



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA Nos.509, 617, 618, 619, 620, 622, 623, 624, 626,
627, 628, 629, 621, 721, 844, 845, 852, 853, 854,
995, 996, 997 and 998 of 2024
and CMP Nos.5972, 5974, 5075, 5987, 5997, 5971,
5989, 5983, 5990, 5988, 6606, 5977, 5978, 5992, 7795, 7834,
7843, 7820, 7793, 9238, 9239, 9240 and 9241 of 2024

CMA No.509 of 2024

1.M/s.Brownbird Enterprises Private Limited
Represented by its Director
WZ-113-A, LGF, Meenakshi Garden,
Tilak Nagar, West Delhi, Delhi – 110018.

2.Mr.Om Shankar

3.Mr.Amarjit Kumar Gupta

..Appellants

.vs.

Equitas Small Finance Bank Limited,
(Formerly known as Equitas Finance Limited)
Rep. by its Assistant Manager – Legal,
Spencer Plaza, 4th Floor, Phase II,
No.769, Mount Road,
Anna Salai, Chennai – 600 002.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996, to set aside the impugned common order dated 07.02.2023 passed by the learned Sole Arbitrator, Mr.C.Samson in A.No.74 of 2023 in Arbitration Case No.403 of 2022.



In All CMAs

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For Appellants : Mr.P.Shiva

For Respondent : Mr.A.Damodaran

JUDGMENT

The subject matter of challenge in all these appeals pertains to the ex-parte interim order passed by the Sole Arbitrator freezing the bank account/bank accounts linked with three PAN numbers viz., AAGCB0299M, BOUPS4015N and ASZPG3180A with immediate effect, until further orders.

2.The claimants have preferred the arbitration claim under totally 22 claims and accordingly, 22 applications were filed before the Arbitrator for recovery of a total sum of Rs.74,66,734/- with interest. The case of the claimants is that the appellants had availed the loan facility for purchase of vehicle.

3.Pending the claim, the claimants had moved an application under Section 17 of the Arbitration and Conciliation Act, 1996 for freezing of the bank accounts linked with PAN Card numbers. The Sole Arbitrator considering the facts and circumstances of the case and also considering the fact that the appellants were chronic defaulters, passed an ex-parte interim order freezing the bank accounts, until further orders. The same has been put to challenge in these appeals.



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4. Heard Mr.P.Shiva, learned counsel appearing on behalf of the appellants and Mr.A.Damodaran, learned counsel appearing on behalf of the respondent.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. This Court has also carefully gone through the interim order passed by the Arbitrator.

7. The learned counsel for the appellants submitted that the very appointment of the Arbitrator in these cases is illegal and therefore, the interim order passed by the Arbitrator must also fail. That apart, it was contended that the Arbitrator had unilaterally passed the order which acts adversely against the interest of the appellants and this order was passed even without affording an opportunity to the appellants.

8. Per contra, the learned counsel for the respondent submitted that the appellants owed huge amounts to the respondent and the appellants were chronic defaulter in repayment of the loan and were evading repayment of the loan and therefore, it became necessary for the respondent to seek for freezing of the bank



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accounts of the appellants to safeguard the interest of the respondent. It was further contended that till date, the appellants have not questioned the jurisdiction of the Arbitrator to deal with the claims and the said issue cannot be indirectly raised in these appeals filed against the interim order passed by the Arbitrator. It was further submitted that no final orders were passed by the Arbitrator and hence, the appellants can always go before the Arbitrator and seek for raising the order freezing the bank accounts. Therefore, it was contended that the present appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 are not maintainable and the same are liable to be dismissed by this Court.

9. In all these appeals, the bone of contention of the learned counsel for the appellants is that the very constitution of the arbitral tribunal is illegal, since the Sole Arbitrator was appointed unilaterally by the respondent without the consent of the appellants. That apart, no notice was served on the appellants before the interim order was passed by the Arbitrator.

10. The legality or otherwise regarding the constitution of the arbitral tribunal requires a separate challenge under Section 13 of the Arbitration and Conciliation Act, 1996. The said provision provides for the procedure in which such challenge can be made. Therefore, unless and otherwise, there is a specific challenge to the very appointment/constitution of the arbitral tribunal, it cannot be collaterally



decided in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, where the interim order passed by the Arbitrator is under challenge. Hence, this Court cannot go into the issue of the constitution of the arbitral tribunal in these appeals.

11.If on the alternative, the appellants are willing to prosecute their case before the Sole Arbitrator, it will always left be open to the appellants to file an application seeking for raising the order freezing the bank account of the appellants by raising all the grounds before the Sole Arbitrator. If any such application is filed, the Sole Arbitrator will have to deal with the same and pass orders in accordance with law. If such a final order is passed by the Sole Arbitrator, whichever party is aggrieved by the same can always maintain an appeal under Section 37 of the Arbitration and Conciliation Act, 1996. This is on the premise that both the parties are agreeing for the Sole Arbitrator to continue with the proceedings in deciding the claim made by the respondent.

12.In the light of the above discussion, this Court is not inclined to exercise its jurisdiction under Section 37 of the Arbitration and Conciliation Act, 1996. It is left open to the appellants to either initiate independent proceedings challenging the appointment/constitution of the arbitral tribunal in accordance with law or on the alternative, to go before the Sole Arbitrator and file an application seeking for raising



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N. ANAND VENKATESH., J

ssr

the order freezing the bank accounts of the appellants and in which case, the Sole Arbitrator shall pass orders, as expeditiously as possible. Except giving this clarity, no further orders can be passed in these appeals.

13. Accordingly, all these appeals are disposed of in the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

22.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

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