



A.No.5480 of 2023 in Arb.Appln.NO.299 of 20
& A.No.5481 of 2023 in O.A.No.800 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 23.11.2023	Pronounced on: 18.04.2024
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THE HONOURABLE MR.JUSTICE C.SARAVANAN

A.No.5480 of 2023 in Arb.Appln.No.299 of 2022

&

A.No.5481 of 2023 in O.A.No.800 of 2022

1.R.Ramsubbu
2.RR.Gopaljee

..Applicants
(in both applications)

Vs.

Mr.R.Sathyamurthy

..Respondent
(in both applications)

Prayer in A.No.5480 of 2023: Application filed under Ordinary Original Civil Jurisdiction praying to permit the applicants to amend the affidavit and Judges Summons filed in Arb.Appln.No.299 of 2022 as follows:-

I. In the affidavit in Arb.Appln.No.299 of 2022, after para 22 – para 23 is to be incorporated as follows:

"23. Pending the above Interim Applications, Original Petitions in O.P No's. 122 & 269 OF 2014 & O.P No.40 OF 2019 filed by the Applicants under Section 34 of the Arbitration and Conciliation Act challenging the Arbitration Awards were taken up for final arguments along with other O.P's filed by the Claimants 2 and 3. In the said Section 34



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Petitions, this Hon'ble Court was pleased to pass a Common Order dated 10/8/2023 and the operative portion of the same is as follows."

"7. In the result,

i.The Original petitions in O.P Nos. 122 of 2014 and 350 of 2017 are dismissed.

ii.The Original Petitions in O.P No.269 of 2014 and 391 of 2017 are partly allowed.

iii.The Original Petitions in O.P No.863 and 864 of 2018 and 40 of 201 are allowed.

iv.The Civil Suits in C.S.No.600 of 2016, C.S.No.939 of 2016, O.A.No.1120 of 2016, O.A.No.727 of 2016 and O.A.No.728 of 2016 are disposed of with the entitlement of parties are arrived in Issue No. XI above, in view of the finding arrived in Issue Nos.I to X.

v.Consequently, the connected applications are hereby closed.

vi.The respective parties are directed to carry on their business with respective editions with the present status until the completion of winding of the affairs of the partnership firm

vii.The parties are directed to work out their remedies to wind up the partnership firm in accordance with the provisions of the Indian Partnership Act 1932."

As per the above Common order this Hon'ble Court was pleased to set aside the Arbitration Award dated 15-03-2014 partly and the Arbitration Award dated 29-09-2018 allocating the edition wise is set aside fully. Further the parties are directed to approach Civil Court to work out the remedies to winding up. In the meantime, the parties



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are directed to carry out their business with the respective editions with the present status. In view of the above said order the applicants as well the Respondents are continuing to manage the editions as they were carrying till today."

II. In the Prayer of the Affidavit in Arb. Appln No. 299 OF 2022:

- After the words ".....Editions by Applicants" add the following:

"Pending disposal of the completion of winding up of the affairs of the Partnership Firm Dinamalar (Dissolved) as per the provisions of Indian Partnership Act 1932 and pass appropriate orders and thus render justice."

- And delete the following:

"Pending disposal of the Petitions filed U/S. 34 of the Arbitration & Conciliation Act, 1996 and pass appropriate orders and thus render justice"

III. The prayer in Judges Summons in Arb.Appln.No.299 of 2022:

-After the words ".....Editions by Applicants" add the following:

"Pending disposal of the completion of winding up of the affairs of the Partnership Firm Dinamalar (Dissolved) as per the provisions of Indian Partnership Act, 1932 and pass appropriate orders and thus render justice."

-And delete the following:

"Pending disposal of the Petitions filed U/S. 34 of the



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Arbitration & Conciliation Act, 1996 and pass appropriate orders and thus render justice.”

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Prayer in A.No.5481 of 2023: Application filed under Ordinary Original Civil Jurisdiction praying to permit the applicants to amend the affidavit and Judges Summons filed in **O.A.No.800 of 2022** as follows:-

I. In the affidavit in O.A.No.800 of 2022, after para 22 – para 23 is to be incorporated as follows:

" 23. Pending the above Interim Applications, Original Petitions in O.P No's. 122 & 269 OF 2014 & O.P No.40 OF 2019 filed by the Applicants under Section 34 of the Arbitration and Conciliation Act challenging the Arbitration Awards were taken up for final arguments along with other O.P's filed by the Claimants 2 and 3. In the said Section 34 Petitions, this Hon'ble Court was pleased to pass a Common Order dated 10/8/2023 and the operative portion of the same is as follows."

"7. In the result,

- i. The Original petitions in O.P Nos. 122 of 2014 and 350 of 2017 are dismissed.*
- ii. The Original Petitions in O.P No.269 of 2014 and 391 of 2017 are partly allowed.*
- iii. The Original Petitions in O.P No.863 and 864 of 2018 and 40 of 201 are allowed.*
- iv. The Civil Suits in C.S.No.600 of 2016, C.S.No.939 of 2016, O.A.No.1120 of 2016, O.A.No.727 of 2016 and O.A.No.728 of 2016 are disposed of with the entitlement of parties are arrived in Issue No. XI above, in view of the finding arrived in Issue Nos. I to X.*



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v. *Consequently, the connected applications are hereby closed.*

vi. *The respective parties are directed to carry on their business with respective editions with the present status until the completion of winding of the affairs of the partnership firm.*

vii. *The parties are directed to work out their remedies to wind up the partnership firm in accordance with the provisions of the Indian Partnership Act 1932."*

As per the above Common order this Hon'ble Court was pleased to set aside the Arbitration Award dated 15-03-2014 partly and the Arbitration Award dated 29-09-2018 allocating the edition wise is set aside fully. Further the parties are directed to approach Civil Court to work out the remedies to winding up. In the meantime, the parties are directed to carry out their business with the respective editions with the present status. In view of the above said order the applicants as well the Respondents are continuing to manage the editions as they were carrying till today."

II. In the Prayer of the Affidavit in **O.A.No.800 of 2022:**

- After the words ".....Editions by Applicants" add the following:

"Pending disposal of the completion of winding up of the affairs of the Partnership Firm Dinamalar (Dissolved) as per the provisions of Indian Partnership Act 1932 and pass appropriate orders and thus render justice."

- And delete the following:

"Pending disposal of the Petitions filed U/S. 34 of the Arbitration & Conciliation Act, 1996 and pass appropriate orders and thus render justice"



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III. The prayer in Judges Summons in O.A.No.800 of 2022:

-After the words “.....Editions by Applicants” add the following:

“Pending disposal of the completion of winding up of the affairs of the Partnership Firm Dinamalar (Dissolved) as per the provisions of Indian Partnership Act, 1932 and pass appropriate orders and thus render justice.”

-And delete the following:

“Pending disposal of the Petitions filed U/S. 34 of the Arbitration & Conciliation Act, 1996 and pass appropriate orders and thus render justice.”

(In both Applications):

For Applicants : Mrs.Chitra Sampath
Senior Counsel
for Mr.T.S.Baskaran

For Respondent : Mr.P.S.Raman
Senior Counsel
for Mr.P.Giridharan

COMMON ORDER

These applications have been filed for the following relief :-

Prayer in A.No.5480 of 2023	Prayer in A.No.5481 of 2023
To permit the applicants to	To permit the applicants to



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Prayer in A.No.5480 of 2023	Prayer in A.No.5481 of 2023
amend the affidavit and Judges Summons filed in Arb.Appln.No.299 of 2022.	amend the affidavit and Judges Summons filed in O.A.No.800 of 2022.

2. The dispute between the five partners of "Dinamalar" was the subject matter of Arbitration pursuant to order passed in O.S.A.No.282 of 2006. Arbitral Tribunal was presided over by three former Judges of this High Court. About 45 issues were framed by the Arbitral Tribunal in its order dated 18.07.2007. The Arbitral Proceedings have culminated in two preliminary awards and one final award of the Arbitral Tribunal.

3. These awards were subject matter of challenge under Section 34 of the Arbitration and Conciliation Act, 1996. They were dealt along with C.S.No.600 of 2016 and C.S.No.939 of 2016 as detailed below:-

Sl.No.	Date of Arbitral Award	Petitions challenging the orders	Status of the petitions post the common order dated 10.08.2023
1.	28.11.2013 (Interim-1)	O.P.Nos.122 & 350 of 2014	Dismissed completely
2.	15.03.2014	O.P.Nos.269 & 391	Dismissed partially up to the



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	(Interim-2)	of 2017	Dissolution, but allowed Appeal on the winding up of partnership part
3.	29.08.2018 (Final Award)	O.P.Nos.863 & 864 of 2018 & 40 of 2019	Allowed completely while invalidating the Award on Division of Editions completely
4.	-	C.S.No.600 of 2016	Disposed of
5.	-	C.S.No.939 of 2016	Disposed of

4. All OAs, OPs, Arbitration Applications along with Suits in C.S.No.600 of 2016 and C.S.No.939 of 2016 were disposed of by a common order of this Court dated 10.08.2023.

5. One of the partner of “Dinamalar” namely Mr.R.Sathyamurthy, issued a notice under Section 43 of the Indian Partnership Act, 1932 for dissolving the partnership firm on 27.02.2012. There, the Tribunal passed an order dated 23.07.2012 by holding that it had jurisdiction to decide as to whether the partnership could be dissolved.

6. This lead to further proceedings in O.A.No.132 of 2012 by the partners 1 & 2 namely Mr.R.Venkitapathy (RV) (since deceased) & Mr.R.Krishnamurthy (RK) (since deceased). An order came to be passed by



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this Court on 30.10.2012 in O.A.No.132 of 2012. The 4th partner namely R.Raghavan (RR) in turn had filed C.S.No.748 of 2012 and had challenged the common order dated 23.07.2012 passed by the Tribunal.

7. The plaint in C.S.No.748 of 2012 was rejected by this Court by its order dated 26.11.2012. The said decision was affirmed by the Hon'ble Division Bench of this Court by its judgment and decree dated 27.02.2013 in O.S.A.No.103 of 2012. Further, SLP in SLP.No.14417 of 2013 was disposed by the Hon'ble Supreme Court by its order dated 12.09.2013 by directing the Arbitral Tribunal to dispose all the 45 issues and thereafter to deal with the issue relating to dissolution of the partnership firm.

8. These were subject matter of further proceedings before this Court. It is in the above background, the above mentioned two preliminary awards dated 28.11.2013, 15.03.2014 and a final award dated 29.08.2018 came to be passed.



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9. By the preliminary award dated 28.11.2013, the Arbitral Tribunal

accepted the plea of Mr.R.Sathyamurthy the 5th claimant (respondent herein) for dissolution of the partnership firm. These were subject matter of further proceedings before this Court. The details which are given later.

10. In the preliminary Award dated 28.11.2013, 45 issues that were framed by the Tribunal on 18.07.2007 were answered. The Arbitral Tribunal rejected most of the claims of Mr.R.Sathyamurthy, 5th claimant (respondent herein).

11. The issue relating to dissolution of the partnership firm was later affirmed by the Arbitral Tribunal in its second Award dated 15.03.2014. The Arbitral Tribunal held that partnership firm will stand dissolved with effect from 27.02.2012 being the date of notice under Section 43 of the Indian Partnership Act, 1932. However, in the second Award dated 15.03.2014, *status quo* was ordered regarding printing of newspaper Editions and Operations.



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12. The second preliminary award dated 15.03.2014 held that the

Firm Dinamalar will stand dissolved with effect from 27.02.2012 (date of notice under Section 47 of the Indian Partnership Act, 1932) but ordered *status quo* on operations and Editions.

13. The second preliminary award which came to be passed on 15.03.2014, the Arbitral Tribunal decided that the assets of the partnership firm “Dinamalar” can be divided based on the valuation report to be submitted by a Chartered Accountant by adopting discounted cash flow method. The said preliminary award dated 15.03.2014 was also subject matter of further proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 as detailed above.

14. Eventually, a final award was passed by the Arbitral Tribunal on 29.08.2018. The actual division of the assets of the partnership firm was ordered by the Arbitral Tribunal. Final Award dated 29.08.2018 was also challenged before this Court under Section 34 of the Arbitration and Conciliation Act, 1996 by the aggrieved partners as detailed above.



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15. The assets which were subject matter of division pertains to edition in control of the partners of the firm, some of whom have now deceased and are now represented by their legal heirs. Details of the five partners and their legal heirs and their status in the proceedings before this Court are as under :-

Sl.No.	Name of the partner		Edition
1.	R.Venkitapathy (RV) (Deceased)		Tirunelveli & Nagercoil
2.	R.Krishnamurthy (RK) (Deceased)		Chennai & Puducherry
3.	R.Lakshmipathy (RLP)		Madurai & Coimbatore
4.	R.Raghavan (RR) (Deceased) R.Ramasubbu R.R.Gopaljee	(Applicants herein)	Trichy & Vellore
5.	R.Sathyamurthy (RS)	(Respondent herein)	Erode & Salem

16. The source of income for the Newspapers are primarily from the advertisements. It is informed approximately, 40% of primary income is from news paper circulation and 60% income from advertisements of advertisers. The 1st, 4th & 5th partners were sharing a common Group Office at T.Nagar called Mercury Office, and collection from advertisement for the editions were



under their control.

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17. In this application, the Court is not really concerned with the other group under the control of the 2nd and 3rd partners.

18. By a common order dated 10.08.2023, this Court has upheld the decision of the Arbitral Tribunal holding that the partnership firm can be dissolved. At the same time, Court has held that the division of the partnership firm cannot be made by the Arbitral Tribunal but by a Civil Court as it is one of the liquidation of the assets of the partnership firm under the dissolution and the Court ordered the winding up to be done in accordance with Indian Partnership Act, 1932 before a Court.

19. The Court held that the act of liquidation or winding up affects right of third parties like creditors of the partnership firm and hence held it to be a right in *rem* and not a right in *personam* and therefore beyond the scope of the Partnership Deed. The operative portion of the decision of the Single Judge of this Court and the conclusion in para.no.6.8.5 and 7 are reproduced



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“6.8.5 Further, the Tribunal having come to the conclusion that the rights to be decided in the course of winding up of partnership firm, is right in rem, when such was the finding of the Tribunal, it really shocks the conscience of this Court, still how the Tribunal dealt with the issue of winding up. Hence, on this ground also the third Arbitration award is liable to be set aside. Accordingly, the Issue No.VIII is answered.

.....

7. In the result,

- i. The Original Petitions in O.P.Nos.122 of 2014 and 350 of 2017 are dismissed.*
- ii. The Original Petitions in O.P.Nos.269 of 2014 and 391 of 2017 are partly allowed.*
- iii. The Original Petitions in O.P.Nos.863 and 864 of 2018 and 40 of 2019 are allowed.*
- iv. The Civil Suits in C.S.No.600 of 2016, C.S.No.939 of 2016, O.A.No.1120 of 2016, O.A.No.727 of 2016 and O.A.No.728 of 2016 are disposed of with the entitlement of parties as arrived in Issue No.XI above, in view of the finding arrived in Issue Nos.I to X.*
- v. Consequently, the connected applications are hereby closed.*
- vi. The respective parties are directed to carry on their business with the respective editions with the present status until the completion of winding up of the affairs of the partnership firm. (vii) The parties are directed to work out their remedies to wind up the partnership firm in accordance with the provisions of the Indian Partnership Act, 1932.”*

20. During the interregnum, before the final order was passed on



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10.08.2023 in above petition, the applicants herein had filed O.A.No.800 of 2022 and Arbitration Application No.299 of 2022. These applications were filed for the following reliefs:-

Prayer in O.A.No.800 of 2022	Prayer in Arb.Appln.No.299 of 2022
To permit the 2 nd Applicant to sign jointly with the 1 st Applicant in the cheques in respect of the Bank Accounts, of newspaper Dinamalar (U6 group) for effective management and administration of Trichy and Vellore Editions by the Applicants pending disposal of the Petitions filed U/s 34 of the Arbitration & Conciliation Act, 1996.	To grant an order of interim injunction restraining the Respondent from interfering with the administration and management of the Group advertisement office at T.Nagar by the Applicants pending disposal of the Petitions filed U/s 34 of the Arbitration & Conciliation Act, 1996.

21. Series of orders have been passed in O.A.No.800 of 2022 & Arb.Appln.No.299 of 2022 as detailed below:-

Case No.	Date of order	Operative portion
Arb.Appln.No. 299 of 2022	22.12.2022	7.Considering the submissions made on behalf of the applicants and perusal of the averments in the affidavit, this Court is of the view that the



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		applicants have made out prima facie case and the balance of convenience is in favour of the applicants. Hence, this Court pass the following interim order. - Applicant Nos.1 and 2 are permitted to operate the above mentioned five bank accounts jointly for the purpose of maintaining Trichy and Vellore editions. If the respondent requested his 20% share to met out the expense of Erode and Salem edition, the applicants are directed to withdraw the respondent share and pay in favour of the respondent. - The Bank Manager of the above mentioned five banks shall substitute the 2 nd applicant in the place of the respondent and permit the applicants 1 and 2 to operate the above said five bank accounts.
Arb.Appln.No. 299 & O.A.No.800 of 2022	07.02.2023	- Further it was submitted by both the parties that they will exchange the details of the Advertisement revenue received from 01.04.2022 to 31.01.2023, on or before 20.02.2023 and thereafter make the submissions before this Court. In the meantime, as undertaken by the applicants, they shall not operate the five accounts as ordered by this Court on 22.12.2022 till 20.02.2023. - Post this matter on 20.02.2023. - In the meantime, in case of emergency, the parties can have discussion and if all the parties agree, they can operate the bank accounts, as decided by both the applicants and the respondent.
O.A.No.800 of 2022	08.03.2023	In view of the above submissions made by the learned Senior Counsel appearing on either side, this Court directs the applicants to forward the cheques by filling up the name of the parties to whom the cheques are going to be issued along with the copy of invoices/challans in all the cases. In the event of providing the copy of



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		invoices/challans and the cheques in the name of the parties concerned, the respondent is directed to sign the cheques forthwith. In case of any dispute, the parties are at liberty to approach this Court along with their objection without withholding the cheques. The applicants are directed to maintain the statement of account and forward the same to the respondent periodically i.e. once in a month.
O.A.No.800 of 2022	20.03.2023	4.Considering the submissions made by the learned Senior counsel for the respective parties, this Court finds that the issue pertains to the operation of bank accounts and signing the cheques. As far as the Indian Bank is concerned, this Court already permitted the respondent to operate bank accounts as per the mode of operations that were existing between the parties before filing the applications. As far as remaining 4 accounts are concerned, this Court already permitted the applicant to operate the same. In these circumstances, now the issue that has been arisen is with regard to the signing of the cheques by the respective parties where the signatures in the cheques are required by the opposite party. It is made clear if any cheque is issued by any of the parties for the signature of the other party in any of the bank accounts, the party who received the cheque, in the event if the cheque is issued as Account Payee cheque, he has to sign the cheque and send it within two days, of course, the party who signed the cheque is entitled to receive the copy of the invoice along with the cheque. In the event if there is any dispute, the parties shall approach the Court soon after signing the cheques. This order shall be complied with by the respective parties strictly.

22. It is in the above mentioned O.A.No.800 of 2022 and



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Arb.Appln.No.299 of 2022, these applications namely A.No.5480 of 2023 in

Arb.Appln.No.299 of 2022 & A.No.5481 of 2023 in O.A.No.800 of 2022

have been filed after final order dated 10.08.2023 has been passed disposing of OPs and Civil Suits.

23. Apart from the above two applications, following applications were also filed by these applicants in O.A.No.800 of 2022 for the following relief:-

Application No.	Prayer
A.No.2819 of 2023	To restrain the respondent from withdrawing any amount from the Group Advertisement income from the Indian Bank Account Vide Account no.443378535 at Ethiraj Salai Branch, Chenna? pending disposal of the above application.
A.No.2820 of 2023	To permit the Applicants to withdraw the amounts from the Group Advertisement income from the Indian Bank Account vide Account No.443378535 at Ethiraj Salai Branch, Chennai as per the orders passed by this Honourable Court pending disposal of the above application.
A.No.2821 of 2023	To punish the respondent herein for committing contempt of the order of this Honourable courts order dated 8/3/2023, 20/3/2023 and 24/4/2023 passed in OA.No.800 of 2022 and pass appropriate orders.

24. It is evident, in view of the order passed by the learned Single Judge of this Court on 10.03.2023, the partnership arrangement still continues



to exist. Each of the parties were permitted to manage the affairs of respective

Editions and were directed to maintain *status quo*.

25. The applicants herein state that they have proposed to file appeal against the decision of this Court dated 10.03.2023. It is therefore submitted that the applicants are entitled to seek for interim protection to manage the Trichy and Vellore Editions and therefore filed this application for granting the relief sought for.

26. In Application Nos.5480 & 5481 of 2023, the applicants seek for incorporation of **Paragraph 23** after **Paragraph 22** in the common affidavit filed in support of O.A.No.299 of 2022, for including and deleting certain paragraphs in the prayer as detailed above.

27. The applications are opposed by the respondent (5th partner of Dinalmalar). On behalf of the respondent, it is stated that in a post award Section 9 proceedings, the purpose of providing interim relief after the passing but before the enforcement of the arbitral award is to secure its value and/or protect rights for the benefit of the party that seeks the enforcement of the award. It is therefore submitted that once an award is passed, the remedy under Section 9 can only be obtained as a step-in aid of enforcement of the



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arbitral award/decision in Section 34 petition and not otherwise.

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28. It is further submitted that after the Impugned Award dated 28.11.2013 of the Tribunal came to be passed ordering dissolution of the partnership firm “Dinamalar”, the Arbitral Tribunal passed second Interim Award dated 15.03.2014 thereafter by Final Award dated 29.09.2018, the Tribunal had allotted the Editions of “Dinamalar” Newspaper to be controlled by five partners.

29. These Orders were subsequently diluted. Subsequently there are no applications filed by either of the parties.

30. I have considered the arguments advanced by the learned Senior Counsel for the petitioners and the learned Senior Counsel for the respondent.

31. These applications are misconceived as the decisions of the Court passed during the interregnum in O.A.No.800 of 2022, particularly on 22.12.2022, 07.02.2023, 08.03.2023 & 20.03.2023, content of which have been extracted above have been now subsumed into the final order dated 10.08.2023 of the Court. Thus, the partnership continues to exist till it is dissolved by the Civil Court as ordered on 10.03.2023. The final order dated



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10.08.2023 of the Court has not been stayed.

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32. The order of the Court disposing of various OAs, OPs and Arbitration Applications and suits vide order dated 10.08.2023 are appealable under Section 37 of the Arbitration and Conciliation Act, 1996. They can be stayed by the Hon'ble Division Bench of this Court.

33. Remedy if any, has to be worked out by the applicants only before the Hon'ble Division Bench since the rights of the parties have crystallized finally in terms of the final order dated 16.08.2023. Further, question of amending the paragraphs in O.A.No.800 of 2022 and Arb.A.No.299 of 2022 at this stage cannot be countenanced. O.A.No.800 of 2022 and Arb.A.No.299 of 2022 were filed pending disposal of the various Original Petitions and Suits as mentioned before the Court for stop gap arrangement.

34. Even otherwise, the applicant has to challenge the Award before the Hon'ble Division Bench and would have already filed an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 against final order dated 10.08.2023. The applicants should therefore work out their remedy only



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before the Arbitral Tribunal.

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35. As such these applications to amend the paragraphs in O.A.No.800 of 2022 and Arbitration Application No.299 of 2022 are misconceived and are liable to be dismissed and accordingly they are dismissed.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
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Pre-delivery Order in
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