In the High Court of Judicature at Madras

Reserved on	Delivered on :
28.10.2025	**03.11.2025**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Original Petition No.803 of 2017
& A.No.197 of 2025

1.Mrs.K.Meenakshi,
Sole Proprietrix,
M/s.Saraswathi Builders

2.Mr.C.Kailasam
3.Mr.S.Subramaniam ...Petitioners

Vs

M/s.New Link Overseas Finance Ltd., rep.by the Administrator Shri B.Anil Kumar appointed by the NCLT, Chennai in CP {CA}/85 (CHE) 2024 dated 13.12.2024 and vide Administrator's Authorization Letter in terms of the order dated 28.5.2025 passed in IA/CA/No.8 (CHE)/2025 through the Authorised Signatory Mr.P.Viswanathan

(amended as per order dated 10.9.2025 in A.No.4138 of 2025 by NAVJ) ...Respondent

PETITION under Section 34 of the Arbitration and Conciliation Act, 1996 praying to set aside the award dated 09.3.2017 passed by the sole Arbitrator - Shri D.Saravanan, Advocate, Chennai in Arbitration Proceedings Reference ACP.No.1 of 2014 passed against the petitioners directing to pay a sum of Rs.32,59,837/- together with interest at 21.57% PA from 27.2.2014 - the date of reference to till date of realization with a cost of Rs.60,000/- and for costs of the above petition.

For Petitioners	:	Mr.S.Ratnasabapathy
For Administrator of the respondent company	:	Mr.Prasanna Vineeth Durai

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, the Act) challenging the award dated 09.3.2017 passed by the sole Arbitrator.

2. Heard both.

3. The first petitioner was stated to have approached the respondent company for availing loan facilities. On 22.3.2012, a loan agreement was entered into among the first petitioner as a borrower, petitioners 2 and 3 as guarantors and the respondent company. As per the agreement, a total sum of Rs.37,20,000/- was payable in 24 equal monthly instalments for the period from 22.3.2012 to 22.2.2014.

4. The first petitioner also executed a promissory note for the said amount towards security. Petitioners 2 and 3 separately executed deeds for continuing with their personal guarantee. Apart from that, all the three petitioners executed separate arbitration agreements dated 22.3.2012, which contained an arbitration clause at S.No.22.

5. The petitioners were said to have committed default in repayment of the loan and as on 28.2.2014, a sum of Rs.32,59,837/- was due and payable towards principal, interest and other charges. Hence, a notice was issued to the petitioners and even thereafter, since the amount was not repaid back, the arbitration clause was invoked and the sole Arbitrator was appointed. Ultimately, the sole Arbitrator, by award dated 09.3.2017, directed the petitioners to pay a

sum of Rs.32,59,837/- along with interest and also directed the petitioners to pay costs of Rs.60,000/-. Aggrieved by that, the above petition has been filed before this Court.

6. The learned counsel for the petitioners submitted that there was no valid arbitration agreement between the parties since the respondent company had not signed in any of those agreements, that the arbitration proceedings initiated before the sole Arbitrator was without jurisdiction, that the sole Arbitrator was unilaterally appointed by the respondent company, that the sole Arbitrator conducted the proceedings in a biased manner, that none of the documents relied upon by the petitioners was properly appreciated and that a one side award was passed by the sole Arbitrator.

7. Per contra, the learned counsel appearing on behalf of the respondent submitted that there was a valid agreement between the parties in terms of loan and hypothecation agreement, which contained an arbitration clause at S.No.22, that this formed the basis for referring the dispute to the sole Arbitrator, that the requirement under Section 7(4) of the Act was that the agreement must be in writing and

must be signed by the parties and that this requirement had been satisfied in the present case.

8. The learned counsel appearing for the respondent also submitted that the issue of unilateral appointment of an arbitrator cannot be raised in this case since the sole Arbitrator was appointed even prior to the Arbitration and Conciliation (Amendment) Act, 2015, that there were disputes between the directors of the respondent company, which resulted in a petition filed before the National Company Law Tribunal, Division Bench, Chennai, which, by order dated 13.12.2024, appointed an Administrator to administer the respondent company, that ultimately, the Administrator was authorized to prosecute the above petition on behalf of the respondent company by order dated 28.5.2025 and that in pursuance of it, the Administrator engaged a counsel and he was making his submissions before this Court on behalf of the respondent company in order to sustain the award.

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on

record and more particularly the impugned award.

10. It is not in dispute that the first petitioner approached the respondent company, that the first petitioner borrowed money, that as per the agreement, a sum of Rs.37,20,000/- was due and payable to the respondent company, that petitioners 2 and 3 stood as guarantors to the said loan transaction, that later, the amount borrowed was not repaid back and that therefore, the dispute was referred to the sole Arbitrator appointed by the respondent company.

11. The main ground that was raised on the side of the petitioners was that there was no valid arbitration agreement between the parties.

12. The said submission does not have any substance since S.No.22 of the loan cum hypothecation agreement clearly provides for referring the dispute for arbitration.

13. The learned counsel for the petitioners relied upon Ex.A.12 and Ex.A.13 and submitted that the respondent company was not a

signatory to the arbitration agreements dated 22.3.2012.

14. In the considered view of this Court, Ex.A.12 and Ex.A.13 were executed by petitioners 2 and 3 and it was pursuant to the loan cum hypothecation agreement dated 22.3.2012. They formed part of the loan cum hypothecation agreement. It is seen from the overwhelming documents that were available in terms of Ex.A.4 to Ex.A.17 that petitioners 2 and 3 stood as guarantors for the loan availed by the first petitioner and that it is too late in the day for the petitioners to take a stand that there was no valid arbitration agreement. The agreement between the parties clearly satisfies the requirement under Section 7 of the Act.

15. The learned counsel for the petitioners was trying to pinpoint some of the answers that were given by C.W.1 during the course of cross examination to substantiate the submission that before the claim petition was filed, no resolution was passed authorizing the Managing Director of the respondent company to file a claim petition.

16. All these grounds are frivolous in nature and it is seen from the records that the resolution of the respondent company was, in fact, marked as Ex.A.1.

17. In so far as the issue regarding unilateral appointment of the sole Arbitrator is concerned, the agreement provides for the appointment of an Arbitrator by the respondent company and this took place even before the coming into force of the Arbitration and Conciliation (Amendment) Act, 2015. In any case, the bar of unilateral appointment of an arbitrator will have only prospective effect and it cannot revive the proceedings, which have already come to an end.

18. This was made clear by the Hon'ble Apex Court in the decision in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) [reported in 2025 (4) SCC 641]***.

19. On carefully going through the impugned award, it is seen that the sole Arbitrator assigned sufficient reasons while passing the award and it does not suffer from perversity or patent illegality warranting the interference of this Court. The plea of bias raised on the

side of the petitioners cannot be assumed just because the sole Arbitrator was appointed by the respondent company. On a reading of the award, it is seen that the award has been passed only based on the overwhelming evidence that were available in favour of the respondent company.

20. It is now too well settled that a distinction must be drawn between an arbitral award where reasons are either lacking/ unintelligible or perverse and an arbitral award where reasons are there, but appear to be inadequate or insufficient. In the latter cases, if, on a careful reading of the entire award coupled with the documents relied upon, the underlying reason, factual or legal that forms the basis of the award, is discernible/intelligible and the same exhibits no perversity, the Court need not set aside such award in exercise of its jurisdiction under Section 34 of the Act. The Court can rather explain the existence of that underlying reason, which will enable the award passed by the Arbitral Tribunal to be understood in a better and clearer manner.

21. In the case in hand, this Court has dealt with the award passed by the sole Arbitrator by keeping in mind the above principle of law.

22. Accordingly, the above original petition stands dismissed with costs of ***Rs.50,000/- (Rupees fifty thousand only)*** payable by the petitioners to the Administrator of the respondent company. Consequently, the connected application is also dismissed.

03.11.2025

RS

N.ANAND VENKATESH,J

RS

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