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*O.A.No.52 of 2021
and A.Nos.304 to 306 2021*

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M.SUNDAR, J

This common order will govern the captioned four applications.

2. Captioned four applications have been taken out under Section 9 of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].

3. In this order, for the sake of convenience and clarity, the applicant company (juristic person) in the captioned three applications shall be referred to as 'NBFC' denoting Non-Banking Financial Company, first respondent-Company (a juristic person) shall be referred to as 'Borrower Company', respondents 2 and 3, who are natural persons shall be referred to as Guarantors.

4. This Court is informed that pending captioned applications, the Borrower Company was subjected to proceedings under the 'Insolvency Bankruptcy Code, 2016' [hereinafter 'IBC' for the sake of brevity] before 'National Company Law Tribunal' [hereinafter 'NCLT' for the sake of convenience and clarity], Chennai and became a corporate debtor within the meaning of IBC.



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5. There is no dispute or disagreement that a 'Interim Resolution Professional' [hereinafter 'IRP' for the sake of brevity] was appointed by NCLT and the IRP, owing to progress of the proceedings under IBC has now become 'Resolution Professional' (hereinafter 'RP' for the sake of brevity). This Court is informed that RP is one Mr.Kannan and Mr.V.Manivannan, learned counsel who has joined this Court submits that he has instructions to represent the RP.

6. Mr.P.H.Arvinth Pandian, learned Senior counsel appearing on behalf of counsel on record for NBFC and Mr.V.G.Suresh Kumar, learned counsel on behalf of Guarantors are before this Court. This means, all the parties in the captioned applications are represented by their respective counsel in these matters.

7. There is no dispute or disagreement before this Court regarding the existence of Arbitration Agreement between the parties and nomination of a Sole Arbitrator. Suffice to say that the Sole Arbitrator, who has been nominated by NBFC is one Mr.C.Ramesh at Old No.31, New No.10, Krishna Street, T.Nagar, Chennai-600 017. This Court is informed that the Sole Arbitrator is a learned Member of the Bar in Madras High Court. Learned Senior Counsel, on instructions submits that there has been as many as five sittings of Arbitral Tribunal (AT) post nomination i.e., constitution of AT.



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8. Adverting to sub-section (3) of Section 14 of IBC, it is submitted that respondents 2 and 3 being Guarantors would be outside the realm of sub-section (1) of Section 14. In support of this submission, ***State Bank of India Vs. V.Ramakrishnan and another*** reported in AIR 2018 SC 3876 and ***Lalit Kumar Jain Vs. Union of India*** reported in (2021) 9 SCC 321 were pressed into service, but it may not be necessary to discuss the same make this order verbose owing to the trajectory the matter has taken before this Court today and the order this Court now proposes to make.

9. To be noted, RP can any event be represented by the aforementioned learned counsel before the Arbitral Tribunal.

10. Therefore, captioned applications are disposed of making it clear that the same can be presented before the Arbitral Tribunal qua the Guarantors (obviously under Section 17 of A and C Act).

11. Though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the arbitrable lis between the parties.

12. Captioned applications are disposed of as closed in the aforesaid manner. There shall be no order as to costs.

15.02.2022

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