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

% **Date of Decision: 24th March, 2025**

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+ CM(M) 1101/2023 & CM APPL. 35824/2023

M/S INDUSIND BANK LTD.

.....Petitioner

Through: Mr. Amit Bajaj and Mr. Puneet Bajaj,
Advocates

versus

SUNIL KUMAR & ANR.

.....Respondents

Through: Ms. Padma Priya, Amicus Curiae

23

+ CM(M) 317/2023 & CM APPL. 9626/2023

POONAWALA FINCORP LTD.

.....Petitioner

Through: Mr. Arvind Jadon and Ms. Taru
Saxena, Advocates
(through V.C.)

versus

MR. SUBODH SHARMA & ORS.

.....Respondents

Through: Mr. Ajit Kumar Gola, Advocates.

24

+ CM(M) 437/2023 & CM APPL. 13162/2023

KOGTA FINANCIAL INDIA LIMITED

.....Petitioner

Through: Mr. Arvind Jadon and Ms. Taru
Saxena, Advocates
(through V.C.)

versus

FARMAN SAIFI & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The issue raised in all the present three petitions is same and similar.
2. All the three petitioners, based on Award passed by Sole Arbitral



Tribunal, filed separate execution petitions.

3. When these execution petitions were taken up by learned District Judge (Commercial Court), these were held as ‘not maintainable’ as the Award was found to be *void ab initio*, as the Arbitrator had been appointed unilaterally.

4. The issue is no longer *res integra* as such appointment of Arbitrator is in teeth of the specific directions contained in *Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.*: (2020) 20 SCC 760.

5. The situation in *Kotak Manindra Bank Limited vs. Narender Kumar Prajapat*:2023 SCC OnLine Del 3148 was precisely the same. In said case also, the learned Commercial Court was seized with Execution Petition wherein the Arbitral Award was found passed *ex-parte* by an Arbitrator, who had been appointed, unilaterally.

6. Referring to *TRF Limited vs. Energo Engineering Projects Limited*: (2017) 8 SCC 377 and *Perkins Eastman Architects* (supra), it was, categorically, held therein that the failure, if any, on the part of the respondent to object to the unilateral appointment of Sole Arbitrator, cannot be construed as waiver of his right under Section 12(5) of Arbitration & Conciliation Act, 1996 and, therefore, the Award rendered by any such Arbitrator, who was ineligible to be appointed as such, cannot be enforced. Accordingly, learned Division Bench of this Court did not find any infirmity in the decision of learned District Judge (Commercial Court) and held that a person, who is ineligible to act as an Arbitrator, lacks the inherent jurisdiction to render an Arbitral Award. It was also supplemented therein that it was trite law that a decision, by any authority, which lacks inherent jurisdiction to make such a decision, cannot be considered as valid and, thus,



the impugned award could not have been enforced.

7. The decision rendered by learned Division Bench of this Court in the abovesaid matter was challenged by filing a *Special Leave Petition* and even such *Special Leave Petition* i.e. SLP (civil) Diary No. 47322/2023 was dismissed by Hon'ble Supreme Court on 12.12.2023.

8. Admittedly, the facts in the present three petitions are, virtually, the same as the arbitrator had been unilaterally appointed and the Award is also *ex-parte* in nature.

9. Viewed thus, this Court does not find any reason to interfere with the impugned orders and, consequently, all the three petitions are, hereby, dismissed.

(MANOJ JAIN)
JUDGE

MARCH 24, 2025/st/shs