



O.A.Nos.190 to 192 of 2022

O.A.Nos.190 to 192 of 2022

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M.SUNDAR, J

This common order will govern the captioned three applications. Mr.K.Doraisami, learned Senior Advocate instructed by Mr.Kandhan Duraisami, learned counsel on record for applicant in all the three applications is before this Court. Ms.Karthikaa Ashok, learned Standing Counsel for Chennai Corporation, who was present in Court accepted notice for all the respondents in all the three applications.

2. Captioned three applications were taken up with the consent of both sides as this Court is informed that similar matters turning on Concession Agreements came up earlier before this Court vide O.A.Nos.20 to 22 of 2022 and Hon'ble Predecessor Judge made interim orders dated 20.01.2022 and 24.01.2022 and disposed of the applications vide order dated 03.02.2022. These three sequential orders read as follows:



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O.A.Nos.190 to 192 of 2022



O.A.Nos.20 to 22 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM:

The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

O.A.Nos.20 to 22 of 2022

Fine Arts Communications India Private Limited
represented by its Authorised Signatory,
No.20, U.V.Saminatha Street,
Alandur, Chennai 600 016.

... Applicant in
O.A.No.20 of 2022

Shine Outdoor Advertising Private Limited,
represented by its Authorized Signatory,
No.4/8, First Main Road, Manjulai Street,
Ekkattuthangal, Chennai 600 016.

... Applicant in
O.A.No.21 of 2022

Skyrams Outdoor Advertising India Pvt. Limited,
represented by its Authorised Signatory,
Nos.15 & 17, Lalith Towers,
G.S.T. Road, Alandur,
Chennai 600 016.

... Applicant in
O.A.No.22 of 2022

Vs

1. The Commissioner,
Corporation of Chennai,
Ripon Buildings,
Periyar E.V.R. Salai,
Chennai 600 003.

2. The Revenue Officer,



O.A.Nos.190 to 192 of 2022

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Corporation of Chennai,
Ripon Buildings,
Periyar E.V.R.Salai,
Chennai 600 003.

O.A.Nos.20 to 22 of 2022

3. The Superintending Engineer,
Bus Road Routes Department,
Corporation of Chennai,
Ripon Buildings,
Chennai- 600 003.

... Respondents

PRAYER in O.A.No.20 of 2022 : This Application is filed under XIV Rule 8 of Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996 praying to grant an order of injunction restraining the Respondents herein and their men, agents and subordinates from in any manner disturbing the peaceful continuance of the advertisement business of the Applicant subject matter of Concession Agreements dated 31.12.2015 for construction and maintenance of bus shelters in respect of Packages 4,5 and 6;

PRAYER in O.A.No.21 of 2022 : This Application is filed under XIV Rule 8 of Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996 praying to grant an order of injunction restraining the Respondents herein and their men, agents and subordinates from in any manner disturbing the peaceful continuance of the advertisement business of the Applicant subject matter of Concession Agreements dated 31.12.2015 for construction and maintenance of bus shelters in respect of Packages 7 and 8; and

PRAYER in O.A.No.22 of 2022 : This Application is filed under XIV Rule 8 of Original Side Rules read with Section 9 of the Arbitration and



O.A.Nos.190 to 192 of 2022

O.A.Nos.20 to 22 of 2022

Conciliation Act, 1996 praying to grant an order of injunction restraining the Respondents herein and their men, agents and subordinates from in any manner disturbing the peaceful continuance of the advertisement business of the Applicant subject matter of Concession Agreements dated 31.12.2015 for construction and maintenance of bus shelters in respect of Packages 1, 2 and 3.

For Applicant : Mr.K.Duraisami, Senior Advocate
(in all OAs) for M/s.Muthumani Doraisami

For Respondents : Mr.M/s.Karthika Ashok,
(in all OAs) Standing Counsel (Corpn.)

ORDER

These applications arise out of a dispute relating to the amounts due and payable by the respective applicant to the Corporation of Chennai under Concession Agreements entered into on BOT basis between the respective applicant and the Corporation of Chennai. The Corporation of Chennai issued orders on 24.12.2021 making claims towards concession fees dues and bus shelter licence fee dues. The claim towards bus shelter licence fees is refuted on the ground that such licence fee is not payable under the relevant Concession Agreement. As regards the concession fee dues, the contention of the respective applicant is that such fees are payable from and out of the revenue realized by displaying advertisements on the bus shelters and that monies could not be realized therefrom on account of



O.A.Nos.190 to 192 of 2022

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the COVID-19 pandemic and the lock downs imposed in the wake thereof

3 In these facts and circumstances, an interim injunction is prayed for to restrain the Corporation of Chennai from removing the advertising materials displayed in these bus shelters or in any way disturbing the respective applicant from carrying on such advertising business at such bus shelters.

2. Upon considering the submissions and on examining the materials, it is necessary to balance the equities. The Corporation of Chennai has demanded substantial amounts towards alleged unpaid dues. However, the Concession Agreement does not appear to have been terminated as on date and the said Agreement envisages the earning of advertising revenue by the respective applicant. Therefore, a *prima facie* case is made out to restrain the Corporation of Chennai from removing the advertising materials from the relevant bus shelters subject to the condition that the respective applicant shall pay 25% of the amount demanded by the Corporation of Chennai in the respective demand notice within a period of two weeks from the date of receipt of a copy of this order.



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O.A.Nos.190 to 192 of 2022



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O.A.Nos.20 to 22 of 2022

3. Ms.Karthika Ashok, learned Standing Counsel accepts notice

for the Corporation of Chennai and seeks time to file a counter.

List on 03.02.2022.

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20.01.2022



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O.A.Nos.20 to 22 of 2022

SENTHILKUMAR RAMAMOORTHY, J

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O.A.Nos.20 to 22 of 2022

20.01.2022



O.A.Nos.190 to 192 of 2022

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O.A.Nos.20 to 22 of 2022

SENTHILKUMAR RAMAMOORTHY, J.

The matter is listed today upon being mentioned by the learned counsel for the respective applicant.

2.It is pointed out that it is unclear from Para 2 of the Order as to whether the respective applicant is required to pay 25% of the amount demanded by the Corporation of Chennai in the respective demand notice towards Concession Fee only or both towards Concession Fee and Licence Fee. It is made clear that the respective applicant is required to pay 25% of the amount demanded in the respective demand notice as regards the Concession Fee.

3.Ms.Karthika Ashok, learned Standing Counsel for the Corporation of Chennai, appears on behalf of all the respondents and seeks time to file a counter.

24.01.2022

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O.A.Nos.190 to 192 of 2022

SENTHILKUMAR RAMAMOORTHY. J.

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O.A.Nos.20 to 22 of 2022

24.01.2022



O.A.Nos.190 to 192 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2022

CORAM :

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Original Application Nos.20 to 22 of 2022

1. Fine Arts Communications India Private Limited
represented by its Authorised Signatory,
No.20, U.V.Saminatha Street, Alandur,
Chennai 600 016. ... Applicant in O.A.No.20 of 2022

2. Shine Outdoor Advertising Private Limited,
represented by its Authorized Signatory,
No.4/8, First Main Road, Manjulai Street,
Ekkattuthangal, Chennai 600 016. ... Applicant in O.A.No.21 of 2022

Skyrams Outdoor Advertising India Pvt. Limited,
represented by its Authorised Signatory, Nos.15 & 17,
Lalith Towers, G.S.T. Road, Alandur,
Chennai 600 016. ... Applicant in O.A.No.22 of 2022
Vs.

1. The Commissioner, Corporation of Chennai,
Ripon Buildings, Periyar E.V.R. Salai, Chennai 600 003.

2. The Revenue Officer,
Corporation of Chennai, Ripon Buildings,
Periyar E.V.R.Salai, Chennai 600 003.

3. The Superintending Engineer,
Bus Road Routes Department,
Corporation of Chennai, Ripon Buildings,
Chennai- 600 003.

... Respondents
in all applications



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PRAYER in O.A.No.20 of 2022 : This Application is filed under XIV Rule 8 of Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996 praying to grant an order of injunction restraining the Respondents herein and their men, agents and subordinates from in any manner disturbing the peaceful continuance of the advertisement business of the Applicant subject matter of Concession Agreements dated 31.12.2015 for construction and maintenance of bus shelters in respect of Packages 4,5 and 6;

PRAYER in O.A.No.21 of 2022 : This Application is filed under XIV Rule 8 of Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996 praying to grant an order of injunction restraining the Respondents herein and their men, agents and subordinates from in any manner disturbing the peaceful continuance of the advertisement business of the Applicant subject matter of Concession Agreements dated 31.12.2015 for construction and maintenance of bus shelters in respect of Packages 7 and 8; and

PRAYER in O.A.No.22 of 2022 : This Application is filed under XIV Rule 8 of Original Side Rules read with Section 9 of the Arbitration and Conciliation Act, 1996 praying to grant an order of injunction restraining the Respondents herein and their men, agents and subordinates from in any manner disturbing the peaceful continuance of the advertisement business of the Applicant subject matter of Concession Agreements dated 31.12.2015 for construction and maintenance of bus shelters in respect of Packages 1, 2 and 3.



O.A.Nos.190 to 192 of 2022

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For Applicant : Mr.K.Duraisami, Senior Advocate
(in all OAs) for M/s.Muthumani Doraisami

For Respondents : Ms.Karthika Ashok,
(in all OAs) Standing Counsel (Corp'n.)

COMMON ORDER

It is submitted by learned senior counsel for the respective applicant that the conditional order dated 20.01.2022, as clarified on 24.01.2022, was complied with by remitting an aggregate sum of about Rs.2.39 crores to the Corporation of Chennai. The said statement is recorded.

2. Both parties submit that they are agreeable to the constitution of an arbitral tribunal by this Court. The respective applicant has executed a Concession Agreement dated 31.12.2015 with the Corporation of Chennai. Each Concession Agreement contains an arbitration clause in Clause 19 thereof, which is couched in identical terms, and such clause was invoked in each case by notice dated 06.01.2022. The said clause, in relevant part, is as under:

19.2 Arbitration

a) Arbitrators

Any Dispute which is not resolved amicably as provided in Clause 19.1(a) shall be finally settled by binding arbitration under the Arbitration and Conciliation Act, 1996. The arbitration shall be by a committee of three arbitrators chosen

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from a panel of five arbitrators on the list of arbitrators available with CoC. One arbitrator is to be chosen by each Party and the third to be appointed by the two arbitrators chosen by the Parties. If either Party fails to choose its arbitrator, the other Party shall take steps in accordance with Arbitration and Conciliation Act, 1996.

b) Place of Arbitration

The place of arbitration shall be Chennai, Tamil Nadu.

3. Upon perusal thereof, it is evident that a panel of three arbitrators is specified. However, the respective applicant and the Corporation of Chennai consent to the appointment of a sole arbitrator in the interest of efficient and cost effective adjudication. Although a separate dispute has arisen under each Concession Agreement between the respective applicant and the Corporation of Chennai, the nature of such dispute is near identical. Therefore, it is appropriate to appoint a common sole arbitrator. Accordingly, with the consent of parties, the following directions are issued:

(i). Mr.Justice M.Sathyanarayanan, retired Judge of this Court, Old No.9, New No.5/1, 2nd Avenue, 2nd Extension, Indira Nagar, Adyar, Chennai – 600 020 (Mobile No.9498022255) is appointed as the Sole Arbitrator to adjudicate the following disputes:

(a) Fine Arts Communications Private Limited v. Corporation of



O.A.Nos.190 to 192 of 2022

Chennai;

(b) Shine Outdoor Advertising Private Limited v. Corporation of Chennai; and

(c) Skyrans Outdoor Advertising India Pvt. Ltd. v. Corporation of Chennai;

(ii) The Sole Arbitrator is directed to enter upon reference and adjudicate each dispute in accordance with law.

(iii) It is open to the Sole Arbitrator to fix the fees and expenses in relation to the arbitral proceedings.

4. Since the Arbitral Tribunal has been constituted, the respective applicant is granted leave to seek the same interim relief before the Arbitral Tribunal. In order to protect the respective applicant until then, the interim order granted on 20.01.2022, as clarified on 24.01.2022, shall stand extended until two weeks after the Arbitral Tribunal enters upon reference. Original Application Nos.20 to 22 of 2022 are disposed of on the above terms.

03.02.2022

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O.A.Nos.190 to 192 of 2022

SENTHILKUMAR RAMAMOORTHY. J.

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O.A.Nos.20 to 22 of 2022

03.02.2022



O.A.Nos.190 to 192 of 2022

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3. As there is no disagreement as between counsel on either side that the facts are similar qua aforementioned orders and cases on hand it is not necessary to dilate much on facts and it will suffice to say that the applicant was awarded contracts for putting up bus shelters; that the Concession Agreements were executed; that the work commenced; that thereafter the Goods and Services Tax (GST) regime kicked in on 01.07.2017 under which this Court is informed that entities like the applicant have to now pay GST at the rate of 18% qua advertisement charges collected from its customers instead of separate components of Service Tax and advertisement; that the respondent allegedly started demanding license fee saying that permission/license has been granted to erect hoardings; that the applicant sought waiver owing to Coronavirus Pandemic and consequent lock down which none could portend or presage; that the respondent had extended such waiver to other similarly placed contractors; that all these factual details *inter alia* constitute the arbitrable disputes that have arisen between the applicant/Contractor and the Chennai Corporation; that a former Hon'ble Judge of this Court was appointed as a sole Arbitrator; that the former Hon'ble Judge of this Court who now constitutes the 'Arbitral Tribunal' ['AT'], has entered upon reference, started sittings (this Court is informed that three sittings have been held thus far) qua contracts forming subject matter of



aforementioned O.A.Nos.20 to 22 of 2022; that certain applications under Section 17 of 'the Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] have been moved before AT; that the captioned applications under Section 9 have now been presented in this Court *inter alia* under pain of / imminent threat of invocation of Bank Guarantee and disruption of work.

4. As already alluded to *supra*, as there is no disagreement that the facts are similar, it is not necessary to dilate on facts in greater detail. Both sides consented that most efficacious option would be similar interim orders in the captioned Section 9 applications and reference of the arbitrable disputes to the same Hon'ble sole Arbitrator. In the light of such consent / consensus, the following common order in the captioned three applications is made:

a) There shall be interim orders as prayed for in captioned three applications subject to payment of 25% of the amount demanded by Chennai Corporation in the respective demand notices within a period of three weeks from today i.e., on or before 28.04.2022;

b) The above interim order will operate for six weeks from today i.e., upto 19.05.2022 subject of course to the aforementioned condition being complied;



O.A.Nos.190 to 192 of 2022

c) Hon'ble Mr.Justice M.Sathyanarayanan, a retired Judge of this Court at Old No.9, New No.5/1, 2nd Avenue, 2nd Extension, Indira Nagar, Adyar, Chennai - 600 020 (Mobile No.94980 22255) is appointed as Arbitrator and Hon'ble Arbitrator is requested to enter upon reference, adjudicate upon the *lis* between the parties qua Concession Agreements between the parties out of which the captioned applications arise and render an award;

d) It is open to the Hon'ble Arbitrator to hold simultaneous or joint sittings for the present arbitration and Arbitration qua aforementioned O.A.Nos.20 to 22 of 2022;

e) Interim orders that are now being granted in the captioned applications has a life of six weeks i.e., upto 19.05.2022. In the interregnum, it is open to the applicant to make same/similar prayers before the Hon'ble Arbitrator (AT) under Section 17 of A and C Act;

f) If the applicant makes same/similar prayers or present copies of the same applications with a request to treat the same as one under Section 17 of A and C Act, though obvious it is made clear that for the sake of specificity that the Hon'ble sole Arbitrator (AT) shall deal with the same on its own merits and in accordance with law;



O.A.Nos.190 to 192 of 2022

g) The above limb of the order means that Hon'ble Arbitrator (AT) can suitably vary this interim order at his discretion notwithstanding this being a judicial order as the decision would depend on submissions made on either side on merits;

h) As a matter of judicial discipline, following the order made by Hon'ble predecessor Judge, this Court deems it appropriate to have it to Hon'ble sole Arbitrator to fix his fees and expenses qua arbitral proceedings;

All three captioned applications are disposed of in the aforesaid manner.

There shall be no order as to costs.

07.04.2022

gpa/nsa

Note:

- 1. Registry to upload the order forthwith**
- 2. Registry to communicate this order forthwith to**

Hon'ble Mr.Justice M.Sathyanarayanan (Retd.,)
Old No.9, New No.5/1,
2nd Avenue, 2nd Extension,
Indira Nagar, Adyar,
Chennai - 600 020.
Mobile No.94980 22255



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O.A.Nos.190 to 192 of 2022

M.SUNDAR.J.,

gpa

O.A.Nos.190 to 192 of 2022

07.04.2022