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Arb.O.P. (Com.Div.)Nos.67 and 70 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)Nos.67 and 70 of 2024
and
A.Nos.706 and 718 of 2024

1.Mrs.B.Priya
2.Mr.E.Baskaran
3.Mrs.E.Sakunthala

... Petitioners in Arb.O.P.(Com.Div)
No.67 of 2024

1.E.Anantharaj
2.R.Veeraraghavan
3.E.Sakunthala

... Petitioners in Arb.O.P.(Com.Div)
No.70 of 2024

Vs.

1.M/s.Challani Capital Limited
(Formerly known as M/s.Indo Asia Finance Limited),
Having its Registered office at,
No.15, New Giri Road, (Opp Hotel Accord),
Off G.N.Chetty Road, T.Nagar,
Chennai – 600 017.

2.Mr.P.Anbarasan
Advocate and Arbitrator
MC03, McClean Street,
Catholic Centre,
108/64, Armenian Street,
Chennai – 600 001.

.. Respondents in both
Arb.O.P.(Com.Div)



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Prayer in Arb.O.P.(Com.Div)No.67 of 2024: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to declare the mandate of the Arbitral Tribunal in MG/IAFL/1 of 2013, presently P.A. ACCP No.11 of 2021 as terminated for the reasons mentioned in the petition.

Prayer in Arb.O.P.(Com.Div)No.70 of 2024: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to declare the mandate of the Arbitral Tribunal in MG/IAFL/2 of 2013, presently P.A. ACCP No.12 of 2021 as terminated for the reasons mentioned in the petition.

For Petitioners : Mr.K.Bijai Sundar
(in both Petitions)

For Respondent : Mr.S.Arun Mathew
(in both Petitions)

COMMON ORDER

These petitions have been filed under Section 14(2) of the Arbitration and Conciliation Act, 1996 to terminate the mandate of the learned Arbitrator who was unilaterally appointed by the respondent in place of one Mr.Ganesan who was appointed as an Arbitrator way back in 2013. Mr.Ganesan, had earlier passed away. Therefore, the second



Arbitrator Mr.P.Anbarasan was appointed as the Arbitrator after amendment to Arbitration and Conciliation Act, 1996 in the year 2015.

2. The petitioners have challenged the continuance of the arbitral proceedings by way of Civil Revision Petition in CRP.Nos.4595 and 4597 of 2023. CRP.Nos.4595 and 4597 of 2023 were dismissed leaving the petitioners herein to file a Section 34 of the Arbitration and Conciliation Act, 1996 after an Award is passed.

3. The learned counsel for the petitioners would submit that the arbitral proceedings is without jurisdiction as there is no binding contract between the petitioners and the respondent.

4. In this connection, the learned counsel for the petitioners placed reliance on the decision of the learned Single Judge of this Court in ***M/s.Film Craft, through its Sole Proprietor Ms.Anjana G.Adhikari Vs. Prasar Bharati Doordarshal Bhawan Mandi House, Coppernicus Marg, New Delhi – 110 001 and another*** reported in ***[(2018) 2 CTC 873]***. Relevant Paragraphs reads as under:-



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“34. Section 14 provides for a termination of the mandate of the Arbitrator in circumstances where there is undue delay caused by the Arbitrator or where such Arbitrator becomes de facto or de jure unable to perform his functions. In the present case, the appointment of R2, being an employee of Prasar Bharti, attracts the bar under item 1 of the 7th schedule reading 'The Arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party'. This bar, seen along the elapse of nearly 13 years from the date of reference to arbitration leading to significant delay and defeating the very purpose of arbitration, renders the mandate of the arbitrator liable to be terminated by this Court.

35. On the aspect of delay, the Apex Court in the case of *Uttar Pradesh State Bridge Corporation Limited* (supra) concludes that unexplained and unwarranted delay in the appointment of an Arbitrator leading to the frustration of proceedings for arbitration over a period of several years would bring the matter within the ambit of Section 14 of the Act. The Bench at para 17 notes as follows:

'17. Constituting Arbitral Tribunals with serving officers from difference far away places should be avoided. There can be no hard and fast rule, but there should be a conscious effort to ensure that Arbitral Tribunal is constituted promptly and arbitration does not drag on for years and decades.'”

5. Opposing the prayer, the learned counsel for the respondent would submit that the grounds in this Original Petition do not substantiate invocation of Section 14(2) of the Arbitration and Conciliation Act, 1996. That apart, it is submitted that after the new



Arbitrator had entered appearance, the petitioners had also filed an objection on 25.01.2023 and kept taking time, in view of the pendency of the CRP.Nos.4595 and 4597 of 2023.

6. The learned counsel for the respondent would draw attention to the decision of the Hon'ble Supreme court in ***Chennai Metro Rail Limited, Administrative Building Vs. M/s.Transtonneltroy Afcons (JV) and another*** and the decision of the Calcutta High Court in the case of ***East Indian Minerals Limited Vs. The Orissa Minerals Development Company Limited and Another***. It is further submitted that there are no case made out for terminating the mandate.

7. Having considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent, Court is of the view that after the previous Arbitraor namely Mr.Ganesan, passed away, it was open for the respondent to approach this Court for appointment of a new Arbitrator instead the respondent unilaterally appointed a new Arbitrator namely Mr.P.Anbarasan.

8. The 2015 amendment to the Arbitration and Conciliation Act,



1996 is intended to eliminate any bias in an arbitral proceedings.

Although, the provisions of the amendments are not retrospective, the fact is that the proceedings are still pending. It was therefore incumbent on the part of the applicant to have approached this Court for appointment of a new Arbitrator earlier. They have acquiesced into the proceedings. At the same proceedings cannot be allowed to continue as there is an element of bias.

9. In view of the same, Court is inclined to dispose these Original Petitions by appointing an sole Arbitrator to resolve the dispute between the parties.

10. Considering the same, **Mr.M.Christopher Manoharan, Advocate, Enrollment No.704/94, (Cell No.70440 99371) having Office at No.6, Esplanade Road, Indian Chambers Annex Building, Chennai - 600 108,** is appointed as an Arbitrator to enter upon reference and adjudicate/resolve the *inter se* dispute between the parties.

11. The learned Arbitrator appointed herein, shall 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.

12. The learned Arbitrator 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.

13. The parties are at liberty to workout the venue for Arbitration at Chennai.

14. These Original Petitions are disposed of with the above observations, leaving the parties to bear their own costs. Consequently, connected Applications are also closed.



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15. 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.

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Index : Yes / No

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