



Arb.O.P.(Com.Div.)No.433 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-08-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

**ARB O.P. (COM.DIV.) No.433 of 2025 and
A No.3559 of 2025**

1. Nityanand Infrastructure Ltd.
Borrower,
No.711,Highway Commerce Center,
Laghu Udyog Kendra I.B. Patel Road,
Goregaon East, Mumbai,
Maharashtra, 400063

2. Mr.Harish Seshappa Prabhu,
Co-Borrower, Flat No.22B,
Wingapeejay Apt,
Plot No. 58, Sector 17, Navi
Mumbainavi,
Mumbairairgarhchhattisgarh - 400703

Petitioner

Vs

Indusind Bank Ltd,
New No.34, GN Chetty Road,
T.Nagar, Chennai-600017
Tamil Nadu India
Through Authorized Signatory
S.Jeevitha.

Respondent



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PRAYER

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Petition filed under Section 34(2)(a(v), Section 34(2)(b)(i) and Section 34(2)(b)(ii) of the Arbitration and Conciliation Act, 1996 to set aside the impugned award dated 21.02.2025 passed by the Learned Arbitral Tribunal.

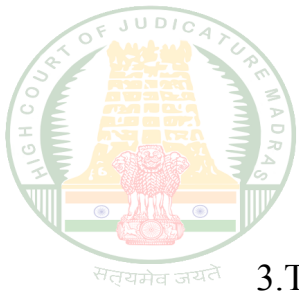
For Applicant(s): Mr.Ashwin Shanbhag

For Respondent(s): Ms.Meera Gnanasekar

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the impugned arbitral award primarily on the ground that the impugned arbitral award has been passed by an arbitrator appointed unilaterally by the respondent. The petitioners have also raised other grounds in this petition.

2.The learned counsel for the petitioners drew the attention of this Court to the impugned arbitral award and submits that as seen from the same, the impugned arbitral award was passed by the arbitrator appointed unilaterally by the respondent. The learned counsel for the petitioners relies upon the decision of 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, in support of his contentions.



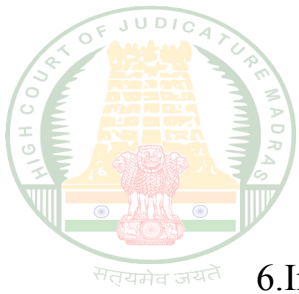
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3.The learned counsel for the respondent also fairly submits that the consent of the petitioners was not obtained before appointing the Arbitrator, who has passed the impugned arbitral award.

4.The law is now settled by the decision rendered by the Hon'ble Supreme Court of India in the case of *Perkins Eastman Architects DPC and another -vs- HSCC (India) Limited* reported in (2020) 20 SCC 760, that a party to the dispute cannot unilaterally appoint an Arbitrator. Eventhough the learned counsel for the respondent submits that the Arbitrator was appointed by an independent arbitral institution, who are having their own panel of Arbitrators, the said contention has to be rejected, since it has been made clear in *Perkins* judgment referred to supra that the consent of the other party for the appointment of the named Arbitrator is mandatory. The petitioner has also not acquiesced to the appointment of the Arbitrator, who has passed the impugned arbitral award, as seen from the proceedings pending before the Arbitrator as well as from the arbitral award. In view of the fact that the award has been passed by an Arbitrator, who was appointed unilaterally by the respondent, necessarily the impugned arbitral award has to be set aside and this petition has to be allowed.

5.Both the learned counsels have made a joint endorsement in the Court bundle on instructions, agreeing for the appointment of an Arbitrator by this Court.



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6. In view of the joint endorsement made by both the learned counsels on instructions, and in view of the fact that the Arbitrator was earlier appointed unilaterally by the respondent, this Court will have to necessarily appoint a new Arbitrator as agreed upon by both the parties to the dispute.

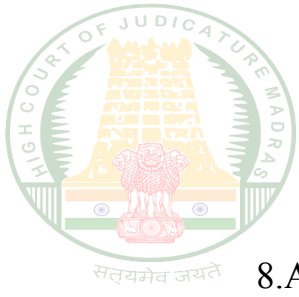
7. For the foregoing reasons, this Petition is allowed as prayed for by issuing the following directions :-

a) This Court appoints Mrs. Chitra Narayan, Advocate, having address at No.3E, Kgeyes Eternity, Parvathy Street, Kalakshetra Colony, Besant Nagar, Chennai 600 090 (Mobile No.90403 31934) as the sole Arbitrator to adjudicate the dispute between the parties.

(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.

(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.



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8. Accordingly, the impugned arbitral award dated 21.02.2025 passed by the arbitral tribunal is hereby set aside. The period spent by both the parties before this Court in this petition as well as before the earlier Arbitrator, who has passed the impugned arbitral award shall stand excluded for the purpose of saving limitation under Section 14 of the limitation Act. In view of the order passed in this Petition, the stay petition in A.No.3559 of 2025 is closed. No costs.

13-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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ABDUL QUDDHOSE J.

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To
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New No.34, GN Chetty Road,
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Tamil Nadu India
Through Authorized Signatory S.Jeevitha.

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