



C.M.P. No. 12719 of 2024
in
O.S.A.(CAD) No. 56 of 2024

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M. SUNDAR,J.

AND

K. GOVINDARAJAN THILAKAVADI,J.

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

Read this in conjunction with and in continuation of separate proceedings made in aforementioned 'Original Side Appeal' ['O.S.A.' for the sake of brevity] today, which reads 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 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



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27.07.2016 and Arbitration Agreement between Licensor and 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



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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 suffice to say that the award amount constituted a 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.'*



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2. Captioned 'Civil Miscellaneous Petition'['C.M.P.' for the sake of brevity] has been filed with a prayer for injunction qua Bank Guarantee being OGT0005160005273 issued by IndusInd Bank, Barakhamba Branch, Dr. Gopal Das Bhawan, 28, Barakhamba Road, New Delhi 110 001['said Bank' for the sake of brevity and convenience]

3. Learned counsel for caveators submits on instructions that Section 34 Court order i.e., impugned order dated 29.04.2024 was available (uploaded in the official website on 10.05.2024) and the Bank Guarantee was duly invoked on 12.06.2024. It was also submitted that aforementioned Bank is yet to pay out the money.

4. We shall be making a separate order in CMP No.12717 of 2024 for stay of the impugned award. Therefore, the aforementioned Bank and all concerned qua said Bank will do well to pay out the money to AAI, i.e, money under Bank Guarantee OGT0005160005273 to AAI forthwith.



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5. Captioned CMP disposed of recording the stated position of parties and with the aforementioned directive, which is a consequence of invocation of Bank Guarantee.

6. Though disposed of, captioned CMP will also be listed under the cause list caption 'FOR REPORTING COMPLIANCE' on 08.07.2024.

nv

(M.S.J.) (K.G.T.J.)
25.06.2024
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