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O.S.A.(CAD) Nos.124 and 125 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

O.S.A.(CAD) Nos.124 and 125 of 2024

and

C.M.P.Nos.22240, 22241, 22251 and 22252 of 2024

in

O.S.A.(CAD) Nos.124 and 125 of 2024

M/s.Nimbark Fashions Limited
Rep.by its authorised signatory
Mr.Nageswaran
Having their Registered office
at No.1006, Windfall, Sahar Plaza,
J.B.Nagar, Andheri Kurla Road,
Andheri East, Mumbai – 400 059.

... Appellant
(in both OSAs)

Vs.

M/s.Soundararaja Mills Limited,
Rep.by its Managing Director
Mr.Kiran Ranjit
Having its registered office and administration office
Soundararaja Buildings
G.T.N.Salai, Dindigul – 624 005.

.. Respondent

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(in both OSAs)

Original Side Appeals filed under Section 13(1) of Commercial Courts Act read with Order XXXVI Rule 1 of Original Side Rules read with Section 37 of Arbitration and Conciliation Act, 1996, praying to allow the appeals and set aside the impugned order dated 09.09.2024 in O.A.Nos.154 and 155 of 2024.

For Appellant in both OSAs : Mr.R.Prabhakaran
For Respondent in both OSAs : Mr.T.Gowthaman,
Senior Counsel
instructed by
Mr.R.Swarnavel

COMMON JUDGMENT

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

This common consent order will now dispose of the captioned two 'Original Side Appeals' {'OSAs' for the sake of brevity, convenience and clarity} and captioned four 'Civil Miscellaneous Petitions' {'CMPs' for the sake of brevity, convenience and clarity} thereat.

2. When the captioned two OSAs and captioned four CMPs thereat were listed before this Court on 04.10.2024, the following proceedings were made:

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and C.M.P.Nos.22240, 22241, 22251 & 22252 of 2024

in

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M.SUNDAR,J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Captioned 'Original Side Appeal' {hereinafter 'OSA' for the sake of brevity} is directed against an order dated 09.09.2024 made in O.A.No.154 of 2024 on the file of the Commercial Division of this Court. This '09.09.2024 order' shall be referred to as 'impugned order' for the sake of brevity and 'the Commercial Division' which made the impugned order shall be referred to as 'said Commercial Division' for the sake of convenience.

2. Short facts are that the appellant company headquartered in Bombay is manufacturer and trader of textiles; that respondent company (Mill with spindles) is engaged in the business of manufacturing yarn at Dindugal in Tamil Nadu; that agreements styled Buyback agreements were entered into between appellant company and respondent mill; that there were buyback agreements dated 15.08.2018, 15.08.2019 and 01.07.2021; that under the buyback agreements, appellant company claims that it has supplied raw material / fibre to respondent mill; that third buyback agreement dated 01.07.2021 ran into rough weather; that there is an arbitration clause in the third buyback agreement; that arbitration clause was triggered; that vide order dated 09.09.2024 in Arb.O.P.(Comm.Div.)No.153 of 2024, retired District Judge in the District Judiciary of Tamil Nadu was appointed as sole arbitrator; that Arb.O.P.(Comm.Div.)No.153 of 2024 is a Section 11 petition i.e., Section 11 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity]; that prior to this 09.09.2024 order, on 22.02.2024 appellant company filed O.A.No.154 of 2024 with a prayer to not to sell finished products i.e., yarn to any third party; that the prayer was negatived in and



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by impugned order; that aggrieved by the impugned order, the appellant company is on appeal.

3. Ms.R.Srinithi, learned counsel for appellant company submitted that the appellant company has funded working capital for respondent mill though they are under no obligation to do so but the respondent mill has not discharged its obligation/s under buyback agreement dated 01.07.2021.

4. Issue notice.

5. Mr.D.R.Arun Kumar (Enrolment No.1933/2014) learned counsel with address for service at No.61/1, Honeydew Apartment, No.9, Kilpauk Garden 2nd Street, Chennai-600 010, who is present in Court accepts notice for respondent mill and requests for time to file counter affidavit in the captioned 'Civil Miscellaneous Petition' {'CMP'}.

6. To be noted, when the matter was listed yesterday (03.10.2024), the following proceedings were made:

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and

C.M.P.Nos.22240, 22241, 22251 & 22252 of 2024

in

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M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Mr.R.Prabhakaran, learned counsel on record for appellant is before us.

2. Mr.R.Swarnavel (Enrol.No.M8/900/98), learned counsel submits that he has lodged caveat vide Caveat No.5464 of 2024 but the name of caveator counsel or details about caveat are not shown in the cause list.

3. Registry to verify and do the needful.

4. List tomorrow (04.10.2024) in the Admission Board i.e., Motion List under the same



cause list caption i.e., 'FOR ADMISSION'.

List on 04.10.2024.'

7. *It is seen from records that caveat has not been numbered and No.5464 of 2024 is Diary number. Mr.D.R.Arun Kumar, learned counsel expressed regret for incorrect representation made yesterday i.e., representation that the respondent mill is on caveat. Nonetheless, Mr.D.R.Arun Kumar, learned counsel has now accepted notice for respondent.*

8. *Let counter in captioned CMP be filed before next listing.*

List a fortnight hence. List on 18.10.2024.'

3. Today, Mr.R.Prabhakaran, learned counsel along Ms.Bhavna, counsel on record for sole appellant and Mr.T.Gowthaman, learned Senior Counsel instructed by Mr.R.Swarnavel, counsel on record for sole respondent are before us.

4. Both sides submitted that the aforementioned 04.10.2024 proceedings capture facts, events and trajectory correctly. Both sides agreed to have the main OSAs taken up.

5. Both sides submitted that an Arbitrator [Former Judge of District Judiciary] has been appointed as sole Arbitrator and he constitutes 'Arbitral Tribunal' ['AT' for the sake of brevity]. Both sides submitted that appointment of Arbitrator is by way of a judicial order in a Section 11 petition i.e., Arb.O.P.(Com.Div.)No.153 of 2024 and a scanned reproduction



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of this judicial order is as follows:

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O.S.A.(CAD) Nos.124 and 125 of 2024	
IN THE HIGH COURT OF JUDICATURE AT MADRAS	
RECEIVED 21.08.2024	RECEIVED BY 19.09.2024
CURAM	
THE HONOURABLE MR. JUSTICE K. KUMARESH BABU <u>Arb.O.P.(Comm.Div.) No.153 of 2024</u>	
M/s. Nandini Fashions Limited Represented by its authorized Signatory, Nageswaran, Having their registered Office at No 1006, Windfall, Sahar Plaza, J.B.Nagar, Adambakkam Road, Ambur East, Madurai - 600 059 Petitioner	
-vs-	
M/s. Saundarya Mills Limited, Represented by its Managing Director, Kumar Raju, Having its registered office and administration office Saundarya Buildings, G. E. N. Road, Dindigul - 624 008 Respondent	
PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking for following prayer:- (a) To appoint an Arbitrator for the purpose of adjudicating upon the disputes which has arisen between the petitioner and respondent, pursuant to the Buy Back agreement between the petitioner and the respondent dated 01.07.2021. (b) Award cost of this application and	



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Arb.D.R.(Green) No. 11 of 2024

(c) Such other orders or relief

For Petitioner : Mr.R.Prabhakaran

For Respondent : Mr.T.Gowthaman
Senior Counsel
for Mr.R.Swaminavel

ORDER

This Arbitration Original Petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter called as 'the Act') to appoint an Arbitrator to adjudicate upon disputes/differences between the Petitioner and the Respondent and direct the Respondent to pay the costs of this proceeding.

2. When the petition was taken up for hearing, both the learned counsels have consented for appointment of a Sole Arbitrator by this Court and they have requested this Court to appoint a retired District Judge as Arbitrator. In such circumstances, this Court appoints **Mr.V.Siva Subramanian, Retired District Judge** residing at 1/39, Judges Avenue, Y.Pudupatti, Arumbanur (PO), Madurai East (TK), Madurai – 625 104 as Sole Arbitrator to enter upon the dispute between the petitioner and the respondent.

3. The learned Sole Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Sole

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6. Both sides submitted that they accept the aforementioned order and they have given legal quietus (finality) to the aforementioned order. It is also submitted by both sides that they would go before AT. This 'Commercial Appellate Division' {'CAD' for the sake of brevity} is further informed that AT has already issued a notice of first sitting, {first sitting is to be held tomorrow (19.10.2024) at 3.00 p.m. at Madurai Union Club, No.9, Tamukkam Park Road, Opposite Rajaji Park, Madurai-625020}. It is submitted by both sides that they will go before AT tomorrow and participate in the proceedings.

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7. In the light of the narrative thus far, without dilating more on facts

or issues, the following consent order is made:

(i) Interim order dated 28.02.2024 made in O.A.Nos.154 and 155 of 2024 as well as the impugned order i.e., order dated 09.09.2024 made in O.A.No.154 and 155 of 2024 are set aside;

(ii) It is made clear that setting aside of the interim order and impugned order are not on merits but for the sole purpose of facilitating parties to go before sole Arbitrator by way of a petition under Section 17 of A and C Act. It is open to parties to present pleadings in O.A.Nos.154 and 155 of 2024 as petitions under Section 17 of A and C Act and counter thereat;

(iii) If the above course is adopted, we request sole Arbitrator / AT to consider Section 17 application/s on its own merits and in accordance with law *de hors* any observations in interim order and impugned order which have now been set aside by this order;

(iv) As already alluded to supra elsewhere in this order, both sides are not entering upon dispute or contestation



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regarding appointment of sole Arbitrator vide a judicial order in a Section 11 petition and that order now attains legal quietus i.e., finality;

(v) As regards all other proceedings before Arbitrator, the same will proceed on its own merits and in accordance with law *de hors* even any observation/s in the present judicial order.

8. As a sequitur, captioned four CMPs are disposed of as closed.

9. Captioned two OSAs and four CMPs are disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

18.10.2024

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

mk

P.S. I: *Upload forthwith*

P.S.II : *All concerned 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.*

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The Sub-Assistant Registrar
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High Court, Madras.



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