IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.405 of 2021

Uber9 Business Process Services Pvt., Ltd.,
A Company incorporated under the
Companies Act, 2013
having its registered office at
F-97, Newry Shreya Apartments,
Anna Nagar East,
Chennai - 600 102 ... Petitioner

Vs.

1. Chairman / Principal Judge,
   District Legal Services Authority,
   City Civil Court,
   Chennai - 600 104

2. Securities and Exchange Board of India
   SEBI Bhavan, Plot No.C4-A, 'G' Block
   Bandra - Kurla Complex, Bandra (East)
   Mumbai - 400 051

3. Nodal Officer
   Justice (Retd.,) R.M.Lodha Committee
   (in the matter of PACL Ltd.,)
   The Ashok, Annexe Building (Oudh Corridor)
   50-B, Chanakya Puri, New Delhi - 110 021 .... Respondents

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Civil Revision Petition is filed under Article 227 of Constitution of India against the Docket order of the Hon'ble Chairman / District Judge in returning the Mediation Application filed on 28.11.2019 under Section 12A of the Commercial Courts Act, 2015 on the file of the District Legal Services Authority is contrary to law, manifestly erroneous and unjust and in any event, it is liable to be set aside.

For Petitioner : Mr.Sriram Venkatavaradan

ORDER

The present Civil Revision Petition has been filed under Article 227 of Constitution of India to set aside the Docket order of the Hon'ble Chairman / District Judge in returning the Mediation Application filed on 28.11.2019 under Section 12A of the Commercial Courts Act, 2015 on the file of the District Legal Services Authority, on the ground that the same is contrary to law, manifestly erroneous and unjust.

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2. The case of the petitioner is that the 2nd respondent, vide its order dated 22.08.2014 held that Schemes of M/s PACL Limited were in the nature of collective investment schemes and interalia directed the PACL Ltd., its promoters and its Directors to wind up all of its collective

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investment schemes and refund the monies collected by it under its schemes with returns which were due to its investors / depositors. The refunds were to be disbursed, as per the terms of offer within a period of three months from the date of the order. Aggrieved by the said order, M/s PACL appealed before the Securities Appellate Tribunal [hereinafter referred to as SAT] and by order dated 12.08.2015, the authority dismissed the appeals and upheld the order of the 2nd respondent. In consequence, M/s PACL filed appeals in C.A.Nos.13319 and 13394 of 2015 before the Hon'ble Supreme Court and the said court had constituted a committee under the chairmanship of Hon'ble Justice (Retd) Mr.R.M.Lodha (Former Chief Justice of India) for disposing of the land purchased by the said company, in order to pay the depositors by way of sale proceeds, who have invested their funds in M/s PACL for purchase of land under the alleged scheme.

3. Subsequently, the said Committee in order to implement the said directions of the Hon'ble Supreme Court, decided to collect and collate the claims of all such depositors and investors throughout India, by designing a website to receive the details and invite claims from the multitude of depositors scattered across the country, so as to be verified with the PACL

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database as provided by M/s PACL to the committee. The committee floated tenders towards the said purpose. The petitioner having offered the most competitive quotation and having met all the evaluation matrix criteria as well as the technical expertise, was awarded with the contract vide Work Order No.JMRLC/PACL/No.2917 dated 17.10.2017 with general terms and conditions.

4. In continuance, a legal notice was sent by the petitioner on 18.12.2018 for recovery of dues payable to the petitioner for the services rendered in the matter of PACL Limited narrating various facts. Further, the petitioner has filed Form-1-Mediation Application under Rule 3(1) narrating the details of dispute and the said application was dismissed, hence the petitioner has filed the present Civil Revision Petition.

5. The learned counsel for the petitioner submits that the petitioner is the fastest growing technology development companies, specializing in incorporation, registrations and filings, accounting, documentation and compliances and a leading innovator in the field of legal and accounting software. The petitioner submitted its quotation for designing and implementing the said project. The petitioner having offered the most

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competitive quotation and having met all the evaluation criteria, the work order dated 17.10.2017 was allotted to the petitioner.

6. That apart, the learned counsel for the petitioner submits that the work order was unconditional and mandated that the petitioner to take into account all the claims/ applications / submissions placed before it. Further, more than 14.48 Lakh people submitted their claim applications and this data was seamlessly collected and stored on the servers of the petitioner. Also the Nodal officer, on 27.02.2018, about three weeks, after the receipt of the said invoice, stated that only a subset of the claims processed where the claim amount was less than Rs.2,500/- and which were complete in all respects were to be paid for. The modified work order without the consensus of the petitioner was a departure from the understanding between the parties. The committee admitted the modification of the work order, as per the letter dated 27.02.2018.

7. The learned counsel for the petitioner also contends that the committee directed the petitioner to run the entire painstaking and expensive manual verification process at its cost, which was without precedent, unfair and arbitrary. The petitioner therefore was left with no

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remedy excepting to approach Courts to remedy his grievance. As a result, the petitioner approached the District Legal Services Authority, Chennai and filed a Mediation application on 28.11.2019 in order to settle the disputes amicaly between the parties. Thereafter, the said Authority returned the Mediation application filed under Section 12A of the Commercial Courts Act, 2015 and Rule 3 of the Commercial Courts (Pre-Institution Mediation and settlement) Rules, 2018 citing Clause (S) of the work order dated 17.10.2017, which states as follows:-

"The application form for mediation filed under the Commercial Courts, Act 2015 under Commercial Courts (Pre-Institution Mediation and Settlement Rules, 2018 is returned for want of jurisdiction. Clause (S) of the work order entered into between the applicant and respondent reads:

"S. Any dispute arising out of or in respect of the contract will be subject to the jurisdiction of the Hon'ble Supreme Court only" hence returned"

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8. Subsequently, the petitioner approached the Hon'ble Supreme Court by filing two applications in Civil Appeal No.13394 of 2015, one of the said application is, I.A.No.197018 of 2019 seeking

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impleadment/invervention of the petitioner herein and the 2nd application, I.A.No.197019 of 2019 is, seeking clarification to the effect that Clause(S) of the work order dated 17.10.2017 did not preclude the petitioner herein from pursuing its claims against the Ld. Committee before the courts here at chennai. The said applications have not been pursued by the petitioner herein, in view of the fact that there was significant delay in listing the matter. In view of the above, the petitioner pleaded to invoke the supervisory jurisdiction of this Court to pass an order directing the Hon'ble Chairman / Principal Judge, District Legal Services Authority, City Civil Court, viz., 1st respondent to entertain the Mediation Application filed by the petitioner on 28.11.2019.

9. The learned counsel for the petitioner in support of his contention relied upon the Judgments of the Hon'ble Supreme Court in **Interglobe Aviation Ltd., V. N.Satchidanand reported in (2011) 7 SCC 463 : (2011) 3SCC (Civ) 747 and the case reported in (1971) 1 SCC 286 Hakam Singh Vs. Gammon (India) Ltd.** Further, the learned counsel for the petitioner also relied on the Judgment of Gujarat High Court in Snehalkumar Sarabhai Vs. Economic Transport Organisation reported in AIR 1975 Guj 72 at Page 72 (which has been referred to affirmatively by

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the Hon'ble Supreme Court in A.B.C. Laminart Pvt., Ltd., Vs. A.P.Agencies, AIR 1989 SC 1239), wherein it is held as under:-

> *"The ouster clause can operate as estoppel against the parties to the contract. it cannot tie the hands of the court and denude it of the power to do justice. It is no doubt true that ordinarily courts would respect the agreement between the parties which is born out of the meeting of their minds and out of considerations of convenience. But the Courts are not obliged to do in ever case. A new approach to this question deserves to be made for the ouster clause is calculated to operate as an engine of oppression and as a means to defeat the ends of justice. But the court on its part is not bound by the stipulation. The stipulation can be ignored by the excluded court which otherwise possesses jurisdiction if it is considered to be oppressive having regard to the surrounding circumstances including the stakes involved."*

10. Heard the learned counsel for the petitioner and perused the documents placed on record.

11. On going through the documents filed by way of typed set of papers, it is seen that the petitioner had approached the District Legal Services Authority by mentionining the details of dispute and the same is reproduced hereunder:-

"Details of Dispute:

1.Nature of dispute as per Section 2(1)(c)(xviii) of the

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Commercial Courts Act,2015.

2.Quantum of claim: Rs.2,65,47,115/-

3.Territorial jurisdication of the competent court: Chennai, Madras High court

4.Brief Synopsis of Commercial dispute (not to exceed 5000 words) Attached herein

5.Additional points of relevane - NA"

12. That apart, earlier, the petitioner has sent a legal notice on 18.12.2018 to the Hon'ble Committee seeking the following prayers:-

(i)seeking an immeidate release of Rs.1,48,47,115/;- being the total amount of outstanding as per the original work order along with interest at 18% from the date of outstanding till the date of remittance.

(ii)Seeking compensation towards loss of Rs.17,00,000/- towards incorect remittance of TDS by the Nodal officer.

(iii)Seeking compensation of Rs.1,00,00,000/- for harassment, intimidation and coercion by the Nodal officer for the loss to reputation caused by her malafides activities and false and baseless allegations against the client. That apart, the petitioner approached the District Legal Services Authority, Chennai - 104 for mediation. Thereafter, the District Legal Services Authority, taking into account the conditions culled out in Clause (S), had rejected to entertain the said petition.

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13. On going through the work order dated 17.10.2017, especially Clause (S), issued by the Hon'ble Committee , wherein it states that *“Any dispute arising out of or in respect of the contract will be subject to the jurisdiction of the Hon'ble Supreme Court only”* hence, it is clear that any dispute in respect of the contract will be subject to the jurisdiction of the Hon'ble Supreme Court and not in any other Court. Further, in the conditional order it is clearly stated that *"in case of any clarification, please do write to us immeidately"* When the committee has been appointed by the Hon'ble Supreme Court and the conditional work order also stipulates that any dispute arising out of the work order, will be subject to the jurisdiction of the Supreme Court, this petitioner cannot now seek the indulgence of this Court to refer the matter to mediation, which definitely has no jurisdiction to entertain the matter.

14. Moreover, the contention of the learned counsel for the petitioner that if a contract confers juridsiction on a court that has no jurisdiction at all to entertain the petition / application, the jurisdiction of other courts / forum which is the proper court / forum to try the questions is not barred and such a clause cannot be pleaded, as a bar to an application brought before the District Legal Services Authority, is not acceptable, because the Clause

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(S) of the work order clearly mentions that*"Any dispute arising out of or in respect of the contract will be subject to the jurisdiction of the Hon'ble Supreme Court only"* and the plain reading itself would show that the said dispute has to be raised before the Hon'ble Supreme Court only and not before this Court.

15. Further, it is also seen that the petitioner has filed two applications, viz., I.A.No.197018 of 2019 seeking impleadment/invervention of the petitioner herein and the other one is, I.A.No.197019 of 2019 was filed seeking clarification to the effect that Clause(S) of the work order dated 17.10.2017, therefore, it is clear that the petitioner is not precluded from pursuing its claims against the Ld. Committee, that being the case, the petitioner is at liberty to pursue the matter before the Hon'ble Supreme Court, where the jurisdiction vests and this Court is not inclined to interfere in such matter and the same is hereby dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order

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To

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   District Legal Services Authority,
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4. The Section Officer,
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   High Court, Madras

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V.BHAVANI SUBBAROYAN, J.,

ssd

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