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Arb.O.P.No.100 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2025

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

Arb.O.P.No.100 of 2023

Vijayakumar

... Petitioner

VS.

1.M/s.Shriram Finance Ltd.,
Formerly M/s.Shriram Transport Finance Company Ltd.,
Rep. by its Authorised Signatory V.Velu
No.1612 - 1st Floor, R.S.Road,
Siruvapuri Murugan Complex,
Ponneri District,
Pincode – 601 204.

2.Mari

... Respondents

PRAYER: Arbitration Original Petition filed under Sections 34(2) & (3) of the Arbitration and Conciliation Act, 1996, to set aside the impugned ex-parte arbitral award in AC.No.489 of 2021 dated 28.02.2023 passed by the Arbitral Tribunal at Chennai.

For Petitioner : Mr.K.Balu

For Respondents

For R1 : Mr.N.Jayabharathi

For R2 : Dispensed with



ORDER

This Arbitration Original Petition has filed under Section 34(2) & (3) of the Arbitration and Conciliation Act, 1996, to set aside the award dated 28.02.2023.

2.I have heard Mr.K.Balu, learned counsel for the petitioner and Mr.N.Jayabharathi, learned counsel for the respondents.

3.The learned counsel for the petitioner would primarily contend that the award that has been passed and challenged in this original petition was passed in violation of the terms and conditions of the Loan Agreement, especially since no opportunity was given to the petitioner to put forth his defence and further, the constitution of the Arbitral Tribunal and procedures followed are also in violation of the terms and conditions of the agreement.

4.The learned counsel for the respondents submitted that without prejudice to the merits, the award can be set aside and to avoid further delay, an Arbitrator can be appointed by this Court, by consent, so that the parties can agitate their respective claims and defences before the Arbitral Tribunal. The learned counsel for the petitioner also submitted that he has no objection



for appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

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5.I have gone through the grounds raised in the above original petition challenging the arbitral award passed by the Arbitrator on 28.02.2023. The main ground of attack is that Section 31(3) of the Act has not been followed and that the award is also full of errors on not only facts, but also in respect of legal aspects.

6.It is not in dispute that the Arbitrator was appointed unilaterally by the respondents without notice to the petitioner and in view of the judgment of the Hon'ble Supreme Court in *Perkins Eastman Architects Dpc Vs. HSCC (India) Limited* reported in (2019) SCC Online SC 1517, the said unilateral appointment is bad in the eye of law. Further, in view of the fair concession shown by the respondents, the parties can be directed to resolve their disputes before the newly constituted Arbitral Tribunal, after set aside the impugned award.

7.In view of the foregoing, the award dated 28.02.2023 is hereby set



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aside and I hereby appoint **Mr.Y.K.Rajagopal, Advocate, No.222/3, Rohini Flats, Anna Nagar, West Extension, 7th Avenue, Chennai 600 101, Ph.No.9841065907**, as the Sole Arbitrator to go into the disputes between the parties and adjudicate the same, in accordance with law.

8.The learned Arbitrator is entitled to fix his fees as per the Schedule-IV to the Act. This Court further requests the learned Arbitrator to endeavor to decide the dispute as expeditiously as possible, however, not later than nine (9) months from the date of his entering into reference.

9. Accordingly, this Arbitration Original Petition is allowed.

24.01.2025

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Index : Yes / No
Internet : Yes / No

P.B.BALAJI, J.,
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