



O.S.A.(CAD).No.64 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 08.02.2023

CORAM :

**THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

O.S.A.(CAD).No.64 of 2022

and

C.M.P.Nos.9041, 10221, 9044 & 8812 of 2022

The Deputy Inspector General of Police,
Technical Services,
Tamil Nadu Police Headquarters,
Kamarajar Salai, Mylapore,
Chennai – 600 004.

... Appellant

Versus

1.M/s.Larsen & Toubro Ltd.,
Rep. by its Authorized Signatory,
Mr.Purushothaman P.,
Construction Smar World & Communications,
Mount Ponnammalle Road,
Manapakkam, P.B.No.979,
Chennai – 600 089.

2.IDBI Bank Limited,
Trade Finance, Specialised Corporate Branch,
Reg. Office at IDBI Tower, WTC Complex,
Cuffe Parade, Mumbai – 400 005.
Branch Office at:
110, Prakash Presidium,
1st Floor, Uthamar Gandhi Salai,
Nungambakkam High Road,
Chennai – 600 034.

... Respondents



O.S.A.(CAD).No.64 of 2022

Prayer : Original Side Appeal filed under Clause 15 of Letters Patent, to set aside the common order dated 22.04.2022 in Arb.Appln.No.90 of 2022.

For Appellant : Mr. R.Shanmugasundaram, Advocate General,
Assisted by Mr.A.Edwin Prabhakar.

For Respondent : Mr.Sathish Parasaran, Senior Counsel,
Assisted by M/s.Preeti Mohan, (for R1)

: Mr. S.Krishna (for R3)

: No Appearance (for R2)

JUDGMENT

(Delivered by the Hon'ble Acting Chief Justice)

This Original Side Appeal in O.S.A.(CAD).No.64 of 2022 is filed against the common order dated 22.04.2022 in Arbitration Application No.90 of 2022 and O.A.Nos.222 to 224 of 2022.

2. All the above four applications were filed *inter-alia* seeking the prayers as follows:

(i) To pass an order appointing independent neutral expert agencies to conduct the field test ;

(ii) For an injunction restraining the respondents from invoking and



O.S.A.(CAD).No.64 of 2022

encashing the bank guarantees;

WEB COPY

(iii) Injunction restraining the respondents from terminating the contract;

(iv) Injunction restraining the respondents from undertaking any action pursuant to the purported termination of the contract.

3. When the above applications came up for hearing, the learned Counsel took notice on behalf of the respondents, and by the impugned order the learned Single Judge passed the following order :

“7. The trajectory the applications took in the hearing today (alluded to supra) brings to light that there is no dispute or contestation about the existence of Clauses 1.61 to 1.69 i.e., arbitration agreement in the RFP, as there is no dispute or disagreement about the existence of arbitration agreement, respondents 2 and 3 are only formal parties as they are only Banks which issued the Bank guarantees and as appointment of an Arbitrator has now become inevitable, parties to the RFP i.e., L & T and first respondent submitted that it would be desirable to have an arbitrator appointed so that the arbitrable disputes can be adjudicated upon. This is the reason why this Court at the outset mentioned



WEB COPY



O.S.A.(CAD).No.64 of 2022

that it is not necessary to dilate much on facts (short facts shorn of elaboration will suffice). Therefore, captioned four applications are being disposed of by this short order.

8. Captioned four applications are disposed of by making following order:

a) Hon-ble Mr.Justice Badar Durrez Ahmed (Retd.), Former Chief Justice of High Court of Jammu and Kashmir, residing at No.14, Friends Colony (West), New Delhi ~ 110 065 [Mob: 70422 05786], E~mail: badardurrez.arb@gmail.com is appointed as sole Arbitrator;

b) There shall an order of interim injunction restraining the first respondent from invoking two Bank Guarantees [one dated 27.07.2018 bearing Bank Guarantee No. 180380IBGP00582 issued by second respondent (IDBI Bank) and another dated 10.03.2022 bearing 0009NDLG00095522 issued by third respondent (ICICI Bank)] forming subject matter of one of the captioned applications, namely O.A.No.222 of 2022 for a fortnight from today or the first sitting of the Hon-ble Arbitrator whichever is later;

(c) Learned Senior counsel for applicant on instructions from the counsel on record (who in turn



WEB COPY



O.S.A.(CAD).No.64 of 2022

has taken instructions from the applicant company) submits that both the aforementioned bank guarantees viz, one dated 27.07.2018 bearing Bank Guarantee No. 180380IBGP00582 issued by second respondent (IDBI Bank) and another dated 10.03.2022 bearing 0009NDLG00095522 issued by third respondent (ICICI Bank) will be kept alive throughout the arbitral proceedings inter alia by renewing the same/renewing from time to time if the need arises. This submission is recorded.

d) It is open to the applicant to present copies of captioned four applications or replicate the same in any other form, present them before the Hon-ble Arbitrator and it is open to the Hon-ble Arbitrator to consider the same on its own merits and in accordance with law notwithstanding this limited judicial order;

e) Though obvious, it is made clear that it is open to both parties to present other applications also either under Section 17 of A and C Act or any other provision of A and C Act;

f) Considering that the first respondent is State, this Court deems it appropriate to request the Hon-ble sole Arbitrator to adopt the fourth schedule to A and C Act as regards fee;

g) The mode of hearing (including hearing on



WEB COPY



O.S.A.(CAD).No.64 of 2022

a video~conference platform) is left to the discretion of Hon-ble Arbitrator and the convenience of the parties before him;”

4. Aggrieved by the same, the first respondent in the application, namely, Deputy Inspector General of Police, Chennai, had filed the present Appeal, *inter-alia* complaining that even though the learned Counsel took notice, they did not consent for appointing the Sole Arbitrator and the orders have been passed at the admission stage itself without giving opportunity to the respondents.

5. Be that as it may, when the matter came up for hearing today, the learned Advocate General suggested the appellant will be agreeable to any one of two Hon'ble retired Judges of this Court suggested by him, to be the Sole Arbitrator, and the expert assistance if any required can be decided by the Sole Arbitrator.

6. *Mr.Sathish Parasaran*, learned Senior Counsel appearing for the first respondent, agreed for appointing the Hon'ble Mr.Justice V.Parthiban (Retd.) as the Sole Arbitrator.



O.S.A.(CAD).No.64 of 2022

7. Accordingly, the Original Side Appeal is disposed off by modifying the order of the learned Single Judge by appointing the Hon'ble Mr.Justice V.Parthiban (Retd.) as the Sole Arbitrator, as per the consent of both sides.

8. It would be open for the Sole Arbitrator to pass orders seeking expert assistance from the Indian Institute of Technology, Chennai or Anna University, Chennai, since it is agreed across the bar that the resolution of the dispute would require technical expertise and expert opinion and the issue is left open to the learned Arbitrator to decide on the services of technical experts.

9. With the above modifications to the impugned order, the Original Side Appeal is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(T.R., ACJ.) (D.B.C., J.)
08.02.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
klt



WEB COPY



O.S.A.(CAD).No.64 of 2022

**T.RAJA, ACJ.,
AND
D.BHARATHA CHAKRAVARTHY, J.,**

klt

O.S.A.(CAD).No.64 of 2022
and
C.M.P.Nos.9041, 10221, 9044 & 8812 of 2022

08.02.2023