



Arb O.P NO. 47 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 12-03-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

Arb O.P No. 47 of 2024

Priyam Sarkar
No.10, J Mahendra Roy Lane,
West Bengal, 700046.

..Petitioner

Vs

M/S.Tata Capital ltd formerly know
as M/s. Tata Capital Financial Services Ltd.,
No.10, J Mahendra Roy Lane, West Bengal,
700046.Rep.by its authorised signatory
Centennial Squares, 1st Floor,
No.6A, Dr.Ambedkar Salai,
Kodambakkam, Chennai 24

.. Respondent

For Petitioner : M/s.S.Ramajayam

For Respondent: M/s. N.K.Vanan,

Prayer: Petition filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, praying (a) to set aside the Arbitral Award dated 05.06.2024 bearing No.A.C.P.(ODR-TATA) No.2024007056 passed by the Arbitral Tribunal by in its entirety or to the extent to which it is challenged;
(b) to direct the respondent to pay the costs and
© to grant such further reliefs as this court may deem fit.



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ORDER

This petition has been filed under Section 34(2) of the Arbitration and Conciliation Act, 1996, challenging the impugned Arbitral Award dated 05.06.2024.

2. Apart from raising other grounds, the primary ground raised by the petitioner for challenging the impugned Arbitral Award is that the respondent has unilaterally appointed the Arbitrator, who has passed the impugned Arbitral Award, and therefore the Arbitral Award is to be set aside by this Court.

3. Law is well settled by the decision rendered by the Honourable Supreme Court in *Perkins Eastman Architects DPC and another Vs. HSCC (India) Limited* reported in (2020) 20 SCC 760, that if one of the parties to the dispute appoints an Arbitrator unilaterally without the consent of the other party and the said Arbitrator passes the Arbitral Award, the said Arbitral Award is patently illegal.



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4. Admittedly, as seen from the impugned Arbitral Award, the petitioner has not given consent for the appointment of an Arbitrator. The respondent had approached an institution for the appointment of an Arbitrator and the said institution had nominated the Arbitrator, who had acted upon the reference and passed the Arbitral Award. The petitioner had never approached the institution and never sought for appointment of an Arbitrator by the said institution referred to in the contract. The petitioner did not give consent for the appointment of the Arbitrator by the said institution. Therefore, the contention of the learned counsel for the respondent that since the petitioner has not responded to the notice, consent by the respondent as well as by the institution would amount to giving concurrence of the named Arbitrator, has to be rejected. The petitioner also did not participate in the Arbitral proceedings which culminated in the passing of the impugned Arbitral Award.

5. Being an Award passed by the Arbitrator appointed unilaterally by the respondent, necessarily, the impugned Arbitral Award has to be set aside by this Court, as it is not in accordance with the decision rendered by the Honourable Supreme Court in the case of *Perkins*, referred to supra.



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Accordingly, the impugned Arbitral Award is hereby set aside and the petition is allowed. However, liberty is given to the respondent to raise fresh Arbitration against the petitioner in accordance with law. The amount deposited by the petitioner shall remain in court deposit for a period of six months, to enable the respondent to initiate fresh arbitration and thereafter, the respective parties are granted liberty to approach this Court seeking for payment out lying to the credit of O.P., depending on the outcome of the fresh Arbitration.

12-03-2025

nvsri

To
1. M/S.Tata Capital ltd formerly know as M/s. Tata Capital
Financial Services Ltd.,
No.10, J Mahendra Roy Lane, West Bengal,
700046.Rep.by its authorised signatory Centennial
Squares, 1st Floor, No.6A, Dr.Ambedkar Salai,
Kodambakkam, Chennai 24



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ABDUL QUDDHOSE, J.

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