

Ezen Aviation Pvt Limited & Anr vs Big Charter Private Limited on 12 October, 2020

Author: Manmohan

Bench: Manmohan, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO(05) (COMM) 124/2020

EZEN AVIATION PVT LIMITED & ANR. Appellants
Through: Mr.Arvind Kamath, Sr.Advocate with
Mr.Pai Amit, Mr.Prashant Popat, Mr.Nikit
Bala, Ms.Karishma Naghnoor, Mr.Rahat
Bansal and Mr.Souvik Paul Mazumdar,
Advocates.

versus

BIG CHARTER PRIVATE LIMITED Respondent
Through: Mr.Pradeep Dhingra, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% 12.10.2020

C.M.No.25544/2020

Keeping in view the averments in the application, the delay in filing the present appeal is condoned.

Accordingly, the application stands disposed of. C.M.Nos.25545-25547/2020 Exemption allowed, subject to all just exceptions. Accordingly, the applications stand disposed of.

The petition has been listed before this Bench by the Registry in view of the urgency expressed therein. The same has been heard by way of video conferencing.

Present appeal has been filed challenging the order dated 08th June, 2020 passed by the learned Single Judge of this court in OMP (I) (COMM) No.112/2020.

Learned senior counsel for the appellant states that the appellant had given its consent to the interim order as the judgment had been reserved in the matter and it had been indicated that the order would be passed shortly. He emphasises that no findings were made on the merits of the matter or on any of the issues pending consideration. He states that as it is now over hundred days since judgment was reserved and no order has been passed, the appellant needs to be relieved of its

consent.

He also states that the respondent had failed to initiate arbitral proceedings within the statutory period under the alleged lease deed dated 09th December, 2019 as stipulated in Section 9 (2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Arbitration Act') as well as the judgment of the Supreme Court in Sundaram Finance Ltd. Vs. NEPC India Ltd; (1999) 2 SCC 479 and the judgment dated 04th March, 2020 passed by the High Court of Madras in Application No.9466/2019.

He further submits that Part I of the Arbitration Act is inapplicable to the present Foreign Seated Commercial Arbitration.

Learned senior counsel for the appellant states that the appellant is not receiving any benefit from the aircraft in terms of rent. On the other hand, he states that the first appellant is incurring losses having to pay rent to GMR to keep the aircraft at the SEZ, Hyderabad and is also paying monthly maintenance to maintain the aircraft.

Issue notice.

Mr.Pradeep Dhingra, Advocate accepts notice on behalf of the respondent.

He states that arbitration proceedings under the lease deed dated 09th December, 2019 has not commenced as Singapore International Arbitration Centre is asking the respondent to deposit fees twice over i.e. under the lease deed dated 12th November, 2019 as well as under lease deed dated 09th December, 2019.

He submits that the Delhi High Court has jurisdiction to entertain the Section 9 petition in view of the Jurisdiction Clause in the subsequent lease deed dated 09th December, 2019. He further submits that 21st November, 2019 agreement ceased to exist, as it merged into agreement dated 09th December, 2019.

He states that the appellant has not filed the entire paper book as well as the orders passed by the learned Single Judge post 08th June, 2020. He has during the course of arguments, read the entire order dated 03rd July, 2020 passed by the learned Single Judge.

He lastly states that as the respondent has paid to the appellant Rs.4,30,00,000/- (Rupees Four Crores Thirty Lakhs only) approximately, the said amount needs to be secured before the appellant can be allowed to sell or take away spare parts of the aircraft.

After some arguments, with the consent of the parties, the interim order dated 08th June, 2020 stands modified/varied as under:-

- (i) The appellant shall furnish a list of inventory as of date to the learned counsel for the respondent within a week.

(ii) The first appellant is permitted to dismantle and shift the landing gears and other accessories from the facility of M/s GMR Air Cargo and Aerospace Engineering Limited (GMR) at Hyderabad to the warehouse of GMR where other parts of the aircraft are already stocked and stored.

(iii) The first appellant shall be entitled to donate the bare shell of the aircraft without any accessories and landing gears to the National Institute of Technology, Warangal. Proof of such donation shall be placed on record before this Court within one week from the date of delivery to the National Institute of Technology, Warangal.

(iv) The first appellant is permitted to sell the landing gears and other spare parts and raise an amount of Rs.4,30,00,000/- (Rupees Four Crores Thirty Lakhs only). Immediately, on receipt of sale proceeds of landing gears and other spare parts, the appellant shall ensure that Rs.4,30,00,000/- (Rupees Four Crores Thirty Lakhs only) is deposited with the Registry of this Court.

(v) Only upon deposit of Rs.4,30,00,000/- (Rupees Four Crores Thirty Lakhs only) with the Registry of this Court, the appellant shall be permitted to take away or sell other spare parts or appropriate the surplus sale proceeds for its use.

(vi) The aforesaid arrangement shall be subject to OMP (I) (COMM) No.112/2020.

(vii) CCP (O)No.16/2020 shall stand dismissed as withdrawn in view of the consensual order passed today.

(viii) In the event, the consensual arrangement is not abided by the appellant, it shall be open to the respondent to seek revival of the contempt proceedings.

Since it is the case of the appellant that judgment has not been pronounced for quite some time, it is given liberty to mention the matter before the learned Single Judge, in accordance with the judgment of the Supreme Court in Anil Rai Vs. State of Bihar; (2001) 7 SCC 318.

List on 09th November, 2020.

As a token of acceptance of today's order, learned counsel for both the parties are directed to sign the present order sheet tomorrow.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J SANJEEV NARULA, J OCTOBER 12, 2020 KA