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Arb.O.P.No.53 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.02.2023**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Arb.O.P.No.53 of 2022

1.Mrs.Selvasundari
2.Mrs.S.Kiruthiga
3.Mr.S.RathanMachendra
Petitioners

...

VS.

1.M/s.Chennai Network Infrastructure Limited
Rep. by its Managing Director
City Centre 3rd Floor, 232/77 (186/303)
Purasaiwalkam High Road, Kilpauk,
Purasaiwalkam, Chennai - 600 010.

2.M/s.GTL Infrastructure Limited
rep. by its Managing Director
City Centre 3rd Floor, 232/77 (186/303)
Purasaiwalkam High Road, Kilpauk,
Purasaiwalkam, Chennai - 600 010.

3.Mr.Pawan Jhabhak,
Advocate,
No.115, Luz Church Road,
Chennai - 600 004.

... Respondents



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PRAYER: Arbitration Original Petition filed under Section 14(1)(a) and 15(2) of the Arbitration and Conciliation Act, 1996, pleased to terminate the appointment of the existing arbitrator Mr.Pawan Jhabhak and appoint a substitute arbitrator.

For Petitioners : Mr.S.Jaganathan

For Respondents : Mr.C.Sakthimanikandan
1 and 2

ORDER

The petitioners seek the termination of the mandate of the third respondent and his consequential substitution.

2. The petitioners assert that the third respondent was appointed as arbitrator by order dated 13.04.2022 in O.P.No.394 of 2020. After such appointment, by communication dated 23.05.2022, the petitioners requested the arbitrator to provide the declaration of acceptance and statement of evidence in terms of schedule 4 to the Arbitration and Conciliation Act,



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1996. There was no response to the said communication. Therefore, by

subsequent communication dated 27.06.2022, the request was reiterated.

Once again, there was no response. The present petition is filed in the said facts and circumstances.

3. Upon receipt of notice, the first and second respondents are represented by counsel. On instructions, learned counsel for the first and second respondents concurs in the submission of learned counsel for the petitioners that the third respondent has failed to enter upon reference and adjudicate the dispute. The third respondent was served through Court on 10.01.2023. Private notice was also effected on the third respondent, as evidenced by the affidavit of service filed by the petitioners on 20.01.2023. However, the third respondent has not contested the matter.

4. Section 14(1) of the Arbitration and Conciliation Act, 1996 is as under:

"14(1). The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if-



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(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and
(b) he withdraws from his office or the parties agree to the termination of his mandate."

5. Clause (a) of Section 14(1) provides for the termination of the mandate of an arbitrator if such arbitrator fails to act without undue delay. By taking into consideration the fact that the appointment was by order dated 13.04.2022 and the arbitrator has not entered upon reference or conducted hearings till date, a case is made out to terminate the mandate on the ground of undue delay.

6. Both parties submit that Mr.M.Senthil Kumaran, Advocate, is presently adjudicating a similar dispute. They submit that it would be just and convenient to appoint him as the arbitrator in this dispute also.

7. For reasons aforesaid, the mandate of the third respondent stands terminated and Mr.M.Senthil Kumaran, Advocate, Flat No.A, Jayam Villa,



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No.11, East Circular Road, Mandaveli, Chennai 600 028, Mobile

No.7550111110 is appointed as the sole arbitrator in his place. The sole

arbitrator is called upon to enter upon reference and adjudicate the dispute.

The fees and expenses in respect of the arbitral proceedings shall be fixed by

the arbitral tribunal in consultation with the parties.

07.02.2023

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Index : Yes / No

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SENTHILKUMAR RAMAMOORTHY,J

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