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Arb.O.P.(Com.Div.) No.295 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2023

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.295 of 2023

1.Pravin Sharma
2.Neetu Devi

... Petitioners

Versus

M/s.Hinduja Leyland Finance Limited,
Rep by its POA Holder
Having its Corporate Office at No.27A,
Developed Industrial Estate, Guindy,
Chennai- 600 032 and registered
office at No.1, Sardar Patel Road,
Guindy, Chennai – 600 032.

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34(1) of the Arbitration and Conciliation Act, 1996 to set aside the award of the Arbitral Tribunal dated 27.12.2022 and to direct the respondent to pay the costs.

For Petitioner : Mr.J.Srinivasa Mohan
for M/s.TVJ Associates

For Respondent : Mr.A.Rajavel



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ORDER

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2. Apart from raising other grounds, the petitioners have primarily raised the ground that the respondent has unilaterally appointed an Arbitrator, which is in violation of the decision of the Hon'ble Supreme Court in the case of *Perkins Eastman Architects DPC and another vs. HSCC (India) Limited* reported in (2020) 20 SCC 760, wherein it has been held that a party to a dispute cannot unilaterally appoint an Arbitrator and an Award passed by the Arbitrator appointed unilaterally is *per se* illegal. As seen from the impugned Arbitral Award, it is clear that the respondent has unilaterally appointed an arbitrator, which has culminated in passing of the Award dated 27.12.2022 against the petitioners.

3. The petitioners had availed loan from the respondent financial Institution. According to the respondent, the petitioners had committed



default in the repayment of the loan. There is an Arbitration Clause contained in the loan contract based on which arbitration was initiated by the respondent by appointing a Sole Arbitrator. The impugned Arbitral Award dated 27.12.2022, which is an *ex-parte* award makes it clear that only on the request made by the respondent, the Sole Arbitrator had given consent for being appointed as a Sole Arbitrator and has acted upon the reference. It is now settled law as laid down by Hon'ble Supreme Court in **Perkins** judgment that a party interested in a dispute cannot unilaterally appoint an arbitrator and if an award is passed by such an Arbitrator, it is *per se* illegal.

4. Since the impugned Arbitral Award dated 27.12.2022 has been passed by a Sole Arbitrator, who has been appointed by the respondent unilaterally without obtaining the consent of the petitioners, necessarily in view of the Hon'ble Supreme Court decision referred to *supra*, the impugned Arbitral Award dated 27.12.2022 has to be set aside by this Court and this Arbitration Original Petition will have to be allowed.



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ABDUL QUDDHOSE, J.

rsi

5. Accordingly, the impugned Arbitral Award dated 27.12.2022 is hereby set aside and this Arbitration Original Petition is allowed as prayed for. No costs.

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Index: Yes/No

Speaking/Non-speaking orders

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