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ARB.O.P.(Com.Div) No.374 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.374 of 2023

D. Evanstin Sundararaj

... Petitioner

Vs.

HDB Financial Services Ltd.,
Corporate Office at
Ground Floor, Zenith House,
Opposite to Racecourse Keshavrao Khade Marg,
Mahalaxmi Mumbai – 400 034.

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying to set aside the Arbitral Award dated 15.02.2023 passed by the Arbitral Tribunal pursuant to the agreement dated 05.10.2021 entered between the petitioner and the respondent.

For Petitioner : M/s.R. Alvia Manoj Raj

For Respondent : No appearance

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the impugned Arbitral Award dated



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15.02.2023, on the primary ground that the Arbitrator who has passed the impugned Arbitral Award, has been appointed unilaterally by the respondent who is a party to the dispute.

2. Though the name of the respondent is printed in the cause list today, there is no representation for the respondent. Hence, the respondent is set *exparte* by this Court.

3. This Court has perused and examined the impugned Arbitral Award dated 15.02.2023. The petitioner had availed financial facility from the respondent under a Loan Agreement. There arose a dispute arising out of the said Loan Agreement. The respondent has initiated arbitration by unilaterally appointing an Arbitrator who has passed the impugned Arbitral Award dated 15.02.2023 in favour of the respondent against the petitioner.

4. The law is now settled by the decision of the Hon'ble Supreme Court in the case of '**Perkins Eastman Architects DPC and another Vs. HSCC (India) Ltd.**', reported in '**(2020) 20 SCC 760**', which has made it clear that unilateral appointment of an Arbitrator by a party to the dispute, is not legally



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permissible. Admittedly, as seen from the impugned Arbitral Award dated 15.02.2023, the respondent has unilaterally appointed an Arbitrator to adjudicate the dispute between the petitioner and the respondent arising out of the Loan Agreement.

5. Being an unilateral appointment by the respondent who is a party to the dispute, the impugned Arbitral Award will have to be necessarily set aside in view of the decision rendered by the Hon'ble Supreme Court in '*Perkins Eastman Architects DPC's case*', referred to supra.

6. For the foregoing reasons, the impugned Arbitral Award dated 15.02.2023 passed by the Sole Arbitrator appointed by the respondent unilaterally, is hereby set aside and this Arbitration Original Petition is allowed as prayed for. However, the parties are given liberty to initiate arbitration in accordance with the law.

08.09.2023

Index: Yes/ No
Speaking/Non-speaking order
Internet: Yes/No
Neutral Citation: Yes/No

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ABDUL QUDDHOSE, J.

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