

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 3RD DAY OF AUGUST 2012

BEFORE

THE HON'BLE MR.VIKRAMAJIT SEN, CHIEF JUSTICE

WRIT PETITION No.22817/2010(GM-CPC)
& WP No.22818/2010

BETWEEN:

M/s.Dodsal Enterprises Private Limited
Formerly known as
M/s.Dodsal Limited
A Company incorporated under the
Provisions of the Companies Act, 1956 having
Its registered office at 702, Prism Tower
A Wing, Mindspace, Link Road
Goregoan (West),Mumbai 400 062
Represented herein by
Sri Sadanand Bandekar
General Manager –Secretarial and Legal. ...Petitioner

(By Sri Abhilash Raju, Adv. for
M/s.Sundaraswamy and Ramdas, Adv.)

AND:

M/s.NGEF LIMITED (In Liquidation)
A Government Company incorporated under
The provisions of the Companies Act, 1956
Having its office at Old Madras Road
P.B.No.8876, Byappanahalli
Bangalore 560 038
Represented herein by the Official Liquidator
Attached to the High Court of Karnataka
Bangalore. ..Respondent

(By Sri K.S.Mahadevan, Adv.)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to call for records in OS No.6642/1994 and to set aside the order on I.A.No.2 dated 01.01.2003 passed by the XXXI Additional City Civil Judge to the extent it orders awaiting of decision of the Arbitrator as per Annexure-A.

These Writ Petitions coming on for final hearing this day, the Court made the following :-

ORDER

These Writ Petitions assail the order of the XXXI City Civil Judge, Bangalore passed on 1.1.2003 in original suit No.6642/1994. The plaintiff-NGEF Ltd., (now in Liquidation) had filed a recovery suit against the writ petitioner. An objection was raised under Sec.8 of the Arbitration and Conciliation Act, 1996 (in short `the A and C Act`) bringing to the Court's notice, the existence of Arbitration clause in the agreement dated 19.4.1990. That application came to be allowed in the following terms:

"I.A.No.II filed under section 8 of the Arbitration and Conciliation Act, 1996 is partly allowed. The parties to the suit are referred to Arbitration as provided under section 8(1) of the Arbitration and Conciliation Act, 1996. Parties to report the decision of the Arbitrator. Await decision by 30.9.2003."

2. It is informed that the suit has been dismissed in default on 23.7.2011. There is rightly no opposition to the writ petitions by the learned counsel for the respondent. If the arbitration clause is in existence, the jurisdiction of the Civil Court gets ousted. It is therefore impermissible in law to keep

a suit pending if the clause is there to that effect and the parties are bound to adjudicate their case through arbitration. The Addl.City Civil Judge is therefore clearly in error in keeping the suit pending even after referring the parties to the arbitration by virtue of Sec.8 of A & C Act, 1996.

3. The order is incorrect and requires to be set aside.

Ordered accordingly. In any event, suit itself has now come to be dismissed. Parties to bear their respective costs.

4. Writ Petitions are accordingly allowed.

Sd/-
CHIEF JUSTICE

Sk/-