

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 09th DAY OF FEBRUARY 2022

THE HON'BLE MR. JUSTICE M.SUNDAR

Arb.O.P.(Com.Div.) No.309 of 2021

and

A. No.4859 of 2021

In the matter of Arbitration &
Conciliation Act, 1996

And

In the matter of Disputes between Mr.
Rathish and M/s. Mahindra &
Mahindra Financial Services Ltd
Limited Arising under Loan
Agreement Dated 23.08.2018 bearing
Contract No. 5622578

1. Mr. J. RATHISH,
S/o. Jaya Gopal,
No.18, Singaraperumal Koil Street,
Bharathiyar Street, Chegalpattu,
Kanchipuram - 603 204.

2. R. POORNIMA,
No.18, Singaraperumal Koil Street,
Bharathiyar Street, Chegalpattu,
Kanchipuram - 603 204.

...Petitioners/Applicants

vs.

1. M/s. MAHINDRA & MAHINDRA FINANCIAL SERVICES PVT LTD,
2nd Floor, Behind Mahindra Towers,
570 PB Marg, Worli,
Mumbai, Maharashtra-400018.

Having branch office at:-
New No. 244, Old No. 713, 3rd Floor,

Level 4, Rare Block, Carex Centre,
Anna Salai, Thousand Lights,
Chennai 600 006.

...Respondent -1 /Respondent

2. Mr. Dr. T. Ramasamy,
Sole-Arbitrator,
Old No.25, New No.34, 1st Floor, Karpagambal Nagar,
Mylapore, Chennai 600 004.

...Respondent No.2/Sole-Arbitrator/Respondent

Arb.O.P.(Comm. Div.) No.309 of 2021:-

Arbitration Original Petition praying that this Hon'ble Court be pleased to terminate the mandate of the Arbitration Proceedings and to substitute an Arbitrator in the place of existing Arbitrator.

A.No.4859 of 2021:-

Application praying that this Hon'ble Court be pleased to order an Interim Stay of all further proceedings on the file of the 2nd Respondent in the pending Arbitration proceedings in ACP. No. Aug 20-NPA-P2/5622578/JR_W153/2020 pending disposal of the above petition.

This Arbitration Original Petition and the application alongwith these Arb.O.P.Nos.306 to 308 and 310 of 2021 and A.Nos.4850, 4852, 4858 and 4860 of 2021 coming on this day before this Court for hearing in the

presence of Ms.B.Priyanka for M/s.K.Sahithya, Advocates for the petitioners in Arb.O.P.No.309 of 2021 and for the applicants in A.No.4859 of 2021 and the respondents herein not appearing in person or by advocate and upon reading the petition and the affidavit of J.Rathish filed in Arb.O.P.(Com.Div.)No.309 of 2021 and the judge's summons and the affidavit of J.Rathish filed in A.No.4859 of 2021 and this Court observing that the submissions of the learned counsel for the petitioner remain unrefuted it may not be difficult to say that it is rather unfortunate that the Arbitral Tribunal proceeded with the matter inspite of being informed that this Court is in seizin of petitions for termination of mandate and substitution. Notwithstanding such a scenario, this Court express no opinion on this aspect of the matter in this order, as the learned arbitrator and records of the Arbitral Tribunal are not before this Court, however, what is interesting and intriguing is the claimant-company which has been arrayed as first respondent in the captioned OPs has not chosen to come before this Court inspite of being duly served and the name being shown in the cause list, be that as it may, technically, the remedy now available to the petitioner is to challenge aforementioned awards under Section 34 of A and C Act. All questions including the narrative thus far are left open to be canvassed by the petitioner in the Section 34 petition, if the petitioners choose to take the legal route of Section 34 of A and C Act for assailing the arbitral awards.

Though under the normal circumstances the sole arbitrator is not arrayed as co-respondent in Section 34 petitions, it is ordered as follows:-

- That the Arb.O.P.No.309 of 2021 do stand closed.
- 2) That the A.No.4859 of 2021 do stand closed.
- 3) That there shall be no order as to costs of this suit.
- 4) That the petitioner herein, shall be at liberty to array the sole arbitrator as co-respondent in Section 34 petitions, if they choose to file the same.
- 5) That if such route is taken by the petitioners, Registry shall process Section 34 petitions, arraying the sole arbitrator as co-respondent and thereafter this Court will decide on issuing notice, when the matter comes up on board.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 09th DAY OF FEBRUARY 2022.

Sd/-

ASSISTANT REGISTRAR (Comm.Cases)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

ARS

28.02.2022

Arb.O.P.(Com.Div.) No.309 of 2021
and
A. No.4859 of 2021

ORDER

DATED: 09.02.2022

THE HON'BLE MR. JUSTICE
M.SUNDAR

FOR APPROVAL : 11.04.2022

APPROVED ON : 13.04.2022