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Arb.O.P.(Com.Div.) No.369 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2023

CORAM

THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.369 of 2022

Jothimalar Kuppusamy

... Petitioner

Versus

1.M/s.Nissan Renault Financial Services India Pvt. Ltd.,
rep. by its Authorised Signatory
Kasi Viswanathan

2.C.Saifullah

... Respondents

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34(2)(6)(ii) of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 08.04.2022 passed by the Arbitral Tribunal.

For Petitioner : Mr.S.Patrick

For Respondents : Mr.N.Prakash

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act challenging the Arbitral Award dated 08.04.2022.



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2.The petitioner seems to have availed loan from the first respondent based on a loan agreement dated 12.05.2020. In terms of the Arbitration Clause contained in the Loan Agreement dated 12.05.2020, the Arbitration was initiated by the first respondent against the petitioner, which culminated in passing of the impugned Arbitral Award dated 08.04.2022.

3.The petitioner has challenged the impugned Arbitral Award primarily on the ground that the first respondent has unilaterally appointed an Arbitrator, which is in violation of the recent 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**. In the said decision, the Hon'ble Supreme Court has held that a party to the dispute cannot unilaterally appoint an Arbitrator.

4.In the instant case, as seen from the Arbitral Award dated 08.04.2022, which is the subject matter of challenge in this petition, the first respondent has unilaterally appointed the second respondent as an Arbitrator. The first respondent is a party to the dispute and is interested in



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the outcome of the Arbitration. Being an unilateral appointment, the decision rendered by the Hon'ble Supreme Court in Perkins judgment, referred to supra, squarely applies and therefore, the Arbitral Award dated 08.04.2022 is per se illegal and it has to be set aside.

5.For the foregoing reasons, the impugned Arbitral Award dated 08.04.2022 passed by the second respondent/Arbitrator against the petitioner is hereby set aside and this petition is allowed as prayed for.

6.Liberty is granted to both the parties to initiate fresh Arbitration in accordance with law. No costs.

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Index:Yes/No

Speaking/Non-speaking orders



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ABDUL QUDDHOSE, J.

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