

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2020

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

O.P.Nos.482 to 486 of 2020

and

A.Nos.2646, 2647, 2648, 2649 & 2652 of 2020

1. M/s.VNR Auto Logistics
No.4/84, 3rd Floor, 1st Cross Street,
Thirumal Nagar, Poonamallee
Chennai-600 066.
Rep. by its sole proprietor
Nageswara Rao.

2. Ajay Kumar
Son of Nageswara Rao
No.4/84, 3rd Floor, 1st Cross Street,
Thirumal Nagar, Poonamallee
Chennai-600 066.

... Petitioners in
O.P.Nos.482, 485 & 486 of 2020

1. M/s.VNR Auto Logistics
No.4/84, 3rd Floor, 1st Cross Street,
Thirumal Nagar, Poonamallee
Chennai-600 066.
Rep. by its sole proprietor
Nageswara Rao.

2. Nageswara Rao V
Son of Krishnama Naidu
No.4/84, 3rd Floor, 1st Cross Street,
Thirumal Nagar, Poonamallee
Chennai-600 066.

(2nd petitioner is no more and 3rd petitioner Ajay Kumar
is recorded as his legal heir in and by this order)

3. Ajay Kumar
Son of Nageswara Rao
No.4/84, 3rd Floor, 1st Cross Street,
Thirumal Nagar, Poonamallee
Chennai-600 066.

... petitioners
in O.P.Nos.483 & 484 of 2020

vs.

Equitas Small Finance Bank Ltd.,
(Formerly known as Equitas Finance Limited)
Rep. by its Assistant Manager-Legal
Spencer Plaza
4th Floor, Phase-II,
No.769, Mount Road, Anna Salai,
Chennai-600 002.

... Respondent in all OPs

Original Petition Nos.482 to 486 of 2020 filed under Section
34(2)(a)(iii), 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996, to

(a) Set aside the award dated 20.01.2020 rendered by the learned
arbitrator;

(b) Award costs to the petitioner throughout the proceedings; and

(c) Pass such further orders, as are considered appropriate.

For petitioners in all OPs : Mr.K.Rajmohan
For respondent in all OPs : Mr.A.Damodaran

COMMON ORDER

This common order will govern the captioned five 'original petitions' ('OPs' in plural and 'OP' in singular for the sake of brevity and convenience), which are applications under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' {which shall hereinafter be referred to as 'A and C Act' for the sake of convenience and clarity}, assailing five separate arbitral awards dated 20.01.2020 bearing reference Nos. (1) mvh/vf/esfb/598, (2) mvh/vf/esfb/621 (3) mvh/vf/esfb/618 (4) mvh/vf/esfb/600 and (5) mvh/vf/esfb/597 respectively [hereinafter 'impugned award' in singular and collectively 'impugned awards' in plural for the sake of brevity].

2. Mr.K.Rajmohan, learned counsel for petitioners in all five captioned OPs and Mr.A.Damodaran, learned counsel on record for sole respondent in all five captioned OPs are before me. Pursuant to earlier proceedings, records of 'Arbitral Tribunal' [hereinafter 'AT' for the sake of convenience, clarity and brevity] qua all five impugned awards have been placed before me. To be noted, AT is constituted by same sole

arbitrator and all five impugned awards have been made by the same AT. I had the benefit of perusing the records of AT pertaining to all five impugned awards.

3. Aforementioned two counsel, who represent both sides i.e., all parties in captioned OPs consented for captioned OP being taken up for final disposal in this web hearing on a video conferencing platform i.e., virtual hearing. Captioned OPs were taken up for final disposal and heard out.

4. In the light of captioned OPs being applications under Section 34 of A and C Act, owing to the short statutory perimeter of Section 34 of A and C Act, or in other words, limited legal landscape of Section 34 of A and C Act, short facts shorn of elaboration will suffice. In other words, factual matrix in a nutshell containing essential facts imperative for appreciating this common order will suffice.

5. There is no disputation or disagreement before me that the dates qua trajectory of the five matters before AT are common and

issues qua lis before AT are also same/similar in all five captioned OPs. To be noted, dates of agreement, quantum qua impugned awards and other incidental/ancillary details in this regard are different.

6. Factual matrix in a nutshell is that there are loan-cum-guarantee agreements [hereinafter 'loan agreements' in plural and 'loan agreement' in singular for convenience] between petitioners in captioned OP [hereinafter collectively 'VNR'] and lone respondent [hereinafter 'Equitas'] for purchase of lorries which are specifically designed for the purpose of transporting cars. I choose to use the term 'trucks' or in other words, they are specially designed trucks for the purpose of transporting cars; that Equitas advanced different sums of money by way of loan for purchase of these trucks (one truck in each loan agreement out of which each OP arises) and the loans have to be repaid in 36 'Equated Monthly Instalments' ['EMI' in singular and 'EMIs' in plural for the sake of brevity]; that alleging default in payment of EMIs, Equitas vide five separate termination notices, all dated 05.10.2019, terminated the agreements, appointed a sole arbitrator and sent this communication to VNR; that learned counsel for Equitas submits that this 05.10.2019

termination notice also serves as notice invoking arbitration clause in loan agreements being Clause No.31; that learned counsel for Equitas submits that these notices sent to VNR were returned with postal endorsements 'unclaimed' on the envelope; that in records of AT placed before me, these returned envelopes are available in records pertaining to OP Nos.483 & 484 of 2020, but are not available in OP Nos.482, 485 & 486 of 2020; that pursuant to such trigger of arbitration clause in loan agreements which serve as arbitration agreements between VNR and Equitas, being arbitration agreements within the meaning of Section 2(1)(b) read with Section 7 of A and C Act; that AT sent out a communication dated 13.11.2019 fixing the first date of sitting of AT on 12.12.2019 at 4.00 p.m.; that from the records of AT it is seen that this 13.11.2019 communication from AT has been returned with postal endorsement 'unclaimed' qua VNR; that on 12.12.2019, AT held proceedings and the proceedings, as can be culled out from records of AT, is as follows:

M.V.HARIRAM,
SOLE ARBITRATOR

"SWATHI SUBHADRA", 6 SIR
MADHAVAN NAIR ROAD,
MAHALINGAPURAM,
CHENNAI-600034,
MOB: 94449 52608.

BEFORE THE SOLE ARBITRATOR MR.M.V.HARIRAM, ADVOCATE, CHENNAI

CLAIM PETITION FILED
In
msh/vt/efsb/598
In the matter of Arbitration Conciliation Act, 1996
AND
In the matter of dispute between Equitas Small
Finance Bank Limited and VNR AUTO LOGISTICS
and others in respect of their Loan Agreement
SLP/ML/EO163802 Dated 11/06/2017

Equitas Small Finance Bank Limited
(Formerly known as Equitas Finance Limited)
Rep. By its Assistant Manager-Legal
B. Ananda Kumar, Spencer Plaza, 4th Floor, Phase II,
NO. 755, Mount Road,
Anna Salai, Chennai-600 002

1. VNR AUTO LOGISTICS
NO.484 151 CROSS STREET THIRUMAL NAGAR, POONAWALLEE
TIRUVALLUR, TAMILNADU 600056

2. AJAY KUMAR VN, (Age: ymo) S/o. W/o. NAGESWARARAO
NO.484 151 CROSS STREET THIRUMAL NAGAR, POONAWALLEE
TIRUVALLUR, TAMILNADU 600056

.....Claimant
.....HRER
.....Co-HRER1

Sd/-

Proceedings of Hearing held on 12-12-19

Proceedings of Hearing Notice held on 13-11-19 were sent to the Respondent (s) and the same was returned unserved on the respondents.

The above referred matter was taken up for hearing on 12-12-19 at 4.00 p.m. The Representative of the claimant was present, neither the respondents nor the representative of the respondents were present. Hence the respondents are set aside and the matter is adjourned to 15-01-20 as a final chance to arbitrate the dispute, otherwise final award will be passed based on the claim petition and documents.

The venue of arbitration shall be at "Swathi Subhadra", 6, Sir Madhavan Nair Road, Mahalingapuram, Chennai-600034 at 4.00 p.m.

Dated at Chennai on this the 12th day of December 2019.


Sole Arbitrator

M.V.HARIRAM,
SOLE ARBITRATOR

"SWATHI SUBHADRA", 6 SIR
MADHAVAN NAIR ROAD,
MAHALINGAPURAM,
CHENNAI-600034.
MOB: 94449 52608.

BEFORE THE SOLE ARBITRATOR MR.M.V.HARRAM, ADVOCATE, CHENNAI

CLAIM PETITION: N/18

In

mbh/sf/stsb/691

In the matter of Arbitration and Conciliation Act, 1996

AND

In the matter of disputes between Equitas Small
Finance Bank Limited and VNR AUTO LOGISTICS
and others in respect of the loan Agreement
SLPNMLE0140755 Dated 5/6/2017

Equitas Small Finance Bank Limited
(Formerly known as Equitas Finance Limited)
Rep. By its Assistant Manager, Legal
B. Ananda Kumar, Spencer Plaza, 4th Floor, Phase II,
NO. 76B, Madhav Road,
Anna Salai, Chennai-600 032

- Vs -

1. VNR AUTO LOGISTICS
NO:494,1ST CROSS STREET THIRUMAL NAGAR, POONAMALLEE
TIRUVALLUR, TAMILNADU 600056

2. NAGESWARA RAO V. (Age 60 yrs) S/o. W/o. PRASHNAPPA NAGAR
NO:494,1ST CROSS STREET THIRUMAL NAGAR, POONAMALLEE
TIRUVALLUR, TAMILNADU 600056

3. AJAY KUMAR VN. (Age 28 yrs) S/o. H/o. NAGESWARARAO
NO:494,1ST CROSS STREET THIRUMAL NAGAR, POONAMALLEE
TIRUVALLUR, TAMILNADU 600056

Sr.

Proceedings of Hearing held on 12-12-19

Proceedings of Hearing Notice held on 13-11-19 were sent to the Respondent (s) and the same was
returned unserved on the respondents.

The above referred matter was taken up for hearing on 12-12-19 at 4:00 pm. The Representative of the
claimant was present, neither the respondents nor the representative of the respondents were present.
Hence the respondents are set "exparte" and the matter is adjourned to 15-01-20 as a final chance to
arbitrate the dispute, otherwise final award will be passed based on the claim petition and documents.

The venue of arbitration shall be at "Swathi Subhadra", 6, Sir Madhavan Nair Road, Mahalingapuram,
Chennai-600034 at 4.00 pm.

Dated at Chennai on this the 12th day of December 2019.

Sole Arbitrator

MLV.HARIRAM,
SOLE ARBITRATOR:

"SWATHI SUBHADRA", 6 SIR
MADHAVAN NAIR ROAD,
MAHALINGAPURAM,
CHENNAI-600034.
MOB: 94449 62608.

BEFORE THE SOLE ARBITRATOR MR.M.V.HARIRAM, ADVOCATE, CHENNAI

CLAIM PETITION NINE

In
MRB/MT/CLM/618

of Arbitration and Conciliation Act, 1996

NM

In the matter of dispute between: Equitas Small
Finance Bank Limited and VNR AUTO LOGISTICS
and others in respect of the Loan Agreement,
9/PNNLE0149/54 Dated 5/6/2017

Equitas Small Finance Bank Limited
(Formerly known as Equitas Finance Limited)
Represented by: Assistant Manager - Legal
B, Jyoti, Kumar, Spencer Plaza, 4th Floor, Phase II
45, 75B, Mount Road,
Anna Sala, Chennai-600 002.

VS -

1. VNR AUTO LOGISTICS

NO.484, 1ST CROSS STREET THIRUVAL NAGAR, POONAMALLE
THIRUVALUR, TAMIL NADU-600035

2. NAGESWARA RAO V (Age 50 yrs) S/o V/S KNDHAKAM MO
NO.484, 1ST CROSS STREET THIRUVAL NAGAR, POONAMALLE
THIRUVALUR, TAMIL NADU-600035

3. AJAY KUMAR VN (Age 28 yrs) S/o, His NAGESWARARAO
NO.484, 1ST CROSS STREET THIRUVAL NAGAR, POONAMALLE
THIRUVALUR, TAMIL NADU-600035

Sr.

Proceedings of Hearing held on 12-12-19

Proceedings of Hearing Notice held on 13-11-19 was sent to the Respondent (s) and the same was
returned unrecorded on the respondents.

The above referred matter was taken up for hearing on 12-12-19 at 4.00 pm. The Representative of the
claimant was present, while the respondents and the representatives of the respondents were present.
Hence the respondents are set "ex parte" and the award is required to be made by 15-01-20 as a final award to
bring to the dispute, otherwise final award will be passed based on the claim petition and documents.

The venue of arbitration shall be at "Swathi Subhadra" 6 Sir Madhavan Nair Road, Mahalingapuram
Chennai-600034 at 4.00 pm.

Dated at Chennai on the 10th day of December 2019.

Sole Arbitrator

M.V.HARIRAM,
SOLE ARBITRATOR

"SWATHI SUBHADRA", 6 SIR
MADHAVAN NAIR ROAD,
MAHALINGAPURAM,
CHENNAI-600034.
MOB: 94449 52608.

BEFORE THE SOLE ARBITRATOR MR M V HARRAM, ADVOCATE, CHENNAI

CLAIM PETITION FILED
in
mch/vf/sfch/597

In the matter of Arbitration and Conciliation Act, 1996
AND
in the matter of disputes between: Equitas Small
Finance Bank Limited and VNR KUNO LOGISTICS
and others in respect of the loan Agreement
SLPNMLE0176093 Dated 3/13/2018

Equitas Small Finance Bank Limited
(Formerly known as Equitas Finance Limited)
Rep. By its Assistant Manager Legal
B. Anand Kumar, Easwar Plaza, 4th Floor, Phase II,
NO. 779, Mount Road,
Anna Salai, Chennai-600 062

1. VNR AUTO-LOGISTICS
NO 484, 1ST CROSS STREET THIRUMAL NAGAR, POONAMALLEE
TIRUVALLUR, TAMIL NADU 600056
2. AJAY KUMAR VN. (Age yrs) S/o V/o NAGESHVARARAO
NO 484, 1ST CROSS STREET THIRUMAL NAGAR, POONAMALLEE
TIRUVALLUR, TAMIL NADU 600056

Sir,

Proceedings of hearing held on 12-12-19

Proceedings of Hearing Notice held on 13-11-19 were sent to the Respondent (s) and the same was returned unserved on the respondents.

The above referred matter was taken up for hearing on 12-12-19 at 4.00 pm. The Representative of the claimant was present, neither the respondents nor the representative of the respondents were present. Hence the respondents are set "exparte" and the matter is adjourned to 15-01-20 as a final chance to arbitrate the dispute, otherwise final award will be passed based on the claim petition and documents.

The venue of arbitration shall be at "Swathi Subhadra", 6 Sir Madhavan Nair Road, Mahalingapuram, Chennai-600034 at 4.00 pm.

Dated at Chennai on this the 12th day of December 2019.

Sole Arbitrator

7. It is also seen from the records of AT that these proceedings have been sent to VNR and postal acknowledgement cards, some dated 22.01.2020, some with other dates and some without dates are found in records; that on receipt of this 12.12.2019 proceedings, VNR filed an application under Section 17 of A and C Act *inter-alia* seeking interim injunction restraining Equitas from taking possession of trucks along with Vakalatnama; that this Section 17 application, which is in the form of a petition supported by a sworn affidavit and Vakalatnama are part of records of AT; that according to learned counsel for VNR, this Section 17 application and Vakalatnama were sent under cover of letter dated 23.12.2019 which is enclosed in the typed set of papers, but this covering letter does not form part of records; that thereafter, the impugned award have been made by AT on 20.01.2020; that assailing the impugned award, captioned OPs have been filed by VNR.

8. Before proceeding further, some peripheral aspects need to be noticed. First peripheral aspect is, in some of captioned OPs namely, O.P.Nos.483 & 484 of 2020, Mr.Nageswara Rao is one of the petitioners, but this Court is informed that he is no more and the date of demise is

19.10.2020 (pending captioned OPs). However, it is seen that Ajay Kumar, his son, legal heir and co-borrower is a petitioner in all five captioned OPs. Learned counsel on both sides brought this to the notice of this Court and submitted that there is no disputation or disagreement as between counsel before me that captioned OPs can be heard out by treating Ajay Kumar as co-borrower/legal heir without going through the procedural formalities of an application for bringing the legal heir on record. This course suggested by both sides is acceptable owing to factual matrix of cases on hand as the legal heir is also a co-borrower and he is a petitioner in all five captioned OPs. After all, captioned OPs are not appeals and they are only challenges to arbitral awards. In O.P.Nos.483 and 484 of 2020, third petitioner Ajay Kumar is recorded as legal heir of deceased second petitioner V.Nageswara Rao. Second peripheral aspect to be noticed is the trajectory which the captioned OPs have taken. Applications in captioned OPs even at the Diary number stage were moved with prayers to dispense with production of impugned original awards. In this regard proceedings/orders made by this Court on 09.07.2020 (which captures earlier proceedings) are of relevance and the same read as follows:

Order dated 09.07.2020:

'Main matter vide O.P(D).No.24997 of 2020 has been filed under Section 34 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)', which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, with a prayer to set aside an arbitral award dated 20.01.2020 in arbitration proceedings between the applicants herein and sole respondent Bank in Case No.mvh/vf/efsb/621 (hereinafter 'impugned award' for clarity and convenience).

2.It is the case of the applicants herein that only a photocopy of the impugned award was served on them on 21.01.2020. Saying so applicants had taken out the instant application with a prayer to dispense with production of the original impugned award.

3.In the aforesaid backdrop, proceedings came to be made in instant application on four different dates, the last of which was on 02.06.2020. To be noted, 02.06.2020 proceedings captures all the earlier proceedings from the date of inception of this application and the same reads as follows:

'Read this in conjunction with and in continuation of earlier orders / proceedings made on 02.03.2020, 09.03.2020 and 01.06.2020 which read as follows :

Order dated 02.03.2020 :

'Mr.N.Nithiyanandam, learned counsel for applicants in OP.No.SR24997 of 2020 is before this Court.

2. Instant application has been filed with a prayer to dispense with production of original arbitral award. To be

noted, photocopy of arbitral award has been filed.

3. Be that as it may, affidavit says that the deponent is the owner of the petitioner company. A perusal of short and long cause titles in OP reveal that 'VNR Auto Logistics' is prefixed with M/s. and it does not have the words 'Private Limited' or 'Limited' as suffix. Therefore, whether it is a Company at all is not clear. Learned counsel submits in the hearing that it is a proprietary concern and Mr.Nageswara Rao [deponent] is carrying business in the name and style VNR Auto Logistics.

4. With regard to the impugned arbitral award dated 20.01.2020, though a photocopy of envelope, in which photocopy of impugned arbitral award is said to have been received has been filed as part of typed set of papers, date/s of receipt of the photocopy of the impugned arbitral award by each of the applicant has/have not been mentioned with specificity in the affidavit. To be noted, one photocopy of one envelope alone has been filed as part of typed set of papers and name of addressee is not shown therein.

5. Faced with the above situation, learned counsel seeks time to file a better affidavit and an additional typed set of papers.

List on 09.03.2020. '

Order dated 09.03.2020 :

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 02.03.2020.

2. Today, a better affidavit has been filed.

3. In the light of contents of better affidavit, Registry is.

directed to requisition the entire records of arbitral proceedings from sole Arbitrator Mr.M.V.Hari Ram, Advocate at #4 IInd Floor, No.6, Sir Madhavan Nair Road, Mahalingapuram, Chennai-600 034 regarding Case No.mvh/vf/efsb/621 and arbitral award dated 20.01.2020.

4. Registry is to request learned Arbitrator to produce the entire arbitral records in a sealed envelope [to be submitted to the Registrar General and placed before this Court by the next listing, which shall be on 24.03.2020].

List on 24.03.2020. '

Order dated 01.06.2020 :

'After due notification to counsel and after showing the matter in the cause list, this case was listed for web hearing today on a video conference platform.

2 Though notice has not been ordered to respondent Bank, on seeing the cause list, Mr.A.Damodaran, learned counsel also joined the web hearing.

3 Read this in conjunction with and in continuation of earlier proceedings of this Court dated 02.03.2020 and 09.03.2020. Vide 09.03.2020 proceedings, Registry was directed to requisition records of Arbitral Tribunal from the sole arbitrator. However, this Court is informed today that Registry could not send notice to sole arbitrator owing to the intervening pandemic which can be described as Covid-19 situation.

4 Counsel for applicants and/or counsel for respondent Bank are directed to provide electronic mail address, mobile number with Whatsapp application and/or any other electronic

mode of communication address qua sole arbitrator. To be noted, at this stage, learned counsel for respondent bank is permitted to assist the Court only in giving such electronic addresses/numbers, as notice has not been ordered to respondent Bank (as of today) as already mentioned supra.

5 Both learned counsel sought a days time to furnish the above particulars.

6 List tomorrow, i.e., 02.06.2020.'

2 Today in the web hearing on a video conferencing ('VC' for brevity) platform, i.e., virtual court, Mr.N.Nithianandam and Mr.A.Damodaran, learned counsel for applicants and respondent bank respectively are before me.

3 Pursuant to the aforementioned earlier proceedings, aforesaid counsel have provided the email id and mobile number of sole arbitrator Mr.M.V.Hariram, which are as follows:

email id : harirammanjapra@gmail.com

mobile No.9444952608

4 This Court is informed that the aforementioned mobile number of sole arbitrator has a whatsapp application also.

5 As directed in 09.03.2020 order, more particularly paragraph 3 thereat, Registry is now directed to requisition the entire records of arbitral proceedings regarding Case No.mvh/vf/efsb/621 and arbitral award dated 20.01.2020 by sending notice inter-alia through electronic mail and electronic communication to the aforementioned email id and mobile number (Whatsapp) of the sole arbitrator. Registry shall request

the sole arbitrator to produce the entire arbitral records in a sealed envelope before the next listing.

6 Both learned counsel are directed to communicate this order / proceedings to learned Arbitrator by electronic communications to the aforesaid email address / mobile number. Both learned counsel can file proof of service through email to the Registry.

7 List under the same caption on 12.06.2020.'

4. Thereafter, pursuant to my directions, learned sole Arbitrator, who constituted the 'Arbitral Tribunal' (hereinafter 'AT' for brevity), has sent entire records of the AT in a sealed envelope to the Registry under cover of a letter dated 17.06.2020 and the same has been placed before me today.

5. In the virtual Court today Mr.N.Nithianandam, learned counsel for applicants and Ms.Priya, learned counsel representing Mr.A.Damodaran for the respondent Bank are before me. In the hearing, the sealed envelope sent by AT to the Registry and placed before me was opened.

6. I now have the benefit of perusing the records of the AT. A signed copy of the impugned award forms part of the records and post script (PS) to the same shows that impugned award was hand delivered to the respondent Bank and sent by Registered Post with acknowledgment due to the applicants herein, but there is no covering letter. In other words, there is nothing to demonstrate that the impugned award has been sent to the parties under the cover of a letter. However, postal acknowledgment cards qua applicants form part of the records

and the same show delivery qua applicants on 22.01.2020 (To be noted, applicants have averred in the affidavit filed in support of instant application that photocopy of impugned award was served on them on 21.01.2020). It is the stated position and specific case of the applicants that only a photocopy of the impugned award was received by them and as mentioned in the earlier proceedings, a copy of the envelope in which a photocopy of the impugned award is said to have been received by the applicants has been filed as part of the typed-set of papers.

7.I have carefully perused the records and given my detailed consideration to instant application before me. In my considered view, as there is nothing to demonstrate that original impugned award was served on the applicants, I give the benefit of doubt to the applicants in the interest of justice, equity, fair play and allow this application.

8.Registry is directed to process O.P.(D).No.24997 of 2020, assign a number to the same if otherwise in order and post numbering, list the matter under the caption for admission along with the records of the AT in the sealed cover.

9.Application allowed with the above directive. No costs.'

Order dated 02.06.2020:

'Read this in conjunction with and in continuation of earlier orders / proceedings made on 02.03.2020, 09.03.2020 and 01.06.2020 which read as follows :

Order dated 02.03.2020 :

'Mr.N.Nithiyanandam, learned counsel for applicants in OP.No.SR24997 of 2020 is before this Court.

2. Instant application has been filed with a prayer to dispense with production of original arbitral award. To be noted, photocopy of arbitral award has been filed.

3. Be that as it may, affidavit says that the deponent is the owner of the petitioner company. A perusal of short and long cause titles in OP reveal that 'VNR Auto Logistics' is prefixed with M/s. and it does not have the words 'Private Limited' or 'Limited' as suffix. Therefore, whether it is a Company at all is not clear. Learned counsel submits in the hearing that it is a proprietary concern and Mr.Nageswara Rao [deponent] is carrying business in the name and style VNR Auto Logistics.

4. With regard to the impugned arbitral award dated 20.01.2020, though a photocopy of envelope, in which photocopy of impugned arbitral award is said to have been received has been filed as part of typed set of papers, date/s of receipt of the photocopy of the impugned arbitral award by each of the applicant has/have not been mentioned with specificity in the affidavit. To be noted, one photocopy of one envelope alone has been filed as part of typed set of papers and name of addressee is not shown therein.

5. Faced with the above situation, learned counsel seeks time to file a better affidavit and an additional typed set of papers.

List on 09.03.2020. '

Order dated 09.03.2020 :

Read this in conjunction with and in continuation of earlier proceedings of this Court dated 02.03.2020.

2. Today, a better affidavit has been filed.

3. In the light of contents of better affidavit, Registry is directed to requisition the entire records of arbitral proceedings from sole Arbitrator Mr.M.V.Hari Ram, Advocate at #4 IInd Floor, No.6, Sir Madhavan Nair Road, Mahalingapuram, Chennai-600 034 regarding Case No.mvh/vf/efsb/621 and arbitral award dated 20.01.2020.

4. Registry is to request learned Arbitrator to produce the entire arbitral records in a sealed envelope [to be submitted to the Registrar General and placed before this Court by the next listing, which shall be on 24.03.2020].

List on 24.03.2020. '

Order dated 01.06.2020 :

'After due notification to counsel and after showing the matter in the cause list, this case was listed for web hearing today on a video conference platform.

2 Though notice has not been ordered to respondent Bank, on seeing the cause list, Mr.A.Damodaran, learned counsel also joined the web hearing.

3 Read this in conjunction with and in continuation of earlier proceedings of this Court dated 02.03.2020 and 09.03.2020. Vide 09.03.2020 proceedings, Registry was

directed to requisition records of Arbitral Tribunal from the sole arbitrator. However, this Court is informed today that Registry could not send notice to sole arbitrator owing to the intervening pandemic which can be described as Covid-19 situation.

4 Counsel for applicants and/or counsel for respondent Bank are directed to provide electronic mail address, mobile number with Whatsapp application and/or any other electronic mode of communication address qua sole arbitrator. To be noted, at this stage, learned counsel for respondent bank is permitted to assist the Court only in giving such electronic addresses/numbers, as notice has not been ordered to respondent Bank (as of today) as already mentioned supra.

5 Both learned counsel sought a days time to furnish the above particulars.

6 List tomorrow, i.e., 02.06.2020.'

2 Today in the web hearing on a video conferencing ('VC' for brevity) platform, i.e., virtual court, Mr.N.Nithianandam and Mr.A.Damodaran, learned counsel for applicants and respondent bank respectively are before me.

3 Pursuant to the aforementioned earlier proceedings, aforesaid counsel have provided the email id and mobile number of sole arbitrator Mr.M.V.Hariram, which are as follows:

email id : harirammanjapra@gmail.com

mobile No.9444952608

4 *This Court is informed that the aforementioned mobile number of sole arbitrator has a whatsapp application also.*

5 *As directed in 09.03.2020 order, more particularly paragraph 3 thereof, Registry is now directed to requisition the entire records of arbitral proceedings regarding Case No.mvh/vf/efsb/621 and arbitral award dated 20.01.2020 by sending notice inter-alia through electronic mail and electronic communication to the aforementioned email id and mobile number (Whatsapp) of the sole arbitrator. Registry shall request the sole arbitrator to produce the entire arbitral records in a sealed envelope before the next listing.*

6 *Both learned counsel are directed to communicate this order / proceedings to learned Arbitrator by electronic communications to the aforesaid email address / mobile number. Both learned counsel can file proof of service through email to the Registry.*

7 *List under the same caption on 12.06.2020.'*

9. To be noted, proceedings are identical in all five captioned OPs. Therefore, this Court is not repeating proceedings/orders made in each of five captioned OPs. Notwithstanding very many averments made in captioned OPs, learned counsel for VNR made arguments, summation of which are as follows:

(a) VNR has not been given proper notice of appointment of arbitrator.

(b) VNR was not served with communication from AT dated 13.11.2019 fixing the first sitting on 12.12.2019.

(c) Section 17 application filed has not been considered by the arbitrator though 12.12.2019 proceedings says that next sitting will be on 15.01.2020.

(d) On 15.01.2020, VNR went over to the office of AT, AT did not held any proceedings, but merely directed VNR to sent an SMS to mobile number of the arbitrator.

10. In response to above submissions, argument made by learned counsel for Equitas can be summed up as follows:

(a) It is incorrect that proper notice of appointment of arbitrator has not been given as termination notice dated 05.10.2019 itself clearly mentions about the appointment of arbitrator.

(b) 13.11.2019 communication from arbitrator was not received by VNR.

(c) Though VNR was set *ex-parte* on 12.12.2019, they merely choose to file Section 17 application with Vakalatnama without taking steps to set aside the order setting them as *ex-parte*.

(d) Averments/allegations as to what according to VNR happened on 15.01.2020 are incorrect and are denied.

11. This Court now embarks upon the exercise of discussing these rival submissions in the light of arguments of two counsel and more importantly by perusing records of AT which were before me. The argument that there is no proper notice of appointment of arbitrator to VNR does not hold water, the reason is, as rightly pointed out by learned counsel for Equitas, notice dated 05.10.2019 clearly mentions about appointment of arbitrator together with full/complete address. This takes us to the next point that 13.11.2019 communication from AT was not received by VNR. A perusal of records of AT reveals that there are 3 window envelopes which have been despatched by AT and which have been returned with postal endorsements 'unclaimed'. This is appended to 13.11.2019 communication. A perusal of communication also shows that

13.11.2019 communication has been sent to VNR to the address as given in loan agreement and therefore, it is for VNR to have been vigilant and having not received/claimed 13.11.2019 communication from AT and having allowed to be returned with postal endorsement 'unclaimed', cannot now be heard to contend that they did not receive communication from AT.

12. In this regard, learned counsel for Equitas points out that even prior to 13.11.2019, there was a communication dated 14.10.2019 fixing the date of hearing on 13.11.2019.

13. This takes us to the next point with regard to VNR filing an application under Section 17 of A and C Act along with Vakalatnama with prayers for interim injunctions restraining Equitas from repossessing the trucks. In this regard, this Court is unable to sustain the submission that VNR should have made an applications for setting aside the order setting VNR *ex-parte* rather than filing Section 17 applications. The reason is, 'Code of Civil Procedure, 1908' ('CPC') does not apply to AT and the relevant provision is Section 19(1) of A and C Act, which

reads as follows:

'19. Determination of rules of procedure:

(1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).'

14. On 12.12.2019, though AT has recorded that VNR is set *ex-parte*, AT has fixed a further hearing on 15.01.2020. On 15.01.2020, though VNR has not sought for setting aside the order setting VNR *ex-parte*, AT should have dealt with section 17 application and more importantly challenge to appointment itself one way or the other. This Court does not say that it should have been entertained, but there should have been some record of these proceedings, but absent any such proceedings/minutes on 15.01.2020, this Court is unable to sustain the submission made by learned counsel for Equitas that VNR should have first filed applications to set aside the orders setting them *ex-parte*. On this aspect, the next point to be dealt with by this Court will be dovetailed with this as this hearing has happened on 15.01.2020. From the rival submissions captured and set out supra, it will be clear that there are different/contradictory versions regarding what actually transpired

before AT on 15.01.2020. While VNR counsel submits that they did not go before AT, AT did not conduct any proceedings and on the contrary directed counsel to send communication by way of SMS to mobile number, this is flatly denied by learned counsel for Equitas.

15. The only way to embark upon any discussion on this matter will be by looking at all records of AT about what happened on 15.01.2020. Unfortunately, there are no proceedings/minutes in the records of AT with regard to 15.01.2020 hearing. AT having fixed 15.01.2020 as next hearing date vide 12.12.2019 proceedings/minutes albeit after setting VNR *ex-parte*, AT ought to have made some proceedings/minutes on 15.01.2020. The fact that AT has not made any proceedings/minutes on 15.01.2020 and has proceeded to make the impugned award five days later on 20.01.2020, is clearly against basic principles of adjudication qua Rule of law. No elucidation is required to say that such a basic principle is ingrained as part of public policy of India, which in turn constitutes fundamental policy of India. After all, this is the bedrock of Rule of law. Without making any proceedings/minutes on 15.01.2020, the impugned award has been

straight away made five days later (on 20.01.2020) with regard to 15.01.2020, in the impugned award in paragraph No.2, AT mentions that the matter was adjourned on 15.01.2020 for the purpose of giving a final chance to VNR. This is captured in paragraph 2 of impugned award. AT having given a final chance to VNR, ought to have recorded some proceedings/minutes on 15.01.2020 one way or the other, but, AT has not done that. On the contrary, relevant portions of records dated 15.01.2020 proceedings captured in paragraph 2 of impugned award reads as follows:

'2.The said proceeding was also sent to the respondents by RPAD and a final notice also sent to the respondents dated 12th December 2019 by RPAD. Accordingly, the documents were marked and heard the submissions of the claimant on 12th December 2019 and the same was adjourned as a final chance to the respondents to 15.01.2020. The matter was reserved for passing of award.....'

16. This in the considered view of this Court is the death knell for the impugned awards in captioned OPs.

17. It does not stop here. The reason is, a perusal of impugned

awards more particularly, paragraph 7 of impugned awards reveal that entire award is made on Ex.A4 as there is no elaboration or discussion in impugned award about how many out of 36 EMIs were paid, how many EMIs were not paid and how many were delayed or how many were paid in part. Absent any such discussion, Ex.A4 also does not form part of records of AT. More importantly, there is no discussion in the impugned award about Ex.A4. One can understand if there has been some discussion about Ex.A4 in the impugned award, if that has been so, then the dynamics and dimensions may have been different. Therefore, in this regard, this Court has no hesitation in coming to the conclusion that this is violation of Sub-Section (3) of Section 31 of A and C Act, as AT in the impugned awards has not set out the reasons upon which it is based. It is nobody's case before me that parties have agreed that no reasons are given and it is also nobody's case that impugned awards were made on agreed terms. These are two exceptions to Sub-Section (3) of Section 31 of A and C Act. Absent these two exceptions, violation of Section 31(3) of A and C Act also sounds the death knell of impugned awards.

18. This Court, in holding that violation of these two provisions

of A and C Act sounds the death knell of impugned awards, draws inspiration from oft-quoted *Associate Builders case* in *Associate Builders Vs. Delhi Development Authority* reported in (2015) 3 SCC 49 and relevant paragraph regarding sounding death knell reads as follows:

'42.1. (a) A contravention of the substantive law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature.

To be noted, above was regarding 28(1)(a) violation and in case on hand also it goes to the root of the matter.

19. This Court is conscious of the fact that captioned OPs have been presented on 24.02.2020 and therefore, governed by post 23.10.2015 regime of A and C Act or in other words, A and C Act as amended by Act No.3 of 2016, which kicked in with retrospective effect on and from 23.10.2015. This is by applying *Ssangyong* principle, being dicta laid down by Hon'ble Supreme Court in *Ssangyong Engineering and Construction Company Limited Vs. National Highways Authority of India* reported in (2019) 15 SCC 131. In *Ssangyong* principle,

Hon'ble Supreme Court has also explained elucidatively and instructively as to the manner in which some of *Associate Builders principles* have been impacted in and by 23.10.2015 amendment. With regard to this impact of 23.10.2015 amendment to A and C Act on *Associate Builders principles*, it is clear that the violation of certain provisions of A and C Act sounding death knell of an arbitral award remains unaltered.

20. As already set out supra, no proceedings being made on 15.01.2020, is clearly opposed to basic principles of adjudication which are ingrained as a fundamental legal philosophy in public policy of India which in turn is ingrained as fundamental policy of Indian law. Therefore, this Court has again no hesitation in coming to the conclusion that the impugned awards are vitiated by breach of Section 34(2)(b)(ii) read with Clause (ii) of Explanation 1.

21. Before parting with this matter, this Court deems it appropriate to set out paragraph No.52 of *McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181*, which reads as follows:

'52. The 1996 Act makes provision for the supervisory

role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.'

22. Another parting but pertinent remark is, this Court reminds itself that Section 34 of A and C Act is neither an appeal nor a revision, it is not even a full fledged judicial review. It is a mere challenge to an award within the limited statutory perimeter of Section 34 of A and C Act. It is also a summary procedure as laid down by Hon'ble Supreme Court in ***Fiza Developers case in Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited*** reported in (2009) 17 SCC 796. To be noted, in ***Fiza Developers*** case, Hon'ble Supreme Court held that Section 34 legal drill is a one issue summary procedure. While saying one issue summary procedure, Hon'ble Supreme Court made it

clear that one issue does not refer to one issue qua the lis before AT. By saying one issue summary procedure, Hon'ble Supreme Court made it clear that impugned award being assailed or being challenged under Section 34 of A and C Act itself is an issue under Section 34 of A and C Act and it is in this context that Hon'ble Supreme Court held in ***Fiza Developers*** case that Section 34 of A and C Act legal drill is a one issue summary procedure. This Court has adopted such a course in disposing of captioned applications. Also to be noted, ***Fiza Developers case*** was reiterated by Hon'ble Supreme Court subsequently in ***Emkay Global*** case [***Emkay Global Financial Services Ltd. v. Girdhar Sondhi*** reported in (2018) 9 SCC 49] as a step in the right direction. ***Fiza Developers case and Emkay Global case*** were further reiterated in ***Canara Nidhi Limited*** case [***M/S. Canara Nidhi Limited vs M. Shashikala*** reported in 2019 SCC Online SC 1244].

23. Registry is directed to retain the records of AT along with envelope and covering letter from the sole Arbitrator dated 17.06.2020 (five captioned OPs) in a sealed envelope and this is obviously for the purpose of reference in an intra court appeal, if that be so. There shall be

a post script to this order also in this regard.

24. In the light of narrative, discussion and dispositive reasoning thus far, all five captioned OPs i.e., OP.Nos.482 to 486 of 2020 are allowed and all five impugned awards dated 20.01.2020 bearing reference Nos. (1) mvh/vf/esfb/598, (2) mvh/vf/esfb/621 (3) mvh/vf/esfb/618 (4) mvh/vf/esfb/600 and (5) mvh/vf/esfb/597 are set aside. Consequently, applications i.e., Application Nos.2646, 2647, 2648, 2649 & 2652 of 2020 are closed as unnecessary. There shall be no order as to costs.

21.12.2020

Speaking/Non-speaking order

Index : Yes / No

Internet : Yes / No

mk

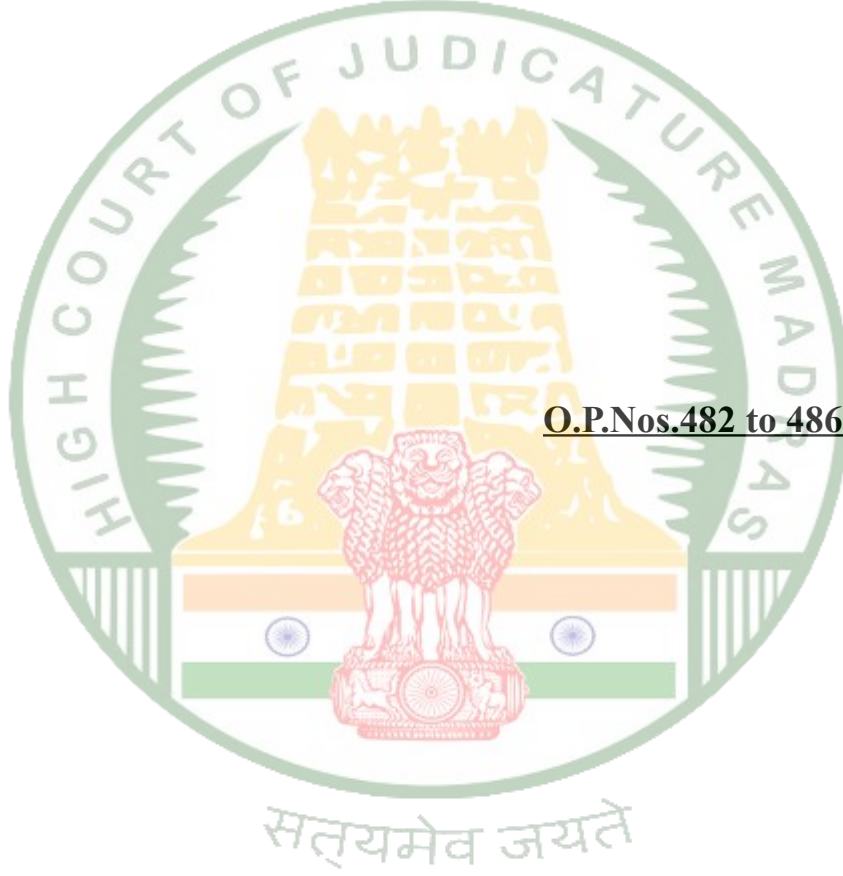
Post-script

Registry is directed to retain the records of AT along with envelope and covering letter from the Sole Arbitrator dated 17.06.2020 (5 captioned OPs) in a sealed envelope.

O.P.Nos.482 to 486 of 2020

M.SUNDAR.J.,

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O.P.Nos.482 to 486 of 2020

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