

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.8.2020

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.M.A.No.1616 of 2018

- 1 M/s.Auro Power Systems Pvt. Ltd.
Rep. by its Director
Mr.Bimal Jitendra Amin,
Bangalore.
 - 2 Bimal Jitendra Amin,
Director,
M/s.Auro Power Systems Pvt. Ltd.
Bangalore.
 - 3 M/s.Zak Global Services Pvt. Ltd.
New Delhi - 110 066. Appellants/ Respondents
- Vs.
- 1 Equitas Small Finance Bank Ltd.
(Formerly known as Equitas Finance Ltd.)
Rep. by its Deputy Vice President - Legal,
Anna Salai, Chennai 600 002.
.... 1st Respondent/ Claimant
 - 2 VIOM Networks Ltd.,
Rep. by its Managing Director,
New Delhi - 110 017.
 - 3 The Managing Director
VIOM Networks Ltd.,
Gurgaon, Haryana.
 - 4 The Chief Executive Officer,
VIOM Networks Ltd.,
Gurgaon, Haryanana.
 - 5 The Chief Finance Officer
VIOM Networks Ltd.,
Gurgaon, Haryanana.

- 6 The Finance Department,
VIOM Networks Ltd.,
Gurgaon, Haryana.
- 7 Ascend Telecom Infrastructure Pvt. Ltd.
Rep. by its Managing Director,
Secunderabad.
- 8 The Managing Director,
Ascend Telecom Infrastructure Pvt. Ltd.,
Bangalore.
- 9 The Chief Executive Officer,
Ascend Telecom Infrastructure Pvt. Ltd.,
Bangalore.
- 10 The Chief Finance Officer,
Ascend Telecom Infrastructure Pvt. Ltd.,
Bangalore.
- 11 The Finance Department,
Ascend Telecom Infrastructure Pvt. Ltd.,
Bangalore.
- 12 GTL Infrastructure Ltd.,
Rep. by its Managing Director,
Egmore, Chennai - 8.
- 13 The Managing Director,
GTL Infrastructure Ltd.,
Egmore, Chennai - 8.
- 14 The Chief Executive Officer,
GTL Infrastructure Ltd.,
Egmore, Chennai - 8.
15. The Chief Financial Officer,
GTL Infrastructure Ltd.,
Egmore, Chennai - 8.
- 16 The Finance Department,
GTL Infrastructure Ltd.,
Egmore, Chennai - 8.
- 17 CNIL
Rep. by its Managing Director,
Commission Nationale De L'Informatique
ET DES Libertes, 3 Place De Fontenay,
TSA 80715 75334 Paris Cedex 07,
France.

- 18 The Managing Director,
CNIL,
Commission Nationale De L'Informatique
ET DES Libertes, 3 Place De Fontenay,
TSA 80715 75334 Paris Cedex 07,
France.
- 19 The Chief Executive officer,
CNIL,
Commission Nationale De L'Informatique
ET DES Libertes, 3 Place De Fontenay,
TSA 80715 75334 Paris Cedex 07,
France.
- 20 The Chief Financial Officer,
CNIL,
Commission Nationale De L'Informatique
ET DES Libertes, 3 Place De Fontenay,
TSA 80715 75334 Paris Cedex 07,
France.
- 21 The Finance Department,
CNIL,
Commission Nationale De L'Informatique
ET DES Libertes, 3 Place De Fontenay,
TSA 80715 75334 Paris Cedex 07,
France.
- 22 Hindustan Salts Ltd.,
Rep. By its Managing Director,
Rajasthan.
G-229, Block C.Near Genpact,
Sitapura Industrial Area, Sitapura,
Jaipur, Rajasthan -302 022.
- 23 The Managing Director,
Hindustan Salts Ltd.,
Rajasthan.
- 24 The Chief Executive Officer,
Hindustan Salts Ltd.,
Rajasthan.
- 25 The Chief Financial Officer,
Hindustan Salts Ltd.,
Rajasthan.

- 26 The Finance Department,
Hindustan Salts Ltd.,
Rajasthan.
- 27 Karnataka Renewable Energy Pvt. Ltd.,
Rep. by its Managing Director,
Kalburagi - 585 102.
- 28 The Managing Director,
Karnataka Renewable Energy Pvt. Ltd.,
Bangalore - 560001.
- 29 The Chief Executive Officer,
Karnataka Renewable Energy Pvt. Ltd.,
Bangalore - 560001.
- 30 The Chief Financial officer,
Karnataka Renewable Energy Pvt. Ltd.,
Bangalore - 560001.
- 31 The Finance Department,
Karnataka Renewable Energy Pvt. Ltd.,
Bangalore - 560001.
- 32 The Deputy General Manager,
Karnataka Renewable Energy Pvt. Ltd.,
Husbli bvbc College Campus,
Vidyanagar, ESCP of Block, Husbli.
- 33 Karle Infra Pvt. Ltd.
Rep. by its Managing Director,
Bangalore 560 022.
- 34 The Managing Director,
Karle Infra Pvt. Ltd.
Bangalore 560 022
- 35 The Chief Executive Officer,
Karle Infra Pvt. Ltd.
Bangalore 560 022.
- 36 The Chief Financial Officer,
Karle Infra Pvt. Ltd.
Bangalore 560 022
- 37 The Chief Finnace Department,
Karle Infra Pvt. Ltd.
Bangalore 560 022

- 38 West Bengal Renewable Energy Development Agency,
Rep. by its Managing Director,
West Bengal. 700 091.
- 39 The Managing Director,
West Bengal Renewable Energy Development Agency,
Siliguri - 730 004.
- 40 The Chief Executive Officer,
West Bengal Renewable Energy Development Agency,
Siliguri - 730 004.
- 41 The Chief Financial Officer,
West Bengal Renewable Energy Development Agency,
Siliguri - 730 004.
- 42 The Finance Department,
West Bengal Renewable Energy Development Agency,
Siliguri - 730 004.
- 43 Kashyapi Infrastructure Pvt. Ltd.
Rep. by its Managing Director,
New Delhi 110 014.
- 44 The Managing Director,
Kashyapi Infrastructure Pvt. Ltd.,
Uttar Pradesh - 201 012.
- 45 The Chief Executive Officer,
Kashyapi Infrastructure Pvt. Ltd.,
Uttar Pradesh - 201 012.
- 46 The Chief Financial Officer,
Kashyapi Infrastructure Pvt. Ltd.,
Uttar Pradesh - 201 012.
- 47 The Finance Department,
Kashyapi Infrastructure Pvt. Ltd.,
Uttar Pradesh - 201 012.
- 48 The Managing Director,
Prajwalya Embedded Technologies,
Bangalore 560 034.
- 49 The Chief Executive Officer,
Prajwalya Embedded Technologies,
Bangalore 560 034.

- 50 The Chief Financial Officer,
Prajwalya Embedded Technologies,
Bangalore 560 034.
- 51 The Finance Department,
Prajwalya Embedded Technologies,
Bangalore 560 034.
- 52 Nagar Pallika Parishad
Uttar Pradesh - 205 001.
- 53 The Commissioner,
Nagar Pallika Parishad,
Uttar Pradesh - 205 001.
- 54 The Finance Controller,
Nagar Pallika Parishad,
Uttar Pradesh - 205 001.
- 55 The Finance Department,
Nagar Pallika Parishad,
Uttar Pradesh - 205 001. Respondents / Garnishees

PRAYER: Civil Miscellaneous Appeal filed under Sec.37 of the Arbitration and Conciliation Act, 1996 to set aside the order, dated 27.6.2018 passed in CS/BL/ ARBITRATION CASE No.79 / 2018 passed by the sole Arbitrator Mr.C.Samson at Chennai.

For Appellants: Mr.Shivakumar
for M/s.Shivakumar & Suresh

For Respondent No.1 : Mr.A.Damodharan

JUDGMENT

The appeal is preferred against the order passed by the Sole Arbitrator, dated 27.6.2018 in Application No.114 of 2018 in CS/BL/ ARBITRATION CASE No.79 of 2018 restraining the Garnishees from making payment upto a sum of Rs.18,80,870/- (Rupees eighteen lakhs eighty thousand eight hundred and seventy only) to the first and second respondents and the Garnishees are directed to deposit upto a sum of Rs.18,80,870/- (Rupees eighteen lakhs eighty thousand eight hundred and seventy only) due to the respondents by way of demand draft before the Arbitral Tribunal in CS/BL/ ARBITRATION CASE No.79/2018 on or before 26.7.2018.

2 The main contention of the learned counsel appearing for the appellants is that the sole Arbitrator has passed the interim order without giving an opportunity of hearing to the appellants to put forth his case before the sole Arbitrator. Further, the learned Arbitrator has passed the order without even ascertaining the nature of the amount lying with the Garnishee and therefore, the impugned order is not sustainable. It is further contended that the appellants have paid the substantial amount to the respondent by way of instalments. Therefore, the order passed by the sole Arbitrator directing the Garnishees to deposit a sum of Rs.18,80,870/- is unsustainable in law. Such order is against the fundamental principles of law. Hence, the order passed by the arbitrator is illegal and the same is liable to be set aside.

3 The learned counsel appearing for the first respondent/claimant submits that some of the Garnishees appeared before the sole Arbitrator and informed that no amount is lying with them in respect of the appellants. Such view of the matter, the application filed under Section 17 of the Arbitration and Conciliation Act itself has become infructuous. However, it is submitted that notice has been sent to the appellants and the detailed order has been passed by the Arbitrator. Despite undertaking given by the appellants, they have not paid the amount due to the first respondent and therefore, the arbitrator was appointed. The learned Arbitrator after perusing the entire materials, passed the interim order in the application filed by the first respondent in Application No.114 of 2018. Hence, there is no illegality or infirmity in the order passed by the sole Arbitrator and thus, the appeal is liable to be dismissed.

4 Heard the learned counsel appearing for the appellants and the learned counsel appearing for the first respondent and perused the entire materials available on record.

5 The learned counsel appearing for the appellants assailed the order of the sole Arbitrator on two grounds. Firstly, the sole Arbitrator has passed the order without giving an opportunity of hearing to the appellants; secondly, the sole Arbitrator without any materials, passed the impugned order directing the Garnishees to deposit the amount before the sole Arbitrator.

6 On perusal of the order of the learned Arbitrator and the entire materials available on record, would show that originally, the date was fixed on 21.6.2018 for hearing which is not in dispute and further, the respondent/appellants herein have also sent communication requesting further time to appear before the Arbitrator. In the meanwhile, on 21.6.2018, the sole Arbitrator without even ascertaining the nature of the amount lying with the Garnishees in respect of the appellants, has passed the interim order directing the Garnishees to withhold the amount upto Rs.18,80,870/-, pending enforcement of the award that may be ultimately passed by the sole Arbitrator and also directed the Garnishees to deposit the said amount by way of demand draft to the account to be opened by the claimant in the name of CS/BL/ ARBITRATION CASE No.79/2018 on or before 26.7.2018. Such order in my considered view is against the well settled principles of law. Even without ascertaining the nature of the amount lying with the Garnishees, blanket order cannot be passed by the Tribunal. Before binding the Garnishees to pay the award amount, the sole Arbitrator ought to have conducted an enquiry as to the nature of amount lying with the Garnishees. Without making such enquiry, the exparte order passed by the sole Arbitrator cannot stand in the eye of law.

7 Accordingly, the order passed by the sole Arbitrator is set aside and the same is remanded to the sole Arbitrator to decide afresh after giving opportunities to the parties concerned and proceed with the arbitral proceedings. If any interim order that may be passed by the sole Arbitrator, the same shall be passed on merit after giving opportunities to the parties concerned. The learned Arbitrator shall issue fresh notice of hearing to the respondents/ appellants herein fixing the date of hearing of the reference afresh. The respondents/appellants herein on receipt of the fresh notice of hearing, shall appear before the Arbitrator and contest the case before the Arbitrator.

With the above observations, the appeal is allowed.

Sd/-

Assistant Registrar (CS-VIII)

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Sub Assistant Registrar

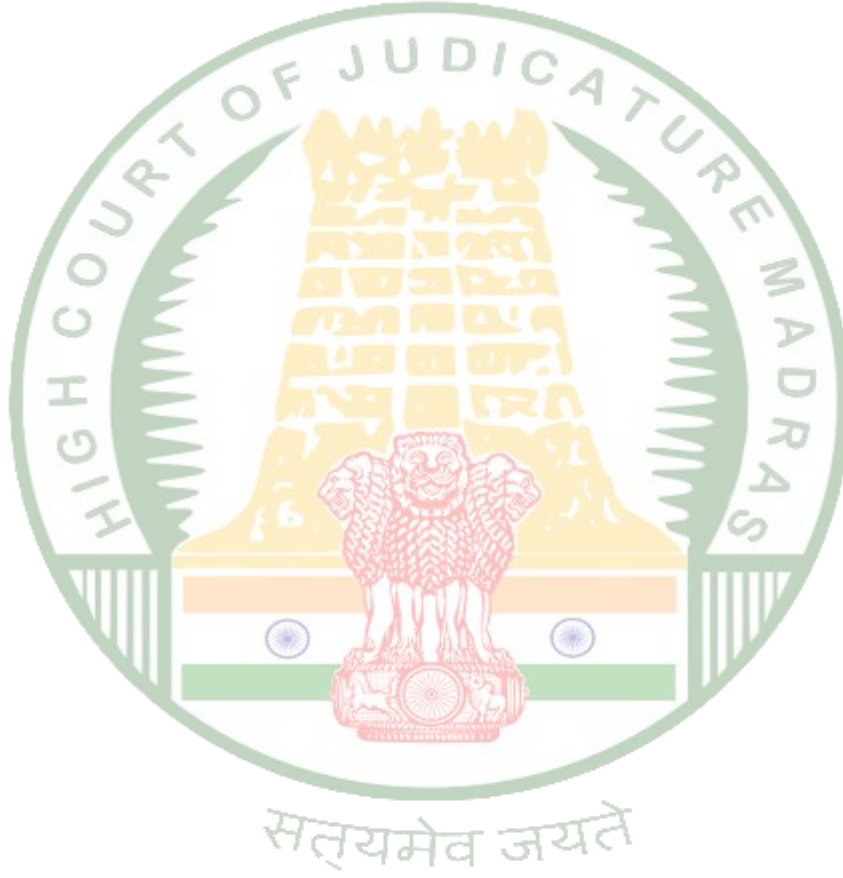
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To

Mr.C.Samson,
Sole Arbitrator,
No.2/3 Jeganathan Garden Street,
Eldoms Road, Teyanampet,
Chennai-600 018.

C.M.A.No.1616 of 2018

LN (CO)
GMY (09/11/2020)



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