

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2020

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.Nos.414 to 418 of 2020

and

A.Nos.2247, 2248, 2250, 2251 and 2253 of 2020

O.P.No.414 of 2020:

1.EMI Infrastructure Private Limited
represented by its Finance Controller,
Mr.N. Biju Paul Samuel,
T-1, Cindiya Enclave,
144, Bharath Madha Street,
East Tambaram,
Chennai-600 059.

2.S.Chandrashekhar

3.Remina Chandrashekhar ...Petitioners

-V-

1.Mahindra and Mahindra Financial Services Limited
rep.by its Authorised Representative,
Gateway Building,
Apollo Bunder,
Mumbai – 400 001.

2.Thiru. L.Thiyagaiya,
Sole Arbitrator,
Old No.25, New No.34, I Floor,
Karpagambal Nagar,
Mylapore,
Chennai – 600 004.

...Respondents

Prayer: Original Petitions filed under Section 14(2) of the Arbitration and Conciliation Act, 1996 praying to terminate the mandate of the 2nd respondent/sole Arbitrator in Ref: JUL-20-NPA-ARB/6298807 /JR.V29/2020 and substitute an independent and impartial sole arbitrator to adjudicate upon the disputes between the petitioner and the respondent arising out of the Arbitration Agreement bearing No.6298897 dated 29.06.2019.

For Petitioners : Mr.Govind Chandrasekhar

COMMON ORDER

All the Original Petitions have been filed to terminate the mandate of the 2nd respondent/sole arbitrator and substitute an independent and impartial sole arbitrator to adjudicate upon the disputes between the petitioners and the respondents arising out of the Arbitration Agreement bearing No.6298807 dated 29.06.2019.

2.The facts in brief which are necessary for disposing of the above petitions are as follows:

The 1st respondent Company is engaged in the business of extending finance to corporate entities and individuals. The petitioners had availed loan for the purchase of vehicles by an Agreement dated 29.06.2019. The Agreement was entered into and a total sum of Rs.24 lakhs was extended as a loan which was repayable in equated monthly installments.

3.It appears that there was a default and the 1st respondent had unilaterally terminated the Contract and exercising their right under the Arbitration Clause had referred the disputes to the 2nd respondent. The 2nd respondent/Arbitrator has also entered reference and issued a notice dated 28.08.2020 to the parties.

4.On perusal of the disclosure statement, the petitioners found that the 2nd Arbitrator was *de jure* incapable of hearing the case as the very

constitution of the Tribunal was void and also opposed to the neutrality principle enunciated by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC and another v. HSCC (India) Limited*** which followed the dicta laid down in the case of ***TRF Limited v. Energo Engineering Projects Limited reported [(2017) 8 SCC 377]***. Therefore, the petitioners have come forward with the present application.

5.The 1st respondent had been served, but however, not appeared and filed a counter. The respondent is therefore set *ex parte*. The issue involved is a purely legal issue and this Court had proceeded to hear the Counsel for the petitioner.

6.Heard the learned counsel for the petitioners and perused the papers.

7.The sole ground on which these petitions have been filed is on the ground that the neutrality of the Arbitrator is in serious doubt since a

reading of the disclosure statement provided by the Arbitrator would indicate that he had over 194 ongoing arbitrations filed by the 1st respondent pending consideration before him.

8. Section 12(1) of the Arbitration and Conciliation Act would read as follows:

“In section 12 of the principal Act,— (i) for sub-section (1), the following sub-section shall be substituted, namely:— “(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.”

9.Likewise, Section 12(5) and its proviso which was introduced by Act, 2015 read as follows:

“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator: Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this subsection by an express agreement in writing.”

10.A perusal of the Fifth Schedule to the Act would clearly indicate that the 2nd respondent Arbitrator comes under Clause 22 therein. The fact that he has 194 ongoing cases on behalf of the 1st respondent definitely disqualifies him from being appointed as the Arbitrator. Consequently, all the Original Petitions are allowed and the mandate of the 2nd respondent stands terminated. All the interim orders passed by the Arbitrator are therefore set aside. Consequently, this Court has to nominate a sole Arbitrator to arbitrate the disputes between the petitioner and the respondents.

11. Accordingly, it is ordered as follows:

i) Mr.V.G. Suresh Kumar, Advocate, residing at 801, (429), P.H.Road, Near D.G. Vaishna College, Arumbakkam, Chennai -600 106, Phone No:044-23630669/23632410, Mobile: 9840387117, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. It is open to the respondent to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs.

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Internet : Yes/No
Index : Yes/No
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Copy to:

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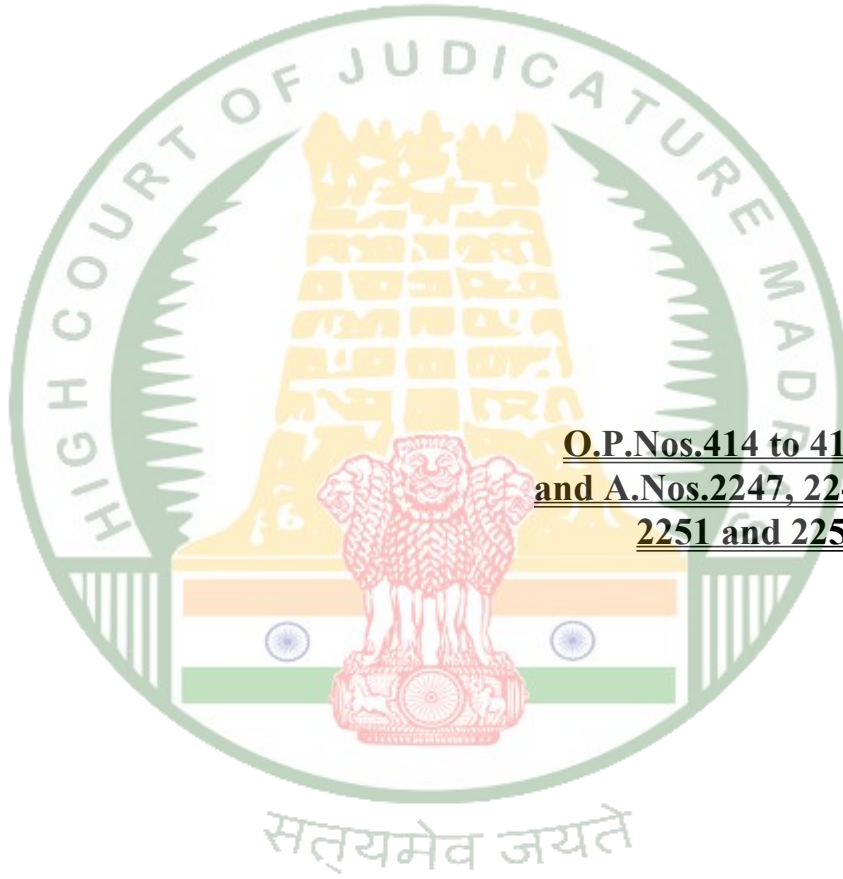


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