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Arb.OP.(comdiv) No.59 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.59 of 2023  
and  
A.No.796 of 2023

1.Srinivasa Rao Chintamaneni  
2.M.Srinivasa Rao Moturi

.. Petitioners

-VS-

1.IndusInd Bank Limited,  
No.116, GN Chetty Road,  
T.Nagar, Chennai – 17.

2.Mr.K.Harish, Advocate,  
AG Block No.106,  
Anna Nagar, Chennai – 40.

.. Respondents

Petition under Section 14 of the Arbitration and Conciliation Act, 1996, has been filed seeking to terminate the mandate of the Arbitrator in KHCP No.2775 of 2022 and consequently appoint a sol arbitrator to adjudicate the dispute between the petitioners and the first respondent.



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For Petitioner : Ms.Vandana Jain

For R1 : Mr.S.R.Sundar

ORDER

This petition has been filed under Section 14 of the Arbitration and Conciliation Act, 1996, seeking for termination of the mandate of the arbitral tribunal on the ground that unilaterally the first respondent has appointed an arbitrator to adjudicate the dispute between the petitioners and the first respondent arising out of the loan agreement dated 03.01.2017.

2. This Court has perused the arbitration clause contained in the loan agreement dated 03.01.2017, which is the basis for reference to arbitration, and it is extracted hereunder:-

*“23.1. All disputes, differences and/or claim arising out of or touching upon this Agreement whether during its subsistence or thereafter shall be settled by arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any statutory amendments thereof and shall be referred to the sole Arbitration of an Arbitrator nominated by the 'Lender'. The award given by such an Arbitrator shall be final and*



*binding on all the Parties to this agreement.*

*23.2. Dispute for the purpose of Arbitration includes default committed by the Borrower as per clause 14 of this Agreement. It is a term of this agreement that in the event of such an Arbitrator to whom the matter has been originally referred resigns or dies or being unable to act for any reason, the Lender, at the time of such death of the arbitrator or of his inability to act as arbitrator, shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor.*

*23.3. The venue of Arbitration proceedings shall be at Chennai and the language shall be in English.*

*23.4. The Arbitrator so appointed herein above, shall also be entitled to pass an Award on the hypothecated asset and also on any other securities furnished by or on behalf of the Borrower/Co-borrower.*

*The Arbitrator is further entitled to pass any interim directions on the custody of the Asset as well as sale of the asset, or any other directions as may be appropriate to protect the interest of the parties pending resolution of the dispute.”*

3. Based on the aforesaid arbitration clause, the first respondent has



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initiated arbitration. The first respondent has unilaterally appointed an arbitrator, which is not legally permissible as per the decision of the Hon'ble Supreme Court in *Perkins Eastman Architects DPC vs. HSCC (India) Limited [(2020) 20 SCC 760]*, wherein it is held that a party to a dispute cannot unilaterally appoint an arbitrator. In view of unilateral appointment of an arbitrator by the first respondent, which is not legally permissible as per the decision in *Perkins's case* (cited supra), the mandate of the arbitrator has to be necessarily terminated by this Court.

4. Learned counsel for the first respondent has not raised serious objection for the same. Both the counsels have made an endorsement in the Court bundle agreeing for arbitration through an arbitrator appointed by this Court. The said endorsement is recorded.

5. For the foregoing reasons, this petition is allowed as prayed for by terminating the mandate of the arbitrator / Mr.K.Harish, Advocate, who has acted upon the reference earlier in case No.2775 of 2022. As agreed upon by the parties to the dispute, as seen from the endorsement made by both the counsels on instructions, this Court is issuing the following directions:-



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(a) This Court hereby appoints Mrs.S.Suba Shiny, advocate, residing at Flat No.B, Ground Floor, Balaji Shree Apartments, No.40-41, 6<sup>th</sup> main road, RA Puram, Chennai – 28 (Mobile No.9841434304), as the sole arbitrator to adjudicate the dispute between the petitioners and the first respondent arising out of the loan agreement dated 03.01.2017.

(b) The Sole Arbitrator appointed by this Court shall be paid remuneration as per the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

(c) The Arbitrator shall adhere to the provisions of Arbitration and Conciliation Act, 1996.

(d) The Arbitrator shall also pass the arbitral award within the stipulated period as prescribed under the Arbitration and Conciliation Act, 1996.

(e) Connected Application No.796 of 2023 is closed.

**24.08.2023**

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**ABDUL QUDDHOSE, J.**

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