



WEB COPY



Arb.O.P.(Comm.Div.) No.356 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.(Comm.Div.) No.356 of 2022
and A.No.3323 of 2022

1. M/s.Vighnaharta Travels and Resorts Pvt. Ltd.
Rep. By Director Mr.Arun Indru Tadani
Mangeshi Dham, Kalyan Murbad Rd.,
Opp. Vertex Main Gate, Kalyan West,
Thane 421 301.
2. Mr.Arun Indru Thadani
Flat 203, Lord Shiva Sumatinath CHS,
Wayale Nagar, Kalyan West, Thane 421 301. ... Petitioners

vs.

- 1.M/s.Daimler Financial Services India Pvt. Ltd.
Registered Office at: Tek Meadows Campus, 1st Floor,
Unit # 1, Block B, No.51, Rajiv Gandhi Salai,
Sholinganallur,
OMR, Chennai-600 119.
- 2.Mr.K.Moorthy,
Sole Arbitrator,
Orient Chambers 4th Floor, No.90/73,
Armenian Street,
Chennai 600 001. ... Respondents

PRAYER: Arbitration Original Petition filed under Section 34(2)(i-iii) &
(b) of the Arbitration and Conciliation Act, 1996 r/w. Section 2 (1)(c)(i) of



Arb.O.P.(Comm.Div.) No.356 of 2022

the Commercial Courts Act, 2015 and r/w. Madras High Court (Arbitration) rules 2020, pleased to (a) Set aside the Impugned Award dated 30.11.2021 in A.C.P.(Daimler) No.660/2020 passed by the Arbitral Tribunal consisting of Sole Arbitrator, Mr.K.Moorthy; (b) Grant costs in favour of the Petitioners and against the Respondents; and (c) Pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and thus render justice.

For Petitioners : Mr.Vineet Subramani

For Respondents : Mr.G.Ashokapathy for
M/s.Pass Associates for R1

ORDER

The petitioners had availed of credit facilities from the first respondent for purchase of a bus. Upon disputes arising in relation thereto, the first respondent constituted the arbitral tribunal by relying upon clause 85 of the loan agreement. The arbitral proceedings culminated in the award dated 30.11.2021 (the Award), which is assailed herein.

2. The petitioners assail the Award on the ground that the unilateral constitution of the arbitral tribunal is contrary to the law laid down in



Perkins Eastman Architects DPC v. HSCC (India) Ltd, AIR 2020 SC 59,
and TRF Ltd. v. Energo Engineering Projects Ltd, AIR 2017 SC 3889. The

petitioners further assert that they were not given due notice of either the appointment of the arbitrator or of the arbitral proceedings and, therefore, were unable to present their case. Learned counsel for the petitioners reiterates the grounds set out in the petition and submits that the arbitral award is not sustainable.

3. Learned counsel for the first respondent submits that the appointment of the arbitrator was indeed unilateral. For that reason, without prejudice to his contentions on the merits, he states that this Award may be set aside by granting leave to the first respondent to institute *de novo* arbitral proceedings.

4. In view of the above submissions, the Award cannot be sustained. Therefore, the Award is set aside. In case the first respondent chooses to institute *de novo* arbitral proceedings, the first respondent shall be entitled to the benefit of Section 43(4) of the Arbitration and Conciliation Act 1996. Since the petition has been allowed on the strength of the concession by the first respondent that the appointment was not in consonance with the



Arb.O.P.(Comm.Div.) No.356 of 2022

judgments of the Hon'ble Supreme Court and without prejudice to the
monetary claims against the petitioners, there shall be no order as to costs.

15.11.2022

Index : Yes / No

Internet : Yes / No

kal



WEB COPY



Arb.O.P.(Comm.Div.) No.356 of 2022

SENTHILKUMAR RAMAMOORTHY,J

kal

Arb.O.P.(Comm.Div.) No.356 of 2022
and A.No.3323 of 2022

15.11.2022