



Arb.O.P.(Com.Div.)No.3 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved On	13.02.2024
Pronounced On	05.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.3 of 2023

and

O.A.Nos.507 & 508 of 2021

and

Arb.Appln.No.184 of 2021

Urban Infrastructure Trustees Limited,
(Acting on behalf of Urban Infrastructure
Venture Capital Fund and its Scheme Urban
Infrastructure Opportunities Fund),
Rep. by its Authorised Signatory,
Office No.85, 8th Floor, Maker Chambers III,
Nariman Point, Mumbai - 400 021.

... Petitioner

VS.

- 1.Ozone Propex Private Limited,
Having its Registered Office at No.38,
Ulsoor Road, Bangalore - 560 042.
- 2.Ozone Projects Private Limited,
Having its Registered Office at New
No.63, G.N. Chetty Road, T.Nagar,
Chennai - 600 017.

3.S.Vasudevan



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4.C.P.Bothra

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5.Vistra ITCL (India) Limited,,
(Acting on behalf of HDFC Property Fund Scheme HIREF)
IL & FS Financial Centre, Plot No.22,
G Block, Bandra Kurla Complex,
Bandra (East), Mumbai - 400 051. ... Respondents
[R5 substituted as per order dated 21.07.2023, in
A.No.3463 of 2023]

Prayer: Original Petition is filed under Section 11 read with Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, praying to appoint Mr.Justice K.Venkatraman (Retd.) or any other person as this Court may deem fit, proper and appropriate to act as the Sole Arbitrator to enter into the reference and arbitrate the disputes and differences that have arisen between the petitioner and the respondents and direct the respondents to pay the cost of the petition and pass such other orders.

For Petitioner : Mr.Abishek Jenasenan

For R1 to R4 : No Appearance

For R5 : Mr.Ranjith Shetty &
Mr.Lucky Raj Indorkar

COMMON ORDER

By this common order, the above mentioned original petition and the



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applications are being disposed.

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2. Ar.O.P.No.3 of 2023 has been filed under Section 11 read with Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, for the following relief:-

"(i) To exercise this Court's power under Section 15 of the Arbitration and Conciliation Act and appoint Mr.Justice K.Venkatraman (Retd.) or any other person as this Hon'ble Court may deem fit, proper and appropriate to act as the Sole Arbitrator to enter into the reference and arbitrate the disputes and differences that have arisen between the petitioner and the respondent.

(ii) Costs of the present petition be awarded to the petitioner."

3. O.A.Nos.507 and 508 of 2021 have been filed under Section 9 of the Arbitration and Conciliation Act, 1996, by the petitioner in Ar.O.P.No.3 of 2023, for the following relief:-

O.A.No.507 of 2021	O.A.No.508 of 2021
To pass an order restraining respondent No.2 from accepting and acting on the Termination Notice, dated 15.03.2021, pending hearing and final disposal of the Arbitral Proceedings and enforcement of	To pass an order restraining respondent No.3 from creating any third party rights on the shares purchased by it from respondent No.7, pending hearing and final disposal of the Arbitral Proceedings



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Arbital Award.

and enforcement of Arbital Award.

**5th respondent in Arb.O.P.No.3 of 2023 whose name was substituted vide order dated 21.07.2023 in A.S.No.3463 of 2023*

4. Earlier, by an order dated 03.02.2022, in Ar.O.P.(Comm.Div.)No.281 of 2021, this Court had appointed Hon'ble Mr.Justice K.Kannan, retired Judge of Punjab and Haryana High Court as the Sole Arbitrator to resolve the dispute between the petitioner and the respondents.

5. Pursuant to the above said order, the learned Arbitrator also entered upon reference and called the parties to file their claim petitions and their response. At that time, the fifth respondent was HDFC Ventures Trustee Company Limited. The Arbitral Proceeding was resisted by HDFC Ventures Trustee Company Limited. HDFC Ventures Trustee Company Limited repeatedly took time stating that the appointment of the learned Arbitrator, vide order dated 03.02.2022, in Ar.O.P.(Comm.Div.)No.281 of 2021, was a subject matter of a challenge before the Hon'ble Supreme Court in S.L.P.(C)No.6637 of 2022 and therefore, the Arbitral Proceeding should be deferred pending orders in S.L.P.(C)No.6637 of 2022. Earlier, an order came to be passed by the



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Hon'ble Supreme Court on 02.05.2022, whereby the parties were directed to complete the pleadings. S.L.P.(C)No.6637 of 2022 was filed by HDFC Ventures Trustee Company Limited. The name of HDFC Ventures Trustee Company Limited has since been substituted with the name of Vistra ITCL (India) Limited, vide order dated 21.07.2023 in A.No.3463 of 2023 as the fifth respondent.

6. Meanwhile, in view of the repeated adjournments by the said HDFC Ventures Trustee Company Limited before the Arbitral Tribunal due to pendency of S.L.P.(C)No.6637 of 2022, the learned Arbitrator issued a Memo, dated 01.06.2022 and withdrew from the Arbitration Proceeding while expressing exasperation and his displeasure by the said HDFC Ventures Trustee Company Limited by persistently unwilling to stick on the schedule fixed for making progress in the Arbitral Proceedings.

7. Thus, by an order dated 10.11.2022, the Hon'ble Supreme Court disposed S.L.P.(C)No.6637 of 2022. The relevant portion of the order dated 10.11.2022, reads as under:-



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"At the stage of hearing, learned Senior counsel for the respondent has brought to our notice that Mr. Justice K. Kannan, learned Arbitrator appointed by the High Court has recused and as such there is need to re-nominate an Arbitrator and towards this end an application under Section 14 would be filed before the High Court.

Learned Senior counsel for the petitioner at this stage would point out that even after the High Court had decided to appoint an Arbitrator, the same ought to have been as provided in Clause 12.7 of the Arbitration Agreement which was relied upon by the respondents themselves and an appropriate Arbitral Tribunal provided therein should have been appointed. On this aspect we leave it open to the High Court to take note of this aspect if an application for re-nomination of the Arbitrator is filed under Section 14 of the Act and while re-nominating the Arbitral Tribunal, an appropriate decision be taken by the High Court to constitute an Arbitral Tribunal consisting such number of arbitrators based on the contentions that would be put forth on the said application. To that extent the contentions are left open to be considered by the High Court while sustaining the decision of the High Court to appoint the Arbitrator."

8. In the background of the aforesaid, the above petition has been filed under Sections 11 and 15 of the Arbitration and Conciliation Act, 1996. The petition is opposed by respondent No.5 and by respondent Nos.1 to 4.



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9. The learned counsel for the fifth respondent resists this Petition

and relies on the following judgments:-

- i. **Rajasthan State Industrial Development and Investment Corporation and another vs. Diamond and Gem Development Corporation Limited and another**, 2013 (5) SCC 470;
- ii. **Hotel Horizon Pvt. Ltd. vs. Palladian Hotels Pvt. Ltd.** Arb.No.485 of 2022, 2023 : BHC-OS:5342;
- iii. **Rajasthan Small Industries Corporation Limited vs. Ganesh Containers Movers Syndicate**, 2019 (3) SCC 282;
- iv. **National Highways Authority of India and another vs. Bumihiway DDB Ltd. (JV) and others**, 2006 (10) SCC 763;
- v. **Yashwith Constructions (P) Ltd. vs. Simplex Concrete Piles India Ltd. and another**, 2006 (6) SCC 204; and
- vi. **Alchemist Asset Reconstruction Company Limited vs. Hotel Gaudavan Private Limited and others**, 2018 (16) SCC 94

10. In my view, it is not necessary to delve into the merits of the allegations, as the arbitrability of the dispute between the petitioner and the respondents particularly, between the fifth respondent on account of transfers made by the fifth respondent namely, HDFC Ventures Trustee



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Company Limited to the first respondent and group of companies is arbitrable. The Hon'ble Supreme Court has categorically held that the decision to appoint an Arbitrator is sustained as extracted above. Suffice to state that pursuant to shares subscription agreement and shareholders agreement, both dated 02.03.2006, in respect of the shares in the second respondent Company signed between the respondents 1 and 4 and the investors and the HDFC Ventures Trustee Company Limited, the fifth respondent came to hold 3,58,94,300 shares in the second respondent Company. The petitioner was the purchaser of 2,15,36,000 shares of the second respondent Company, which were originally allotted to M/s.Dharti Investment and Holdings Limited. These shares have been purchased by the petitioner pursuant to the deed of assignment dated 12.06.2006. During the interregnum, HDFC Ventures Trustee Company Limited appears to have off-loaded the part of the shares held by it in the second respondent Company to the group of companies of the respondents 1 and 2, namely, Ozone Propex Private Limited and Ozone Projects Private Limited and the balance appears to have been sold to the third respondent by the fifth respondent namely, HDFC Ventures Trustee Company Limited, whose name now been substituted with Vistra ITCL (India)



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Limited. The transfers made by the said Company to the first respondent is the subject matter of dispute, which has only been decided properly by the Tribunal. The attempt of the HDFC Ventures Trustee Company Limited was to frustrate the arbitral proceedings by approaching the Hon'ble Supreme Court challenging the appointment made pursuant to the order dated 02.05.2022, in S.L.P.(C)No.6637 of 2022, which has ultimately yielded in a Memo, dated 01.06.2022 of the sole Arbitrator appointed by this Court.

11. As far as this Court is concerned, it is only to look at the arbitral clause and unless it comes to a conclusion that there is no scope for appointing an Arbitrator, on the ground that the dispute is not arbitrable as per the decision of the Hon'ble Supreme Court in **Vidya Drolia vs. Durga Trading Corporation** [2019 (20) SCC 406], this Court has merely appointed an Arbitrator in the light of the decision of the Hon'ble Supreme Court in **Duro Felguera, S.A. vs. Gangavaram Port Limited** [2017 (9) SCC 729].

12. Since the learned Arbitrator appointed earlier vide order dated 03.02.2022, in Ar.O.P.(Comm.Div)No.281 of 2021, has withdrawn from



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the office on account of persistent non-cooperation by HDFC Ventures Trustee Company Limited, whose name has been substituted with the name of Vistra ITCL (India) Limited, I see no impediment in substituting the name of the learned Arbitrator with the name of Hon'ble Mrs.Justice Chitra Venkataraman also a former Judge of this High Court, since retired.

13. Accordingly, Hon'ble Mrs.Justice Chitra Venkataraman (Retd.), Former Judge of Madras High Court, residing at Old No.17B, New No.31, IV Main Road, Raja Annamalaipuram, Chennai - 600028, (Mobile No.98409 90000), as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

14. The learned Arbitrator appointed herein shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.



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15. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

16. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator. All the issues are left open to be canvassed by the respondents before the learned Arbitrator under Section 16 of the Arbitration and Conciliation Act, 1996.

17. In the result, this Original Petition is disposed of with the above observation and the connected Applications are closed, leaving the parties to bear their own costs.



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Index : Yes/No

Neutral Citation : Yes/No
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