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

+ EFA(COMM) 5/2023 CM APPL. 37813/2023

MERCEDES BENZ FINANCIAL

SERVICES INDIA PVT LTD

..... APPELLANT

Through: Mr. Anirban Bhattacharya, Mr.
Muneeb Rashid Malik, Ms. Priyanka
Bhatt, Ms. Aliya Durafshan and Mr.
Rajeev Chowdhary, Advs.

versus

M/S KHOKHER ENTERPRISES

..... RESPONDENT

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

16.01.2024

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1. The appellant has filed the present appeal impugning the order dated 06.05.2023 passed by the learned Commercial Court rejecting the appellant's application under Section 36 of the Arbitration & Conciliation Act, 1996 (hereafter '**the A&C Act**') for enforcement of an *ex-parte* Arbitral Award dated 10.11.2021. The learned Commercial Court had noticed that the sole arbitrator – who was a practicing advocate –was appointed unilaterally by the appellant without concurrence from the respondents. The said arbitrator had proceeded to deliver the *ex-parte* Arbitral Award in Chennai.

2. The learned Commercial Court found that the learned sole arbitrator was ineligible to act as an arbitrator by virtue of Section 12(5) of the A&C Act. Accordingly, the Court held that the Arbitral Award dated 10.11.2021



was a nullity and could not be enforced.

3. The issue involved in the present case is covered by the earlier decision delivered by this Court in ***Kotak Mahindra Bank Ltd v. Narendra Kumar Prajapat: EFA(COMM) 3/2023*** dated 17.05.2023. This Court had held that an award rendered by a person – who is ineligible to act as an arbitrator by virtue of Section 12(5) of the A&C Act – is a nullity, and, therefore, cannot be enforced. This Court is informed that a Special Leave Petition preferred against the said decision (being SLP(Civil) No.47322/2023) was dismissed by the Hon'ble Supreme Court by an order dated 12.12.2023.

4. The learned counsel appearing for the appellant submits that the respondents had not appeared before the learned Commercial Court and set up this objection. Thus, the Court could not reject the application for enforcement of the Arbitral Award on the aforesaid ground. We find no merit in this contention.

5. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

RAVINDER DUDEJA, J

JANUARY 16, 2024
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Click here to check corrigendum, if any