

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 7TH DAY OF JUNE 2024 / 17TH JYAISHTA, 1946

AR NO. 74 OF 2024

PETITIONER:

TRAVANCORE RURAL DEVELOPMENT PRODUCER COMPANY LTD.
P.R.SMARAKA BUILDING, ADOOR (REPRESENTED BY ITS
EXECUTIVE DIRECTOR & PRINCIPAL OFFICER ZEENA R AGED 48
YEARS W/O SETHU, MELATHIL HOUSE, THENUMTHARA MURI,
PERINGANAADU VILLAGE, ADOOR TALUK.)-, PIN - 691523

BY ADVS.
P.PAULOCHAN ANTONY
SREEJITH K.
R.GIRISH

RESPONDENTS:

- 1 DIVYA LEKSHMI SANAL
1. DIVYA LEKSHMI SANAL D/O NARAYANAN PANICKER VADAKKE
MADAM, MARAMON THOTTAPUZHASSERY, PATHANAMTHITTA, PIN -
689549
- 2 NARAYANA PANICKER
S/O PADMANABHA PANICKER VADAKKE MADAM, MARAMON
THOTTAPUZHASSERY, PATHANAMTHITTA, PIN - 689549
- 3 OMANA AMMA
W/O NARAYANAN PANICKER VADAKKE MADAM, MARAMON
THOTTAPUZHASSERY, PATHANAMTHITTA, PIN - 689549

THIS ARBITRATION REQUEST HAVING COME UP FOR ADMISSION
ON 04.06.2024, THE COURT ON 07.06.2024 DELIVERED THE
FOLLOWING:

G.GIRISH, J.

A.R.No.74 of 2024

Dated this the 7th day of June, 2024

ORDER

The applicant, a producer company, has filed this application under Section 11 of the Arbitration and Conciliation Act, 1996 for the appointment of an Arbitrator for the resolution of the dispute related to the non-payment of the loan availed by the 1st respondent, with respondents 2 and 3 as guarantors.

2. The 1st respondent is said to be a member of the applicant company who joined the Members Mutual Fund Scheme launched by the applicant. She is said to have availed a loan of Rs.2,93,000/- from the applicant company, with the 2nd and 3rd respondents as guarantors, after executing the necessary agreements in favour of the applicant company. The aforesaid agreements provided for the appointment of an Arbitrator at the instance of the applicant company in the event of any disputes with the

company in connection with the repayment of the loan. Alleging that the respondents committed default in the repayment of the loan, the matter was referred to an Arbitrator unilaterally appointed by the applicant. The Arbitrator so appointed passed Annexure-A8 award directing the respondents 1 to 3 to pay an amount of Rs.2,54,136/- with interest @ 18% per annum along with costs to the tune of Rs.7,150/- to the applicant. But Annexure-A9 execution petition filed by the applicant before the District Court, Pathanamthitta, was dismissed by the learned Additional District Judge-II, Pathanamthitta vide Annexure-A10 order stating the reason that the unilateral appointment of the Arbitrator was against the relevant provisions of law and the dictum laid down by the Apex Court in **Bharat Broadband Network Limited v. United Telecom Limited [(2019) 5 SCC 755]**. It is under the above circumstances that the applicant has approached this Court with the present application.

3. The notice of this application has been duly served on the respondents. They have not chosen to appear before

this Court or to file any counter.

4. Heard the learned counsel for the applicant.

5. Annexures A2 and A3 agreements executed by the respondents in favour of the applicant would reveal that there are arbitration clauses incorporated thereunder enabling the resolution of the disputes between the parties by an Arbitrator appointed by the applicant. However, as rightly observed by the learned Additional District Judge-II, Pathanamthitta in Annexure-A10 order, it is not possible to have such unilateral appointment of Arbitrator in view of the proviso to Section 12(5) of the Arbitration and Conciliation Act, 1996 and the law laid down by the Apex Court and this Court in **Bharat Broadband Network Limited v. United Telecom Limited [(2019) 5 SCC 755]**, **Perkins Eastman Architects DPC and Another v. H.S.C.C (India) Limited [AIR 2020 Supreme Court 59]** and **Hedge Finance Private Limited, Ernakulam v. Bijish Joseph [ILR 2022 (3) KER 947]**.

6. Though the relevant clauses of arbitration in Annexures A2 and A3 agreements are not in tune with the

law which forbids the unilateral appointment of arbitrators, it is not possible to eschew the aforesaid clauses in toto for the said defect. The said clauses are to be considered as valid arbitration clauses except for those portions which confer the authority upon the applicant to unilaterally appoint arbitrators. The records of the case would also reveal that the applicant had issued notice to the respondents conveying their intention to have the issue resolved by an Arbitrator. Therefore, the request of the applicant for the appointment of a sole Arbitrator for the resolution of the dispute regarding the default in repayment of the loan availed by the respondents, has to be necessarily allowed.

In the result, the application stands allowed, and orders are passed as follows:

- (i) Annexure-A8 award dated 09.02.2018 stands set aside.
- (ii) Adv.Mr.Biju B.k, Azad Complex, KSRTC Road, Pathanamthitta-689 645 is nominated as the sole Arbitrator to adjudicate and resolve the disputes and differences between the parties to

this case.

- (iii) The Registry is directed to communicate a copy of this order to the learned Arbitrator, within a period of two weeks from today and to obtain a Statement of Disclosure from him under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996.
- (iv) Once the Disclosure Statement is obtained from the learned Arbitrator, the Registry shall release the certified copy of this order, with a copy of the said statement appended to it, retaining the original of the same on the files of this case.
- (v) The fees of the Arbitrator shall be governed by the Fourth schedule to the Arbitration and Conciliation Act, 1996.

(sd/-)

G.GIRISH, JUDGE

jsr/

APPENDIX OF AR 74/2024

PETITIONER ANNEXURES

Annexure A1	TRUE EXTRACT OF THE MINUTES OF THE SECOND BOARD OF DIRECTORS MEETING OF THE COMPANY DATED 02.01.2005
Annexure A2	COPY OF THE AGREEMENTS DATED 18-07-2016
Annexure A3	COPY OF THE AGREEMENTS DATED 09-11-2016
Annexure A4	TRUE COPY OF THE NOTICES ISSUED DATED 02-08-2017
Annexure A5	TRUE COPY OF THE NOTICES ISSUED DATED 02-08-2017
Annexure A6	TRUE COPY OF THE NOTICES ISSUED DATED 10-11-2017
Annexure A7	TRUE OF THE LETTER OF APPOINTMENT DATED 17-11-2017
Annexure A8	COPY OF THE AWARD DATED ON 09-02-2018
Annexure A9	COPY OF THE EP
Annexure A10	CERTIFIED COPY OF THE ORDER DATED 30-09-2023