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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMMERCIAL ARBITRATION PETITION NO.814 OF 2019

- 1). Cabcom Cables Limited, A company incorporated under the Companies Act, 1956, having its Registered office at 304, Aggarwal City Mall, Opp. M2K, Road No.44, Pitampura, Delhi – 110 034, through its Directors.)
 - 2). Mr.Sandeep Sehgal, An Adult, Indian Inhabitant of Delhi, residing at R/O B- 200, Lok Vihr, Pitampura, Delhi – 110 034, through its SPA)
 - 3). Ms.Poonam Sehgal, An Adult, Indian Inhabitant of Delhi, residing at R/O B- 200, Lok Vihr, Pitampura, Delhi – 110 034.)
 - 4). Ms.Janak Sehgal, An Adult, Indian Inhabitant of Delhi, residing at R/O B- 200, Lok Vihr, Pitampura, Delhi – 110 034.)
- ...Petitioners

....Versus....

SBI Global Factors Limited,)
A Company incorporated under the)
Companies Act, 1956, having its)
registered office at Metropolitan Building,)
6th Floor, Bandra Kurla Complex,)
Bandra (East), Mumbai – 400 051, through)
its Managing Director.)

...Respondent

Mr.Varun Ahuja with Ms.Dipti Shah for the Petitioners.

Mr.Ashish Mehta with Mr.Narpat Singh i/b M/s.Ethos Legal Alliance
for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 25TH SEPTEMBER, 2019.

ORAL JUDGMENT :-

1. By this petition filed under section 34 of the Arbitration & Conciliation Act, 1996 (for short “the Arbitration Act”), the petitioners have impugned the arbitral award dated 14th January, 2019 passed by the learned arbitrator allowing the claims made by the respondent (original claimant).

2. Learned counsel appearing for the petitioners made the following submissions :

Under clause 23.1 of the agreement entered between the parties, the dispute, if any, could be referred to the sole arbitrator appointed by the respondent. It is submitted that the learned arbitrator in this case was appointed by an advocate representing the respondent and not the respondent itself. In support of this submission, he invited my attention to the disclosure made by the learned arbitrator under section 11(8) of the Arbitration Act annexed at page 505 of the arbitration petition dated 27th December, 2017. In support of the submission that the respondent itself could not have appointed the learned arbitrator and in any event through the advocate, the respondent placed reliance on the judgment of the Supreme Court in case of **TRF Ltd. vs. Energo Engineering Projects Ltd., AIR 2017 SC 3889** and in case of **Bharat Baroadband Network Limited vs. United Telecoms Limited, AIR 2019 SC 2434**. The next submission of the learned counsel that the learned arbitrator was biased and thus the entire award is vitiated on

this ground alone.

3. Mr.Mehta, learned counsel appearing for the respondent submits that that the first arbitrator was appointed by the respondent by addressing a letter through an advocate instructed by the respondent and this appointment made by the respondent was valid and in accordance with the arbitration clause. He invited my attention to a letter addressed by the first arbitrator resigning in the matter. He submits that the respondent appointed the second arbitrator. The respondent made various frivolous allegations against both the arbitrators. He submits that the award is rendered after giving full opportunities to both the parties and thus the findings rendered being not perverse and cannot be interfered with by this Court in this petition filed under section 34 of the Arbitration Act. He distinguished the judgments relied upon by the petitioners on the ground that arbitral proceedings in this case had commenced prior to 23rd October, 2015.

4. Insofar as the first objection raised by the learned counsel for the petitioner is concerned that the learned arbitrator was not appointed in accordance with the arbitration agreement is concerned, it is not in dispute that the learned arbitrator was appointed by a letter addressed by the learned advocate representing the respondent. The respondent is entitled to engage an advocate to address a letter to the learned arbitrator for appointing him. An advocate acts as an agent of the client and under instructions of client he had addressed

a letter appointing an arbitrator. There is thus no substance in this frivolous objection raised by the learned counsel for the petitioner.

5. Insofar as reliance placed on the judgment of the Hon'ble Supreme Court in case of **TRF Ltd.** (supra) is concerned, a perusal of the said judgment clearly indicates that in the said judgment the Supreme Court considered the clause where the Managing Director was allowed to act as a sole arbitrator. The arbitration notice in that matter was admittedly issued on 28th December, 2015 i.e. after insertion of Fifth and Seventh Schedules in the Arbitration Act. After considering the provisions of law post 23rd October, 2015, the Hon'ble Supreme Court held that the Managing Director who was disqualified under seventh schedule himself could not act as an arbitrator and thus could not appoint an arbitrator. The facts before the Hon'ble Supreme Court in case of **TRF Ltd.** (supra) are clearly distinguishable in the facts of this case and would not assist the case of the petitioner.

6. Insofar as the judgment of the Supreme Court in case of **Bharat Baroadband Network Limited** (supra) relied upon by the learned counsel for the petitioner is concerned, paragraph 4 of the said judgment clearly indicates that the notice invoking arbitration clause was admittedly issued on 3rd January, 2017, whereas admittedly in this case the notice was issued prior to 23rd October, 2015. The matter would be thus governed by the provisions prior to 23rd October, 2015. Be that as it may, in view of section 87 of the

Arbitration & Conciliation (Amendment) Act, 2019 by which it is made clear that the provisions of the Arbitration & Conciliation (Amendment) Act 2015 shall apply only to arbitral proceedings commenced after 23rd October, 2015, in my view the judgment of the Supreme Court in case of **Bharat Baroadband Network Limited** (supra) also would not apply to the facts of this case. By the Arbitration & Conciliation (Amendment) Act, 2019, section 26 of the Arbitration & Conciliation (Amendment) Act, 2015 stands deleted with retrospective effect. In this case since the arbitrator was appointed prior to 23rd October, 2015 Fifth and Seventh Schedules would not apply. Since the Fifth and Seventh Schedules are not applicable to this case, the respondent could have appointed an arbitrator under the arbitration agreement agreed between the parties.

7. Insofar as the submission of the learned counsel for the petitioner that the learned arbitrator was biased is concerned, in view of the allegations made by the petitioner against the first arbitrator, the first arbitrator, who was a counsel of this Court, had resigned in the matter. The allegations of bias made by the petitioner were also totally frivolous. The petition is thoroughly misconceived and is accordingly dismissed with costs quantified at Rs.50,000/- which shall be paid to the respondent within one week from today.

(R.D. DHANUKA, J.)