IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.07.2020

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THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.No.1238 of 2020 in A.No.476 of 2018 and

A.No.1239 of 2020 in A.No.9420 of 2018 and

A.No.9420 of 2018 in A.No.476 of 2018 and

A.No.476 of 2018

In A.No.1238 of 2020 in A.No.476 of 2018 and
in A.No.1239 of 2020 in A. A.No.9420 of 2018 in A.No.476 of 2018

Mumbai International Airport Ltd.
Terminal 1-B, 1st Floor Chhatrapati Shivaji
Maharaj Internationa Airport,Santacruz East,
Mumbai 400 099. ... Applicant/ proposed party

Vs.

1. Sundaram Finance Limited,
Rep. by its Deputy Manager (Legal),
Mr.Vyas Prakash, 21, Patullos Road,
Chennai 600 002. ... 1st respondent/applicant

2. M/s Cambata Aviation Private Limited,
Terminal 2-B, 2nd floor Terminal,
C.S.International Airport, Shar,
Andheri-East, Mumbai International Airport
Mumbai 400 099.

Also at:
208, 2nd floor, Ascot Centre,

Sahar International Airport Road,
Opp. ITC Grand Maratha Hotel, Andheri (East),
Mumbai 400 099.

Regd. Off. T9 & 9A, 3rd floor,
Vasant Square Mail, Vasant Kunj,
New Delhi 11070. .. 2nd respondent/respondent

<u>In 476 of 2018 and
in A.No.9420 of 2018 in A.No.476 of 2018</u>

Sundaram Finance Limited,
Rep. by its Deputy Manager (Legal),
Mr.Vyas Prakash, 21, Patullos Road,
Chennai 600 002. ... Applicant

Vs.

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C.S.International Airport, Shar, Andheri-East,
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Regd. Off. T9 & 9A, 3rd floor,
Vasant Square Mail, Vasant Kunj,
New Delhi 11070. ... 1st respondent

2. Mumbai International Airport Ltd.
Terminal 1-B, 1st Floor Chhatrapati Shivaji
Maharaj Internationa Airport,Santacruz East,
Mumbai 400 099. ... 2nd respondent

(R2 impleaded as per order of this court in
A.No.1238 and 1239 of 2020 dated 09.07.2020)

Prayer in A.No.1238 of 2020 in A.No.476 of 2018: Application filed to implead the petitioner as a party respondent in the proceedings in Application No.476 of 2018.

Prayer in A.No.1239 of 2020 in A.No.9420 of 2018 in A.No.476 of 2018: Application filed to implead the petitioner as a party respondent in the proceedings in Application No.9420 of 2018.

Prayer in A.No.476 of 2018: Application filed under Order XIV Rule 8 of O.S. Rules r/w Section 9(2) b and e of the Arbitration and Conciliation Act, 1996 to appoint Mr.Vishal Vishnu Honavarkar, Assistant Manager Operation), C.E.Mumbai of the applicant company as receiver to seize the 10 Nos. of machinery more particulaly described in the schedule to the judges summons in the premises of the respondent or wherever it is found and with whomsoever it is found with powers to break open the premises and grant permission to the receiver to obtain police aid from the concerned police officer.

Prayer in A.No.9420 of 2018 in A.No.476 of 2018: Application filed under Order XIV Rule 8 of O.S. Rules r/w Section 9(2) b and e of the Arbitration and Conciliation Act, 1996 to accord permission to the receiver Mr.Vishal Vishnu Honavarkar, Assistant Manager Operation), C.E.Mumbai of the applicant company to sell 10 No.s of the electronic towing tractors stationed in the Domestic Airport Mumbai, more particularly set out in the schedule to the judges summons in ' as is where is ' condition without bringing the assets out of the DomesticAirport Mumbai and permit the applicant to appropriate the sale proceeds therefrom towards the amount remaining due and payable to the applicant under loan contract No.1024100166 dated 17.02.2014.

In A.No.1238 and 1239 of 2020

For applicant
(proposed party) : Mr.KMD Muhilan.
For first respondent : Mr.Uma Sankar,
for M/s T.Srinivasaragavan & Associates
For second Respondent : No representation

In A.No.476 of 2018 and 9420 of 2018

For Applicant : Mr.Uma Sankar,
for M/s T.Srinivasaragavan & Associates
For first Respondent : No representation
For second Respondent
(newly added party) : Mr.KMD Muhilan.

COMMON O R D E R

This court by an order dated 27.06.2019 in A.No.9460 of 2018 in A.No.476 of 2018, directed the receiver Mr.Vishal Vishnu Honavarkar, Assistant Manager (operation) of the Sundaram Finance to sell the ten numbers of the electronic towing tractors, as described in the schedule appended to the applicaton and to file a report about the particulars of the sale and the sale proceeds, within a period of four weeks from the date of receipt of the copy of the order. The above said order further indicates that the machineries are electronic towing tractors and it is Push Back Tractor used in the Airports and Aerodromes for towing and pushing back airplanes. The above said order also indicates that the receiver Mr.Vishal Vishnu Honavarkar, who was appointed earlier in A.No.476 pf 2018 had expressed difficulty in seizing the machineries, as that involves huge expenses.

2. The learned counsel for the petitioner/proposed party namely Mumbai International Airpot Limited would submit that originally, as there was a due from the workers of the respondent (Cambata Aviation Private Limited) to be recovered, the articles of the respondent were attached. He would further submit that, as the attached articles are lying idle in the

entrance of the Mumbai Airport, which obstructed the further development of the Mumbai Airport, they moved a writ petition in W.P.No.1268 of 2019 before the Mumbai High Court seeking a writ of mandamus for direction to conduct an e-auction of the assets. Further he would submit that the petitioner had filed interim application No.1 of 2019 in W.P.No.1268 of 2019 and the Mumbai High Court vide its order dated 14.01.2020, had permitted the Mumbai International Airport Limited to sell the equipment/materials, on ' as is where is ' basis by e-auction.

3. He would further submit that, the petitioner/proposed party was informed that, on the application filed by the first respondent namely Sundaram Finance, court vide order dated 27.06.2019 in A.No.9420 of 2018 in A.No.476 of 2018, had granted permission to the receiver Mr.Vishal Vishnu Honavarkar, to sell the 10 numbers of the electronic towing tractors, as described in the schedule appended to the petition and hence, the petitioner/proposed party filed an interim aplication No.1 of 2020 in interim application No.1 of 2019 in W.P.No.1268 of 2019 and obtained an order dated 11.02.2020, to conduct auction only after excluding the 10 numbers of the above said tractors, which are covered by the order of atachment by

this Court.

4. The learned counsel for the petitioner/proposed party would also further submit that, as directed by this court, vide order dated 27.06.2019 in A.No.9420 of 2018 in A.No.476 of 2018, the sale has not yet conducted by the receiver and hence, in the interest of all the parties and public, the petitioner /proposed party filed these petitions

i) to implead it as a party respondent in A.No.476 of 2018 and A.No.9420 of 2018,

ii) and seeks modification of the order passed by this court in A.No.9420 of 2018 in A.No.476 of 2018 dated 27.06.2019 by permitting the impleading petitioner to conduct an e-auction of the 10 numbers of the towing tractors belonging to the respondent/Cambata Aviation private Limited, lying at the Mumbai Airport, on ' as is where is ' basis and,

iii) to allow the petitioner/proposed party to deposit the sale proceeds of the said e-auction, after deducting the expenses incurred and hence, he prayed to allow these petitions.

5. It appears from the records that earlier, the first respondent

namely Sundaram Finance Limited filed an application in A.No.476 of 2018 to seize the 10 numbers of the machineries, as described in the schedule appended thereto and in that application, an order was passed by this court on 22.01.2018 to take the custody and possession of the vehicles from the 2nd respondent. After taking possession of the assets, the first respondent had filed another application in A.No.9420 of 2018 in A.No.476 of 2018 to grant permission to the receiver Mr.Vishal Vishnu Honavarkar, to sell the 10 numbers of the electronic towing tractors, as described in the schedule thereto, in ' as is where is ' condition. In that application also, this court vide order dated 27.06.2019, had granted permission to the receiver to sell the 10 numbers of the above said tractors, within a period of four weeks from the date of receipt of the copy of the order. Thereafter, vide order dated 17.10.2019, further time was granted till 7.11.2019 and again vide order dated 21.11.2019, time was extended for a further period of six weeks to sell the above said tractors. However, till now, the sale proceedings are not yet commenced by the receiver. At this juncture, these petitions have been filed by the Mumbai Internation Airport Limited to implead it as a party respondent to the applications in A.No.476 of 2018 and 9420 of 2018 and also for modification of the order passed by this court dated 27.06.2019 in

A.No.9420 of 2010 in A.No.476 of 2018 by permtting the petitioner to conduct an e-sale of the 10 numbers of the towing tractos belonging to the respondent.

6. The learned counsel for the petitioner/proposed party namely Mumbai International Airport Limited submitted that since the machineries are lying in the premises of the Mumbai Airport and the petitioner has also been permitted to sell the other machineries by the Mumbai High Court vide order dated 11.02.2020, they may be permitted to sell the 10 machineries on 'as is where is' condition, which is the subject matter of the attachment made by this court, and also to deposit the sale proceeds of the said e-auction, after deducting the expenses incurred for the sale.

7. The learned counsel for the first respondent namely Sundaram Finance Limited submitted that they have no objection in selling the 10 machineries by the petitioner (Mumbai International Airport Limited), which is the subject matter of the attachment made by this court by this court. However, he submitted that , as far as the sale proceeds are concerned, after deducting the expenses likely to be incurred for the sale of the above said 10

numbers of the tractors, the remaining amount has to be directly paid to the Sundaram Finance.

8. Despite service of notice and the name is printed in the cause list, none appeared for the 2nd respondent and also no representation on behalf of them

9. The dispute between the parties is only with regard to the sale of the tractors. The receiver, who was appointed by this court also expressed his difficulty in dealing with the machineries lying in the premises of the Mumbai Airport. Further, the Mumbai High Court had also authorised the petitioner/Mumbai International Airport Limited (proposed party) to sell the other machineries lying in the Mumbai Airport. Therefore, considering the facts and circumstances of the case, this court is of the view that the Mumbai International Airport Limited is a necessary party to the applications and hence, inclined to pass the following order.

10. Accordingly,

i). The applicant namely Mumbai International Airport Limited is impleaded as a party/2nd respondent in A.No.476 of 2018 and A.No.9420 of 2018.

ii). The Mumbai International Airport Limited is permitted to sell the 10 numbers of the towing tractors (as described in the schedule appended to the applications) in e-auction, as directed by the Mumbai High Court.

iii) The expenses likely to be incurred for the sale of the above said tractors, which was subject matter of the attachment made by this court, shall be deducted and the remaining amount shall be deposited into the credit of the Madras High Court.

iv) On such deposit being made by the Mumbai International Airport Limited, the Registrar General, Madras High Court shall deposit the same under interest bearing deposit in any one of the nationalised bank.

v) The Mumbai International Airport Limited shall inform to the receiver Mr.Vishal Honvarkar, Assistant Manager (operations), C.E.Mumbai of the Sundaram Finance Lmited about the every stage of the sale proceedings.

vi) Inview of the above order passed, this court is of the view that there is no further order required to be passed in A.No.476 of 2018 and in A.No.9420 of 2018 in A.No.476 of 2018 and hence the same are closed.

09.07.2020

mst

Note: The Registry is directed to carry out necessary amendment and issue order copy to the newly impleaded party also.

N.SATHISH KUMAR, J.
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A.No.1238 of 2020 in A.No.476 of 2018 and
A.No.1239 of 2020 in A.No.9420 of 2018 and
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