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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 16.12.2025

\+ FAO (COMM) 169/2025 & CM APPL. 79144/2025

SHRI BN VISHWANATH & ANR. .....Appellants

Through: Mr.Vikram Hegde, Ms.Hima Lawrence, Mr.Abhishek Wadiyar, Advs.

versus

RELIGARE FINVEST LIMITED & ORS. .....Respondents

Through: Mr.Arvind Jadon, Adv. for R-1. Mr.Ajay Uppal Adv. for R-2 and Omkara Assets Reconstruction Pvt Ltd.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. The learned counsel for the appellants submits that the respondent nos.3 to 5 have been impleaded only as *proforma* parties.

2. Mr. Ajay Uppal, the learned counsel appearing for the respondent no.2, that is, M/s India Resurgence ARC Private Ltd. submits that the respondent no.2 has assigned the debt of the appellants to M/s Omkara Assets Reconstruction Pvt. Ltd. and that he enters appearance for them as well.

3. On the oral request of the learned counsel for the appellants, M/s Omkara Assets Reconstruction Pvt. Ltd. is arrayed as a party-

respondent. Let Amended Memo of Parties be filed within a period of two weeks from today.

4. With the consent of the parties, the appeal is being taken up for final hearing today.

5. This appeal has been filed challenging the Judgement dated 26.03.2025 passed by the learned District Judge (Commercial)-03, South, Saket Courts, New Delhi, (hereinafter referred to as 'Trial Court') in OMP (COMM) 68/2021 titled ***Shri B.N. Vishwanath & Anr. v. Sri Raj Kumar Sharma & Ors.***, dismissing the application filed by the appellants herein under Section 34 of the Arbitration and Conciliation Act, 1996 ('A&C Act') against the Arbitral Award dated 22.07.2019, on account of it being barred by limitation.

6. The brief facts leading up to the filing of the present appeal are that the respondent no. 1 nominated a Sole Arbitrator to adjudicate the claim made against the appellants herein in terms of the Loan Agreement dated 24.02.2012 executed between the parties. It is pertinent to note here that the respondent no.2 is the assignee of the said loan, having taken over the same from the respondent no.1.

7. The learned Sole Arbitrator gave his concurrence to act as the Sole Arbitrator and thereafter, as there was no appearance on behalf of the appellants, passed an *ex-parte* Arbitral Award dated 22.07.2019 in favour of the respondents.

8. It is the case of the appellants that on coming to know about the said Award upon receipt of notice in the execution proceedings, on 31.07.2021, the appellants filed the above application under Section

34 of the A&C Act on 09.11.2021. The same, however, came to be dismissed as being barred by limitation as provided under Section 34(3) of the A&C Act.

9. The limited plea of the appellants in the present appeal is that the Impugned Award dated 22.07.2019 has been passed by a Sole Arbitrator who was unilaterally appointed by the respondent no.1 herein, the original holder of the debt.

10. The learned counsel for the appellants submits that in terms of the Judgment of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.,*** (2020) 20 SCC 760, the Impugned Award is therefore void and did not even require an application under Section 34 of the A&C Act to challenge the same.

11. The learned counsel for the newly added respondent, that is, M/s Omkara Assets Reconstruction Pvt Ltd., admits the above submission that the learned Sole Arbitrator had been unilaterally appointed by the respondent no.1.

12. We have considered the submissions made by the learned counsels for the parties.

13. The Supreme Court in ***Perkins*** (supra), relying upon its earlier decision in ***TRF Limited v. Energo Engineering Projects Limited*** (2017) 8 SCC 377, has held that a party who has an interest in the outcome of a decision in an arbitration proceeding must not have the power to appoint or to be a Sole Arbitrator in the said proceeding. We quote the same below:

> *"20. We thus have two categories of cases. The first, similar to the one dealt with in TRF*

Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.'

21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, "whether the Managing

> *Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator" The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]"*

14. In ***State of Uttar Pradesh v. R.K. Pandey,*** 2025 SCC Online SC 52, the Supreme Court while highlighting the importance of equity at the stage of appointment of arbitrators, has stated that Arbitral Awards suffering from an inherent lack of jurisdiction are void and can be

challenged even at the stage of execution. Crucially, the said judgment was passed setting aside a judgment passed by the High Court of Allahabad which had upheld the dismissal of an application under Section 34 of the A&C Act on the ground of delay. We quote the relevant paragraphs as below:

> ***"23.*** *A Constitutional 5-Judge Constitution Bench of this Court in Central Organization of Railway Electrification (Core) v. ECI PIC SMO MCPL (JV), 2024 INSC 857 has observed that equity applies at the stage of appointment of arbitrators, though the A&C Act recognizes the autonomy of parties to decide on all aspects of arbitration. The enactment lays down a procedural framework to regulate the composition of the arbitral tribunal and conduct of arbitration proceedings. It is only then that the arbitral tribunals, which have the backing of courts, can act objectively and exercise their discretion in a judicial manner, without caprice and in accordance with the principles of law and rules of natural justice. This is the core of the alternate dispute redressal mechanism, which is also the core of Section 18 of the A&C Act and is a non-derogable and mandatory provision. It is only then the arbitrators are vested with the power to resolve the dispute under the law. This judgment also observed that the unilateral appointment of arbitrators has a direct effect on the conduct of arbitral proceedings.*
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> ***24. We have made our observations in the context of Section 47 of the Civil Procedure Code, 1908, which even at the stage of execution, permits a party to object to the decree, both on the grounds of fraud, as well as lack of subject matter jurisdiction. It is apparent that the arbitration proceedings were a mere sham and a fraud played by Respondent No. 1, R.K. Pandey, by self-***

> ***appointing/nominating arbitrators, who have passed ex-parte and invalid awards. To reiterate, Respondent No. 1, R.K. Pandey, is not a signatory to the purported arbitration agreement. Moreover, the parties thereto, DNPBID Hospital and the Governor of Uttar Pradesh, do not endorse any such agreement. From the cumulative facts and reasons elucidated above, this is a clear case of lack of subject matter jurisdiction.***
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> ***25.*** *Accordingly, we allow the present appeal and set aside the two ex parte Awards dated 15.02.2008 and 25.06.2008. Both the Awards shall be treated as null and void and non-enforceable in law. Resultantly, the judgment passed, and the subject matter of the appeal shall be treated as set aside. The execution proceedings shall stand dismissed. The appellants will be entitled to costs of the entire proceedings as per the law."*
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> (*emphasis supplied*)

15. Furthermore, a Division Bench of this Court in ***M/s Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi***, 2025:DHC:4781-DB, while considering the validity of unilateral appointment of arbitrator and its effect on the arbitral proceedings, has also opined as under:

> *"84. In view of the above discussion, the legal position on the unilateral appointment of the Sole and Presiding Arbitrator is summarized as under:*
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> *a)* ***Mandatory Requirement****: Any arbitration agreement providing unilateral appointment of the sole or presiding arbitrator is invalid. A unilateral appointment by any part in the arbitrations seated in India is strictly prohibited and considered null and void since its very inception. Resultantly, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are*

also nullity and cannot result into an enforceable award being against Public Policy of India and can be set aside under Section 34 of the Act and/or refused to be enforced under Section 36 of the Act.

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c) ***Award by an Ineligible Arbitrator is a Nullity****: An award passed by a unilaterally appointed arbitrator is a nullity as the ineligibility goes to the root of the jurisdiction. Hence, the award can be set aside under Section 34(2)(b) of the Acy by the Court on its own if it 'finds that' an award is passed by unilaterally appointed arbitrator without even raising such objection by either party.*

d) ***Stage of Challenge****: An objection to the lack of inherent jurisdiction of an arbitrator can be taken at any stage during or after the arbitration proceedings including by a party who has appointed the sole or presiding arbitrator unilaterally as the act of appointment is not an express waiver of the ineligibility under proviso to Section 12(5) of the Act. Such objection can be taken even at stage of challenge to the award under Section 34 of the Act or during the enforcement proceedings under Section 36 of the Act."*

16. In the present case, admittedly, the learned Sole Arbitrator was appointed unilaterally by the respondent no.1 in terms of the contract executed between the parties. It is also not the case of the respondents that a waiver was obtained expressly in writing from the appellants prior to such appointment.

17. In view of the precedents cited above, the unilateral appointment of the learned Sole Arbitrator, being bad in law, renders the entire proceeding without jurisdiction. The Impugned Award dated 22.07.2019 is therefore, *void ab-initio.* The same is accordingly set

aside.

18. The appeal is allowed in the above terms. The pending application also stands disposed of.

NAVIN CHAWLA, J

MADHU JAIN, J

DECEMBER 16, 2025/Arya/pb/ik