



WEB COPY



Arb.O.P (Com.Div.) No.98 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

Arb.O.P (Com.Div.) No.98 of 2022

1.Samriddhi Builtcon Private Limited

Represented by its Director,
Mr.Krishna Kumar Agarwal,
RSB Compound,
New Sarkanda, Bilaspur,
Chattisgarh 495 001.

2.Mr.Krishna Kumar Agarwal

... Petitioners

Vs.

M/s.Daimler Financial Services India Private Limited,
1st Floor, Tower B- Tek Meadows, No.51,
Rajiv Gandhi Salai, Sholinganallur,
Chennai 600 119, Tamil Nadu.

... Respondent

Arbitration Original Petition filed under Section 34(2)(b) of the Arbitration and Conciliation Act, 1996 to set aside the impugned award dated 19.11.2020.



WEB COPY



Arb.O.P (Com.Div.) No.98 of 2022

For Petitioners : Ms.Ramya Subramaniam

For Respondent : Mr.K.J.Sankar Subramanian
for Mr.S.Namasivayam

ORDER

This Arbitration Original Petition has been filed challenging the award passed by the learned Sole Arbitrator on 19.11.2020.

2. The main ground on which the Arbitration Original Petition was filed is that the respondent appointed the learned Arbitrator unilaterally and therefore, petitioners are not able to present their case.

3. For the said submissions, the learned counsel appearing for the respondent fairly submitted that in the present case, the Arbitrator was appointed unilaterally by the respondent and the same is non-est in law. However, referring to the paragraph No.12 of the present original petition, he further submitted that the petitioners have admitted that default in payment was also made.



4. Since the petitioner had admitted the default, the award passed by the Arbitrator cannot be justified by a simple reason, when his appointment itself is non-est in law. The Award passed by the learned Arbitrator cannot be valid in law.

4. If the appointment of Arbitrator is non-est in law and unilateral, and if the petitioner/respondent was not provided any opportunity to present the case, the same is against the law laid down by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC Vs. HSCC (India) Ltd.***, reported in ***2019 SCC OnLine SC 1517***. Therefore, this Court is of the considered view that this award cannot be sustained.

5. Further the learned counsel for the respondent has fairly submitted that since the award passed by the learned Arbitrator is set aside, a common Arbitrator may be appointed.

6. For the above submission, the learned counsel for the petitioner submitted that in the event of sending notice under Section 21 of the



Arb.O.P (Com.Div.) No.98 of 2022

Arbitration and Conciliation Act, 1996 (hereinafter called as “the Act”), they will send appropriate reply, if they are agreeable for the Arbitrator suggested by the respondent herein or otherwise.

7. In response, the learned counsel for the respondent would submit that they would immediately send the notice under Section 21 of the Act and seeks liberty of this Court for the same.

8. In view of this submission, this Arbitration Original Petition is allowed and the award is set aside as not sustainable. The liberty is granted to the respondent to send a fresh notice to the petitioner within two weeks from the date of order made ready.

31.01.2023

Speaking/Non-speaking order

Index : Yes / No

Neutral Citation: Yes / No

nsa



WEB COPY



Arb.O.P (Com.Div.) No.98 of 2022

KRISHNAN RAMASAMY.J.,
nsa

Arb.O.P (Com.Div.)No.98 of 2022

31.01.2023