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O.S.A. (CAD) Nos.92 and 93 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A. (CAD) Nos.92 and 93 of 2024
and
C.M.P. No.17130 in O.S.A. (CAD) No.92 of 2024
and
C.M.P. No.17152 in O.S.A. (CAD) No.93 of 2024

Sharada Mylandla

.. Appellant in
both the
appeals

Vs

- 1.PI Opportunities Fund-I
Having its address at #134, Doddakannelli,
Next to Wipro Corporate Office,
Sarjapur Road, Bangalore,
Karnataka – 560 035
rep. By its Authorized Signatory
Mr.Vardaan Ahluwalia
- 2.Financial Software and Systems Private Limited,
Registered under Companies Act, 1956,
Having its address at 'Saradha',
Ground Floor, No.42, Third Main Road,
Gandhi Nagar, Adyar, Chennai,
Tamil Nadu – 600 020
rep. By its Directors
- 3.Nagaraja V.Mylandla
- 4.Rudhraapathy J



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5.FSS Employees' Welfare Trust
Having residence at
'Saradha', Ground Floor,
No.42, Third Main Road,
Gandhi Nagar, Adyar, Chennai,
Tamil Nadu – 600 020.

.. Respondents
in both the
appeals

Prayer in O.S.A. (CAD) No.92 of 2024: Appeal filed under Order XXXVI Rule XI of The Original Side Rules r/w Section 104 and Order XLIII Rule 1(r) of The Code of Civil Procedure, 1908 to set aside the order dated 25.07.2024 passed in O.A.No.502 of 2024 in Arb.O.P. (Com. Div.) No.285 of 2024.

Prayer in O.S.A. (CAD) No.93 of 2024: Appeal filed under Order XXXVI Rule XI of The Original Side Rules r/w Section 104 and Order XLIII Rule 1(r) of The Code of Civil Procedure, 1908 to set aside the order dated 25.07.2024 passed in O.A.No.501 of 2024 in Arb.O.P. (Com. Div.) No.285 of 2024.

For Appellant : Mr.Anirudh Krishnan
along with
Mr.Adarsh Subramanian
Mr.Anuraag Rajagopalan
in both the appeals



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For Respondents

: Mr.Vijay Narayan,
Sr. Counsel
for R1 in O.S.A. (CAD) No.92 of 2024

Mr.Satish Parasaran,
Sr. Counsel
for R1 in O.S.A. (CAD) No.93 of 2024

both senior counsel instructed by
Mr.P.Giridharan
along with
Mr.Nitesh Jain
Mr.H.Siddarth
Ms.Mahi Mehta

Mr.S.Aravindah
for M/s.Fox Mandal and Associates
for R2 in both the appeals

Mr.P.Rajkumar Jhabakh
for R3 in both the appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

This common order will now govern the captioned two 'Original Side Appeals' ('OSAs' in plural and 'OSA' in singular for the sake of brevity) and captioned two 'Civil Miscellaneous Petitions' ('CMPs' in plural and 'CMP' in singular for the sake of brevity) thereat.



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2. Captioned OSAs are directed against common order dated 25.07.2024 (together with For Being Mentioned listing order dated 29.07.2024) in O.A. Nos.501 and 502 of 2024 in Arb. O.P. (Comm.Div.) No.285 of 2024 (to be noted, post 25.07.2024, the matter was listed before Section 34 Court under the caption 'FOR BEING MENTIONED' and facts brought to the notice of the Court have been recorded on 29.07.2024).

3. Owing to the limited legal perimeter within which captioned matters perambulate, short facts will suffice and factual matrix in a nut shell is that the nucleus of the captioned OSAs is a final award dated 05.07.2024 made by SIAC (Singapore International Arbitration Centre); that R1 before us - 'PI Opportunities Fund – I' (hereinafter 'PIOF' for the sake of brevity) filed the aforementioned Arb. O.P. (Comm.Div.) No.285 of 2024 inter-alia under Sections 47 to 49 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' (hereinafter 'A and C Act' for the sake of brevity, convenience and clarity) for enforcement of 05.07.2024 SIAC award; that this 'SIAC award dated 05.07.2024' is a 'foreign award' within the meaning of Section 44 of A and C Act (hereinafter referred to as 'foreign award' for the sake of convenience and clarity); that arbitration



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itself is an 'international commercial arbitration' within the meaning of Section 2(1)(f) of A and C Act; that post award along with Arb. O.P. (Comm.Div.) No.285 of 2024 for enforcement of said foreign award, two applications viz., O.A.Nos.501 and 502 of 2024 were taken out with prayers for injunction qua movable and immovable properties belonging to R2 and R3 (to be noted R3 - Ms.Sharada Mylandla is the appellant before us in both the OSAs, R2 - Mr.Nagaraj V.Mylandla is R3 before us, he and appellant are spouses); that this prayer regarding movable and immovable properties is O.A.No.501 of 2024; that in the prayer, there is a reference to property disclosure in 'SASHA'; that 'SASHA', we are informed is a reference to 'Share Acquisition and Shareholders' Agreement' dated 10.10.2014; that OA No.502 of 2024 has been filed with a prayer for injunction restraining R2 to R5 thereat from transferring, alienating, pledging or in any manner dealing with shares held in R1 (PIOF) by R2 to R5 as set out in the Schedule thereat; that the Schedule has been described as 'Schedule A' in Judge's summons but there is only one schedule and there is no Schedule B much less any other Schedule; that this is vide O.A.502 of 2024, we would be extracting and setting out the prayers in O.A. Nos.501 and 502 of 2024 infra; that prayer in O.A.No.501 of 2024 reads as follows:



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'to pass an order of interim injunction restraining Respondent Nos.2 to 3 from in any manner dealing with, and/or encumbering and/or disposing off, dissipating, and/or creating third party rights and/or alienating any of the moveable and immoveable properties or assets belonging to Respondent Nos.2 to 3 including the properties disclosed in the SASHA.'

Prayer in O.A.No.502 of 2024 reads as follows:

'Pass an order of interim injunction restraining Respondent Nos.2 to 5 from transferring, selling, pledging, encumbering, dealing or otherwise disposing of their shareholding in Respondent No.1 as set out in Schedule A.'

4. The operative portion of the impugned order as made by Hon'ble Single Judge is articulated in paragraph 12 and the same reads as follows:

'12. Considering the submissions made by the learned Senior Counsels appearing for the Applicant as well as the Respondents, this Court is of the view that prima facie case has been made by the applicants for the grant interim order. Accordingly, this Court passes the following order.'



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(i) Interim injunction restraining Respondents 2 to 5 from transferring, selling, pledging, encumbering, dealing or otherwise disposing of their shareholding in 1st Respondent as set out in Schedule A.

(ii) Interim injunction restraining the Respondents 2 to 3 from, in any manner dealing with, and/or encumbering and/or disposing off, dissipating, and/or creating third party rights and/or alienating any of the movable or immovable properties or assets belong to Respondent nos.2 to 3 including the properties disclosed in the SASHA. As far as movable properties are concerned, this interim order is subject to the exclusions as provided under Section 60 of the Civil Procedure Code.

(iii) Respondent No.1 and its officers in charge (other than the nominee director of the Applicant) are directed to take such actions as may be required including cooperation and providing unrestricted access of 1st Respondent's documents, data and records, execution of necessary forms and agreements for facilitation, and implementation of the Strategic Sale as directed under paragraph 804(c), (d) and (e) of the Final Award.

Post on 12.08.2024.'

5. On perusal of the case files, we found that the matter



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before Section 34 Court having been filed under Sections 47 to 49 of A and C Act, it pertain to the New York Convention Awards and maintainability qua O.A. Nos.501 and 502 of 2024 is being raised. Question of maintainability is being raised by appellant before this CAD (R3 before Section 34 Court i.e., a Hon'ble Singe Judge of this Court).

6. To be noted, when the captioned matters are heard out, appellant is represented by learned counsel Mr.Anirudh Krishnan along with Mr.Adarsh Subramanian and Mr.Anuraag Rajagopalan, R1 / PIOF is represented by learned counsel Mr.P.Giridharan along with Mr.Nitesh Jain, Mr.H.Siddarth and Ms.Mahi Mehta, led by Mr.Vijay Narayan, learned senior counsel in O.S.A. (CAD) No.92 of 2024 and learned counsel Mr.P.Giridharan along with Mr.Nitesh Jain, Mr.H.Siddarth and Ms.Mahi Mehta led by Mr.Satish Parasaran, learned senior counsel in O.S.A. (CAD) No.93 of 2024. R2 / Financial Software and Systems Private Limited in both the OSAs is represented by Mr.S.Aravindah of M/s.Fox Mandal and Associates (Law Firm) and R3 / Mr.Nagaraj V.Mylandla is represented by Mr.P.Rajkumar Jhabakh.

7. As the question of maintainability before Hon'ble Single



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Judge qua the applications in which the impugned order has been made is being canvassed, we turned to the learned senior counsel appearing for caveator.

8. Learned senior counsel submitted that the applications as filed are maintainable and adverted to Section 47 of A and C Act captioned 'Evidence' and more particularly the explanation thereat.

9. In the aforesaid scenario, when we heard Mr.Anirudh Krishnan, learned counsel submitted that he raised the maintainability issue before the Hon'ble Single Judge when the impugned order was made but the same has not been considered though his presence has been recorded. Both learned senior counsel for caveator on instructions very fairly submitted that this position is correct but they are not fighting shy of having the maintainability tested before Section 34 Court. The sequitur is, the matter now has to go back to Hon'ble Single Judge for hearing out the matter on maintainability and subject of course to maintainability take a call on the merits of the prayers in O.A. Nos.501 and 502 of 2024 (if the need arises) leaving open all questions including main matter itself being premature point which will be captured elsewhere infra in this order.



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10. As regards the main OP itself, learned counsel for appellant submitted that the same is premature as there is a 30 days window akin to Section 33 of Part I of A and C Act, both in SIAC Rules as well as relevant statute in Singapore and the enforcement OPs have been presented in this Court even before the 30 days window elapsed. To be noted, this is the premature point qua main matter. Learned counsel submitted that the appellant has filed an application in SIAC, as a very crucial and critical correction had to be made and it was pointed out that the orders are appealable to Singapore International Commercial Court and/or Singapore High Court and thereafter the Singapore Supreme Court which are supervisory Court and appeal Court qua supervisory Court respectively. We refrain from expressing any opinion on this submission as we are remanding the matter back to the Enforcement Court (Section 34 Court) and we deem it appropriate to leave all questions open but we have recorded these submissions for the limited purpose of recording the stated position of the appellant. As regards main OP, all options for the Hon'ble Single Judge would remain open.

11. Be that as it may, as regards the interim orders which



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have been made, O.A. No. 502 of 2024 does not present any problem qua remand as learned counsel for appellant very fairly submitted that the appellant (insofar as the appellant is concerned) would maintain status quo insofar as shares in R1 is concerned for a fortnight. As regards O.A. No.501 of 2024, we are informed that the disclosure application in A.No.3749 of 2024 in Arb. O.P. (Comm.Div.) No.285 of 2024 is pending and the same is scheduled to be listed before Hon'ble Single Judge on 12.08.2024 but it is not on Board.

12. In the light of the narrative, discussion and dispositive reasoning thus far, the following consent order is made:

12.1 Sub-paragraphs 1 and 2 of paragraph 12 of the impugned order dated 25.07.2024 shall now operate for a fortnight i.e., for a period of two weeks from today i.e., till 27.08.2024;

12.2 Hon'ble Single Judge is requested to decide on maintainability of the two applications and subject to maintainability, decide the same on merits (if that be so and if the need arises) as expeditiously as the



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Board of Hon'ble Single Judge would permit and we also make it clear that this is at the discretion of Hon'ble Single Judge;

12.3 It is open to Hon'ble Single Judge to take up the main O.P. Viz., Arb.O.P.(Comm.Div) No.285 of 20124 but that will be subject to the view that the Hon'ble Single Judge would take on the O.P. being premature point which has been captured supra;

12.4 The aforesaid two points mean that it is open to the Hon'ble Single Judge to vary, continue, confirm, extend or negative the interim prayers at his discretion subject of course to maintainability point and it is open to the Hon'ble Single Judge to take up the main O.P. subject of course to premature point;

12.5 Appellant and R3 can withdraw a total sum not exceeding 5 crores INR for the purpose of living expenses, legal expenses from the account/s of appellant, R3 and/or joint account of appellant and R3 who are spouses. To be noted, whether the statement



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of accounts qua this Rs.5 crores has to be filed is left open for the Hon'ble Single Judge to decide as the matter progresses;

12.6 All the rights and contentions of all the parties (including those who are neither on caveat nor those for which counsel have represented and obviously, appellant as well as caveator) are left open. To be noted, as regards R2 / Financial Software and Systems Private Limited in both the OSAs, Mr.S.Aravindah of M/s.Fox Mandal and Associates (Law Firm) and as regards R3 / Mr.Nagaraj V.Mylandla, Mr.P.Rajkumar Jhabakh, learned counsel are before us. It is further to be noted, these two counsel also joined in the consent for this order. That leaves Rudhraapathy J and FSS Employees' Welfare Trust (R4 and R5) who fall under the category 'neither on caveat nor on appeal' as they may also have audience when the matter is taken up (subject of course to the discretion of Hon'ble Single Judge).

12.7 If similar appeal/s against similar order/s



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(impugned order dated 25.07.2024) come up, we make it clear that the question of maintainability is left open to be decided in such matters if a legal tussle in this regard ensues. In other words, maintainability qua captioned appeals has not been decided in this order.

13. Captioned OSAs are disposed of in the aforesaid manner. Consequently, captioned CMPs thereat are closed. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
12.08.2024

Index :Yes/No
Neutral Citation : Yes/No
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To

The Sub Assistant Registrar,
Original Side, High Court,
Madras.



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**M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

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