

ORDER SHEET
IA NO.GA/1/2022
In
APOT/159/2022
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION

MDD HANIF
VS
M/S CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY LTD.

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 22nd November, 2022.

Appearance:
Mr. Priyankar Saha, Adv.
Mr. Lalratan Mandal, Adv.
Ms. M. Banerjee, Adv.
...for the petitioner

Mr. Pratik Mukherjee, Adv.
Mr. Ranjit Singh, Adv.
Mr. Amit Sankar Bagchi, Adv.
Mr. Abir Debnath, Adv.
...for the respondent

The Court: This is a Section 37 application against an ex parte award passed in a Section 17 application made before an Arbitrator who was unilaterally appointed by the finance company. Counsel on behalf of the finance company submits that the award has been passed and therefore, the award-debtor has right to challenge the same in proceedings under Section 34 of the

Arbitration and Conciliation Act, 1996. He submits that the order passed in the Section 17 application has become infructuous because of passing of the award.

However, the fact remains that the appointment is unilateral and such an appointment is hit by the judgments of the Apex Court in *TRF Limited v. Energo Engineering Projects Ltd.* reported in (2017) 8 SCC 377 and in *Perkins Eastman Architects v. HSCC (India) Limited* reported in (2019) 9 SCC Online SC 1517. In the above conspectus, this Court is of the view that any order passed by the Arbitrator would amount to be a nullity. The Arbitrator is directed to provide a copy of the award to the award-debtor/petitioner within a period of one week from date.

The petitioner shall be at liberty to take appropriate action against the award in accordance with law.

With regard to the impugned order in question, I am of the view that since the appointment of the Arbitrator appears to be void ab initio, this order should not be allowed to operate in any manner.

Accordingly, the said order is stayed.

IA No.GA/1/2022 and APOT/159/2022 are, accordingly, disposed of.

(SHEKHAR B. SARAF, J.)