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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)Nos.493 & 494 of 2023
and
A.Nos.5466 & 5470 of 2023

1.KUNFRAS ENGINEERING CONSTRUCTION COMPANY,
Rep. By its authorized signatory,
1, Flat No.204, 10-2-37 Nest Dolphin Apartment,
Bazarghat, Hyderabad,
Hyderabad – 500 057.
Telangana.

2.MOAHAMMED FAIZ AHMED

3.Razwan Shaik .. Petitioners
(in both cases)

Vs.

M/s.HDB Financial Services Limited,
Corporate Office at Ground floor, Zenith House,
Opposite Race Course,
Keshavrao Khadye Marg,
Mahalaxmi, Mumbai – 400 034,
Through its duly constituted Attorney /
Authorised Signatory. .. Respondent
(in both cases)

Prayer in Arb.O.P.(Com.Div.)No.493 of 2023: Original Petition is filed under Sections 34 (2) (a) (v), 34 (2) (b) (ii) and 34(2-A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral

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Award dated 15.11.2021 bearing ARB Case No.ARC/HDB/VL/18401/2021 passed by Mr.N.SIVATHANU, Sole Arbitrator and for a direction to the respondent to pay the costs.

Prayer in Arb.O.P.(Com.Div.)No.494 of 2023: Original Petition is filed under Sections 34 (2) (a) (v), 34 (2) (b) (ii) and 34(2-A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 15.11.2021 bearing ARB Case No.ARC/HDB/VL/18481/2021 passed by Mr.N.SIVATHANU, Sole Arbitrator and for a direction to the respondent to pay the costs.

(In both cases):

For Petitioners : Mr.R.Naveen Srinivasan

For Respondent : Mr.N.Arunachalam

C O M M O N O R D E R

By this common order, both these petitions are being disposed of.

2.These petitions have been filed under Sections 34 (2) (a) (v), 34 (2) (b) (ii) and 34(2-A) of the Arbitration and Conciliation Act, 1996 to set aside the Arbitral Awards both dated 15.11.2021.

3.The challenge to the award by the petitioners are on the ground that the Arbitrator appointed by the respondent was contrary to the

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decision of the Hon'ble Supreme Court in Perkins Eastman case and Section 12(5) of the Arbitration and Conciliation Act, 1996 and contrary to the seventh Schedule to the Act.

4.During the course of the argument, the learned counsel for the respondent submitted that the respondent was agreeable for setting aside the award of the Arbitral Tribunal for passing a fresh award by an Arbitrator who may be appointed by this Court in exercise to power conferred under Section 11 of the Arbitration and Conciliation Act, 1996.

5.Considering the amount involved in both the cases and considering the fact that the parties are same, Court is inclined to pass the following order:-

(i) **Mrs.M.Rajalakshmi, Retd. District Judge, (Mobile No.: 8754920985)** residing at **No.25, M.G.Ramachandran Road, Besant Nagar, Kalashetra Colony, Chennai – 600 090** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties in accordance with the respective agreement under which the Arbitration clause has been prescribed for resolving the

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dispute between the parties.

(ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(iii) The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondent remain *ex parte*, the petitioners shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

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6.In view of the above, respective award dated 15.11.2021 are set aside. The learned Arbitrator shall pass separate awards for the dispute under the respective agreements.

7.These Original Petitions are allowed with the above observations, leaving the parties to bear their own costs.

8.Since the Court has appointed an Arbitrator, it is open to the petitioners as well as the respondent to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator. Consequently, the connected Applications are closed.

07.12.2023

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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C.SARAVANAN, J.

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