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Arb.O.P.(Com.Div.) Nos.219 and 220 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P. (Com.Div.) Nos.219 and 220 of 2022

1.M/s.Thai Educational and Charitable Trust
rep. by its Managing Trustee
T.Sadhan Thirumalai Kumar

2.T.Sadhan Thirumalai Kumar

3.Kumari Chandrakantham ... Petitioners in Arb.O.P. No.219 of 2022

1.T.Sadhan Thirumalai Kumar

2.Kumari Chandrakantham ... Petitioners in Arb.O.P. No.220 of 2022

Versus

1.M/s.Newlink Overseas Finance Limited,
rep. by its Director
U.P.Prakasham

2.N.Muthukumaran (Arbitrator) ... Respondents in both cases

Prayer in both cases: Arbitration Original Petition (Commercial Division) filed under Section 14(2) of the Arbitration and Conciliation Act, 1996 to terminate the mandate of the second respondent Arbitrator immediately.



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For Petitioners : Mr.Vijayakrishnan for
Ms.R.Priyakumar

For Respondents : Mr.N.Premkumar for R1
No appearance for R2

COMMON ORDER

These petitions have been filed under Section 14(2) of the Arbitration and Conciliation Act seeking to terminate the mandate of the Arbitrator on the ground that the Arbitrator has been appointed by the first respondent unilaterally, which is not legally permissible as per the decision of the Hon'ble Supreme Court in its decision in the case of **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited reported in (2020) 20 SCC 760**.

2.It is well settled law as laid down by the aforesaid decision that a party to a dispute cannot unilaterally appoint an Arbitrator.

3.In the case on hand, admittedly, the first respondent has appointed an Arbitrator unilaterally and he has acted upon the reference.



4.Learned counsel for the first respondent also fairly concedes that the first respondent had appointed the Arbitrator unilaterally.

5.Since the first respondent has unilaterally appointed an Arbitrator, the mandate of the Arbitrator has to be terminated as per the provisions of Section 14 of the Arbitration and Conciliation Act.

6.Learned counsel for the first respondent would submit that as per the provisions of Section 14(1) of the Arbitration and Conciliation Act, once the mandate of the Arbitrator is terminated, he shall be substituted by another Arbitrator under Section 14 of the Arbitration and Conciliation Act, which reads as follows:

"14.Failure or impossibility to act

(1)[The mandate of an Arbitrator shall terminate and he shall be substituted by another arbitrator, if]-

- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and*
- (b) he withdraws from his office or the parties agree to the termination of his mandate.*



(2)If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the court to decide on the termination of the mandate.

(3)If, under this Section or sub-section (3) of Section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of Section 12."

7.It is clear from the aforesaid provision that once the mandate of the Arbitrator is terminated by this Court under Section 14(1) of the Arbitration and Conciliation Act, he has to be substituted by another Arbitrator. Even though learned counsel for the petitioners has raised objections to the same on the ground that the claim is barred by limitation and therefore, there cannot be any substitution of an Arbitrator as per the provisions of Section 14 of the Arbitration and Conciliation Act, this Court is not accepting the said submission in view of the fact that the petitioners are always having the right to file an Application under Section 16 of the Arbitration and Conciliation Act questioning the jurisdiction of the Arbitrator as well as to



raise the claim of limitation under the said Section. Therefore, the contention of the learned counsel for the petitioners is rejected by this Court.

8.For the foregoing reasons, these Arbitration Original Petitions are allowed as prayed for by issuing the following directions:

(a)The mandate of the Arbitrator Mr.Muthukumaran is terminated as per the provisions of Section 14 of the Arbitration and Conciliation Act and in his place, this Court appoints Mr.G.Dhanraj, Former Principal District and Sessions Judge, having Office at No.2228, 1st street, AF Block, Anna Nagar, Chennai (Mobile No.9443819126) as the Sole Arbitrator to adjudicate the dispute between the petitioners and the first respondent arising out of the Rescheduled Loan Agreement dated 28.03.2016 entered into between the petitioners and the first respondent, on merits and in accordance with law.

(b)The Arbitrator shall be paid his remuneration / fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996.



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ABDUL QUDDHOSE, J.

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(c)Both the parties shall equally share the Arbitrator's fees.

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

08.09.2023

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