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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 16th August 2023*

+ O.M.P. (T) (COMM.) 49/2023 & I.A. 12794/2023

SHYAM RANCHHOD LAL GANATRA
& ORS.

..... Petitioners

Through: Dr Charu Mathur and
Mr. Vikas Nair, Advocates.

versus

IIFL HOME FINANCE LIMITED Respondent
Through: Mr. S.P. Das, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. This petition has been filed under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '1996 Act') seeking termination of the mandate of the learned sole Arbitrator Sh. Mithilesh Jha.

2. Petitioners state that they had availed a loan facility of Rs.4 crores and 5 lacs from the Respondent Finance Company, which was secured by deposit of original title documents as mortgage of 21 unsold units of a project at Gandhinagar, Gujarat. Disputes having arisen between the parties, Respondent unilaterally appointed Sh. Mithilesh Jha as the sole Arbitrator in terms of the Arbitration Clause existing in the Agreement.

3. Learned counsel for the Petitioners submits that the unilateral appointment is unsustainable in law in view of the judgment of the



Supreme Court in *Perkins Eastman Architects DPC and Another v. HSCC (India) Ltd.*, (2020) 20 SCC 760, and thus the mandate of the Arbitrator requires to be terminated.

4. Mr. Das, learned counsel appearing on behalf of the Respondent submits that he cannot dispute the proposition of law laid down by the Supreme Court in *Perkins Eastman Architects DPC and Another (supra)* which is a binding dictum but he has no instructions to consent to the name of any particular person as an Arbitrator.

5. I have heard the learned counsels for the parties and examined the submissions. The arbitration clause between the parties to the Agreement dated 10.03.2016, reads as follows:-

“25. ARBITRATION

*25.1 Notwithstanding anything to the contrary in the Loan Documents (including this Agreement), the Parties agree that if any dispute/disagreement/differences (“Dispute”) arises between the Parties during the subsistence of the Loan Documents (including this Agreement) and/or thereafter, in connection with, inter alia, the validity, interpretation, implementation and/or alleged breach of any provision of the Loan Documents (including this Agreement), jurisdiction or existence/appointment of the arbitrator or of any nature whatsoever, then, **the Dispute shall be referred to a sole arbitrator who shall be nominated /appointed by the Lender only.** The Parties expressly agree that, in any circumstance, the appointment of the sole arbitrator by the Lender shall be and shall always deemed to be the sole means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment/nomination of the sole arbitrator.*

25.2 The place of the arbitration shall be New Delhi or such other place as may be notified by the Lender and the arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996 (or any statutory re-enactment thereof, for the time being in force) and shall be in the English language.

25.3 The arbitrator's award shall be in writing. The arbitrator shall also decide on the costs of the arbitration proceedings.

25.4 The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law.”



6. It is clear that arbitration clause envisages unilateral appointment of the Arbitrator by the lender only which cannot be sustained in law in view of the judgment of the Supreme Court in ***Perkins Eastman Architects DPC and Another (supra)***, relevant paragraph of which is as follows:-

“21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]”

7. In view of the aforesaid binding dictum of the Supreme Court, mandate of the learned Arbitrator Sh. Mithilesh Jha is hereby terminated with the following further directions:-

(a) Delhi International Arbitration Centre (‘DIAC’) is requested to appoint an Arbitrator from the panel maintained by the DIAC and needless to state the proceedings shall be



conducted under the aegis of DIAC.

(b) Learned Arbitrator is requested to furnish a declaration in terms of Section 12(1) of the 1996 Act, prior to entering upon reference.

(c) Fees of the learned Arbitrator shall be regulated in terms of the Fourth Schedule of the 1996 Act.

(d) The learned Arbitrator shall proceed from the stage at which the proceedings are pending.

8. Petition along with pending application stands disposed of in the aforesaid terms.

JYOTI SINGH, J

AUGUST 16, 2023/shivam