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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 10.07.2025

+ **O.M.P. (COMM) 160/2021 & I.A. 5709/2021**

SANDEEP MAHAJAN

.....Petitioner

Through: Ms. Prachi Johri, Mr. Sharad
Agnihotri, Advs.

versus

MAHINDRA AND MAHINDRA FINANCIAL SERVICES

.....Respondent

Through: Ms. Sonali Joon, 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 seeking to challenge the Award dated 13.12.2019 passed by the learned Sole Arbitrator.
2. The facts are that the petitioner was appointed as a director in Sandeep Axles Pvt. Ltd. on 20.09.1989 and in SPM Auto Pvt. Ltd. on 10.08.2004. Subsequently, a loan facility of Rs. 3,00,00,000/- was sanctioned to SPM Auto Pvt. Ltd. by the respondent vide Sanction Letter No. SME/SPMAUTO-01/SG/12-13 dated 12.10.2012. A Loan Agreement was executed on 13.10.2012 between SPM Auto Pvt. Ltd. (as the borrower) and the petitioner, along with Mr. Vimal Mahajan



and Mr. Vikrant Mahajan, who acted as Personal and Corporate Guarantors to secure the said loan.

3. The petitioner resigned from the directorship of SPM Auto Pvt. Ltd. on 24.08.2015, and from Sandeep Axles Pvt. Ltd. on 18.02.2016. After his resignation, the petitioner had no further association with either company or its directors. Owing to personal differences with his brothers, who were also directors, he completely dissociated himself and remained unaware of any subsequent events or decisions related to the companies.
4. *Vide* order dated 17.10.2017, the Hon'ble National Company Law Tribunal, ("**NCLT**") Delhi, initiated the Corporate Insolvency Resolution Process ("**CIRP**") against Sandeep Axles Pvt. Ltd., and subsequently, a liquidation order was passed on 13.09.2018. Similarly, *vide* order dated 18.11.2020, the Hon'ble NCLT, Delhi, also initiated CIRP against SPM Automotive Components Private Limited.
5. On 11.01.2021, the petitioner received an email from the respondent showing copies of arbitral awards dated 13.12.2019, passed against the petitioner and two other respondents. Subsequently, summons issued by the Delhi High Court in the execution petitions were emailed to the petitioner on 12.03.2021. He appeared before the Court on 16.03.2021 and received copies of the petitions and consequently filed the present petition.
6. Learned counsel for the petitioner has submitted that the petitioner was not served with any notice of the arbitral



proceedings nor was informed of the appointment of the learned Sole Arbitrator. Consequently, the petitioner was proceeded ex-parte and did not have the opportunity to participate or present his case. It is further submitted that the signed copy of the Arbitral Award has not been received by the petitioner.

7. The learned counsel for the respondent has submitted that due to payment defaults, arbitration was initiated, excluding the borrower company as it was under insolvency. The petitioner appeared through counsel in 2019, filed a *vakalatnama*, and sought documents but later failed to participate, resulting in an ex-parte award dated 13.12.2019. A Board Resolution dated 30.09.2012 authorized the petitioner to execute the loan documents. Despite allegedly exiting the company, the petitioner neither notified the respondent nor revoked his guarantee.
8. I have heard the learned counsels for the parties.
9. The arbitration clause 7.8 contained in the Loan Agreement is as under:-

“All disputes, differences and/or claim arising out of these presents or in any way touching or concerning the same or as to constructions, meaning or effect hereof or as to the right and liabilities of the parties hereunder shall be settled by arbitration to be held in accordance with the provision of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitrator to be nominated by the lender.”



10. A perusal of the above arbitration clause clearly reveals that the authority to appoint the sole arbitrator was vested exclusively with the respondent, i.e. the lender. The clause empowers the lender to unilaterally nominate a sole arbitrator to adjudicate disputes arising out of or in connection with the Loan Agreement. In exercise of this contractual right, the respondent appointed a sole arbitrator, who thereafter conducted the arbitral proceedings ex parte. Pursuant to the said proceedings, the arbitrator passed the impugned arbitral award which is now under challenge in the present petition. The operative part of the award reads as under:-

“10. That, whereas as per the terms mentioned in the clause of the said Loan Agreement any notice to be given by the Claimant shall be effective and deemed to have been duly and sufficiently served on the Borrower and guarantor seventh days after the same shall have been delivered to the post office /courier properly addressed to the address provided by the borrower/guarantor in the loan Agreement. In these proceeding, it is clear from the copy of the notice dated:24.10.2017 sent by the Claimant to the Respondents under Speed Post/ Regd. Ad Post/ Regd. Post, expressing therein their desire/intention to refer the matter to Sole arbitration of adjudication. Proof has been provided by the Claimant for sending the notice dated: 24.10.2017 by Speed Post I Regd. Ad Post/ Regd. Post. There being sufficient compliance of the provisions of law by the Claimant before making the reference to me, I have accepted the Reference made to me by their



Letter of reference dated: 22.03.2018.”

11. Further, the letter dated 22.03.2018 sent by the respondent appointing the learned Sole Arbitrator reads as follows:

Mahindra FINANCE

Mahindra & Mahindra Financial Services Ltd.
Mahindra Towers, 4th Floor,
Dr. G. M. Bhosale Marg, Worli,
Mumbai 400 018 India

Tel: +91 22 66526007/17
Fax: +91 22 24953608

VIA SPEED POST/REGISTERED AD POST/BY HAND

To,

Date: - 22.03.2018

Annexure 6
Sole Arbitrator
Mumbai
8/6/2019

Exd-6
Sole Arbitrator
Mumbai
14/11/2019

Mr. Sanjay Aggarwal,
Sadhana House, 02nd Floor
570, P.B. Marg, Worli, Mumbai – 400018.

Ref No: MAHINDRA & MAHINDRA/SME/RB/4845/LOT-39/01

SUB: APPOINTMENT OF THE ARBITRATOR IN THE MATTER OF MAHINDRA & MAHINDRA FINANCIAL SERVICES LTD Vs SPM AUTO PRIVATE LIMITED & Another.

Sir,

We, Mahindra & Mahindra Financial Services LTD, entered into the loan agreement dated 13.12.2012 with SPM AUTO PRIVATE LIMITED as borrower/s.

The borrower failed to pay the installments as per the agreement. On account of the consistent default, the loan facilities were recalled by loan Recall Notice dated 24.10.2017 and the borrower was called upon to pay the entire loan amount of Rs.1,32,03,916/- (Rupees One Crore and Thirty Two Lakhs Three Thousand Nine Hundred and Sixteen Only). Despite the service of the notice, the borrower failed to repay the amount.

As per arbitration clause of the agreement, the dispute arises between the parties, be settled through arbitration proceedings. We hereby invoke the arbitration clause and appoint you as the sole arbitrator and refer the matter to you for its adjudication, according to the provisions of the Arbitration and Conciliation Act, 1996.

Kindly take necessary steps.

P. Markey

Thanking you,

Yours truly,

Regd. Office: Gateway Building, Apollo Bunder, Mumbai 400 001 India
Tel: +91 22 2202 1031 | Fax: +91 22 2287 5485 | www.mahindrafinance.com
CIN: L65921MH1991PLC059642

Mahindra FINANCE

CERTIFIED COPY

SANJAY AGGARWAL
Advocate Delhi High Court
Sadhana House, 02nd Floor, 570
B Marg, Worli, Mumbai-400018

12. The legal position regarding the unilateral appointment of an



arbitrator is now well-settled in light of the judgment of the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd., 2019 SCC OnLine SC 1517***, wherein it was held that a unilateral appointment of an arbitrator by one of the parties, particularly by the party that is interested in the outcome of the dispute, is impermissible under the scheme of the Arbitration and Conciliation Act, 1996. The relevant portion at para 20 reads as under:-

“20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the



decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.”

13. Even though specific objection has not been laid, it is an objection which goes to the root of the matter and can be taken even at the stage of arguments. The objection pertains to the fundamental requirement of a fair and impartial adjudicatory mechanism, which is non-derogable. The Hon'ble Supreme Court in **Perkins Eastman (supra)** has categorically held that any award passed by an arbitrator unilaterally appointed by an interested party is vitiated. Therefore, in view of the settled legal position and to uphold the sanctity of the arbitral process, the arbitral award dated 13.12.2019 is liable to be and is accordingly set aside.
14. The legal heirs of the petitioner have been brought on record *vide* order dated 16.05.2024.
15. The present petition is allowed and disposed of.
16. Pending application(s), if any, are disposed of.

JASMEET SINGH, J

JULY 10, 2025/sp

(Corrected and released on 18.07.2025)