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ARB.O.P.(Com.Div) No.372 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

Arb.O.P.(Com.Div) No.372 of 2023

1.M/s.Anupam Finlease India Ltd.,
Rep. by its Managing Director,
Mr.Narendra Kumar Chhajer,
(DIN: 01093335).

2.Mrs.Swapna Chhajer

... Petitioners

Vs.

M/s.Shriram Transport Finance Company Ltd.,
Rep. by its Power of Attorney
Mr.Simon Mahendran,
No.4, Mookambika Complex, 3rd Floor,
Lady Desika Road, Mylapore,
Chennai – 600 079.

... Respondent

Prayer : Arbitration Original Petition (Commercial Division) filed under Sections 34(2)(a)(iii) and 32(2)(b)(i),(ii) of the Arbitration and Conciliation Act, 1996, praying to set aside the ex-parte award dated 22.07.2022 passed in Arbitration Case No.237/2022.

For Petitioners : Mr.C. Kaveen

For Respondent : Ms.V. Pushpa



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ARB.O.P.(Com.Div) No.372 of 2023

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to set aside the Arbitral Award dated 22.07.2022

2. This petition has been filed primarily on the ground that unilaterally, the respondent has appointed an Arbitrator which has culminated in passing of the impugned Arbitral Award dated 22.07.2022.

3. According to the petitioners, in view of the decision of the Hon'ble Supreme Court in the case of '**Perkins Eastman Architects DPC Vs. HSCC (India) Limited**' reported in '**2020 20 SCC 760**', unilateral appointment of an Arbitrator cannot be made by a party to the dispute.

4. Admittedly, as admitted by both the counsels, the impugned Arbitral Award has been passed by the Arbitrator who has been



ARB.O.P.(Com.Div) No.372 of 2023

WEB COPY

appointed unilaterally by the respondent, who is a party to the Loan Agreement which is the subject matter of the dispute.

5. In view of the decision of the Hon'ble Supreme Court in '*Perkins Eastman Architects DPC's case*' referred to (*supra*), such an unilateral appointment of an Arbitrator by a party to the dispute, is not legally permissible under law. In view of the said decision, the impugned Arbitral Award dated 22.07.2022 passed in Arbitration Case No.237/2022, has to be set aside by this Court.

6. Now both the counsels have made an endorsement in the Court bundle, on instructions, that the petitioners as well as the respondent are agreeable for appointment of an Arbitrator by this Court, who shall adjudicate the dispute between the petitioners and the respondent, which is the subject matter of this petition.

7. In terms of the endorsement made by both the counsels in the Court bundle and in view of the fact that the impugned Arbitral Award has been passed by the Arbitrator appointed by the respondent,



ARB.O.P.(Com.Div) No.372 of 2023

unilaterally, the following directions are issued:-

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- (a) The impugned Arbitral Award dated 22.07.2022 passed by the Arbitrator in Arbitration Case No.237/2022, is hereby set aside and accordingly, this Arbitration Original Petition is allowed on the ground that unilaterally, the Arbitrator was appointed by the respondent;
- (b) By consent of both the parties, this Court appoints Hon'ble Tmt. Justice R. Banumathi (Retd.), Former Supreme Court Judge, having residence at C-20 C Block, Ground Floor, Defence Colony, New Delhi – 110 024, Mobile No.:7042955477, as a Sole Arbitrator, to adjudicate the dispute arising out of the Agreements entered into between the petitioners and the respondent;
- (c) The Arbitrator shall be paid her remuneration/fees as per the schedule agreed upon by the parties to the dispute;



ARB.O.P.(Com.Div) No.372 of 2023

WEB COPY

(d) Both the parties shall equally share the Arbitrator's fees;

(e) 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.

25.08.2023

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

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ARB.O.P.(Com.Div) No.372 of 2023

ABDUL QUDDHOSE, J.

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Arb.O.P.(Com.Div) No.372 of 2023

25.08.2023