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

\+ EFA(COMM) 11/2023 and CM APPL. 64034/2023

SHIV KUMAR .....Appellant

Through: Mr O.P. Gupta, Advocate.

versus

M/S CHOLAMANDALAM INVESTMENT AND FINANCE CO. LTD. & ORS. .....Respondents

Through: Mr Puneet Raj Banderwal, Mr Ravi Shankar Garg, Mr Chanakya Verma and Ms Mamta Garg, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% 16.07.2024

1. The appellant has filed the present appeal impugning an order dated 01.12.2023, whereby the learned Commercial Court had dismissed the objections raised by the appellant.

2. Respondent no.1 had filed the aforementioned execution proceedings *Execution (COMM) 336/2023* captioned *Cholamandalam Investment and Finance Co. Ltd. v. Star Rural Bus Links & Anr.*, seeking to enforce an arbitral award dated 30.07.2016 (hereafter *the arbitral award*) passed by a sole arbitrator, unilaterally appointed by respondent no.1.

3. It is the appellant's case that it filed objections before the executing court, specifically stating, that it had not received any notice from the arbitrator regarding the arbitration proceedings; that the arbitrator was unilaterally appointed; and was ineligible to act as an arbitrator under Section 12(5) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*). It was also urged that the arbitral award is a nullity in law.

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4. The learned Commercial Court rejected the said objections and decided to continue to enforce the arbitral award. The Court held that "*a challenge to the award on the ground that it is a "nullity" or otherwise illegal can be addressed only in proceedings that may be initiated in accordance with Section 34 of the Act*" [A&C Act].

5. The learned counsel for the parties submit that the issues involved in the present appeal are covered by a decision of this Court in ***Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat: Neutral Citation No. 2023: DHC:3705-DB*** and ***Babu Lal & Anr. v. Cholamandalam Investment and Finance Company Ltd. & Anr.: Neutral Citation No. 2023: DHC:8195-DB***.

6. In ***Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat*** (*supra*), it has been categorically held as under:

> "10. The award rendered by an arbitrator who is ineligible to be appointed as such cannot be enforced.
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> xxx xxx xxx
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> 13. The Learned Commercial Court has held that an award rendered by a person who is ineligible to act as an Arbitrator by virtue of the provisions of Section 12(5) of the A & C Act is a nullity and, therefore, cannot be enforced. It has accordingly dismissed the enforcement petition under Section 36 of the A&C Act with the cost quantified as ₹25,000/-.
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> 14. This Court finds no infirmity with the aforesaid view. A person who is ineligible to act an Arbitrator, lacks the inherent jurisdiction to render an Arbitral Award under the A&C Act. It is trite law that a decision, by any authority, which lacks inherent jurisdiction to make such a decision, cannot be considered as valid. Thus, clearly,

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such an impugned award cannot be enforced."

7. The Special Leave Petition [Special Leave Petition (Civil) Diary No(s).47322/2023] preferred by Kotak Mahindra Bank against the aforesaid decision was dismissed by the Supreme Court by an order dated 12.12.2023.

8. In ***Babu Lal & Anr. v. Cholamandalam Investment and Finance Company Ltd. & Anr.*** (*supra*), it has been held as under:

> "10. Clearly, an award rendered by an ineligible Arbitrator would be a nullity as has been held by a Coordinate Bench of this Court in *Kotak Mahindra Bank Ltd. vs. Narendra Kumar Prajapat*: 2023 SCC OnLine Del 3148.
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> 11. In the instant case since the appointment of an Arbitral Tribunal was unilateral and without recourse to Court, the Award rendered by the Arbitral Tribunal would also be a nullity. The Trial Court has clearly erred in not appreciating that the appointment was unilateral and consequently, the Award was a nullity."

9. The learned counsel submit that the aforesaid judgments were specifically brought to the notice of the executing court in the objections filed by the appellant, but have not been taken note of in the impugned order. Clearly, the impugned order is contrary to the aforesaid judgments.

10. The learned counsel for the respondent concedes that the issue involved is covered by the aforesaid decisions. He prays that the liberty may be granted to the respondent to file an application under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an arbitrator to adjudicate the subject disputes.

11. In view of the above, the present appeal is allowed. The impugned order is set aside. The execution petition [being Execution (COMM.)

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336/2023] instituted by respondent no.1 is terminated. The pending application is also disposed of.

12. It is clarified that this order shall not preclude the concerned respondents from taking recourse to appropriate proceedings, including for appointment of an arbitrator under Section 11 of the A&C Act in accordance with law.

VIBHU BAKHRU, J

SACHIN DATTA, J

JULY 16, 2024
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