



WEB COPY

Arb.O.P.(Com.Div).No.250 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div).No.250 of 2021

and

A.No.4360 of 2021

1.Veluru Dhananjaya
2.Veluru Ramanamma

... Petitioners

VS.

M/s.TVS Credit Services Ltd.,
Represented By Its Authorised Signatory,
Jayalakshmi Estates,
No.29, Haddows Road,
Chennai – 600 006.

...Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34 of the Arbitration and Conciliation Act, 1996 as amended Act, 2015 to set aside the award dated 15.12.2020 passed by the Sole Arbitrator in Arbitration Case No.BVV/ARG/TVS/174/2020 in the matter of dispute between the petitioners and the respondent and to direct the respondent to pay the cost for this Petition.

For Petitioners : Mr.V.Ramana Reddy

For Respondent : Mr.M.Arunachalam



ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award dated 15.12.2020 made in Arbitration Case No.BVV/ARG/TVS/174/2020.

2. The petitioners had availed loan from the respondent Financial Institution for the purchase of a vehicle under a contract dated 31.12.2017. There arose a dispute under the said contract. The respondent had initiated arbitration by invoking the arbitration clause contained in the contract. However, unilaterally, the respondent had appointed an Arbitrator though only in accordance with the loan contract. The Arbitrator has passed an award in favour of the respondent, calling upon the petitioner to pay a sum of Rs.7,33,470/-, together with interest and costs, on account of the default committed by the petitioners in the repayment of the loan to the respondent. The said Arbitral Award dated 15.12.2020, is the subject matter of challenge in this petition.

3. The arbitration agreement by virtue of which the respondent had initiated arbitration is found at clause 25(1) of the Loan Agreement, dated 31.12.2017, which is extracted hereunder :

"25(1) Any dispute, difference or claims in regard



to this agreement, shall be referred to the Arbitration of a Sole Arbitrator nominated and appointed by the TVSCS. The provisions shall follow the Arbitration and Conciliation Act, 1996 and or any statutory amendments thereto. The Venue of the Arbitration shall be at Chennai or other place as may be determined by the Lender. The language shall be in English. The Award passed by the Arbitrator shall be final and binding on the parties."

4. As seen from the aforementioned clause, it is clear that unilaterally the respondent has appointed an Arbitrator, which has culminated in passing of the impugned Arbitral Award dated 15.12.2020.

5. It is settled law as laid down by the decision of the Hon'ble Supreme Court in the case of ***Perkins Eastman Architects DPC v. HSCC (India) Ltd. reported in 2019 SCC Online SC 1517***, wherein it has been held that unilateral appointment of an Arbitrator cannot be made by any of the parties to the dispute and that too when they have any interest in the arbitration.

6. Admittedly, in the instant case, the respondent unilaterally



appointed an Arbitrator and they have also interest in the dispute between the parties. Therefore, necessarily in accordance with the decision laid down by the Hon'ble Supreme Court referred to supra, the impugned Arbitral Award, which is the subject matter of challenge in this petition, has to be set aside and the Arbitration Original Petition allowed.

7. Accordingly, the impugned Arbitral Award dated 15.12.2020 passed by the Sole Arbitrator in Arbitration Case No.BVV/ARG/TVS/174/2020 is hereby set aside and this petition is allowed. However, liberty is granted to both the parties to initiate fresh arbitration by the appointment of an Arbitrator through an application filed under Section 11 of the Arbitration and Conciliation Act, 1996. Consequently, connected application is closed.

07.07.2023

ms

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

ABDUL QUDDHOSE, J.



WEB COPY

Arb.O.P.(Com.Div).No.250 of 2



ms

**Arb.O.P.(Com.Div).No.250 of 2021
and
A.No.4360 of 2021**

07.07.2023