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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2025
Pronounced on : 17.02.2025

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.(Com.Div.) Nos.41 & 42 of 2025
& O.A.Nos.875 & 876 of 2024

Arb.O.P.(Com.Div.)No.41 of 2025:

M/s.VIDVEDAA PRG AIRPORT RETAIL TRZ PVT.LTD,
Rep. by its Director, Mr.Vanchinathan Thangavel,
Olympia Teknos Park, Level – 4, Plot No.28,
SIDCO Industrial Estate, Guindy,
Chennai – 600 032.

... Petitioner in both OPs.

VS.

Airport Director,
Airport Authority of India,
Trichy Airport,
Trichy – 620 007.

... Respondent in both OPs.

COMMON PRAYER: Arbitration Original Petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the arbitration agreement dated 03.04.2024 and to direct the respondent to pay the costs.



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For Petitioner : Mr.Girish Sundaram

For Respondent : Mr.Arun C.Mohan
& Mr.K.Venkatesan

O.A.Nos.875 & 876 of 2024:

M/s.VIDVEDAA PRG AIRPORT RETAIL TRZ PVT.LTD,
Rep. by its Director, Mr.Vanchinathan Thangavel,
Olympia Teknos Park, Level – 4, Plot No.28,
SIDCO Industrial Estate, Guindy,
Chennai – 600 032.

... Applicant in both OAs.

vs.

Airport Director,
Airport Authority of India,
Trichy Airport,
Trichy – 620 007.

... Respondent in both OAs.

COMMON PRAYER: Arbitration Original Petition filed under Order XIV Rule 8 of OS Rules r/w Section 9(2)(a)(d) of the Arbitration and Conciliation Act, 1996, to grant an order of interim injunction restraining the respondent from withdrawing/encashing/forfeiting the Security Deposit and EMD submitted by the applicant in pursuance of the Concession Agreement dated 03.04.2024, pending disposal of the arbitration.

For Applicant : Mr.Girish Sundaram

For Respondent : Mr.Arun C.Mohan
& Mr.K.Venkatesan



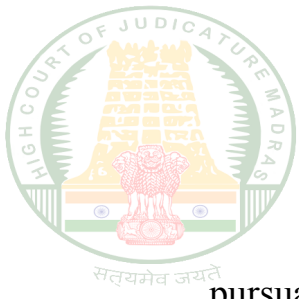
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COMMON ORDER

These Arbitration Original Petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, for appointment of a Sole Arbitrator to adjudicate the disputes between the petitioner and the respondent in terms of the Agreement dated 03.04.2024.

2.O.A.Nos.875 and 876 of 2024 have been filed for interim injunctions to restrain the respondent from withdrawing / encashing / forfeiting the Security Deposit and Earnest Money Deposit (EMD) submitted by the applicant pursuant to the Concession Agreement dated 03.04.2024.

3.I have heard Mr.S.Girissh Sundaram, learned counsel for the applicant in O.A.Nos.875 & 876 of 2024 and petitioner Arb.O.P.(Com.Div.)Nos.41 & 42 of 2025 and Mr.Arun C.Mohan and Mr.K.Venkatesan, learned counsel for the respondent in both the original applications as well as the arbitration original petitions.



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4.The learned counsel for the applicant would submit that in pursuance of e-tender invited by the respondent, the applicant had participated in the tender process, as a consortium and the applicant's bid was accepted. Thereafter, the Concession Agreement was entered into between the parties on 03.04.2024. According to the learned counsel for the applicant, the applicant faced several operational hurdles and procedural difficulties on account of inordinate delay on the part of the respondent in commencing the operations in the International Terminal at Trichy.

5.According to the applicant, there has been several lapses on the part of the respondent. Further, in terms and conditions, the applicant was required to submit a bank guarantee for Rs.2,40,96,383/- in O.A.No.875 of 2024 and Rs.3,33,34.936/- in O.A.No.876 of 2024, for which further time was sought for considering the various delays. However, the request was rejected by the respondent on 06.02.2024 and ultimately, the bank guarantee of Rs.2,40,96,383/- was obtained as per the conditions specified in RFP/LOIA on 20.03.2024. Apart from the bank guarantee, the applicant also deposited a sum of Rs.10,36,000/- in O.A.No.875 of 2024 and Rs.13,48,000/- in O.A.No.876 of 2024 as EMD. Subsequently, the applicant



withdrew the bank guarantee and deposited the said amount with the respondent on 07.05.2024.

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6.It is the contention of the applicant that the said deposit was in good faith and under the bonafide belief that the project would take off and the applicant could start doing business in the International Terminal at Trichy. However, things did not turn out as anticipated by the applicant and there were further delays in resolving various issues and hurdles that cropped up in the interregnum period. According to the applicant, even the floor plan was up to only August 2024 and only thereafter, the applicant could even apply for security clearance for the layout.

7.It is the further case of the applicant that the respondent, vide letter dated 04.10.2024, directed the applicant to take over the earmarked locations within seven days to avoid delay in commencing the concession, within three days thereafter, the applicant was slapped with a proforma invoice on 07.10.2024 towards license fee bill for the month of August 2024. According to the applicant, during the relevant point of time in August 2024, the applicant was not even in possession of the premises and



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therefore, there is no question of generating any revenue and payment of the license to the respondent. On 14.08.2024, the respondent had informed the applicant that the process of extension of the gestation period would be considered as per RSP provisions and even in the letter dated 04.10.2024, the respondent had indicated that the site had not been taken over on account of delay in obtaining the security clearance. As the applicant was suffering financially, and there was no progress at the end of the respondent and especially in view of the respondent demanding the license fee for the periods during which the applicant was not even in occupation of the locations, the applicant was constrained to terminate the contract by notice dated 10.10.2024.

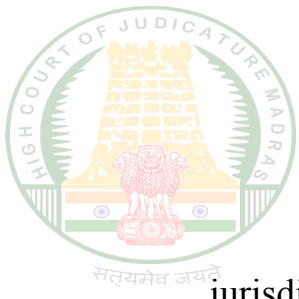
8. According to the applicant, the respondent did not even reply to the said notice. However, the respondent has floated a new tender on 30.10.2024 and also by flouting the rules and in a high handed manner is attempting to forfeit the security deposit of Rs.2,40,96,383/- in O.A.No.875 of 2024 and Rs.3,33,34,936/- in O.A.No.876 of 2024 as well as the earnest money deposit of Rs.10,36,000/- in O.A.No.875 of 2024 and Rs.13,48,000/- in O.A.No.876 of 2024. As an interim measure, the applicant has filed the



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above Section 9 applications seeking interim injunctions. He would therefore pray for injunctions to be granted as sought for and also for appointment of Arbitrator in view of the fact that the respondent does not deny the existence of a valid termination agreement. The learned counsel would also place reliance on the decisions of the Hon'ble Supreme Court in *Arif Azim Company Limited., Vs. Micromax Informatics FZE* reported in *2024 SCC Online SC 3212*, in support of his contentions that the Section 9 applications are maintainable before this Court in view of the preliminary objections raised by the respondent regarding the jurisdiction of this Court to entertain the Section 9 application.

9.Per contra, Mr.Arun C.Mohan, learned counsel for the respondent would first and foremost contend that the applicant has suppressed material facts and circumstances from this Court and filed the applications. According to the learned counsel for the respondent, without disclosing and filing the entire contract, the applicant has chosen to merely file a portion of the contract which suited the applicant's convenience and therefore, on this ground of suppression alone and not having come the Court with clean hands, he sought for dismissal of the injunction applications.



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10.Further, the learned counsel for the respondent referring to the jurisdiction clause under the contracts, moreso, clause 25 of the RFP dated 31.07.2023, would submit that it was agreed that the Courts at Airport of Concession shall have exclusive jurisdiction over matters arising out of or relating to the agreement. Therefore, the learned counsel would submit that it is only the Courts at Trichy which shall have jurisdiction to entertain the Section 9 applications and not this Court.

11.Further, on the merits, the learned counsel would submit that the security deposit as well as the earnest money deposit are liable to be forfeited by the respondent even in terms of the contract and therefore, the interim relief sought for cannot be granted. The learned counsel for the respondent would also place reliance on the decision of the Hon'ble Supreme Court in *Mankastu Impex Private Limited Vs. Airvisual Limited* reported in (2020) 5 SCC 399. He would therefore pray for dismissal of the injunction applications. However, insofar as appointment of an Arbitrator, the learned counsel for the respondent would submit that the respondent has no objection for the Section 11(6) petitions being allowed, directing the parties to resort to arbitration proceedings for adjudicating their disputes.

12.I have carefully considered the submissions advanced by the



learned counsel on either side including the decision on which reliance is placed on by the learned counsel for the parties.

13. With regard to the Section 9 applications in respect of two tender notifications issued by the respondent, the parties have clearly agreed upon the jurisdiction clause which is extracted hereunder:

“Clause 25 of the RFP dated 31.07.2023.

25.1 Governing law and jurisdictional.

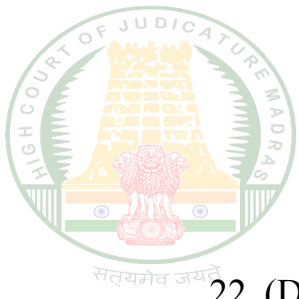
2.1.1. This agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Airport of Concession shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

Clause 25 of the Concession Agreement dated 03.04.2024.

25.1 Governing law and jurisdictional.

2.1.1. This Agreement shall be construed and interpreted in accordance with and governed by the laws of India and the Courts at Airport of Concession shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.”

A bare perusal of the above clauses evidence that the parties have categorically agreed that the Courts at the Airport of Concession shall have exclusive jurisdiction.



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14. Though the learned counsel for the applicant has relied on Article 22 (Dispute Resolution) where the venue of arbitration has been agreed upon as 'RHQ Chennai', when the parties have specifically agreed upon a jurisdiction clause, then the same would supersede the parties agreeing upon a venue.

15. In the instant case, the Airport concerned is the International Terminal at Trichy and therefore, as per the governing law and jurisdiction clauses in the contracts, it is only the District Court, Trichy which is the competent Court before which the Section 9 application should be made. Consequently, the applications filed before this Court are not maintainable. Even on the merits of the interim reliefs sought for, I am unable to countenance the reliefs of interim injunctions that have been prayed in the applications.

16. The applicant seeks interim injunctions to restrain the respondent from withdrawing/encashing/forfeiting the security deposit and earnest money deposit submitted by the applicant under two Concession Agreements pertaining to two tenders. The question of withdrawing or



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encashing of the amounts cannot and does not arise in the present case for the simple reason that the money is not available in a separate escrow account or made available by way of a guarantee favouring the respondent. Admittedly, even according to the applicant the monies have been deposited into the account of the respondent and therefore, such monies are already with the respondent in their regular banking account.

17. Insofar as the question of forfeiting the said amounts, according to the applicant, the said amounts is not liable for forfeiture. However, insofar as the respondent is concerned, the amount is liable to be forfeited. This is going to be the bone of contention of the parties before the Arbitrator and subject to the final award published by the Arbitrator. The liability of the respondent to return/refund the said amounts or entitlement of the respondent to hold back the same on account of the applicant will be decided only at the conclusion of the arbitral proceedings and therefore, if at all the applicant succeeds in the arbitration, then the respondent would be bound to refund the monies, if and so directed by the arbitral award. Therefore, there is no protection required for the applicant as an interim measure, considering the fact that the applicant has already parted with the



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monies to the respondent and the monies being available with the respondent, there is no question of withdrawing or encashing the same. In any event, when I have already found that this Court has no jurisdiction to entertain the Section 9 applications and the Section 9 applications can only be filed before District Court (Commercial Court), Trichy, I have no hesitation in dismissing the original applications.

18. Reverting my attention to the decision cited by the learned counsel for the petitioner in *Arif Azim Company Limited's case*, I do not find the ratio laid down by the Hon'ble Supreme Court in the said case coming to the aid of the applicant because in the present case, the parties having specifically agreed upon the jurisdiction to be Airport of Concession clause and therefore, it is not a case where there is no significant contrary indication as well. The reliance placed on by the petitioner in *Arif Azim Company Limited's case* actually is of no avail to the petitioner. The ratio laid down by the Hon'ble Supreme Court was only in relation to determination of seat of arbitration, when there is an express designation of a place of arbitration, anchoring the arbitral proceedings to such place and when there being no other significant contrary indica to show otherwise,



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then the such place would be the seat of arbitration, even though it is designated in the nomenclature of venue in the arbitration agreement.

19.As rightly pointed out by the learned counsel for the respondent, the applicant has not even chosen to file the entire contract before this Court and has merely enclosed Article 22 in the typed set of papers clearly not bringing to the notice of this Court the jurisdiction clause. Therefore, when the parties have expressly agreed upon the Courts of Airport of Concession, the venue will not become the seat of arbitration.

20.In fact, in *Mankastu Impex Private Limited's case*, the Hon'ble Supreme Court specifically held that the seat and venue cannot be used interchangeably and the place of arbitration would not be the basis for determining the intentions of the parties regarding the seat of arbitration and that the intention of the parties as to the seat of arbitration should be determined from the clauses in the agreement and the conduct of the parties.

21.Here, I have already referred to the jurisdiction clause whereby the parties have agreed upon the seat of arbitration and therefore, merely because the parties agreed upon the venue would be Chennai, it would not



confer to jurisdiction of this Court to entertain the Section 9 applications.

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22.Insofar as the arbitration original petitions are concerned, I have gone through the contracts and I find valid arbitration agreements existing and agreed upon between the parties. The learned counsel for the respondent also fairly conceded that a Sole Arbitrator can be appointed to enter reference and adjudicate the disputes between the parties.

23.In view of the above, the O.A.Nos.875 & 876 of 2024 are dismissed and Arb.O.P(Com.Div.)Nos.41 & 42 are allowed in the manner following:

(i) **Hon'ble Mr.Justice B.Rajendran, Judge (Retd) High Court, Madras, Old No.E-65, New No. E-15, 5th Main Road, Anna Nagar, Chennai – 102, Contact Nos.26213036 / 9445024747 / 9841033622**, is appointed as the Sole Arbitrator to enter reference and adjudicate the disputes between the parties, in respect of two separate Tribunals.

(ii) The learned Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not



later than nine (9) months from the date of his entering into reference.

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17.02.2025

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Internet : Yes / No

P.B.BALAJI, J.,

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