting to the impugned Arbitral award and more particularly, clause (g) at internal page 47 of the impugned Arbitral award, learned counsel submitted that the licence agreement provides for simple interest @ 12% per annum for one month on delayed payments and 18% per annum for a maximum of two months but only 8% per annum from the date of invocation of arbitration upto the date of impugned Arbitral award has been awarded. It was also pointed out that interest @ 10% per annum has been awarded from the date of impugned



Arbitral award till payment.

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5. It is the further contention of learned counsel for GGIPL that Section 31(7)(a) of A & C Act provides for interest component in arbitration proceedings and that the impugned Arbitral award has not complied with the said provision or the covenant in the contract though the same has been noticed.

6. We find that the impugned Arbitral award makes a specific reference to Section 31(7)(a) of A & C Act but the interest provided for in the Arbitral award and the ultimate award of interest is in the aforesaid manner.

7. Learned counsel for GGIPL very fairly submitted that the interest component point was not raised before Section 34 Court but it is now sought to be raised before this CAD by taking recourse to **Sal Udyog** principle. To be noted, **Sal Udyog** principle is the ratio of Hon'ble Supreme Court in **State of Chhattisgarh and another vs. Sal Udyog Private Ltd. (2022) 2 SCC 275**. **Sal Udyog** was rendered in the context of Section 28(3) violation but we refrain from expressing any opinion on this aspect of the



matter owing to the counsel for AAI very fairly agreeing for a remand on this aspect alone *i.e.*, on the interest component alone as Section 34 Court did not have the benefit of the same being raised either as a ground or being argued in the hearing.

8. Ms.Preeti Mohan, learned counsel for AAI submitted that the interest component as in the impugned Arbitral award is in order but nonetheless AAI did not get an opportunity to raise this contention and project argument as it was not raised as a ground by the protagonist of Section 34 petition.

9. Mr. Anirudh Krishnan, learned counsel for GGIPL contended to the contrary and submitted that the interest as awarded in the impugned Arbitral award is not in consonance with the obtaining legal position and it is particularly not in consonance with the **Vedanta** principle, *viz.*, **Vedanta Ltd. vs. Shenzhen Shandong Nuclear Power Construction Company Ltd. (2019) 11 SCC 465.**

10. As learned counsel on both sides have agreed for a remand on



the interest aspect of the matter, we deem it appropriate not to express any view or opinion on the same and remand the matter to the Hon'ble Commercial Division for taking a call on the interest component alone. We are of the view that this would be an appropriate procedure which would be fair to Section 34 Court as that point was never raised. Likewise, we also refrain from expressing any opinion or view on whether **Sal Udyog** principle can be applied across board to all kinds of matters as already alluded to supra. This is also in the light of both the counsel agreeing for a remand.

11. In the light of the narrative thus far, the following order is made:

i. Arb.O.P. (Com.Div.) No.312 of 2023 is remanded to Section 34 Court (in the Commercial Division of this Court) for deciding on the sole question of whether the impugned Arbitral award has decided the interest component correctly;

ii. GGIPL shall file additional memorandum of grounds within three weeks from today, *i.e.*, before 15.10.2024 raising the interest component ground alone and also favour the counsel for AAI with an advance copy. We make it clear that no other ground shall be raised in the additional memorandum of grounds;



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iii. the matter will thereafter be listed *i.e.*, post 15.10.2024, before the Commercial Division under the caption 'ON REMAND' and the Commercial Division is requested to decide on the interest component alone based on the submissions of learned counsel on both sides, *i.e.*, counsel for GGIPL and AAI, and render a verdict as expeditiously as possible as the board and the business of the Commercial Division would permit;

iv. the verdict to be rendered in the aforesaid manner shall now become an addendum to the impugned order *i.e.*, order dated 29.04.2024 order in Arb.O.P. (Com. Div.) No.312 of 2023 which has been assailed;

v. it is open to both parties, *i.e.*, GGIPL and AAI to assail the impugned order and addendum together;

vi. if the aforementioned scenario of the impugned order and addendum together being assailed unfurls, it is made clear that all other points, *i.e.*, including points raised in the instant memorandum of grounds of appeal are left open for being canvassed before the CAD;

vii. both learned counsel submit that they will render utmost assistance in having a verdict in the aforesaid manner as



expeditiously as possible; and

viii. the impugned order is neither set aside nor sustained.

The captioned OSA is disposed of in the aforesaid manner. Consequently, captioned CMP is disposed of as closed. There shall be no order as to costs.

**(M.S., J.) (A.D.M.C., J.)**  
**24.09.2024**

Index : Yes/No  
NC : Yes/No  
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**M. SUNDAR, J.**

and

**DR. A.D. MARIA CLETE, J.**

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