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C.M.A.No.1257 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1257 of 2021
and C.M.P.No.5233 of 2021

1.EMI Infrastructure Private Limited,
Represented by its Finance Controller,
Mr.N.Biju Paul Samuel,
No.2/279, Village High Road OMR,
Thoraipakkam,
Oggiamthoraiipakkam, Near Tollgate,
Chennai - 600 097.
Also at Registered Office
T1, Cindiya Enclave,
No.144, Bharatamatha Street,
East Tambaram, Chennai 600 059

2.Remina Chandrasekaran,
Managing Director EMI Infrastructure Private Limited,
Wife of Chandrasekaran,
No.2/279, Village High Road OMR,
Thoraipakkam, Side 331, Ragiv Gandhi Salai,
Oggiamthoraiipakkam, Near Tollgate, Chennai - 600 097.

Also at Registered Office
T1, Cindiya Enclave,
No.144, Bharatamatha Street,
East Tambaram, Chennai 600 059

...Appellants



C.M.A.No.1257 of 2021

Vs

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M/s.Shriram Transport Finance Co. Ltd.,
Rep by its G.P.A. Holder Shri S.Vardhan,
Mokamika Complex, 3rd Floor,
No.4, Lady Desika Road,
Mylapore,
Chennai - 600 004.

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 praying to set aside the order dated 11.12.2020 passed by the Sole Arbitrator in Arbitration Interim Application 75 of 2020 in Arbitration Case 1563 of 2020.

For Appellants : Mr.R.Harikrishnan
for Mr.Govind Chandrasekhar

For Respondent : Mr.M.Peer Mohamed

JUDGEMENT

The appellants are the respondents before the Tribunal below. They are before this Court, challenging the interim Award passed by the Arbitral Tribunal on 11.12.2020 in Arbitration Interim Application No.75 of 2020 in Arb.Case No.1563 of 2020.



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2. The main challenge to the interim Award is that the Arbitral Tribunal which passed the Award is one without jurisdiction. The Arbitrator is ineligible in the light of the judgment of the Hon'ble Supreme Court reported in 2019 SCC Online SC1517 [*Perkins Eastman Architects DPC and another -vs- HSCC (India) Ltd*] as he has been regularly acting as an Arbitrator in the several arbitral proceedings initiated by the respondent herein. That apart, the appellants would also contest the case on merits by stating that no notice has been received by them, since the notice has not been despatched to the correct address of the appellants.

3. The appellants have also filed an additional typed set of papers, in which, the declaration under the Sixth Schedule as per Section 12(1)(b) of the Arbitration and Conciliation Act, 1996 has been given by the Arbitrator. The learned Arbitrator, in his declaration, has stated that he has about 50 and above ongoing arbitrations. No doubt, the declaration does not say that all of the 50 proceedings relates to the respondent-Company. Further, with reference to the disclosure regarding the past or present



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relationship with the parties or with the subject matter, the learned Arbitrator has answered in the negative. However, the learned counsel for the appellants would submit that the Arbitrator herein is being regularly appointed by the respondent-Finance company and therefore, the declaration is an incorrect one.

4. On merits of the case, the appellants would submit that they have received first notice from the respondent calling upon them to clear the arrears at the following address:-

- 1.EMI Infrastructure Private Limited,
Represented by its Finance Controller,
Mr.N.Biju Paul Samuel,
No.2/279, Village High Road OMR,
Thoraipakkam,
Oggiamthoraipakkam, Near Tollgate,
Chennai - 600 097.
- 2.Remina Chandrasekaran,
Managing Director EMI Infrastructure Private Limited,
Wife of Chandrasekaran,
No.2/279, Village High Road OMR,
Thoraipakkam, Side 331, Ragiv Gandhi Salai,
Oggiamthoraipakkam, Near Tollgate,
Chennai - 600 097.



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In the arbitration proceedings, the address given is the factory address and not the address at East Tambaram. The contention is also that no notice of the proceedings was given to them.

5. After extensive arguments were heard and at the suggestion of the Court, both the learned counsels agreed that the dispute be referred to another Arbitrator, after terminating the mandate of the present Arbitrator. Further, since the interim order has been passed by an Arbitrator, who is ineligible to act as one, the order in Arbitration Interim Application No.75 of 2020 in Arbitration Case No.1563 of 2020 may be set aside.

6. By consent of the parties, the mandate of Mr.P.Rosaiah, District Judge (Retd), Chennai is terminated and the civil miscellaneous appeal is disposed of on the following terms:

(i) Hon'ble Mr.Justice V.Bharathidasan (Retired Judge), High Court, Madras, No.22, (L-45), 2nd Main Road,



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Kamaraj Nagar, Thiruvannamipur, Mobile Nos: 94443 8319 and 9445500224 is appointed as an Arbitrator.

ii) The learned arbitrator may, 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 entering reference. It is open to the respondents to raise all legal objections as to the validity of contract.

iii) The learned arbitrator is at liberty to fix the remuneration and other incidental expenses as per law.

iv) The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.



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v) The order passed in Arbitration Interim Application

No.75 of 2020 in Arbitration Case No.1563 of 2020 is set aside and the learned Arbitrator shall proceed to hear the said application afresh.

There shall be no order as to costs in this appeal. Consequently, connected miscellaneous petition is closed.

08.07.2022

Index : Yes/No

Speaking order/non-speaking order

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P.T.ASHA, J.,

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