



*Arb O.P.(Com. Div.)No.126 of 2022
and A.No.1213 of 2022*

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.03.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.SUNDAR**

Arb O.P.(Com. Div.)No.126 of 2022

and

A.No.1213 of 2022

1. M/s.Ganga Bhavani Earth Mover,
Rep by its Proprietor Mr.Rajeshudu,
H.No.2-7, Ammakkapet Village,
Ibrahimpetnam Mandal,
Landmark:near Hanuman Temple,
Jigtial, Telangana-505 450.
2. Mr.PateruChinnakka Ravinder,
S/o. NADAPIGANGARAM,
4-15/A, Rajeshwar Rao Pet,
Ibrahimpatnam, Lankmark: near Gp.
Telangana-505 450

... Petitioners

vs.

1. M/s.IndusInd Bank Ltd.,
Rep by its Manager/Executive Legal,
New No.34, Old Nos.115 & 116,
G.N.Chetty Road, T. Nagar,
Chennai 600 0017.
2. Shri D.Anand,
Advocate,
Sole Arbitrator,
CNICA, Unit No.208, 2nd Floor,
Beta Wing, Raheja Towers, No.113-114, Anna Salai,
Near LIC, Chennai-600 002.

... Respondents



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(a) the termination of mandate of the 2nd respondent herein in the pending arbitration proceedings in (CV) A.C.P.No.1808 of 2021 and be substituted by an independent and Sole Arbitrator to be appointed by this Hon'ble Court, to enter reference afresh to adjudicate upon all the disputes, differences and claims that have arisen between the parties hereto under the Loan Agreement No.AHK00253E dated 21.04.2017;

(b) Direct the 1st respondent to pay the cost of the petition.

For Petitioner : Mr.J.Ravikumar

For Respondents : Mr.K.Moorthy for R1

ORDER

Captioned Arb OP has been presented in this Court on 22.02.2022 *inter alia* under Section 14(2) of 'The Arbitration and Conciliation Act, 1996 (Act 26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity].

2. This Court is informed that arbitration agreement between the 'two petitioners' [hereinafter 'Borrowers' for the sake of convenience] and 'first



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respondent' [hereinafter 'Lender Bank' for the sake of convenience] is in the form of a clause in an agreement dated 21.04.2017 captioned 'LOAN AGREEMENT', which shall hereinafter be referred to as 'primary contract' for the sake of convenience and clarity.

3. Clause 23 of the primary contract reads as follows:

'23.0 LAW, JURISDICTION, ARBITRATION

23.1 All disputes, differences and/or claim arising out of or touching upon this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the Sole Arbitration of an Arbitrator nominated by the Lender. The award given by such an Arbitrator shall be final and binding on all the parties to this agreement.

23.2 Dispute for the purpose of Arbitration includes default committed by the borrower as per clause 14 of this Agreement. It is a term of this agreement that in the event of such an Arbitrator to whom the matter has been originally referred resigns or dies or being unable to act for any reason, the lender, at the time of such death of the arbitrator or of his inability to act as arbitrator, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.

23.3 The venue of arbitration proceedings shall be at



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23.4 The Arbitrator so appointed herein above, shall also be entitled to pass an Award on the hypothecated asset and also on any other securities furnished by or on behalf of the Borrower/Co-borrower.

The Arbitrator is further entitled to pass any interim directions on the custody of the Asset as well as sale of the asset, or any other directions as may be appropriate to protect the interest of the parties pending resolution of the dispute.

23.5 All notices and other communications on the lender and the borrower(s) shall be to the following address, respectively:

For Lender: Consumer Finance Division Office: IndusInd Bank Ltd, No.34, G.N.Chetty Road, T.Nagar Chennai 600 017.

For Borrower and Co-borrower: The residential address stated in this Agreement unless change of address was notified by the Borrower or Co-borrower.'

4. The aforementioned Clause 23 of the primary contract serves as an arbitration agreement between the Borrowers and Lender Bank i.e., arbitration agreement within the meaning of Section 2(1)(b) read with Section 7 of A and C Act.

5. Suffice to say that primary contract was for financing purchase of a vehicle, arbitrable disputes arose regarding alleged default, arbitration clause was triggered, second respondent in captioned application was nominated as



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a sole Arbitrator by the Lender Bank, a claim statement was filed, second respondent who constituted 'Arbitral Tribunal' ['AT'] made an interim order on 21.12.2021 and thereafter there was a sitting of AT on 09.02.2022 which has re-scheduled the next sitting to 23.02.2022.

6. Learned counsel for Borrowers (petitioners in captioned Arb OP) *inter alia* submitted that the very nomination of the second respondent as sole Arbitrator by the Lender Bank (first respondent in captioned Arb OP) is unilateral and it is hit by **Perkins** principle i.e., ratio of Hon'ble Supreme Court in **Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.**, reported in **2019 SCC Online SC 1517**.

7. Mr.K.Moorthi, learned counsel of M/s.Kasthuri and Sundar Associates (Law Firm) with address for service at Rohit Towers, II Floor, Parrys Corner, George Town, Chennai-600 001, who was present in Court accepted notice on behalf of first respondent.

8. Owing to the trajectory this matter has taken today and owing to the order which this Court proposes to pass, the presence of second respondent is not necessary for disposal of captioned Arb OP. It is also not necessary to set out any discussion or dispositive reasoning about the arguments of Borrowers



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qua **Perkins** principle as learned counsel for Lender Bank very fairly agreed for substitution of second respondent by an Arbitrator of this Court's choice. In other words, all questions in captioned Arb OP are left open.

9. Before appointing a sole Arbitrator of this Court's choice, the following points are made clear:

(a) though captioned application is under Section 14(2) of A and C Act, both sides agreed for substitution under Section 15(2) of A and C Act;

(b) the date of commencement of arbitral proceedings within the meaning of Section 21 of A and C Act qua arbitral proceedings before AT will continue to be the date of commencement of arbitral proceedings before second respondent i.e., reckoning date qua Section 21 of A and C Act for ensuing proceedings before sole Arbitrator to be appointed by this Court;

(c) as already alluded to supra, all questions in the captioned Arb OP are left open as discussion and dispositive reasoning on the same is not imperative for the disposal of the captioned Arb OP;

(d) Though obvious it is made clear that this Court has not expressed any view or opinion on the merits of the arbitrable disputes;

(e) for the purpose of specificity, it is made clear that the Lender Bank shall present its 21.12.2021 claim statement afresh



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WEB COPY before the new Arbitrator to be appointed by this Court and the new Arbitrator will commence arbitral proceedings therefrom;

(f) as a sequitur to the previous limb, though obvious it is made clear that all proceedings of the second respondent (AT) thus far in arbitral proceedings/orders in captioned matter bearing reference (CV) A.C.P.No.1808 of 2021 are set aside/stand effaced ;

(g) it is also made clear that aforementioned proceedings are set aside only to facilitate the arbitration proceedings to commence afresh and it shall not be construed as expression of any opinion or view on the proceedings before second respondent;

(h) it is also made clear that this order shall not be construed as any expression of opinion of this Court on the second respondent;

(i) this order is made merely to ensure and facilitate the arbitral proceedings to proceed expeditiously;

10. Ms.K.M.Valsala Kumari, learned counsel with address of service at 452, Law Chamber, 4th Floor, High Court of Madras, Chennai-600 104 (Mobile No.93810 23236) (e-mail: valsala.km@gmail.com) is appointed as sole Arbitrator. Learned Arbitrator is requested to enter upon reference, adjudicate arbitral disputes qua 21.04.2017 Loan Agreement (primary



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WEB COPY contract) between the Borrowers and Lender Bank i.e., petitioner and first respondent. The arbitration venue shall be 'Madras High Court Arbitration and Conciliation Centre under the aegis of this Court' ['MHCAC']. Arbitration proceedings shall be in accordance with the Madras High Court Arbitration Proceedings Rules 2017 and Hon'ble Arbitrator's fee shall be as per Madras High Court Arbitration Centre (MHCAC) (Administrative Cost and Arbitrator's Fees) Rules 2017.

Captioned Arb OP disposed of on the above terms. Consequently, connected application is also disposed of. There shall be no order as to costs.

18.03.2022

Speaking/Non-speaking order

Index : Yes / No

kmi/nsa



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Note: Registry is directed to communicate a copy of this order forthwith to

1. Ms.K.M.Valsala Kumari,
452, Law Chamber, 4th Floor,
High Court of Madras,
Chennai-600 104.
(Mobile No.93810 23236)
2. The Director,
Tamil Nadu Mediation and Conciliation Centre -cum-
Ex-Officio Member,
Madras High Court Arbitration Centre,
Madras High Court,
Chennai 600 104.



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M.SUNDAR. J.,

kmi/nsa

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