

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION NO.382 OF 2022

K. Shanmugam & Anr.

... Petitioners.

Vs.

M/s Piramal Capital and Housing

Finance Ltd.(successor to DHFL Ltd.)

... Respondent.

Mr.Shrihari Iyer, Advocate for the petitioner.

Mr. Ajay L. Bhise i/b Vikrant Sabne and Associates for the respondent.

CORAM : MANISH PITALE, J.

DATE : 6th October, 2022.

PC. :

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter to be referred as “the Act”) challenging an award dated 7.10.2021 passed by the sole Arbitrator. As per the said award, the petitioner is required to pay specific amount to the respondent herein alongwith interest. Further

directions have been granted in the award.

2. The principal ground of challenge in the present petition is that the sole Arbitrator was unilaterally appointed by the respondent and it was not strictly in terms of the arbitration clause.

3. Since private notice was served on the respondent, it has appeared through Counsel. Learned Counsel for the respondent fairly submits that the principal ground of challenge raised in the present petition, is in terms of judgment of the Supreme Court, as issue regarding unilateral appointment of the Arbitrator goes to the root of the matter. In that regard reference is made to the judgment of the **Supreme Court in the case of TRF Limited Versus Energo Engineering Project Limited**¹. On this basis, it is submitted by the learned Counsel for the respondent, on instructions, that, the impugned award be set aside and that the parties be referred to arbitration by appointing fresh Arbitrator.

4. In view of the aforesaid, it is found that the present petition can be allowed and parties can be relegated to fresh round of arbitration by

¹ (2017)8 SCC 377

appointing sole Arbitrator, agreed upon by the parties.

5. Learned Counsel for the parties, on instructions, submit that Shri S. D. Dharmadhikari, retired Judge, can be appointed as a sole Arbitrator. In view of the agreement between the parties of appointment of sole Arbitrator and in the facts and circumstances of the case, it would be appropriate to allow the petition by disposing it of in following manner.

a) The impugned Award dated 07.10.2021 passed by the sole Arbitrator is set aside by consent.

b) Shri S. D. Dharmadhikari, retired District Judge, is appointed as sole Arbitrator to adjudicate the dispute between the parties which has arisen in context of agreement dated 29.3.2016.

c) Learned Arbitrator shall forward the statement of disclosure as per Section 11(8) and 12(1) of the said Act to the Prothonotary and Senior Master, as also his consent to be placed on record on this petition.

d) Copy of the statement be forwarded to both the

parties.

e) Parties shall appear before the said sole Arbitrator on 14.11.2022.

f) Statement of claim shall be filed by the claimant within two weeks from appearance before the learned Arbitrator.

g) Needless to say, all contentions of the parties are left open.

h) Office is directed to forward a copy of this order to the learned Arbitrator on the following address:

*Shri S. D. Dharmadhikari
Office address: 121, Agra building,
1st floor, M.G. road, Fort, Mumbai-400 001.
District Judge (Retd)
Advocate High Court, Room no.18, A.A.W.I.
Ground floor, High Court, Mumbai-400 032.*

6. The petition is disposed of in above terms.

7. Applications, if any, also stand disposed of.

(MANISH PITALE, J.)