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Arb O.P.(Com. Div.)Nos.306, 307, 308, 309 & 310 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.02.2022

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

Arb O.P.(Com. Div.)Nos.306, 307, 308, 309 & 310 of 2021

and

A.Nos.4850, 4852, 4858, 4859 & 4860 of 2021

1. Mr.J.Rathish,
S/o.Jaya Gopal.

2. R.Poornima.

... Petitioners in all O.Ps

vs.

1. M/s.MAHINDRA & MAHINDRA
FINANCIAL SERVICES PVT LTD,
2nd Floor, Behind Mahindra Towers,
570 PB Marg, Worli,
Mumbai, Maharashtra-400018.

Having branch office at:-
New No.244, Old No.713, 3rd Floor,
Level 4, Rare Block, Carex Centre,
Anna Salai, Thousand Lights,
Chennai 600 006.

2. Mr.Dr.T.Ramasamy,

Sole-Arbitrator,

Old No.25, New No.34, 1st Floor, Karpagambal Nagar,

Mylapore, Chennai 600 004.

... Respondents in all O.Ps.



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Prayer: Arbitration Original Petition filed under Section 14(2) & 15(2) of the Arbitration and Conciliation Act, 1996, to terminate the mandate of the Arbitration Proceedings and to substitute an Arbitrator in the place of existing Arbitrator.

For petitioners in all O.Ps. : Ms.B.Priyanka
for M/s.K.Sahithya.
For respondents in all O.Ps. : No appearance

COMMON ORDER

This common order will govern the captioned five main Arb OPs and the captioned applications therein.

2. Captioned main Arb OPs have been filed inter *alia* under Sections 14(2) and 15(2) of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' which shall hereinafter be referred to as 'A and C Act' for the sake of brevity, with prayers to terminate the mandate qua sole arbitrator and for substitution of the sole arbitrator. To be noted, the captioned OPs are predicated primarily on the ground that the sole arbitrator has been appointed without the consent of petitioners and has de jure become unable to perform functions of the arbitrator.



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3. When the captioned main OPs along with captioned applications came up before Hon'ble predecessor Judge on 23.12.2021, the following proceedings/orders came to be made:

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2021 &
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2021

SENTHILKUMAR RAMAMOORTHY I

This petition is filed under Section 14(2) of the Arbitration and Conciliation Act, 1996 for termination of mandate of the Sole Arbitrator. It is asserted that the appointment was unilateral and in contravention of principles laid down by the Hon'ble Supreme Court.

3. Issue notice to the first respondent returnable by 11.01.2022. Private notice is also permitted.

4. It is open to the petitioner to bring it to the notice of the learned Arbitrator that the petition is pending before this Court.

23.12.2021

kal

1/3
Neha
2/12/21
Peking
25/12/21
FD32
28/12/21

DP notice
Served
to R+
1 mail OP (husbaili)
Submitted
2/12/21
Solely to
Applicant
but not
died
submitted
2/12/21

2/12/21
R-1 served
2/12/21
1036 to 1040/2021

1/1



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4. Aforementioned scanned reproduction of order made by Hon'ble predecessor Judge makes it clear that on and from 23.12.2021, this Court was in seizin of the question qua termination of mandate of the sole arbitrator and substitution of sole arbitrator. Further more, this Court has also made it clear that it is open to the petitioner to bring it to the notice of the sole arbitrator that the captioned petitions are pending. Today, Ms.B.Priyanka, learned counsel representing the counsel on record for the petitioners submits that pursuant to the aforementioned 23.12.2021 order of this Court, the petitioners filed a memo dated 27.10.2021 before the sole arbitrator. It was also submitted that the memo was followed by a legal notice dated 30.12.2021 and an Electronic Mail intimation about the pendency of captioned OPs i.e., the factum of this Court being in seizin of question qua mandate of sole arbitrator.

5. Today, learned counsel brings to the notice of this Court that notwithstanding the intimation in the aforesaid manner, the sole arbitrator proceeded with the arbitral proceedings and has made five arbitral awards (all dated 31.12.2021) relatable to the captioned five Arb OPs.



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petitioner is to challenge aforementioned awards under Section 34 of A and C Act. All questions including the narrative thus far are left open to be canvassed by the petitioner in the Section 34 petition, if the petitioners choose to take the legal route of Section 34 of A and C Act for assailing the arbitral awards. Though under the normal circumstances the sole arbitrator is not arrayed as co-respondent in Section 34 petitions, in this case, liberty is given to the petitioners to array the sole arbitrator as co-respondent in Section 34 petitions, if they choose to file the same. If this route is taken by the petitioners, Registry shall process Section 34 petitions, arraying the sole arbitrator as co-respondent and thereafter this Court will decide on issuing notice, when the matter comes up on board.

9. Captioned five Arbitral OPs and the captioned applications therein are disposed of as closed in the aforesaid manner with the aforesaid observation. There shall be no order as to costs.

09.02.2022

Speaking/Non-speaking order
Index : Yes / No
Internet : Yes / No
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