

THE HIGH COURT OF JUDICATURE AT MADRAS

Date 22.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.Nos.327 to 329 of 2021 &
A.Nos.1685, 1687 & 1688 of 2021

1. Emi Infrastructure Private Limited,
Represented by its Finance Controller,
N.Biju Paul Samuel,
Having branch office at
T-1, Cindiya Enclave, Bharath Math Street,
East Tambaram, Chennai – 600 059.

2. Mr.S.Chandrasekaran,
S/o.Mr.Sundara Vardhan,
No.3, 7th Cross, Vinayaka Nagar,
Off Doddanagamangala Road,
Naganathapura, Electronic City,
Bangalore, Karnataka – 560 010.

... Petitioners

Versus

1. M/s.Equitas Small Finance Bank Ltd.,
Formerly known as Equitas Finance Ltd.,
4th Floor Spencer Plaza, No.769, Phase II,
Anna Salai, Chennai – 600 002.

2. Mr.C.Samson,
Sole Arbitrator,
No.2/3, Jegannathan Garden Street,
Eldams Road, Chennai – 600 018.

... Respondents

PRAYER : Applicant filed under section 14(2) of the Arbitration and Conciliation Act, 1996 to terminate the mandate of the second respondent in Arbitration Case Nos.314, 316 and 315 of 2019 in disputes arising out of the loan agreement No.SLMSNRD0185926, SLMSNRD0185925 and SLMSNRD0185927 dated 31.05.2018.

For petitioners : Mr.Sharath Chandran

For respondents : Ms.Neela Narayani

ORDER

These petitions have been filed to terminate the mandate of the arbitrator in Arbitration Case Nos.314 of 2019 316 of 2019 and 315 of 2019 arising of the loan agreement dated 31.05.2018.

2. The main contention of the learned counsel appearing for the petitioner is that the arbitrator is a stock arbitrator and despite the Order passed by this Court in CMA.No.1616 of 2018, indicating remarks as against the arbitrator as to the nature of his functioning, similar Orders have been continuously passed by the arbitrator mechanically. That itself clearly indicate that the arbitrator is not applying his mind and he is a stock arbitrator. Therefore, his mandate has to be terminated.

3. The learned counsel appearing for the respondent has submitted that a fresh arbitrator can be appointed in this regard and she has no objection in terminating the mandate of the arbitrator.

4. In an earlier occasion, this Court has deprecated the practice of the arbitrator in passing mechanical Orders and passing interim Orders for the sake of relief without applying his mind and the same is put into challenge and sought for terminating the mandate of the arbitrator. This Court recorded the finding to the effect the arbitrator has not even applied his mind without ascertaining the nature of the amount lying with the garnishee, has passed an Order mechanically and passing such orders is against fundamental law. Despite the above Order passed by this Court, the arbitrator has passed similar Order as against the garnishee and he has drawn his own opinion that the garnishee is liable to pay several crores to the first respondent. Such an observation has been made without any materials or without conducting any enquiry and that itself clearly show that the Order is nothing but a stereotype Order, which has been followed in the earlier Order.

5. In such view of the matter, the mandate of the arbitrator has to terminated. If the same arbitrator continues and similar mechanical Order are allowed to be passed, there would not be any fair adjudication of the dispute.

6. Accordingly, it is ordered as follows:

i] that the mandate of the arbitrator is terminated and earlier Orders passed by the arbitrator will stands vacated and the same will not bind parties.

ii] that Mr.C.Mohan, Advocate, M/s.King and Patridge, No.108, Armenien Street, Chennai -1, Mobile No.9840029865 is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

iii] That the learned Arbitrator appointed herein, shall 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.

iv] That the learned Sole Arbitrator appointed herein
be paid fees and other incidental charges fixed by him and
the same shall be borne by the parties equally.

7. This Original Petition is ordered accordingly, leaving the parties
to bear their own costs. Consequently, connected applications are closed.

22 .06.2021

Index : Yes / No
Internet: Yes
Speaking/non speaking order

vrc

To,

Mr.C.Mohan,
Advocate,
M/s.King and Patridge,
No.108, Armenien Street,
Chennai -1
Mobile 9840029865



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N. SATHISH KUMAR, J.
VRC



order in:

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