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O.S.A (CAD) Nos.127 and 128 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.09.2024**

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **R.SAKTHIVEL**

O.S.A (CAD) Nos.127 and 128 of 2023

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C.M.P.No.22595 of 2023 in O.S.A(CAD) No.127 of 2023

&

C.M.P.No.22596 of 2023 in O.S.A (CAD) No.128 of 2023

M/s.EDAC Engineering Ltd.,
Rep. by its Asst. Manager-Legal
No.88, Mount Road
Guindy, Chennai - 600 032

... Appellant
in both appeals

Vs.

1. M/s.Industrial Fans (India) Pvt. Ltd.,
Rep. by its Managing Director
Mr.C.Arunagiri
Nellipukkam High Road
Karayambedu Village
Guduvancherry, Chengalpattu Taluk
Kanchipuram District
2. Hon'ble Mr.Justice F.M.Ibrahim Khalifulla
Former Judge, Supreme Court of India
Sole Arbitrator
Flat No.4, 141
Eldams Road, Teynampet
Chennai - 600 018

.. Respondents
in both appeals

Prayer in O.S.A (CAD) No.127 of 2023 : Original Side Appeal filed



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under Section 13 (1) of Commercial Court 2015 (Act 4 of 2016) against the order passed in A.No.2080 of 2021 dated 31.08.2023.

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Prayer in O.S.A (CAD) No.127 of 2028: Original Side Appeal filed under Section 13 (1) of Commercial Court 2015 (Act 4 of 2016) against the order passed in A.No.4609 of 2021 dated 31.08.2023.

For Appellant : Mr.G.Veerapathiran
in both appeals

For Respondent : Ms.J.Jyothi for R1
in both appeals

Ms.Vinithra Srinivasan
of M/s.NVS Associates (Law Firm)

COMMON JUDGMENT

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

This common consent judgment will now dispose of the captioned two 'Original Side Appeals' ['OSAs' for the sake of brevity and convenience] and captioned two 'Civil Miscellaneous Petitions' ['CMPs' for the sake of brevity and convenience] thereat.

2. Mr.G.Veerapathiran, learned counsel on record for sole appellant /sole petitioner 'EDAC Engineering Ltd.,' [hereinafter 'EDAC' for the sake of brevity], Ms.J.Jyothi, learned counsel for R1 [Industrial Fans (India) Pvt. Ltd.,] and Ms.Vinithra Srinivasan, learned counsel of M/s.NVS Associates (Law Firm) for R2 are before this Court.

3. Captioned two OSAs are directed against a 'common order



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dated 31.08.2023 made in A.Nos.2080 and 4609 of 2021 by a Hon'ble single Judge of this Court' {hereinafter 'impugned order' for the sake of brevity and convenience}. To be noted, A.No.2080 of 2021 and A.No.4609 of 2021 are applications under Section 39 and 39(2) respectively 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]. Owing to the captioned matters heading for a closure by way of a consent order, we are not dilating on facts and we deem it appropriate that it will suffice to write that both applications were dismissed by the impugned order by Hon'ble single Judge imposing costs of Rs.5 lakhs on appellant EDAC and directing the same to be paid to R2-Hon'ble Arbitrator.

4. There is no dispute or disagreement before us today that the entire fee/costs of Hon'ble Arbitrator as well as Rs.5 lakhs costs have since been paid by EDAC.

5. Mr.G.Veerapathiran, learned counsel for EDAC very fairly submitted that he would withdraw the captioned appeals leaving the impugned order to be sustained subject only to the costs i.e., Rs.5 lakhs which has been paid by EDAC. In other words, learned counsel for EDAC submitted that it will suffice if the costs of Rs.5 lakhs is returned



to EDAC and he would not pursue the appeals.

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6. Learned counsel for R2 pointed out that certain averments which are not in good taste have been made qua Hon'ble Arbitrator and Hon'ble Section 34 Court. Learned counsel for EDAC submitted that the grounds have been taken only in the campaign against the impugned order but nonetheless as a matter of good order, all the grounds including the grounds which are being described as 'not in good taste' qua Hon'ble Arbitrator as well as Section 34 Court will be withdrawn by way of an endorsement to be made by Mr.R.Sathish Kumar, son of Mr.D.Ramalingam, aged 39 years, Senior Legal Officer in EDAC, who has verified and signed the pleadings.

7. In the light of the narrative thus far, following endorsements by aforementioned Senior Legal Officer as well as learned counsel for EDAC Mr.G.Veerapathiran have been made:



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all jointly mentioned
in the above appeal
not enclosing the appeal
not pressed by the
deceased without cost

R. SATHISH
Law Officer
R. SATHISH KUMAR.

This appeal (O.S.A) all
is not pressed
and may be
dismissed with-out
cost
2/9/24



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I, Sathish Kumar R. Law
Officer of the Appellate
Company in relation
all grounds mentioned
in the above appeal
and enclosing the
appeal not placed my
as demanded without
costs. *Prakash*
Law Officer
R. SATHISH KUMAR,
2/9/2024

SHARUKUMAR S.I
nos no. 4629/2021
Counsel for Appellant
This appeal is a
O.S.A & not placed
and any further
and demerit
not



8. In the light of the narrative thus far and in the light of consensus that has been arrived at between the parties, captioned OSAs and captioned CMPs thereat are disposed of in the following manner:

i) Rs.5,00,000/- [Rupees Five Lakhs only] costs already paid by EDAC to Hon'ble Arbitrator (R2) will be returned by way of a Demand Draft payable in Chennai drawn in favour of EDAC Engineering Ltd., and the Demand Draft shall be handed over by Ms.Vinithra Srinivasan, learned counsel for R2 to Mr.G.Veerapathiran, learned counsel for EDAC within a fortnight from today i.e., by 16.09.2024. To be noted, the costs is being returned without interest.

ii) All the grounds raised by EDAC as well as averments made by EDAC in the support affidavit as well as other affidavits touching upon Hon'ble Arbitrator and Hon'ble Section 34 Court shall stand withdrawn/effaced in the light endorsements (scanned and reproduced supra) made by EDAC in the aforesaid manner;

iii) We are informed by both sides that lien also has been lifted on and from 14.11.2023;

iv) This Court is informed that EDAC has assailed the



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award rendered by Hon'ble Arbitrator i.e., award dated 30.04.2021 by way of a Section 34 petition vide O.P.No.564 of 2023. This Section 34 petition will now be heard out by the Hon'ble Section 34 Court on its own merits and in accordance with law untrammelled by this order and/or any observations made either in this order or in the impugned order, which is sustained sans costs.

Captioned two OSAs are disposed of as withdrawn/closed albeit with aforementioned observations and directives. Consequently, CMPs thereat are disposed of as closed. There shall be no order as to costs.

(M.S.J.) (R.S.V.,J.)
02.09.2024

Index: Yes/No

Neutral Citation: Yes/No

gpa

P.S: Though captioned OSAs are disposed of, list the captioned OSAs under the cause list caption 'FOR REPORTING COMPLIANCE' on 23.09.2024.



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**M.SUNDAR.J.,
and
R.SAKTHIVEL, J.,
gpa**

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