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Arb.O.P. (Com.Div.)Nos.578 and 579 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)Nos.578 and 579 of 2023

and

A.Nos.6649 and 6640 of 2023

1.M/s.Priyanka Arcade Limited,
No.11/6, 1st Floor, “Rubi Mahal”,
Ramanathan Street, Mahalingapuram,
Nungambakkam, Chennai – 600 034.
Rep by its Managing Director.

2.F.Francis Markus

.. Petitioners in both Original
Petitions

Vs.

Mahindra and Mahindra Financial Services Limited,
Having Branch office at:
New No.244 (Old No.713) 3rd Floor, Level 4,
Carex Centre, Mount Road,
Chennai – 600 006.

Registered office at:
Gateways, Apollo Bunder,
Mumbai – 400 001.

.. Respondent in both Original
Petitions

Prayer in Arb.O.P.(Com.Div)No.578 of 2023: Original Petition is filed
under Section 34(2)(a-iii)(a-v) 34(2-b)(ii) 34(2-A) of the Arbitration and
Conciliation Act, 1996, praying to set aside the Ex-parte arbitral award



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dated 20.10.2022 (received on 08.06.2023) bearing No.DE 21-ARB/S:1_TNAB508/6499621 of 2021 passed by the sole Arbitrator in its entirety and to direct the respondents to pay the cost of the petition.

Prayer in Arb.O.P.(Com.Div)No.579 of 2023: Original Petition is filed under Section 34(2)(a-iii)(a-v) 34(2-b)(ii) 34(2-A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Ex-parte arbitral award dated 20.10.2022 (received on 08.06.2023) bearing No.DE 21-ARB/S:1_TNAB509/64999742 of 2021 passed by the sole Arbitrator in its entirety and to direct the respondents to pay the cost of the petition.

For Petitioners : Mr.S.Vijayakumar
(in both Petitions) Senior Counsel for
Mr.J.Melwin Jabas

For Respondent : Mr.S.Namasivayam
(in both Petitions)

COMMON ORDER

By this common order, both these petitions are being disposed of.

2. These petitions have been filed under Section 34(2)(a-iii)(a-v) 34(2-b)(ii) 34(2-A) of the Arbitration and Conciliation Act, 1996, praying to set aside the Ex-parte arbitral award dated 20.10.2022 (received on 08.06.2023) bearing Nos.



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DE 21-ARB/S:1_TNAB508/6499621 of 2021 and DE 21-ARB/S:1_TNAB509/64999742 of 2021 passed by the sole Arbitrator in its entirety and to direct the respondent to pay the cost of the petition.

3. The petitioners have challenged the Awards both dated 20.10.2022 by the learned Arbitrator. The learned Arbitrator was appointed unilaterally by the respondent contrary to the decision of the law settled by the Hon'ble Supreme Court in the case of **Perkins Eastman Architects DPC & Another Vs. HSCC (India) Limited**, 2019 SCC Online SC 1516 and **TRF Limited Vs. Energo Engineering Projects Limited**.

4. That apart, it appears that the Awards are also an ex-parte Awards.

5. Considering the same, the impugned Awards are set aside. Both the learned Senior Counsel for the petitioners and the learned counsel for the respondent consent for appointment of an sole Arbitrator to resolve the dispute between the parties.



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

7. The Court is inclined to pass the following order:-

(i) **Hon'ble Mr.Justice.T.Sudanthiram, (Retd.,) Former Judge of this Court, residing at Old No.39/2, New No.20, Anandavelu Street, Perambur, Chennai – 600 011, Mobile No.9841016353,** is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.

(ii) The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, 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.



(iii) The learned Arbitrator appointed herein 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 petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

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

9. 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
Internet : Yes / No
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