



\$~26

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

+ O.M.P. (T) (COMM.) 63/2024 & I.As. 33110-111/2024.

SHREE BANKEY BIHARI METALS & ORS. ....Petitioners  
Through: Mr. Ankit A. & Mr. Bhaskar  
Aditya, Advocates.

versus

LIVFIN INDIA PRIVATE LIMITED .....Respondent  
Through: Mr. Mayank Mahajan, Advocate  
with Rajshekaran Pandian, AR.

**CORAM:**  
**HON'BLE MR. JUSTICE PRATEEK JALAN**

% **ORDER**  
**25.07.2024**

1. The petitioner has filed this petition under Section 14 of the Arbitration and Conciliation Act, 1996 ["the Act"], seeking termination of the mandate of a learned sole arbitrator, who is *seisin* of disputes between the parties under an agreement dated 19.06.2023.
2. Clause 18 of the agreement contains a provision for resolution of disputes by arbitration. It provides for the arbitrator to be appointed by the "*lenders*" mutually. In the array of parties, the respondent herein and a party by the name of Shriram Finance Limited are described as "*lenders*".
3. Disputes having arisen between the parties, the respondent by a legal notice dated 12.03.2024, invoked arbitration and suggested the



names of some proposed arbitrators. As the petitioner failed to respond to the letter, the respondent, by a second notice dated 16.03.2024, purported to appoint an arbitrator.

4. Although the petitioners have entered appearance in the arbitration proceedings, they have now filed this petition seeking termination of the mandate of the learned arbitrator on the ground that he was appointed unilaterally by the respondent.

5. The law relating to unilateral appointment of an arbitrator 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 Section 12 of the Act prohibits appointment of an officer of any of the parties as the arbitrator and also prohibits appointment of the arbitrator by a representative of one party.

6. The Division Bench judgments of this Court have followed this principle to hold that proceedings are null and void *ab initio* and any award rendered therein, is unenforceable. Reference in this connection may be made to the judgments in *Govind Singh vs. Satya Group Pvt. Ltd.* [2023 SCC OnLine Del 37] and in *Kotak Mahindra Bank Ltd. vs. Narendra Kumar Prajapat* [2023 SCC OnLine Del 3148].

7. Mr. Mayank Mahajan, learned counsel for the respondent, has appeared pursuant to notice issued on 12.07.2024. He submits that the factual position narrated above is not disputed and that the mandate of the learned arbitrator may, therefore, be terminated. He, however, seeks appointment of a substitute arbitrator in exercise of the power under Section 15(2) of the Act.



8. Having regard to the above, and with the consent of learned counsel for the parties, the mandate of the learned arbitrator, who is in *seisin* of disputes between the parties under the agreement dated 19.06.2023 is terminated.
9. Ms. G. Padma Priya, Advocate [Tel: 9910531145] is appointed as the substitute arbitrator for adjudication of the disputes. The statement of claims filed by the respondent may be placed before the learned Arbitrator. The petitioner will file its statement of defence within two weeks from today or immediately upon the Arbitrator appointed today, entering into the reference.
10. The arbitration will be conducted under the aegis of Delhi International Arbitration Centre, Shershah Road, New Delhi-110503 [“DIAC”], and the arbitration will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.
11. The learned Arbitrator is requested to furnish a declaration under Section 12 of the Act, prior to entering upon the reference.
12. Learned counsel for the parties assure the Court, that they will co-operate with the learned Arbitrator for expeditious disposal of the arbitration proceedings.
13. The petition stands disposed of with these observations.

**PRATEEK JALAN, J**

**JULY 25, 2024**  
**‘pv’/**