IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2020

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

O.P.Nos.60 to 69 of 2017

1. Saveetha Engineering College,
   No.1, Saveetha Nagar, Thandalam Post,
   Mevalurkuppam,
   Chennai.

2. M/s.Saveetha Medical and Educational Trust,
   No.333, Brough Road,
   Erode.

3. Dr.V.Saveetha,
   President of M/s.Saveetha Medical and Educational Trust,
   No.333, Brough Road,
   Erode.

4. Dr.N.M.Veeraiyan
   M/s.Saveetha Medical and Educational Trust,
   No.333, Brough Road,
   Erode.

5. Smt.Saraswativeeraiyan,
   M/s.Saveetha Medical and Educational Trust,
   No.333, Brough Road,
   Erode. .. Petitioners in all O.Ps

-Vs.-

1.M/s.Tata Capital Financial Services Ltd.,
Registered Office at 1 Forbes, Fort,
Mumbai - 400 001.

2. P.Sivakumar.

3. M/s.Sri Muthuramman Travels and Transport
(Unit of Muthuramman and Co.,)
Having its Corporate Office at 54,
G.V.T.Complex, Varadharajapuram,
Nazarathpet, Chennai. ...Respondents in all O.Ps.

Original Petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to call for the records and proceedings No.PI_HO/TCFSL10668 of 2015, No.PI_HO/TCFSL10673 of 2015, No.PI_HO/TCFSL10669 of 2015, No.PI_HO/TCFSL10674 of 2015, No.PI_HO/TCFSL10670 of 2015, No.PI_HO/TCFSL10672 of 2015, No.PI_HO/TCFSL10665 of 2015, No.PI_HO/TCFSL10666 of 2015, No.PI_HO/TCFSL10667 of 2015 and No.PI_HO/TCFSL10671 of 2015 respectively from the office of the Sole Arbitrator P.C.Phalgunan, Advocate, No.1/3, Ground Floor, Chandrodaya CHS, C.S.T. Road, Opp. to Swastik Chambers, Off.Sion Trombay Road, Chembur, Mumbai 400 071 and after examining the legality, validity and propriety of impugned orders dated 11.05.2015, 10.08.2015 and impugned award dated 20.10.2015 which are at EXHIBIT -"A", "B" & "C" hereto, be pleaded to quash and set aside the impugned orders dated 11.05.2015, 10.08.2015 and award dated 20.10.2015 passed by the Tribunal, Mumbai and reject the arbitral proceeding No.PI_HO/TCFSL10668 of 2015, No.PI_HO/TCFSL10673 of 2015, No.PI_HO/TCFSL10669 of 2015, No.PI_HO/TCFSL10674 of 2015, No.PI_HO/TCFSL10670 of 2015, No.PI_HO/TCFSL10672 of 2015, No.PI_HO/TCFSL10665 of 2015, No.PI_HO/TCFSL10666 of 2015,No.PI_HO/TCFSL10667 of 2015 and No.PI_HO/TCFSL10671 of 2015 respectively.

b) That pending the hearing and final disposal of this petition, this Court may be pleased to stay the operation, effect, execution and implementation of the impugned orders dated 11.05.2015, 10.08.2015 and award dated 20.10.2015 which are at EXHIBIT -"A", "B" & "C" hereto, passed by the Sole Arbitrator P.C.Phalgunan, Advocate, No.1/3, Ground Floor, Chandrodaya CHS, C.S.T. Road, Chembur, Mumbai 400 071 in arbitral proceeding No.PI_HO/TCFSL10668 of 2015, No.PI_HO/TCFSL10673 of 2015, No.PI_HO/TCFSL10669 of 2015, No.PI_HO/TCFSL10674 of 2015, No.PI_HO/TCFSL10670 of 2015, No.PI_HO/TCFSL10670 of 2015, No.PI_HO/TCFSL10672 of 2015, No.PI_HO/TCFSL10665 of 2015, No.PI_HO/TCFSL10666 of 2015, No.PI_HO/TCFSL10667 of 2015 and No.PI_HO/TCFSL10671 of 2015 respectively.

c) That ad-interim orders / interim orders in terms of prayer clause (b) may be granted.

d) Costs of this petition be granted.

For petitioners in all O.Ps	...	Mr.V.P.Sengottuvel
For Respondent-1 in all O.Ps	...	Mr.A.R.L.Sundaresan,Sr.Counsel for Mr.K.R.Ramesh Kumar

ORDER

The respondents before the arbitral Tribunal are the petitioners herein. The petitioners are challenging the award passed by the learned Arbitrator with reference to the following proceedings.

Sl.No.	***Loan cum Hypothecation Agreement No.& Date***	***Amounts sought to be recovered***	***O.P.No.***
1	7000197021 dated 31.07.2013	Rs.5,99,261/-	60 of 2017
2	7000194928 dated 18.07.2013	Rs.12,02,655/-	61 of 2017
3	7000197015 dated 31.07.2013	Rs.5,99,388/-	62 of 2017
4	7000194927 dated 18.07.2013	Rs.12,03,001/-	63 of 2017
5	7000194922 dated 18.07.2013	Rs.12,04,081/-	64 of 2017
6	7000194926 dated 18.07.2013	Rs.12,03,667/-	65 of 2017
7	7000197034 dated 31.07.2013	Rs.5,99,351/-	66 of 2017
8	7000197030 dated 31.07.2013	Rs.5,98,461/-	67 of 2017
9	7000197024 dated 31.07.2013	Rs.5,99,230/-	68 of 2017
10	7000194924 dated 18.07.2013	Rs.12,05,583/-	69 of 2017

2. The brief facts necessary to appreciate the dispute on hand are herein below narrated.

(i) The petitioners 1 and 2 are leading institutes for technical education in the State of Tamil Nadu and for the purpose of transporting the students and staffs, the institutes engaged the services of the transport operators, who own and possess buses. As was the practice, the petitioners were approached by the second respondent claiming to be proprietor of the third respondent offering new buses for transporting the students.

(ii) After negotiations, the petitioners and the third respondent had entered into Transport Service Agreements. The third respondent had undertaken to provide 23 new buses exclusively for the purpose of transportation of students and staff of the petitioners' institutions. The agreement was for a period of 5 years commencing from the date of the agreement.

(iii) As per the terms of the agreement, it was the responsibility of respondents 2 and 3 to purchase the buses, provide the necessary man power and undertake the maintenance of the vehicle. In lieu of these services, the petitioners were under an obligation to pay a fixed sum per month per bus as service charges, which include taxes and levies applicable from time to time. The respondents 2 and 3 on receipt of the above charges was required to operate the buses with the name and emblem of the petitioner-institution.

(iv) The petitioners would submit that all of a sudden, they were approached by one of the financiers, who had extended the financial assistance to respondents 2 and 3 for purchasing the buses stating that the third respondent had committed a default in the repayment of the loan. To ensure that there was no disturbance in the operation of the buses, since the buses were being used for transporting the students and staff, the petitioners had paid the defaulted amount. Other persons also made claims and therefore, the petitioners were constrained to pay the dues. Since he was not receiving the monthly service charges directly, the third respondent had requested the first petitioner to pay the service charges directly to them so as to enable them to pay the pending / overdue EMI to the financial institutions which included the first respondent. Therefore, the petitioners resumed paying service charges to the third respondent, which they had discontinued in view of their making payment to the financial institutions.

(v) In the month of December 2014, the first respondent's representative approached the petitioners 1 and 2 stating that there was a default in payment of the equated monthly installments. The petitioners, therefore, requested the first respondent to provide the documents relating to the vehicle in question, which they had obtained from the third respondent. The petitioners also paid the outstanding E.M.Is.

(vi) Thereafter, when the petitioners scrutinized the documents, they were shocked to realise that the buses had been purchased in the name of the first petitioner and the signature of the President of the first petitioner along with the name and seal of the educational agency had been fabricated and forged and it appeared that the entire loan agreements were entered directly in the name of the petitioner as the borrower. The said information came as a utter shock to the petitioners, since they had arrangements with the third respondent only for providing buses for transporting their students and staff under Transport Service Agreements and on account of the fact that the second and third respondents had informed the petitioners that they owned nearly 23 buses. The petitioners have stated that there has been a collusion between the officials of the first respondent and the respondents 2 and 3 and they contended that there was no agreement between them and the first respondent and the signatures found in the agreement were all forged. The petitioners had simultaneously initiated criminal proceedings against the second respondent and he was arrested and remanded to the judicial custody. The petitioners further contended that the first respondent would be sending the documents for necessary signature verification and they had also initiated arbitral proceedings by invoking the arbitration clause under the Transport Service Agreements that they had with the respondents 2 and 3 for delaying the proceedings.

(vii) In the meanwhile, the petitioners had received a notice from the first respondent recalling the amounts due under various agreements. The petitioners 1 and 2 had sent a reply notice, in which they had stated that they were neither the borrower nor the co-borrower under the loan agreements alleged to have been entered into with the first respondent. They had also enclosed the proceedings that they had initiated against the respondents to highlight the fact that the entire agreement is tainted with fraud. However, the petitioners had proceeded to appoint an Arbitrator and had proceeded with the arbitration. The petitioners had received a letter from the sole Arbitrator stating that he has been nominated as sole Arbitrator and the Arbitrator had forwarded the statement of claim as well as the interim order passed by him under Section 17 of the Arbitration and Conciliation Act.

(viii) The petitioners, in response to the said notice, had appeared before the Arbitral Tribunal at Mumbai and had filed an application under Section 16 of the Arbitration and Conciliation Act questioning the very jurisdiction of the Arbitrator, in view of the fact that they were not the borrower and the co-borrower under the loan agreements, since the signatures found therein did not belong to the petitioners 1 and 2 herein. The petitioners would submit that the Arbitrator had heard the parties in the application under Section 16 and passed an order rejecting it. However, a copy of the said order was not available to the petitioners. The minutes of the proceedings would reveal the fact that the application under Section 16 has been taken up for hearing and the same has been rejected. However, the detailed order has not been served to the hands of the petitioners.

3. When the matter was posted for hearing on 06.01.2020, this Court had directed the learned counsel for the first respondent to produce a copy of the order passed in the said Section 16 application in all 10 O.Ps, the learned counsel for the first respondent had reverted stating that there was no separate order in Section 16 application though reference is made to the same. The parties, therefore, consented to have the awards set aside with a direction that the parties should proceed afresh with arbitration. This Court had directed the parties to suggest the name of the Arbitrator, who they seek to nominate for hearing the dispute between the parties.

4. Today, when the matter is called, the learned counsels, on instructions from the parties, would submit that they have no objection for appointing Mr.N.C.Ramesh, learned Senior Counsel as a sole Arbitrator.

5. Considering the fact that in the original petitions, the petitioners herein had only filed the application under Section 16 of the Arbitration and Conciliation Act, it is made clear that the petitioners would file their counter in the main arbitral proceedings The Arbitrator, who has now been appointed by this Court, shall enter reference within a period one week from the date of receipt of a copy of this order by informing the date of hearing of the case to both the parties. The counter shall thereafter be filed by the petitioners within a period of one week from the date of receipt of the notice from the Arbitrator. It is also made clear that the learned Arbitrator shall dispose of the claims within a period of three months from the date of receipt of the counter. The application under Section 16, which has been filed by the petitioners, shall be heard along with main O.P. Consequently, all O.P.s are allowed and the respective awards are set aside. No costs.

10.02.2020.

Internet: Yes/No
Index:Yes/No
Speaking/Non-Speaking

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P.T.ASHA.J

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