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

+ O.M.P. (T) (COMM.) 111/2023 & I.A. 24135/2023

**BERKELEY LIFESTYLE BRANDS PVT LTD
& ANR.**

..... Petitioners

Through: Mr. Gaurav Gupta, Mr. Nikhil
Kohli, Mr. Akshaya Ganpati, Ms.
Saumya Tiwari, Advocates.

versus

HERO FINCORP LIMITED & ANR.

..... Respondents

Through: Mr. Sanjeev Pathak, Advocate for
R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
09.02.2024

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1. By way of this petition under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, the petitioners seek termination of the mandate of the arbitrator who is in *seisin* of disputes between the petitioner and respondent No. 1 under the Facility Agreement dated 30.11.2020.

2. The main ground urged by learned counsel for the petitioners is that the learned Arbitrator was appointed unilaterally by respondent No. 1. It is stated that the petitioner came to learn of the appointment of the arbitrator when the respondent No. 2 – State Bank of India [“the Bank”], informed the petitioner that it had been served with an order of the learned Arbitrator dated 28.09.2023, in respect of a fixed deposit



maintained by the petitioner with the respondent No. 2 – Bank. Respondent No. 2 – Bank is concerned with the arbitral proceedings only in this respect and is not otherwise a party to the Facility Agreement or to the arbitration.

3. Respondent No. 2 had appeared on 04.12.2023 when notice was issued but has not appeared thereafter. Learned counsel for the petitioners states that its learned counsel has been informed of today's hearing in compliance of the order of this Court dated 12.01.2024. In any event, in view of the limited involvement of respondent No. 2 in the present proceedings, there is no impediment to continue with the hearing in its absence.

4. Mr. Sanjeev Pathak, learned counsel for respondent No. 1, accepts that the appointment of the learned Arbitrator was indeed unilateral. Having regard to the judgments of the Supreme Court in *TRF Limited vs. Energo Engineering Projects Limited* [(2017) 8 SCC 377], *Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited* [(2020) 20 SCC 760] and judgments following these, Mr. Pathak does not object to termination of the mandate of the learned Arbitrator and appointment of a new Arbitrator in his place. However, he submits that, in the meanwhile, an attempt may also be made to resolve the disputes through mediation. Learned counsel for the petitioners has no objection to this suggestion.

5. In view of the above, the following order is passed with the consent of learned counsel for the parties:

- A. The mandate of the learned Arbitrator appointed by the respondent No. 1 is terminated.
- B. The petitioner and respondent No. 1 are referred to mediation



under the aegis of *Samadhan*, the Delhi High Court Mediation and Conciliation Centre, Delhi High Court, Shershah Road, New Delhi. They will appear before learned Mediator on 15.02.2024.

- C. In the event the disputes between them under the Facility Agreement are not resolved in mediation, they will be adjudicated by arbitration of Ms. R. Kiran Nath, former District Judge [Tel:- 9910384659].
- D. The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Shershah Road, New Delhi [“DIAC”]. The arbitral proceedings will be governed by the Rules of DIAC, including as to the remuneration of the learned Arbitrator.
- E. The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act, prior to entering into the reference.
- F. DIAC and the learned Arbitrator appointed today are requested not to take any further steps in the arbitration for a period of one month from today, to enable the parties to explore settlement in mediation.
- G. The erstwhile learned Arbitrator is requested to handover the arbitral record to learned counsel for the petitioners so that it can be placed before the learned Arbitrator appointed today, if necessary. These documents will also be served upon learned counsel for respondent No. 1 by learned counsel for the petitioner.
- H. Respondent No. 1 will file its statement of defence to the claim and response to the Section 17 application within four weeks from service thereof, and the parties will request the learned Arbitrator to take up the said application at the earliest.



- I. Learned counsel for the petitioners has raised a grievance with regard to an order dated 28.09.2023 passed by the erstwhile learned Arbitrator under Section 17 of the Act. In view of the fact that the mandate of the learned Arbitrator has been terminated on the ground stated above, it is agreed between the petitioner and respondent No. 1 that *status quo* will be maintained as to the fixed deposit of Rs.20 lakhs which is the subject matter of the said order, until the learned Arbitrator appointed today has had an opportunity to hear the parties under Section 17 of the Act.
6. Further directions may be given by the learned Arbitrator appointed today.
7. The petition stands disposed of with these directions.

PRATEEK JALAN, J

FEBRUARY 9, 2024

“Bhupi”/