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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 30TH DAY OF JUNE 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.276 of 2021

and

A.No. 1237 of 2021

In the matter of Arbitration and
Conciliation Act of 1996

and

In the matter of loan Agreement No.
BLSECBD0000375 dated Nill
Between Ratolika Ravindra &
another with M/s. Equitas Small
Finance Bank Limited.

Dr.Ratolika Ravindra
S/o. Lakshmikanth Manikrao Ratolika
No.3-4-362 to 365 HVS Apartment,
Lingampalli,
Hyderabad – 500027
Andhra Pradesh.

. . . Petitioner/Applicant

Versus

1. M/s.Equitas Small Finance Bank Limited,
Spencer Plaza, 4th Floor, Phase – II,
No.769, Anna Salai, Chennai – 600 002.

2. Mr.Jyothi Ratolika
W/o. Dr.Ratolika Ravindra
No.3-4-362 to 365 HVS Apartment,
Lingampalli,
Hyderabad – 500027
Andhra Pradesh.



3. Mr.R.Ganesan , M.L. OFL DPM.,
District Judge [Retd],
Sole Arbitrator,
Chamber of arbitration and Mediation,
No.9, Eldams Square, No.167, Eldams Road,
Alwarpet, Chennai – 600 018. . . . Respondents/Respondents

O.P.No. 276 of 2021:-

Original Petition praying that this Hon'ble Court be pleased to order:

a) the termination of mandate of the third respondent herein in the pending arbitration proceedings in A.C.P.No.[ESFB] 10 of 2021 and be substituted by an independent and sole arbitrator to be appointed by this Court as per law to adjudicate upon all the disputes, differences and claims that have arisen between the parties hereto under the Loan Agreement No.BLSECBD0000375 dated Nil entered between the parties.

2. to direct the respondent to pay the cost of the petition.

A.No. 1237 of 2021:-

Application praying that this Hon'ble Court be pleased to pass an order of interim stay of all further proceedings on the file of the 3rd respondent in the pending arbitration proceedings in A.C.P.No. (ESFB) 10 of 2021 pending disposal of the above petition,

This Original Petition alongwith Application coming on this day before this court for hearing in the presence of Mr.J.Ravikumar, Advocate for the petitioner in O.P.No. 276 of 2021 and for the Applicant in A.No. 1237 of 2021 and Ms.A.S.Neela Narayani, Advocate for the respondents in O.P.No.276 of 2021 and A.No. 1237 of 2021 and upon reading the petition



filed in O.P.No. 276 of 2021 and the order herein dated 24.06.2021 made in A.No. 1237 of 2021, it is ordered as follows:-

That Mr.S.Arunachalam, Advocate, residing at No.6, Sorrya Illam, Second Floor, Vasanth Apartments, Madurai Sami Madam, Sembiam, Chennai – 600 011, Mobile No.8056038856, be and is hereby appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall enter reference afresh and send notice to the parties and the applicant, namely the respondent, shall file claim statement afresh and learned arbitrator shall decide the issue on merits and pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii] That the learned Sole Arbitrator appointed herein shall fix his fees and other incidental charges and the same shall be borne by the parties equally.

iv) That both parties hereto, shall bear their own costs.

v) That the A.No. 1237 of 2021 do stand closed.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 30th DAY OF JUNE 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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15.07.2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Date 30.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No.276 of 2021 & A.No.1237 of 2021

Dr.Ratolika Ravindra

. . . Petitioner

Versus

1. M/s.Equitas Small Finance Bank Limited,
Spencer Plaza, 4th Floor, Phase – II,
No.769, Anna Salai, Chennai – 600 002.

2. Mr.Jyothi Ratolika

3. Mr.R.Ganesan
District Judge [Retd],
Sole Arbitrator,
Chamber of arbitration and Mediation,
No.9, Eldams Square, No.167, Eldams Road,
Alwarpet, Chennai – 600 018.

. . . Respondents

PRAYER : Petition filed under Section 14(2) of Arbitration and Conciliation Act, 1996 read with Clause 2 of the Appointment of Arbitrators by the Chief Justice of Madras High Court, Scheme, 1996 to terminate the mandate of the third respondent herein in the pending arbitration proceedings in A.C.P.No.[ESFB] 10 of 2021 and be substituted by an independent and sole arbitrator to be appointed by this Court as per law to adjudicate upon all the disputes, differences and claims that have arisen between the parties hereto under the Loan Agreement



No.BLSECBD0000375 dated Nil entered between the parties.

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For petitioner : Mr.J.Ravikumar

For respondents : Ms.A.S.Neela Narayani

ORDER

This Original Petition has been filed to terminate the mandate of the third respondent and to appoint an independent arbitrator to resolve the dispute arising out of the loan agreement entered between the petitioner and the first and second respondents.

2. It is the contention of the learned counsel appearing for the petitioner that the respondent has unilaterally appointed the third respondent as an arbitrator, which is not permissible in law. Hence, it is his contention that new arbitrator has to be appointed.

3. It is the contention of the respondent, the arbitrator, namely the third respondent is a retired District Judge and hence, it cannot be said that it is an unilateral appointment.

4. A perusal of materials available on record indicate that the sole arbitrator, retired District Judge has been appointed directly by the communication dated 18.01.2021, unilaterally. It is now well settled that unilateral appointment of arbitrator is not permissible in law. In the

judgment of the Honourable Supreme Court in **Perkins Eastman**



Architects DPC Vs. HSCC [India] Ltd. reported in [2019] 8 MLJ 623, in

para 15 it has been held as follows :

“15. It was thus held that as the Managing Director became ineligible by operation of law to act as an arbitrator, he could not nominate another person to act as an arbitrator and that once the identity of the Managing Director as the sole arbitrator was lost, the power to nominate someone else as an arbitrator was also obliterated. The relevant Clause in said case had nominated the Managing Director himself to be the sole arbitrator and also empowered said Managing Director to nominate another person to act Arbitration Application No.32 of 2019 [Perkins Eastman Architects DPC & Anr. v. HSCC \(India\) Ltd.](#) as an arbitrator. The Managing Director thus had two capacities under said Clause, the first as an arbitrator and the second as an appointing authority. In the present case we are concerned with only one capacity of the Chairman and Managing Director and that is as an appointing authority. We thus have two categories of cases. The first, similar to the one dealt with in TRF Limited⁴ where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first



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category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Limited⁴, all cases having clauses similar to that with which we are presently concerned, Arbitration Application No.32 of 2019 [Perkins Eastman Architects DPC & Anr. v. HSCC \(India\) Ltd.](#) a party to the agreement would be disentitled to make any appointment of an Arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an Arbitrator.

16. But, in our view that has to be the logical deduction from TRF Limited.”

5. In the light of the above judgment and having regard to the nature

of the dispute between the parties and by consent of both sides, this Court is

inclined to appoint Mr.S.Arunachalam, Advocate as a Sole Arbitrator.



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6. Accordingly, it is ordered as follows:

i) that Mr.S.Arunachalam, Advocate, residing at No.6, Sorrya Illam, Second Floor, Vasanth Apartments, Madurai Sami Madam, Sembiam, Chennai – 600 011, Mobile No.8056038856 is appointed as a Sole Arbitrator to enter upon reference and adjudicate the matter.

ii] That the learned Arbitrator appointed herein, shall enter reference afresh and send notice to the parties and the applicant, namely the respondent, shall file claim statement afresh and learned arbitrator shall decide the issue on merits and pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the Order.

iii] That the learned Sole Arbitrator appointed herein shall fix his fees and other incidental charges and the same shall be borne by the parties equally.



5. This Original Petition is ordered accordingly, leaving the parties to bear their own costs. Consequently, connected application is closed.

Sd./-(N.S.K.J.,)

30.06.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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