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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO.80 OF 2023

Shahzeen Sayed & Anr.] .. Petitioners
vs.
Piramal Capital & Housing Finance Ltd.] .. Respondent

Mr.Anand Pai a/w Vinay Nair i/b Arun Panickar for the Petitioners.
Mr.Manoj Prajapati i/b Mohit Gadkari & Co. for the Respondent.

CORAM : BHARATI DANGRE, J

DATE : 12th June, 2023.

P.C.

1] The Petition filed under Section 12(1) of the Arbitration and Conciliation Act. 1996, seek termination of the mandate of the Arbitrator on the ground that his unilateral appointment cannot be sustained in the eyes of law and instead relief is sought that Arbitrator shall be substituted by an Arbitrator to be appointed by the Court , to complete the arbitral proceedings by taking over the proceedings from the current stage.

2] The learned counsel for the Applicant would invite my attention at the arbitration clause in form clause 12 contained in the Loan Agreement between the Applicant and Respondent (At the relevant time Dewan Housing Finance Corporation Limited), which contemplate reference of disputes, differences and/or claims arising out of and/or

concerning and/or in connection with the Agreement, to the Sole Arbitration of the Managing Director, Executive Director(s), President(s) or Vice President(s) of the DHFL or any other authorized person, to be appointed/nominated by the Managing Director, Executive Director(s), President(s), or Vice President(s) or any other Officer/ Executive, not below the level of Senior Manager of the DHFL as his nominee.

3] The Arbitration clause which contemplate appointment of the existing office bearer of DHFL or nominee or such office bearer, clearly falls within the teeth of the decision of the Hon'ble Apex Court in the case of ***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited*** (2020) 20 SCC 760.

4] The learned counsel for the Applicant would submit that the Respondent appointed a retired District Judge to be the sole Arbitrator without any consent being obtained from the Applicant and therefore the appointment is bad in law. It is sought to be argued that the sole Arbitrator in an attempt to enter the differences gave disclosure statement, and entered into reference, which is seriously objected by the Applicant.

The learned counsel on instructions from the newly substituted Respondent fairly state that, they have no objection if the arbitration is continued through the Sole Arbitrator to be appointed by the Court and subject to such conditions as this Court deem appropriate to impose.

5] In the wake of above, I need not delve deep into the legal propriety of the arbitration clause contained in the Agreement or its implication and I deem it appropriate to appoint Advocate Mr. Abhishek Bhadang as a Sole Arbitrator, on the following terms and conditions :

TERMS OF APPOINTMENT

(a) Appointment of Arbitrator :

Advocate Mr.Abhishek Bhadang, is hereby substituted as a Sole Arbitrator to, to complete the arbitral proceedings by taking over the proceedings from the current stage.

(b) Communication to Arbitrator of this order :-

(i) A copy of this order will be communicated to the learned Sole Arbitrator by the Advocates for the applicant/petitioner within one week from the date this order is uploaded.

(c) Disclosure : The learned Arbitrator, within a period of 15 days before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this application, with a copy to be forwarded to both the parties.

(d) Appearance before the Arbitrator : The parties shall appear before the Sole Arbitrator within a period of two weeks from today and the learned Arbitrator shall fix up a first date of hearing in the week commencing from 03/07/2023. The Arbitral Tribunal shall give all further directions with reference to the arbitration and also as to how it is to proceed.

(e) Contact and communication information of the parties : Contact and communication particulars are to be provided by both sides to the learned Sole Arbitrator. This information shall include a valid and functional E-mail address as well as mobile numbers of the parties, participating in the

process as well as of the Advocates.

(f) Section 16 application : The respondent is at liberty to raise all questions of jurisdiction within the meaning of section 16 of the Arbitration Act. All contentions are left open.

(g) Fees : The learned Arbitrator shall be entitled for the fees as per the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

(h) Venue and seat of Arbitration : Parties agree that the venue and seat of the arbitration will be in Mumbai.

(i) Procedure : These directions are not in derogation of the powers of the learned Sole Arbitrator to decide and frame all matters of procedure in arbitration.

(j) All contentions of both sides are left open to be raised by the respective parties before the Arbitral Tribunal, in accordance with law.

Arbitration Petition is disposed off in the aforesaid terms.

[BHARATI DANGRE, J]