



WEB COPY



Arb.OP.(comdiv) No.311 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2023

CORAM

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

Arb.O.P.(Comm.Div.) No.311 of 2023

1.M/s.PSR Infrastructures,
Rep. By its Managing Partner,
D.No.26/1/1578 F, No.301B Block,
Dheeraj Courts Apartment Srinagar Colony,
Magunta Layout Nellore,
Andhra Pradesh – 524 004.

2.Puchalapalli Sudhakar Reddy

3.Puchalapalli Silpa

.. Petitioners

-vs-

M/s.HDB Financial Services Limited,
Ground Floor, Zenith House,
Opposite to Race-course Keshavarao Khadye Marg,
Mahalaxmi,
Mumbai – 400 034.

.. Respondent

Petition under Section 34 of the Arbitration and Conciliation Act, 1996, has been filed seeking to set aside the arbitral award dated 04.05.2022 in ARC.No.ARC/HDB/VL/15879/2021 passed by Mr.N.Sivathanu, sole arbitrator.



Arb.OP.(comdiv) No.311 of 2023

For Petitioner : Mr.G.Vigneshwar
for Mr.J.Ashish
Respondents set exparte

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the impugned arbitral award dated 04.05.2022 passed in ARC.No.ARC/HDB/VL/15879/2021 on the primary ground that unilaterally the respondent has appointed an arbitrator, which has culminated in the passing of the impugned arbitral award.

2. Apart from raising the aforesaid ground, the petitioners have also raised another ground that they did not receive any notice in the arbitration proceedings and they came to know about the passing of the impugned arbitral award only after they received the notice in the execution petition filed by the respondent to execute the impugned arbitral award.

3. Notice in this application has been duly served on the respondent.



Arb.OP.(comdiv) No.311 of 2023

Name of the respondent is also printed in the cause list today. Despite the receipt of the court notice, neither the respondent nor any counsel on their behalf represented and therefore, the respondent is set exparte.

4. This Court has perused and examined the impugned arbitral award. As seen from the same, unilaterally the respondent has appointed an arbitrator, which has culminated in the passing of the impugned arbitral award. Law is now well settled as laid down by the Hon'ble Supreme Court in *Perkins Eastman Architects DPC and another vs. HSCC (India) Limited [(2020) 20 SCC 760]* that a party to the dispute cannot unilaterally appoint an arbitrator. Being an unilateral appointment, which culminated in the passing of the impugned arbitral award, the impugned arbitral award has to be set aside by this Court.

5. Though the petitioners have raised another ground that they did not receive any notice in the arbitral proceedings, there is no necessity for this Court to consider the said ground as the impugned arbitral award is being set aside on the ground that unilaterally the respondent has appointed an



Arb.OP.(comdiv) No.311 of 2023

arbitrator, which has culminated in the passing of the impugned arbitral award.

6. For the foregoing reasons, the impugned arbitral award dated 04.05.2022 is hereby set aside and this petition is allowed. However, liberty is granted to the parties to initiate fresh arbitration in accordance with law. Consequently, Application No.3477 of 2023 is closed. No Costs.

30.08.2023

rkm



WEB COPY



Arb.OP.(comdiv) No.311 of 2023

ABDUL QUDDHOSE, J.

rkm

Arb.O.P.(Comm.Div.) No.311 of 2023

30.08.2023