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

+ O.M.P. (COMM) 78/2024 & I.A. 3247/2024

UPHAR FINVEST LIMITED

..... Petitioner

Through: Mr. Gajinder Kumar, Ms. Kiran
Jai, Ms. Chandra Shekhar, Ms.
Somya & Ms. Drishti, Advocates.

versus

SHRIRAM FINANCE LIMITED

..... Respondent

Through: Ms. Charu Sachdev, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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15.03.2024

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner assails an arbitral award dated 23.11.2023 by which the learned Sole Arbitrator has awarded a sum of ₹6,50,37,886/- alongwith interest and costs, in favour of the respondent herein.

2. Disputes between the parties arose under a Loan Cum Hypothecation Agreement dated 01.04.2019 [“Agreement”]. Clause XIV(9) of the Agreement provided for resolution of disputes by an arbitrator to be appointed by the respondent herein. It is undisputed that the learned Arbitrator was appointed by the respondent unilaterally pursuant to this arbitration clause, and the arbitration proceeded *ex parte*



against the petitioner.

3. The first ground urged by Mr. Gajinder Kumar, learned counsel for the petitioner, is that the learned Arbitrator was appointed unilaterally by the respondent, rendering the Award *non-est*. Ms. Charu Sachdev, learned counsel for the respondent, does not dispute that the learned Arbitrator was unilaterally appointed.

4. The question of impermissibility of unilateral appointment of an arbitrator has been elaborated by the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC vs. HSCC (India) Limited* [(2020) 20 SCC 760]. Division Benches of this Court, in *Ram Kumar vs. Shriram Transport Finance Co. Ltd.* [2022 SCC OnLine Del 4268] and *Govind Singh vs. Satya Group Pvt. Ltd.* [2023 SCC Online Del 37], have categorically held that an award rendered by an arbitrator who suffers from this disqualification, is *non-est* in law.

5. The impugned Award dated 23.11.2023 is therefore set aside.

6. The respondent would be at liberty to institute fresh arbitral proceedings in respect of its claims. However, with the consent of learned counsel for the parties and at their request, an arbitrator is appointed by the Court in these proceedings itself.

7. Hon'ble Mr. Justice Vipin Sanghi, former Chief Justice, High Court of Uttarakhand [Tel: 9871300037] is appointed as the Arbitrator to adjudicate disputes between the parties under the Loan Cum Hypothecation Agreement dated 01.04.2019. The arbitral proceedings will be conducted under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 ["DIAC"] and in accordance



with the Rules of DIAC, including as to the remuneration of the learned Arbitrator.

8. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. As both parties have notice of the arbitral proceedings, learned counsel assure the Court that they will accordingly enter appearance in the arbitral proceedings also.

10. Mr. Kumar submits that he has been instructed to seek a reference to mediation, so that the parties can make an effort to resolve their disputes. Ms. Sachdev is also willing to make such an attempt. The parties will therefore appear before the mediator nominated by *Samadhan*, Delhi High Court Mediation and Conciliation Centre, Shershah Road, New Delhi-110503, on 27.03.2024.

11. DIAC is requested to defer the arbitral proceedings until 01.05.2024. The learned Arbitrator is requested to enter into the reference after the said date, at the request of either party.

12. It is made clear that all rights and contentions of the parties are left open for adjudication by the learned Arbitrator.

13. The petition, alongwith pending application, is disposed of with these observations.

PRATEEK JALAN, J

MARCH 15, 2024

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