



*CMA Nos.166 of 2023
and 2400 to 2402 of 2022*

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2023

PRONOUNCED ON : 27.02.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

**CMA Nos.166 of 2023 and 2400 to 2402 of 2022
and CMP Nos.18737, 18748, 18673, 18675, 18744, 20162, 20167, 20166,
20483, 20478, 20484 of 2022 and 1420 of 2023**

CMA No.166 of 2023

M/s.Sri Lakshmi Narasimha Mining
Corporation Pvt. Ltd.,
Rep. By its Director,
Mr.Kiran Kumar Reddy,
Flat No.F1, Sneha Apartments,
No.555, 17th Cross, 5th Main Road,
Opp. To HIG Dollars Colony,
New BEL Road, Bangalore.

... Appellant/Respondent

Vs.

1. M/s.Trans India Shipping Services Pvt. Limited,
Rep. By its Authorised Signatory,
Mr.C.Sathyanarayanan,
Flat No.1A, Riviera Park Apartment,
No.11, 4th Main Road Extension,
Kotturpuram, Chennai – 600 085.



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2. Smt.Nandana Reddy,

... Respondents/Claimant

PRAYER: This Civil Miscellaneous Appeal is filed under Section 37(1) and (2) of Arbitration and Conciliation Act 1996, to set aside the common order dated 29.03.2022 passed by the learned Sole Arbitrator Justice R.Banumathi, in I.A.No.2/2022 in the matter of M/s.Trans India Shipping Services Pvt. Limited Vs. M/s.Sri Lakshmi Narasimha Mining Corporation Pvt. Ltd., and another and direct her to enquire into the same for adjudication on merits in accordance with law.

CMA No.2400 of 2022

M/s.Sri Lakshmi Narasimha Mining
Corporation Pvt. Ltd.,
Rep. By its Director,
Mr.Kiran Kumar Reddy,
Flat No.F1, Sneha Apartments,
No.555, 17th Cross, 5th Main Road,
Opp. To HIG Dollars Colony,
New BEL Road, Bangalore.

... Appellant/Respondent

Vs.

1. M/s.Auro Logistics Ltd.,
Rep. By its Authorised Signatory,
Mr.G.Srinivasan,
Flat No.1A, Riviera Park Apartments,
No.11, 4th Main Road Extension,
Kotturpuram, Chennai – 600 085.

2. Smt.Nandana Reddy,

... Respondents/Claimant



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CMA No.2401 of 2022

M/s.Sri Lakshmi Narasimha Mining
Corporation Pvt. Ltd.,
Rep. By its Director,
Mr.Kiran Kumar Reddy,
Flat No.F1, Sneha Apartments,
No.555, 17th Cross, 5th Main Road,
Opp. To HIG Dollars Colony,
New BEL Road, Bangalore.

... Appellant/Respondent

Vs.

1. M/s.Auro Logistics Ltd.,
Rep. By its Authorised Signatory,
Mr.G.Srinivasan,
Flat No.1A, Riviera Park Apartments,
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R.Banumathi, in I.A.No.1/2022 in the matter of M/s.Auro Logistics Limited Vs. M/s.Sri Lakshmi Narasimha Mining Corporation Pvt. Ltd., and another and direct her to enquire into the same for adjudication on merits in accordance with law.

CMA No.2402 of 2022

M/s.Sri Lakshmi Narasimha Mining
Corporation Pvt. Ltd.,
Rep. By its Director,
Mr.Kiran Kumar Reddy,
Flat No.F1, Sneha Apartments,
No.555, 17th Cross, 5th Main Road,
Opp. To HIG Dollars Colony,
New BEL Road, Bangalore.

... Appellant/Respondent

Vs.

1. M/s.Trans India Shipping Services Pvt. Limited,
Rep. By its Authorised Signatory,
Mr.C.Sathyanarayanan,
Flat No.1A, Riviera Park Apartment,
No.11, 4th Main Road Extension,
Kotturpuram, Chennai – 600 085.

2. Smt.Nandana Reddy,

... Respondents/Claimant

PRAYER: This Civil Miscellaneous Appeal is filed under Section 37(1) and (2) of Arbitration and Conciliation Act 1996, to set aside the common order dated 29.03.2022 passed by the learned Sole Arbitrator Justice R.Banumathi, in I.A.No.1/2022 in the matter of M/s.Trans India Shipping Services Pvt. Limited Vs. M/s.Sri Lakshmi Narasimha Mining Corporation Pvt. Ltd., and another and direct her to enquire into the same for



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adjudication on merits in accordance with law.

For Appellant : Mr.P.V.S.Giridhar, Sr. Counsel
in all cases for M/s.Giridhar & Sai

For Respondents : Mr.Arun Mohan, Sr. Counsel
in all cases Ms. Smiti Verma

For Caveator : Mr.K.Udayakumar &
Mr.C.Jagadish

COMMON JUDGMENT

In all four Civil Miscellaneous Appeals, the appellant is Sri Lakshmi Narasimha Mining Corporation Private Limited, represented by its Director.

2. By consent of parties, all the cases are taken up together and common argument is heard and common judgment is passed.

3. These appeals are filed under Section 37(1) and (2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act') against the common order dated 29.03.2022 passed by the learned Sole



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Arbitrator Justice R.Banumathi, former Judge of Hon'ble Supreme Court of India, in IA Nos.1 & 2 of 2022 and IA.Nos.1 & 2 of 2022 in the matter of arbitration vide Arbitration Agreement dated 15.10.2005 between Trans India Shipping Services Private Limited and Sri Lakshmi Narasimha Mining Corporation Private Limited along with Smt. Nandana Reddy and M/s. Auro Logistics Limited and Sri Lakshmi Narasimha Mining Corporation Private Limited along with Smt.Nandana Reddy.

4. The records reveals that Clause 73 of Job Work Agreement dated 15.10.2005 between Dasaratha Rami Reddy and Chenna Keshava Reddy with Auro Logistics limited and Clause 11 of Sale Agreement dated 15.10.2005 with Trans India Shipping Services Private Limited represented by its Managing Director, relates to Arbitration. Both the companies are interconnected undertakings promoted and owned by the family members.

5. All the four appeals are filed against the common order dated 29.03.2022 in the applications filed under Section 16 of the Act filed by the



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claimants, seeking rejection of the counter claims dated 24.12.2020 filed by the minority share holders of the 1st respondent company, *inter alia* on the ground that counter claims are belated and barred by limitation.

6. By above stated common order dated 29.03.2022, the Arbitral Tribunal has passed the order. The operative portion as contained in paragraph No.73 reads as follows:

Minority Shareholders were already in the know of the alleged fraud and misappropriation by the Majority Shareholders – Yathin Raddy and Jansi Reddy along with Swarup Reddy and CEO of the Respondent Company Venkataramana Reddy even from the year 2014. The draft audit report of M/s. Brahmayya & Co., was filed on 17.05.2017. Final audit report was filed on 20.05.2019. Even then the Minority Shareholders have filed their counter claims only on 24.12.2020 after the commencement of the arguments. **While so the Minority Shareholders cannot seek the benefit of Section 17 of the Limitation Act. The Minority Shareholders have filed the Counter Claims on 24.12.2020. The Counter Claims made on 24.12.2020, five years after the commencement of the Arbitral Proceedings and more than Eighteen months after the report of the Auditor Brahmayya & Co. is belated and cannot be entertained.**

(emphasis supplied)



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75. In the result, the Applications filed by the Claimants under Section 16 of the Act are allowed. It is held that the Counter claims filed by the Respondent Company represented through its Minority Shareholders are belated and barred by limitation and the Counter Claims are rejected in both the matters of Auro Logistics and Trans India. It is made clear that the findings that the Counter Claims are belated, and barred by limitation are only for the purpose of the present Arbitration proceedings and the same shall not be construed as expression of opinion in the pending appeal before NCLAT or any other pending proceedings or other proceedings that might arise between the parties in future. In view of this Order, the Applications filed by the Claimants seeking to adduce oral evidence in the Counter Claims are accordingly disposed of as unnecessary.”

7. In short, four Miscellaneous Applications were filed before the Arbitral Tribunal in respect of two companies i.e. one by the claimant for rejection of the counter claim by the opposite party on the ground of limitation and another application filed by the claimant seeking to adduce oral evidence in the counter claims, was also disposed of as unnecessary. Accordingly, all the four Miscellaneous applications stood dismissed and hence, these four Civil Miscellaneous Appeals.



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8. The contentions of the respective learned Senior Advocates Mr.P.V.S.Giridhar and Mr.Arun Mohan, are heard.

9. Mr.P.V.S.Giridhar, learned Senior Advocate appearing for the appellant could contend that the Arbitral Tribunal ought not to have decided the maintainability of the counter claims at the threshold and ought to have decided the maintainability at the time of trial, after evidence is adduced.

10. The submissions of the appellant being that the application filed by the 1st respondent company is not maintainable, since under Section 16 of the Act, only jurisdictional issue or issues of law, can be raised and consequently, the learned Senior Advocate would emphasis that the applications filed by the 1st respondent company herein/claimant before the learned sole Arbitrator, for rejection of counter claims, is erroneous. He also submitted that the counter claims were filed by the appellant herein before the Arbitral Tribunal on the basis of the facts disclosed in the audit report and the knowledge of fraud committed by the 1st respondent company herein



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is on the basis of the audit report, therefore, the Arbitral Tribunal ought not to have dismissed the Miscellaneous Applications, on the point of limitation and further contended that the competent forum viz., NCLAT has seized the matter and the counter claims, which are based upon the final audit report of Mr.Brahmayyah & Co, cannot be determined by the Arbitral Tribunal.

11. Heard the learned counsel for the respondents/Claimants.

12. The sum and substance of the submissions made by the learned Senior Advocate Mr.P.V.S.Giridhar, appearing for the appellant company is that the Arbitral Tribunal has erroneously held that the counter claims filed by the appellant company, are not arbitrable and the said counter claims are belated and barred by limitation, in both the cases. The operative portion of the order passed by the learned Arbitrator is extracted supra.

13. The learned Senior Advocate for the respondent Mr.Arun Mohan could contend that the order passed by the learned Arbitrator is not



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appealable under Section 37 (1) and (2) of the Act and hence, he could contend that all the four appeals are not maintainable.

14. On the point of maintainability, both the learned Senior Advocates are put on notice and another date was given for advancing the argument.

15. Heard the learned counsel on either side on the point of maintainability.

16. Under Section 37 of the Act, orders that are appealable has been enumerated and it is specifically stated therein that appeal shall lie from the following orders and from no others, is the key for the determination of these Civil Miscellaneous Appeals.

17. Learned Senior Advocate drew my attention to Section 37(2) of the Act, which reads as follows:



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“37 (2) An appeal shall also lie to the Court from an order of the arbitral tribunal -

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under Section 17.”

18. Learned counsel for the respondent relied upon 2018 (2) SCC 534 [Indian Farmers Fertilizer Cooperative Limited Vs. Bhadra Products], wherein the Hon'ble Supreme Court has categorically held that ruling on the issue of limitation is not a ruling on issue of jurisdiction of Arbitrator, for it to be appealable under Section 37 (2)(a) of the Act.

19. In the said decision, the Hon'ble Supreme Court has considered as to whether an award delivered by an arbitrator, which decides the issue of limitation, can be said to be an interim award and whether such interim award can then be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 and has observed that a fair means for resolution of all disputes should be uppermost in the mind of the Arbitral Tribunal.



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20. Further, while considering whether a decision on a point of limitation would go to jurisdiction and, therefore, be covered by Section 16 of the Act, the Hon'ble Supreme Court has held that

“When an Arbitral Tribunal finds that a claim was dead and was not available to be made at the relevant time or that the claim was not maintainable for other valid reasons or that the claim was barred by limitation, they are all adjudications by the Tribunal on the merits of the claim and in such a case the aggrieved party can have recourse only to Section 34 of the Act and will have to succeed on establishing any of the grounds available under that provision.”

21. In view of the settled preposition of law as stated by the Hon'ble Supreme Court, I find that rejection of the counter claims by the learned sole Arbitrator on the point of limitation does not fall under Section 16(3) of the Act so as to be made appealable under Section 37 of the Act.

In the course of argument, the learned Senior Advocate emphasized the fact that the proceedings are pending before NCLAT and therefore, the Arbitral Tribunal ought not to have rejected the applications.



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22. The order passed by the Arbitral tribunal is extracted supra, which speaks for itself and hence, I have no hesitation to negate the said argument advanced by the appellant counsel.

23. Hence all the Civil Miscellaneous Appeals fail and the above point is held in negation against the appellant company. The Civil Miscellaneous Appeals, are not maintainable and accordingly, they are dismissed. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

27.02.2023

Index : Yes/No
Neutral Citation : Yes/No.
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RMT.TEEKAA RAMAN,J.,

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**Pre-delivery common judgment in
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