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

Date of decision: 21.08.2025

+ **O.M.P. (COMM) 108/2022**

PMR SOFTWARE TECHNOLOGY PVT LTD & ORS

.....Petitioners

Through: Mr Dilraj Singh Bhinder, Mr Rishabh
Singhle, Ms.Kavya Agrawal, Mr
Sujoy Chatterjee, Mr Priyadarshi
Banerjee, Advs.

versus

CITIFINANCIAL CONSUMER FINANCE INDIA LTD & ANR.

.....Respondents

Through: Mr Randhir Singh, Mr. Jitender
Kumar, Ms. Purwa Pramita, Advs.
Mr. Dheeraj Nag, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (ORAL)**

1. This is a petition filed under section 34 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking setting aside of the Arbitral Award dated 30.11.2012 passed by the Sole Arbitrator in the arbitration case titled as "*Citifinancial Consumer Finance India Ltd vs. PMR Software Technology Pvt. Ltd. & Ors*".
2. The facts as per the petitioners are that *vide* a Home Equity Agreement ("**the Agreement**") dated 16.06.2008, a loan of Rs. 2,77,70,000/- was availed by petitioner No. 1 i.e., PMR Software Technology Pvt. Ltd. as the main borrower and petitioner Nos. 2, 3



and 4 as co-borrowers from the respondent No. 1 i.e., Citifinancial Consumer Finance India Ltd.

3. As per the terms of the Agreement, the rate of interest was @ 14% p.a. The repayment period was 134 months commencing from 05.07.2008 to 05.08.2019 and the mode of repayment was equated monthly instalment/ EMI, which was Rs. 4,10,803/- per month. To secure the repayment of the said loan, the petitioners mortgaged their immovable property namely Plot No. 1496, Block J, 16th Main Road, Anna Nagar West, Chennai – 600040.
4. The Agreement contained an arbitration clause being Clause No. 10.7(h), which reads as under:-

“h) In the event of any dispute or differences arising under this Agreement including any deed as to any amount outstanding, the real meaning or purport hereof (“Dispute”) such Dispute shall be finally resolved by arbitration. Such arbitration shall be conducted in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996 or any amendment or reenactment panel by a single arbitrator to be appointed by the Lender. The venue of arbitration shall be at New Delhi and the arbitration shall be conducted in English language.”

5. After having remitted 38 EMIs from 2008 till 2011, the petitioners came to know that the respondent No. 1 had unilaterally increased the interest rate from 14% to 15.50% p.a. and had extended the EMI payment tenure from the original date of 05.08.2019 to 05.10.2021. The respondent No. 1 informed the same via letter dated 29.08.2008, which was received by the petitioners only on 15.03.2011.



6. In response to the said letter, the petitioners issued a notice dated 29.08.2011 requesting the respondent No. 1 to retain the original interest rate and EMI tenure, which was rejected by the respondent No.1 *vide* letter dated 12.11.2011.
7. Subsequently, the respondent No. 1 *vide* letter dated 13.12.2011 informed the petitioners that it had decided to restore the number of instalments to 134 months and will provide a revised repayment schedule. However, in a month's time from the said letter, the respondent No.1 backtracked from its statement and *vide* letters dated 24.01.2012 and 28.01.2012 terminated the Agreement and demanded payment of Rs. 2,68,75,773/- with interest @ 24% p.a. within 4 days.
8. Subsequently, before the petitioners even replied to the said termination letters, the petitioners received a notice dated 10.02.2012 from the Sole Arbitrator stating that he has been appointed by the respondent No.1 as an Arbitrator in a purported arbitration between the parties, being Arbitration No. 2189 of 2012. Pertinently, the petitioners did not receive any notice under section 21 of the 1996 Act referring any alleged disputes to arbitration or notice under section 11 of the 1996 Act for appointment of an Arbitrator.
9. Consequently, the petitioners sent an application/ objections dated 12.04.2012, under sections 12 and 13 of 1996 Act to the Sole Arbitrator, which was recorded as taken on record by the Sole Arbitrator and the respondent No. 1 sought time to file a reply. Not having received any reply from the respondent No. 1 and the Sole Arbitrator, the petitioners wrote to the Sole Arbitrator on 22.05.2012 about non-receipt of any reply to its application/ objections under



sections 12 and 13 of 1996 Act.

10. *Vide* arbitral order dated 14.07.2012, the Sole Arbitrator dismissed the petitioners' application/ objections under sections 12 and 13 of the 1996 Act. The petitioners having not received copy of any proceedings/ order in the interregnum, sent a letter dated 01.10.2012 to the Sole Arbitrator again intimating non-receipt of any reply to its application/objections under sections 12 and 13 of the 1996 Act, among other objections.
11. On 23.02.2013, the petitioners received a correspondence from the Sole Arbitrator containing an Arbitral Award dated 30.11.2012, wherein a sum of Rs.2,68,75,773.10/- with an interest @ 18% p.a. was awarded to the respondent No. 1. *Via* the said Award the respondent No. 1 was also entitled to realize the amounts by selling the mortgaged property.
12. The petitioners challenged the impugned Award dated 30.11.2012 under section 34 of the 1996 Act before the Hon'ble Madras High Court, in O.P. No. 207/2013. The Hon'ble Madras High Court impleaded respondent No. 2 on the express submission of respondent No. 2 that that all outstanding amounts with respect to the subject loan, together with security, stand assigned from respondent No. 1 to respondent No. 2. Subsequently, the Hon'ble Madras High Court dismissed the petition for lack of jurisdiction and granted liberty to the petitioners to present the petition under section 34 of the 1996 Act before the jurisdictional Supervisory Court at New Delhi.
13. Consequently, the petitioners filed the present petition before this Court.



14. Learned counsel for the respondent No. 1 states that the subject loan facility has been assigned to respondent No. 2 in the year 2013 and hence, respondent No. 1 has no role in the present petition.
15. Mr. Nag, learned counsel for respondent No. 2 states that the loan account in question has been further assigned to respondent No. 3 and respondent No. 3 is entitled to collect all the outstanding dues.
16. As the respondent No. 2 has assigned the assets in question to the respondent No. 3, this Court *vide* order dated 10.03.2022, impleaded respondent No. 3 in the present petition. Nobody appeared on behalf of respondent No. 3 nor any reply has been filed on behalf of respondent No. 3. The impugned Arbitral Award is of the year 2012. Hence, I am proceeding to hear the present petition *ex-parte*.
17. Mr. Singh, learned counsel for the petitioners' states that the impugned Award is liable to be set aside as no notice under section 21 of the 1996 Act was served upon the petitioners by the respondent No. 1 referring any alleged dispute to arbitration. Further, even notice under section 11 of the 1996 Act for appointment of an Arbitrator was also not served upon the petitioners by the respondent No. 1. He contends that the absence of any notice invoking arbitration under section 21 of the 1996 Act or any notice under section 11 of the 1996 Act for appointment of an Arbitrator is borne out from the arbitral records.
18. Mr. Singh, learned counsel further submits that the arbitration clause being Clause No. 10.7(h) of the Agreement empowers the 'Company' i.e., respondent No.1 to unilaterally appoint an Arbitrator. He states that respondent No.1, without consulting or petitioners' consent



appointed the Sole Arbitrator and the petitioners only became aware of the Sole Arbitrator's appointment *vide* the Sole Arbitrator's notice dated 10.02.2012. He states that it can hardly be disputed that respondent No.1 has an interest in the outcome of the dispute and such unilateral appointment by an interested party is impermissible in law.

19. He further submits that section 12(1) of the 1996 Act makes it mandatory for the person who has been approached to be an Arbitrator to make disclosure of all circumstances that may give rise to justifiable doubts as to his independence and impartiality. He states that in the present case, the petitioners were not served with any disclosure by the Sole Arbitrator under section 12 of the 1996 Act. He further states that despite this, the petitioners submitted application/ objections under sections 12 and 13 of the 1996 Act. However, the petitioners' application/ objections were dismissed without providing any disclosures to the petitioners or without intimating any reasons for disposal thereof.
20. Mr. Singh, learned counsel further submits that the petitioners' application/ objections under sections 12 and 13 of the 1996 Act was dismissed without any reply being served on the petitioners. It is stated that on various dates of proceedings the petitioners did not receive prior notice/ intimation of the proceedings. It is submitted that the absence of service of copies of proceedings/orders on the petitioners is borne out from the arbitral records. Thus, this establishes that the petitioners were not given a full and fair opportunity/ hearing in the proceedings, and the proceedings were in violation of principles of natural justice.



21. Hence, the learned counsel for the petitioners submits that these grave irregularities and illegalities throughout the arbitral proceedings culminated into the impugned *ex parte* Arbitral Award. Hence, the impugned Award is liable to be set aside under, *inter alia*, sections 34(2)(a)(iii) and (v), sections 34(2)(b)(i) and (ii) and section 34(2A) of the 1996 Act.
22. I have heard learned counsel for the petitioners and also perused the materials available on record.
23. The principles with regard to the limited scope of interference by a Court under section 34 of the 1996 Act against the Arbitral Award have been reiterated time and again by the Hon'ble Supreme Court and this Court, reliance has been placed on ***Consolidated Construction Consortium Limited v. Software Technology Parks of India, 2025 INSC 574 (paragraph No. 23)***. The Court in absence of any ground under section 34 of the 1996 Act, it is not to re-examine the facts to find out whether a different decision can be arrived at¹.
24. The law on issue of unilateral appointment of an Arbitrator by a party is no longer *res integra*. It is well settled that neutrality and independence of an Arbitral Tribunal go to the root of the matter and the principle of equal treatment of parties applies at every stage of arbitration proceedings, including the stage of appointment of the Arbitrator(s).²
25. Learned counsel for the petitioners has assailed the impugned Award on the ground that the respondent No. 1, the initial lender, did not

¹*Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd., (2019) 20 SCC 1.*

²*TRF Ltd. v. Damodar Valley (Energo) Projects Ltd., (2017) 8 SCC 377; Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760.*



issue legal notice referring the alleged dispute to arbitration, as mandated under section 21 of the 1996 Act.

26. A Coordinate bench of this Court in ***Alupro Building Systems Pvt. Ltd. v. Ozone Overseas Pvt. Ltd., 2017 SCC OnLine Del 7228***, has laid down the importance and mandatory nature of section 21 of the 1996 Act. The operative portion of the said judgment is extracted below:-

“25. ... The party to the arbitration agreement against whom a claim is made, should know what the claims are. It is possible that in response to the notice, the recipient of the notice may accept some of the claims either wholly or in part, and the disputes between the parties may thus get narrowed down. That is one aspect of the matter. The other is that such a notice provides an opportunity to the recipient of the notice to point out if some of the claims are time barred, or barred by any law or untenable in fact and/or that there are counter-claims and so on.

27. Fourthly, even assuming that the clause permits one of the parties to choose the arbitrator, even then it is necessary for the party making such appointment to let the other party know in advance the name of the person it proposes to appoint. It is quite possible that such person may be ‘disqualified’ to act an arbitrator for various reasons. On receiving such notice, the recipient of the notice may be able to point out this defect and the claimant may be persuaded



to appoint a qualified person. This will avoid needless wastage of time in arbitration proceedings being conducted by a person not qualified to do so. The second, third and fourth reasons outlined above are consistent with the requirements of natural justice which, in any event, govern arbitral proceedings.

29. Of course, as noticed earlier, parties may agree to waive the requirement of such notice under Section 21. However, in the absence of such express waiver, the provision must be given full effect to. By overlooking this important step, and straightaway filing claims before an arbitrator appointed by it, a party would be violating the requirement of Section 21, thus frustrating an important element of the parties consenting to the appointment of an arbitrator.

30. Considering that the running theme of the Act is the consent or agreement between the parties at every stage, Section 21 performs an important function of forging such consensus on several aspects viz. the scope of the disputes, the determination of which disputes remain unresolved; of which disputes are time-barred; of identification of the claims and counter-claims and most importantly, on the choice of arbitrator. Thus, the inescapable conclusion on a proper interpretation of Section 21 of the Act is that in the absence of an agreement to the contrary, the notice under



Section 21 of the Act by the claimant invoking the arbitration clause, preceding the reference of disputes to arbitration, is mandatory. In other words, without such notice, the arbitration proceedings that are commenced would be unsustainable in law.”

(Emphasis added)

27. A bare perusal of paragraph Nos.1 and 2 of the impugned Award and arbitral records shows that the respondent No. 1, never served a legal notice to the petitioners under section 21 of the 1996 Act, referring the alleged dispute to arbitration. Although the arbitration clause (reproduced above) permitted the ‘Lender’ i.e., the respondent No. 1 to appoint the arbitrator, even then it was necessary for the respondent No. 1 to let the petitioners know in advance the name of the person it proposes to appoint as an Arbitrator. Hence, the arbitration proceeding in the present case, which commenced without the required legal notice under section 21 of the 1996 Act, is in violation of principles of natural justice and hence, unsustainable in law, as observed in ***Alupro Building Systems (supra)***.
28. Additionally, in the present case, the first instance of initiation of the arbitral proceedings was appointment of the Sole Arbitrator by respondent No. 1 via letter dated 06.02.2012. In the said letter, there is no mention of petitioner’s consent to the said appointment of the Sole Arbitrator or that the petitioners were apprised of the same.
29. In response to the said letter dated 06.02.2012, the Sole Arbitrator via letter dated 10.02.2012, accepted his appointment as the Sole Arbitrator and directed the parties to appear before him. However, the



Sole Arbitrator made no disclosure as required under section 12 of the 1996 Act.

30. Learned counsel for the petitioners submits that non-disclosure by the Sole Arbitrator as mandated under section 12 of the 1996 Act is another ground which vitiates the impugned Arbitral Award.
31. Since, the appointment of the Sole Arbitrator was in the year 2012 i.e., before the 2015 amendment to the 1996 Act, section 12 of the 1996 Act pre-2015 amendment, reads as under: -

“12. Grounds for challenge—

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has



participated, only for reasons of which he becomes aware after the appointment has been made.”

32. A bare perusal of the above stated facts, averments made by the petitioners and the arbitral records, clearly show that there is no disclosure made by the Sole Arbitrator as mandated under section 12(1) of the 1996 Act, pre-2015 amendment. Since, the respondents have not provided any clarification pertaining to the fulfillment of the mandate under section 12(1) of the 1996 Act, pre-2015 amendment, as directed *via* order dated 08.04.2025, it is to be presumed that there is no declaration made by the Sole Arbitrator under section 12(1) of the 1996 Act, pre-2015 amendment. Hence, it is held that the Sole Arbitrator did not make the required disclosures as required under section 12(1) of the 1996 Act, pre-2015 amendment.
33. Further, learned counsel for the petitioners has relied on ***Alupro Building Systems (supra)***, and more particularly paragraph Nos. 41 and 42, which read as under:-

“41. The emphasis therefore is on “a fair trial by an impartial Tribunal”. This forms the basis of Section 12 of the Act. Incidentally, there have been some significant changes to Section 12 with effect from 23rd October, 2015 which have further strengthened the requirements of disclosures by arbitrators to obviate any likelihood of bias. However, as far as the present case is concerned, when the AT was seized of the matter, Section 12 of the Act as it stood prior to the above amendment was relevant and it reads as under:



“12. Grounds for challenge-

42. Section 12(2) of the Act requires an Arbitrator from the time of his appointment and throughout the arbitral proceedings, to mandatorily disclose to the parties, “without delay” and “in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.” The circumstances under sub-section (1) of Section 12 of the Act as it stood prior to 23rd October, 2015 were “any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.””

(Emphasis added)

34. A bare perusal of the said paragraphs produced above, shows that the disclosure as required under section 12(1) of the 1996 Act by an Arbitrator is mandatory in nature and not optional. The word “shall” in section 12(1) of the 1996 Act mandates that the person who has been approached to be an Arbitrator shall make all the necessary disclosure of all circumstances that may give rise to justifiable doubts as to his independence and impartiality, as rightly contended by the learned counsel for the petitioners.
35. In the present case, the absence of the disclosure as mandated under section 12(1) of the 1996 Act by the Sole Arbitrator goes to root of the matter and vitiates the impugned Award passed by the Sole Arbitrator, as the same is patently illegal and against the principles of natural justice.
36. Further, in absence of the disclosure as mandated under section 12(1)



of the 1996 Act by the Sole Arbitrator, the petitioners filed an application/ objections under sections 12 and 13 of the 1996 Act *vide* letter dated 12.04.2012. The objections raised in the said application are reproduced below:-

“3. I state that this Tribunal has failed to disclose in writing any circumstances likely to give rise to justifiable doubts to his independence or impartiality when approached by the claimant and thus the Arbitral has miserably failed to discharge the said mandatory requirement and on this ground alone the Arbitral Tribunal has no authority to continue the proceedings.

4. I further state that the alleged letter dated 06.02.2012 by the claimant to this Tribunal has not been served on the respondents and we came to know about the appointment only after the notice from the Arbitral Tribunal. I further state that on perusal from the documents served it is clear that the said letter dated 06.02.2012 has been served on the Arbitral Tribunal by the claimant by hand and the same clearly proves that the arbitral tribunal and the claimant has close connections on day today basis.

5. I further state that the following details are required to file our further objections u/s 12 and 13 of the Arbitration and Conciliation Act 1996.

a. The Arbitrator has numbered the instant case as Arbitration case No.2189 of 2012 and the same proves that thousands of cases are referred by the



claimant to the Arbitral Tribunal. How many matters have been referred by the claimant to the Arbitral Tribunal?

b. How many matters have been decided by the Arbitral Tribunal in favour of the claimant out of the total matters referred?

c. How many matters have been decided by the Arbitral Tribunal against the claimant out of the total matters referred?

d. Whether the Arbitral Tribunal has ever appeared for the claimant or its group companies before any Court or Tribunal?

e. Whether the Arbitral Tribunal has ever given any professional opinion for the claimant or its group companies in any matter?

f. Whether the Arbitral Tribunal or his spouse is in any way connected with the claimant company or its group companies as a share holder or a Director or otherwise?

g. Whether the Arbitral Tribunal or his spouse is employed directly or indirectly with the claimant company or its group companies?

h. Whether the Arbitral Tribunal or his spouse has any business relationship with the claimant company or its group companies?

i. How the alleged letter dated 6.2.2012. has been



served on the Arbitral Tribunal by the claimant?

j. When the summons dated 10.2.2012 fixing the first hearing on 12.3.2012 has been posted to the claimant and the respondents by the Arbitral Tribunal? The photo copy of all the postal ledgers may also be sent to the respondents.

k. When the first hearing was conducted by this Arbitral Tribunal and when the copy of the proceedings has been posted to the respondents by the Arbitral Tribunal? The photo copy of postal ledgers may also be sent to the respondents.

l. Two different proceedings were sent by the Arbitral Tribunal with different recordings and which is the actual proceedings recorded on 12.3.2012?"

37. The respondent No. 1 in reply to said application/ objections of the petitioners did not disclose the number of cases wherein the Sole Arbitrator was appointed by it as an Arbitrator. Instead, the reply filed by the respondent No. 1 contains vague denial to the objections raised by the petitioners, without clear explanation.
38. Subsequently, the Sole Arbitrator *vide* order dated 14.07.2021, dismissed the application/objections of the petitioners, without advertng to any of the objections raised by the petitioners. The operative portion of the said order is extracted below: -

“Arguments heard on behalf of the counsel for the claimant company. Despite notice to appear through or an



advocate/respondents, no one has appeared. After going through application u/s 12 & 13 arbitration & conciliation act 1996 filed by the respondents are only filing fishing queries without event appearing and are only meant for delaying the present proceeding. Hence the application filed by the respondents U/s-12 & 13 of the arbitration & conciliation Act, 1996 is dismissed. In the interest of justice, fresh notice be issued to the respondent's counsel Shri V. Vaithiyalingam Advocate, (Address at: No. 4/89, Avvaithiru Nagar, 1st Cross St. Virugambakka, Chennai-600092). Counsel for the respondents is directed to file the written statement/counter affidavit within two weeks from the receipt of this order.”

39. In view of the said discussion, the impugned Arbitral Award is vitiated and unsustainable in law on two grounds. Firstly, that no notice under section 21 of the 1996 Act was served by the respondent No. 1 on the petitioners. Secondly, that the Sole Arbitrator failed to make the disclosure as mandated under section 12 of the 1996 Act, which gives rise to doubts as to his independence and impartiality.
40. For the said reasons, the impugned Arbitral Award dated 30.11.2012 passed by the Sole Arbitrator is in contravention to the principles of natural justice and public policy of India and also, suffers from patent illegality. Hence, the present petition is allowed and the impugned Arbitral Award dated 30.11.2012 passed by the Sole Arbitrator is set aside.



41. The petition is disposed of along with pending applications, if any.

JASMEET SINGH, J

AUGUST 21, 2025/DM
(Corrected and released on 28.08.2025)