

ODC 20

ORDER SHEET
EC/462/2022
IA NO: GA/1/2023
IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL DIVISION

M/S CHOLAMANDALAM INVESTMENT AND FINANCE
COMPANY LIMITED
VS
AVINASH KUMAR AND ANR

BEFORE:
The Hon'ble JUSTICE SHEKHAR B. SARAF
Date: 20th March, 2023.

Appearance:
Mr. Ranjit Singh, Adv.
Ms. Pooja Sett Chakraborty, Adv.

Mr. Priyankar Saha, Adv.
Mr. Lalratan Mondal, Adv.

The Court:

1. The instant execution petition arises out of an award passed by a unilaterally appointed sole arbitrator.
2. While dealing with the fate of such awards, this Court in ***Cholamandalam Investment and Finance Company Ltd. -v- Amrapali Enterprises and Anr.*** reported in ***2023 SCC OnLine Cal 605***, had outlined the inherent lack of jurisdiction that plagues the awards passed by unilaterally appointed sole arbitrators.

This Court held, in the light of the judgments of the Supreme Court in ***HRD Corporation -v- GAIL*** reported in **(2018) 12 SCC 471**, ***TRF Limited -v- Energo Engineering Projects Limited*** reported in **(2017) 8 SCC 377**, ***Perkins Eastman Architects DPC -v- HSCC (India) Limited*** reported in **(2020) 20 SCC 760**, and ***Bharat Broadband Network Limited -v- United Telecoms Limited*** reported in **(2019) 5 SCC 755**, that arbitral proceedings conducted by arbitrators who are unilaterally appointed are vitiated from the very beginning and that any award as a result of such proceedings is a nullity, and therefore, has to be regarded as *non-est* in law.

3. While, this inherent lack of jurisdiction can be cured through a written express waiver in terms of the proviso to Section 12(5) of the Arbitration and Conciliation Act, 1996 ('Act'), the same has not been done in the instant case. As such, this Court is bound to conclude that there is no award which can be executed in the instant execution petition.
4. As a result of the aforesaid findings, the parties are at liberty to re-agitate the matter before a new arbitral tribunal in accordance with the law.
5. However, the parties before me, have consented for the appointment of an arbitrator and waived the applicability of Section 21 of the Act. Accordingly, I appoint **Mr. Shuvasish Sengupta, Advocate, Mob. No.**

9830855276 as the Sole Arbitrator to adjudicate the dispute between the parties.

6. The appointment is subject to submission of declaration by the Arbitrator in terms of Section 12(1) in the form prescribed in the Sixth Schedule of the Act before the Registrar, Original Side of this Court. Such declaration must be furnished within four weeks from the date of this order. Let this order be conveyed to the Arbitrator by the Registrar, Original Side forthwith.
7. Accordingly, EC/462/2022 along with GA/1/2023 is disposed of. There shall no order as the costs.

(SHEKHAR B. SARAF, J.)

sp/