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

+ **O.M.P. (COMM) 558/2020**

KAMAL JASWANTLAL SHETH

.....Petitioner

Through: Mr. M. Dutta, Mr. Aditya Guha
and Mr. P.S. Sudheer, Advocates.

versus

PNB HOUSING FINANCE LIMITED & ORS.Respondents

Through: Mr. Ajay Uppal, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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19.07.2024

1. The petitioner has approached this Court, under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], challenging an arbitral award dated 28.02.2020, by which the learned sole arbitrator has adjudicated disputes between the parties under a Loan Agreement dated 30.11.2017 [the “Loan Agreement”].

2. The parties to the Loan Agreement included respondent No.1 [which was the claimant], respondent Nos. 2, 3 and 4 [which were arrayed as respondent Nos. 1, 3 and 4 in the arbitration] and the petitioner herein, who was arrayed as respondent No.2. The principal ground upon which challenge is laid to the award is that the impugned award was passed by an arbitrator appointed unilaterally by respondent No.1. My attention is drawn to paragraph 1 of the impugned award, which refers to a letter dated 23.01.2019, issued by respondent No.1–claimant,

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appointing the arbitrator.

3. Having regard to 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], Mr. Ajay Uppal, learned counsel for respondent No.1, accepts that the award of an unilaterally appointed arbitrator cannot be sustained.

4. Mr. M. Dutta, learned counsel for the petitioner, and Mr. Uppal have also drawn my attention to a letter dated 26.06.2024 issued by respondent No.1 to the petitioner and the other respondents in the arbitration, which states *inter-alia* as follows:

*“5. It is pertinent to mention here that as you, the Addressees, have failed to repay the outstanding dues, despite repeated reminders, of captioned LAN, the **PNBFHL was constrained to invoke the Arbitration clause in terms of Clause 10.7 and 10.8 of General Terms and Conditions and initiated the Arbitral Proceedings in year 2019** vide Case No. PNBHFL/LRN/L-1/476 and loan recall notice was sent to you, the Addressees, for recovery of dues as on 08.02.2019 amounting to Rs. 3,19,70,995/- (Rupees Three Crores Nineteen Lakhs Seventy Thousand Nine Hundred Ninety-Five Only). **However, you the Addressees, did not come forward before the Ld. Sole Arbitrator. Thus, during the span of time, a judgment was passed by Hon'ble Supreme Court Perkins Eastman Architects DPC & Anr. Versus HSCC (India) Ltd., (2020) 20 SCC 760 and it has been held that "it is not permissible for a party to unilaterally appoint an arbitrator without the consent of the other party(ies) in context of Section 12(5) of the Arbitration & Conciliation Act."** Thus, in view the same, said **Arbitral Proceedings was held null and void. Thus, PNBFHL does not proceed further with respect to the same.**”*

[Emphasis supplied.]

5. Respondent No.1 has, therefore, invoked the arbitration clause again in the said communication.

6. The position of the law laid down in *Perkins Eastman Architects*



DPC (supra) has been applied in several Division Bench decisions of this Court in *Babu Lal and Another vs. Cholamandalam Investment and Finance Company Ltd. and Another* [2023 SCC OnLine Del 7239] and *Kotak Mahindra Bank Ltd. vs. Narendra Kumar Prajapat* [2023 SCC OnLine Del 3148] to the effect that such an award is a nullity and *void-ab-initio* and incapable of enforcement.

7. In view of the above, the impugned award dated 28.02.2020, is set aside, leaving it open to respondent No.1 to agitate its claims afresh in accordance with law.

8. The petition is disposed of in the above terms.

PRATEEK JALAN, J

JULY 19, 2024
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