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Arb.O.P (Com.Div.) No.227 of 2024 and A.No.2980 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2025

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

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1.M/s.Sanghi Transport Co.,
rep. by its Proprietor Naveen Sanghi

2.Deepa Sanghi

... Petitioners

Versus

M/s.IndusInd Bank Ltd.,
rep. by its Manager/Executive Legal

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 34(2)(a)(ii),(iii),(v),(b) and (2A) of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 05.04.2023 passed by the learned Arbitrator concerning the Loan Agreement bearing No.AHJ0883D dated 28.08.2019 and direct the respondent to pay costs.

For Petitioners : Ms.A.Saranya

For Respondent : Ms.S.Darshini for
Mr.S.R.Sundar



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ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, challenging the impugned Award dated 05.04.2023 passed in favour of the respondent/claimant.

2.The petitioners have challenged the impugned Award on the ground that unilaterally the respondent had appointed an Arbitrator, who has passed the impugned Arbitral Award.

3.The law is now well settled by the Hon'ble Supreme Court in the case of **Perkins Eastman Architects DPC and another vs. HSCC (India) Limited reported in (2020) 20 SCC 760** that unilateral appointment of an Arbitrator by one of the parties to the dispute is not permissible under law.

4.Learned counsel for the petitioners also drew the attention of this Court to the reply dated 06.02.2023 sent by the petitioners to the Section 21 Notice dated 19.01.2023 sent by the respondent/claimant and would submit



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that despite the fact that the petitioners have objected to the appointment of the Arbitrator, who has passed the impugned award, the respondent/claimant had nominated the very same Arbitrator. He would therefore submit that being an unilateral appointment, the impugned order passed by the Arbitrator amounts to patent illegality and is contrary to the law laid down by the Hon'ble Supreme Court in Perkins judgment referred to supra.

5.Learned counsel for the respondent is not able to counter the submission made by the learned counsel for the petitioners as admittedly, the respondent had objected to the appointment of the Arbitrator, who has passed the impugned award, despite the same, the respondent/claimant had chosen to appoint the very same Arbitrator.

6.In view of the well settled law and in view of the fact that the Arbitrator, who has passed the impugned award, was appointed by the respondent/claimant unilaterally, the impugned award passed by the Arbitrator, which is the subject matter of challenge in this petition, suffers from patent illegality.



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7. For the foregoing reasons, this Arbitration Original Petition is allowed by setting aside the impugned Award dated 05.04.2023 passed by the Sole Arbitrator by issuing the following directions:

(a) Both the counsels on instructions have made a joint endorsement in this petition agreeing to the appointment of Mr. Justin David, retired District Judge. In view of the joint endorsement, this Court appoints Mr. Justin David, retired District Judge, residing at Block OAK, Flat - B1, Maple Orchard, Ben Foundation, Padikuppam Road, Anna Nagar West, Chennai – 600 040, 9443551078 as the Sole Arbitrator to adjudicate the dispute between the petitioners and the respondent, arising out of the Loan Agreement dated 28.08.2019, on merits and in accordance with law.

(b) The Arbitrator shall be paid his remuneration/fees in accordance with the 4th Schedule of the Arbitration and Conciliation Act, 1996.

(c) Both the parties shall equally share the Arbitrator's fees.



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(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act.

Consequently, connected application is closed. No costs.

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ABDUL QUDDHOSE, J.

vga

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