IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM. ARBITRATION PETITION NO. 231 OF 2025

Satyavan Vishnu Agate ...Petitioner
Versus
Airports Authority of India ...Respondent

Mr. Karl Tamboly *a/w. Samit Shukla and Vaibhavi Bhalerao i/b Trilegal, for Petitioner.*

Ms. Shilpa Kapil *a/w. Chidanand Kapil and Chandni Bavishi and Priti Karbhari, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.
Date : March 25, 2025

P. C.

1. This is a Petition under Section 9 of the Arbitration and Conciliation Act, 1996 ("***the Act***").

2. Heard Learned Counsel for the parties.

3. Disputes and differences between the parties have arisen in connection with a License Agreement dated October 14, 2024, under which the Petitioner was given a license for installation, testing, commissioning, operation and maintenance of electric vehicle charging stations in the Juhu Airport. The license was for a period of ten years after the completion of an

initial period of 90 days or commencement of the operations, whichever is earlier. Clause 1 of the Contract envisages that the Agreement could be terminated earlier on account of giving a 180 day notice period in writing for the reasons specified in Clause B. Clause B provides that the termination may be effected on a shorter notice on account of unsatisfactory performance.

4. There are other references to termination in the Agreement. Clause 28 provides that the Petitioner shall not terminate the license before expiry of the license period, except by giving 180 days' notice in writing, in which event, the licensee would be required to pay to the Respondents such amount of money as the Respondent may assert in as due to the Respondent. The license could be terminated by the Respondent by giving 180 days' notice period without assigning any reason, only in the case of unsatisfactory performance. In other words, by the sentence would in itself appear inherently contradictory, *prima facie* it is plausible to read it as meaning that the reason for considering the performance to be unsatisfactory need not be articulated. However, in such a situation, the 180 day notice period would be required.

5. Clause 30 of the Agreement, is broken up into four parts, namely, (i) normal termination (upon expiry of the license); (ii) termination for cause (where there is a specific reason for termination which would be after the

mediation has failed); (iii) termination for convenience which is which is to take effect on the basis of the period during which the termination is effected; and (iv), termination for regulatory, legislative or supervisory requirements, whereby the law requires termination of the contract. Clause 30(C) which deals with termination for convenience, is indeed problematic. It does suggest that either party may terminate the contract with the notice being served on the other party, but the date on which the notice *is received by the Respondent*, would be the commencement of the notice period. This would indicate that such termination would by the Petitioner and not by the Respondent. It would be necessary to reconcile these conflicting provisions, in particular, the provisions of Clause 30(C) and Clause 28, all of which would fall in the domain of the arbitral tribunal, and, of course, the mediation prior thereto. Today, the sole scope of consideration is what would meet the ends of equity and necessary to balance the competing interests of the parties.

6. Moreover, Learned Counsel for the Respondent places on record, a termination notice dated March 22, 2025, which Learned Counsel for the Petitioner submits, was received only on March 24, 2025. The termination notice is issued after service of notice of today's hearing on the Respondent. That notice is titled "without prejudice". The notice refers to alleged

manipulation of Clauses 5(a) and 34(b) of the standard contract by an affidavit of the Respondent, and alleges collusion between officials of the Respondent and the Petitioner in manipulating the agreement that actually got executed. With the assistance of Learned Counsel for the parties, I have perused and compared the draft of the standard form document and the document that is actually executed. Today, apart from the say-so of the Respondent, there is nothing to demonstrate that there is actually a manipulation of the draft terms. It could well be that there been a valid negotiation as well. It would not be appropriate to comment at this stage. Assuming for the sake of argument that the grounds of termination, as sought to be made at this stage, are valid, it would not be a termination for convenience, but would be a termination for cause. Should this be a termination for cause, the termination can take effect only when mediation has failed.

7. Consequently, there is a strong *prima-facie* case that the conduct of the Respondent in accelerating the termination, would need to be interfered with to enable mediation to take place in a fair and reasonable manner. One other grievance raised by the Respondent is that the Petitioner has assigned its rights under the agreement to one Disha Construction, which would not have been possible, but for the manipulation of Clause 5A in the contract signed

between the parties. This too, would point to the termination not being a termination for convenience, but a termination for cause. The termination letter, in the penultimate paragraph, states that issuing a show cause notice could not serve any purpose, since there could be no action on the part of the Petitioner which could lead to a rectification, if the contract itself is vitiated by fraud. Apart from such a bland statement, there is nothing brought on record to say that the alleged manipulation was of a nature that warranted and necessitated such an emergent action. Moreover, the assignment of the agreement to Disha Construction was evidently communicated to the Respondent way back on October 29, 2024 and the reaction of the Respondent was not one of shock and surprise at that stage. The termination is in fact being effected only on March 22, 2024 which would also show that there is no tearing urgency to bring the termination into effect forthwith.

8. In these circumstances, Learned Counsel for the Respondent shall take instructions as to whether the Respondent would be willing to proceed to arbitration forthwith, to save time on mediation, particularly considering the grave nature of allegations being levelled by the Respondent. Needless to say, if the wrong alleged is incapable of cure by issuing a show cause, it may be incapable of cure by going into mediation. In these circumstances, the Respondent shall intimate as to whether the Respondent would proceed to a

sole arbitrator appointed by this Court. Such intimation shall be made no later than April 1, 2025.

9. The effect and operation of the letter dated March 22, 2025, purported to terminate the agreement, shall remain stayed until April 1, 2025. Depending on whether the parties are willing to proceed to arbitration, if further adjustments are required to be made, the same shall be made on that date. List on the ***Supplementary Board*** on ***April 1, 2025.***

10. The original cause for having come to this Court with the Section 9 Petition (that has been overtaken by the termination letter dated March 22, 2025) was the issuance of a letter dated December 31, 2024 under which the Respondent told the Petitioner to keep all the work under the agreement in abeyance with immediate effect owing to "administrative reason, till further orders". This too points to there having been expression of no tearing emergency or urgency to interdict the contract. Whether the allegations made have a *prima-facie* ring of truth to it and whether there are other considerations that have led to the break down in relations between the parties at this early stage of the license agreement are all matters of merits, which can be agitated before the arbitral tribunal.

11. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

Shraddha