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

+ **O.M.P. (COMM) 366/2020 & I.As. 2252-2253/2020, 7322/2023**

M/S STAN WHEELS PVT. LTD. & ORS.

.....Petitioners

Through: Mr. Naresh Markanda, Sr.
Advocate with Mr. Virender
Kumar Sharma, Advocates
[9810758256].

versus

M/S INDIABULLS HOUSING FINANCE LTD.Respondent

Through: Mr. Mukesh Gupta, Mr. Rishabh
Gupta, Mr. Devansh Dua,
Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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15.07.2024

1. The petitioners have approached this Court under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], challenging an arbitral award dated 23.07.2019, by which a learned sole arbitrator has adjudicated disputes between the parties under two loan agreements dated 09.09.2014.
2. The arbitration clauses [Article 11] in both agreements are in similar terms, and provide for reference of disputes to an arbitrator appointed by the respondent.
3. I have heard Mr. Naresh Markanda, learned Senior Counsel for the



petitioners and Mr. Rishab Gupta, learned counsel for the respondent.

4. The award itself discloses, and this position is not disputed by Mr. Gupta, that the arbitrator was appointed by a letter dated 08.01.2018 by the respondent unilaterally.

5. The status of an award rendered by an arbitrator appointed by one of the parties, after the insertion of Section 12(5) in the Act by the Arbitration and Conciliation (Amendment) Act, 2015 is no longer *res integra*. The judgments of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377] and *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760], make it clear that arbitration by an arbitrator appointed by one of the parties is impermissible. This principle has been followed in several judgments of this Court, to arrive at the conclusion that an award rendered by an arbitrator so appointed is null and void *ab initio*. The judgments of the Division Bench 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] are authorities for this proposition. In fact, this Court has held that even without an application for setting aside, an award rendered by an arbitrator appointed by one of the parties is unenforceable. Reference may be made to the Division Bench decisions in *Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat* [2023 SCC OnLine Del 3148] and *Babu Lal v. Chola mandalam Investment & Finance Co. Ltd.* [2023 SCC OnLine Del 7239]. The judgment in *Kotak Mahindra* [*supra*] was carried to the Supreme Court, which rejected Special Leave to Appeal [by order dated 12.12.2023 in Special Leave to Petition under Diary No. 47322/2023].



6. Mr. Gupta submits that the petitioner, in fact, participated in the arbitral proceedings and did not object to the unilateral appointment of the arbitrator. This question is settled against the respondent, by the decision in *Bharat Broadband Network Ltd. v. United Telecoms Ltd.* [(2019) 5 SCC 755], which clearly requires express waiver in writing of the rights conferred under Section 12 of the Act. No such waiver can be implied by conduct. In the present case, in fact, Mr. Markanda points out that an application under Sections 12 and 13 of the Act had also been filed before the learned arbitrator.

7. In view of the above, the impugned award dated 23.07.2019 is set aside.

8. At the request of learned counsel for the parties, the disputes are referred to the arbitration of Mr. Vinay K. Gupta, former Principal District and Sessions Judge, Delhi Judge [Tel: 9910384701]. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.

9. The arbitration proceedings will be taken up after the stage of completion of pleadings. The pleadings which were filed before the erstwhile learned arbitrator will be placed by the parties before the learned arbitrator appointed today. Learned counsel for the parties accept the position that as pleadings have already been completed, the mandate of the learned arbitrator appointed today will commence from the date he enters upon the reference.

10. The arbitration proceedings will be held under the aegis of Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi ["DIAC"] and subject to the Rules of DIAC, including as to



remuneration of the learned Arbitrator.

11. All rights and contentions of the parties on merits are left open for adjudication by the learned arbitrator.

12. The petition, and all pending applications, are disposed of in these terms.

PRATEEK JALAN, J

JULY 15, 2024
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