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

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**Judgment pronounced on: 13.05.2025**

+ **ARB.P. 779/2024**

M/S RELIGARE FINVEST LIMITED

..... Petitioner

Through: Ms. Taniya Bansal, Ms. Meenakshi.  
S, Ms. Sandipa Bhattacharjee, Advts.

versus

M/S SURYA SILK MILLS & ORS.

..... Respondents

Through: Mr. Ankit Shah, Mr. Tarun Arora,  
Advts.

+ **ARB.P. 780/2024**

M/S RELIGARE FINVEST LIMITED

..... Petitioner

Through: Ms. Taniya Bansal, Ms. Meenakshi.  
S, Ms. Sandipa Bhattacharjee, Advts.

versus

M/S SURYA SILK MILLS & ORS.

..... Respondents

Through: Mr. Ankit Shah, Mr. Tarun Arora,  
Advts.

**CORAM:**

**HON'BLE MR. JUSTICE SACHIN DATTA**

**JUDGMENT**

1. The present petitions have been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'A&C Act'), seeking appointment of a Sole Arbitrator for resolution of disputes that have arisen out of Loan Agreements dated 27.02.2016 and 31.03.2015, executed between the petitioner and the respondents in ARB.P. 779/2024 and ARB.P. 780/2024 respectively.



2. Loan Agreement dated 27.02.2016 (ARB.P. 779/2024) contains an arbitration clause in the following terms –

**“21. ARBITRATION AND JURISDICTION**

*21.1 Any and all disputes, claims, differences arising out of or in connection with this Agreement and the Schedule/s attached hereto or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the RFL and the award thereupon shall be binding upon the Parties to this Agreement. The Arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The place of the arbitration shall be in Delhi. The proceeding of Arbitration tribunal shall be conducted in English language. Each Party shall bear cost of representing its case before the Arbitrator. Costs and charges of Arbitrator to be shared equally unless otherwise provided for in the award.*

*21.2 The Borrower(s) further agree that all claims, differences and disputes, arising out of or in relation to dealings/transaction made in pursuant to this Agreement including any question of whether such dealings, transactions have been entered into or not, shall be subject to the exclusive jurisdiction of the courts at Delhi only.”*

3. Loan Agreement dated 31.03.2015 (ARB.P. 780/2024) contains an arbitration clause in the following terms –

**“20. ARBITRATION AND JURISDICTION**

*Any and all disputes, claims, differences arising out of or in connection with this Agreement and the Schedule/s attached hereto or the performance of this Agreement shall be settled by arbitration to be referred to a sole arbitrator to be appointed by the RFL and the award thereupon shall be binding upon the Parties to this Agreement. The Arbitration shall be held in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. The place of the arbitration shall be in Delhi. The proceeding of Arbitration tribunal shall be conducted in English language. Each Party shall bear cost of representing its case before the Arbitrator. Costs and charges of Arbitrator to be shared equally unless otherwise provided for in the award.*

*20.1 The Borrower(s) further agree that all claims, differences and disputes, arising out of or in relation to dealings/transaction made in pursuant to this Agreement including any question of whether such*



*dealings, transactions have been entered into or not, shall be subject to the exclusive jurisdiction of the courts at Delhi only.”*

4. At the outset, it is noticed that the factual matrix is identical in both the petitions. The only difference is that there are two separate loan agreements, hence two petitions have been filed. For the sake of convenience, the reference to the facts as noted, unless the context indicates otherwise, are the facts as obtaining in ARB.P. 779/2024.

5. The dispute arises from a financial facility availed by respondent no. 1, M/s. Surya Silk Mills, along with Co-borrowers (respondents no. 2 to 7), who had approached the petitioner in 2016 seeking a Loan Against Property (LAP). The petitioner sanctioned a loan of Rs. 2,60,00,000/- (Rupees Two Crore Sixty Lakhs only), repayable in 120 months at an interest rate of 12.5% p.a., through Loan Account No. XMORSUR00071339. The loan was secured by creation of security interest on a property bearing the description “All that piece and parcel of Bangla No. 8, Amikunj, T.Y.P.NO.: 5, F.P. NO. 123, Athwa, Ghod Dod Road Surat, Gujarat, 395007”.

6. It is submitted that starting in 2018, the respondents began defaulting on repayment obligations under the Loan Agreement. As a result, on 15.11.2018, the petitioner issued a loan recall and arbitration invocation notice, and initiated arbitration proceedings by unilaterally appointing an Arbitrator. The Arbitral Tribunal was constituted in January 2019. Although respondents challenged the unilateral appointment of the arbitrator by moving an application under Sections 12 and 13 of the A&C Act, the objection was dismissed by the arbitrator.

7. During the course of arbitral proceedings, the loan account of the



respondents was classified as a Non-Performing Asset (NPA) on 31.01.2019, in accordance with RBI guidelines, due to continued default. Subsequently, a demand notice dated 13.02.2019 was issued under Section 13(2) of the SARFAESI Act, 2002, calling upon the respondents to repay an outstanding sum of Rs. 5,22,98,311.22/- across the two loan accounts bearing numbers XMORSUR00071339 (ARB.P. 779/2024) and XMORSUR00059477 (ARB.P. 780/2024)

8. Upon non-payment, the petitioner took physical possession of the secured property on 13.10.2020 in accordance with and in compliance with the Order dated, 29.01.2020 passed by the District Magistrate, Surat passed under Section 14 of the SARFAESI Act, 2002. A notice for sale dated 16.07.2021 was then issued in accordance with Rule 8(6) of the Security Interest (Enforcement) Rules, 2002, scheduling a public auction for 06.08.2021.

9. The auction was conducted on 06.08.2021 and the property was sold for Rs. 4,85,10,000/-. Upon receipt of the full sale consideration, a sale certificate dated 07.10.2021 was issued to the auction purchaser.

10. Meanwhile, the respondents challenged the SARFAESI measures before the Debt Recovery Tribunal (DRT-II), Ahmedabad, by filing Securitization Application No. 382 of 2020, titled *Surya Silk Mills vs. Religare Finvest Limited & Ors.* An interim stay granted by DRT on 26.10.2021 against registration of conveyance deed in favour of the auction purchaser was vacated on 27.02.2023, allowing the petitioner to proceed under SARFAESI Act. The sale was made subject to final outcome of the said application, which remains pending.



11. Subsequently, the arbitration proceedings stood terminated on 19.04.2022 upon expiration of the arbitrator's mandate.

12. It is submitted that despite the auction under the SAFAESI Act, the full outstanding loan amount could not be recovered. It is submitted that as of 21.05.2024, a balance of Rs. 1,70,37,983.56/- remained due.

13. Since the outstanding dues remained unpaid even after the property was auctioned, the petitioner issued a fresh invocation notice dated 15.01.2024 under Section 21 of the A & C Act. However, the respondents have failed to reply.

14. Now the petitioner had approached this Court seeking the appointment of an independent sole arbitrator under Section 11(6) of the Act.

15. It is submitted by the petitions that the scope of enquiry under Section 11(6) of the Act is limited to the existence of an arbitration agreement between the parties, and other disputes, including those regarding arbitrability or maintainability, fall within the jurisdiction of the arbitral tribunal. Reliance is placed on the judgment of the Supreme Court in **SBI General Insurance Co. Ltd. v. Krish Spinning**, 2024 SCC OnLine SC 1754

16. While countering the objection raised by respondent no. 4 that the present invocation is barred due to the petitioner's earlier initiation of arbitration proceedings through its letter dated 15.11.2018 and subsequent failure to seek an extension of the arbitrator's mandate, which expired on 19.04.2022, it is submitted by the petitioner that the arbitrator previously appointed was unilaterally nominated by the petitioner, a practice that has been recognised impermissible by the Supreme Court in **Perkins Eastman**



**Architects DPC v. HSCC (India) Ltd.**, 2019 SCC OnLine SC 1517 and **Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company**, 2024 INSC 857. In light of these authoritative pronouncements, the initial appointment was legally unsustainable and non-est in law. Consequently, the question of seeking an extension under Section 29A of the Arbitration and Conciliation Act, 1996, did not arise.

17. It is submitted that the respondents' reliance on the judgment of the Supreme Court in **HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad**, 2024 SCC OnLine SC 3190, is misplaced. It is submitted that the observations in **HPCL** cannot be construed as imposing an absolute prohibition on invoking the same arbitration clause more than once, particularly where the earlier proceedings are *non-est*. The Petitioner relies on the Hon'ble Supreme Court's ruling in **Perkins** (supra) and the Division Bench judgment of the Delhi High Court in **Govind Singh v. Satya Group Pvt. Ltd.**, 2023 SCC OnLine Del 37.

18. It is further submitted that the current invocation is based on a fresh and distinct cause of action, i.e., the recovery of the outstanding balance amounting to ₹2,19,03,252/- as on 21.01.2024, after adjusting the proceeds of the secured asset sold under the SARFAESI Act. Hence, the petitioner is not reviving an old claim but seeking adjudication of a new dispute arising after partial recovery.

19. In order to substantiate its arguments, reliance has been placed on **Dolphin Drilling Ltd. v. ONGC**, (2010) 3 SCC 267, **Parsvnath Developers Ltd. v. Rail Land Development Authority**, 2018 SCC OnLine Del 12399



and ***Panipat Jalandhar NH1 Tollway (P) Ltd. v. NHAI***, 2022 SCC OnLine Del 108.

20. It is further submitted that the judgments cited by respondent no. 4, ***Fedbank Financial Services Ltd. v. Narendra H. Shelar***, 2020 SCC OnLine Bom 5252, and ***Raj Chawla & Co. v. Mine Media & Information Services***, 2023 SCC OnLine Del 520, are distinguishable as in those cases, there was no new cause of action after closure of earlier proceedings. In contrast, here the SARFAESI recovery led to a partial repayment, and the current claim relates to the remaining balance, arising post-sale.

21. At last it is submitted that the present application is well within the limitation period prescribed under the Limitation Act, 1963. Moreover it is submitted that the present invocation of arbitration is based on a separate and distinct cause of action. The earlier invocation related to the entire outstanding financial facilities, whereas post-termination of the earlier arbitration, the petitioner exercised its rights under the SARFAESI Act, 2002. The secured asset was sold on 07.10.2021, and the remaining outstanding dues after such sale gave rise to the current dispute. Consequently, a fresh notice invoking arbitration was issued on 15.01.2024, and the present Section 11 petition followed. Therefore, this invocation is based on a fresh dispute and a distinct cause of action, and is not time-barred.

22. The respondent no. 4 while objecting to the appointment of a sole arbitrator has submitted as under -

- i. It is submitted that the petitioner had already invoked arbitration by issuing a legal notice dated 15.11.2018, wherein



it demanded repayment of ₹2,31,48,941.63 /-. Without awaiting a response from the respondents, the petitioner, by letter dated 29.11.2018, unilaterally appointed a sole arbitrator, Mr. Raj Kumar Sharma, Retired ADJ.

- ii. The respondents, vide reply dated 19.12.2018, raised specific objections to the unilateral appointment of the arbitrator and denied the allegations made in the notice. A formal challenge was also filed under Sections 12(3), 13(1), and 13(2) of the Act, questioning appointment of the arbitrator. However, the Ld. Arbitrator dismissed the said challenge by order dated 20.05.2019 and proceeded with the matter.
- iii. It is submitted that the mandate of the said arbitrator expired on 19.04.2022, in terms of Section 29A(4) of the Act. Despite the expiry, the petitioner failed to seek an extension of the mandate or approach the Court under Section 29A(5). It is submitted that the petitioner, by its inaction, effectively abandoned its claims.
- iv. Respondent no. 4 submits that, having abandoned its claims, the petitioner is now barred from re-invoking the arbitration clause. Reliance is placed on the decision of the Supreme Court in *M/s HPCL Biofuels Ltd. v. M/s Shahaji Bhanudas Bhad*, 2024 SCC OnLine SC 3190 which held that once a party unconditionally withdraws the arbitration petition without seeking liberty to refile, a second invocation is impermissible.
- v. Further reliance is placed on *ANTRIX Corporation Ltd. & Anr. v. Devas Multimedia Pvt. Ltd.* (2014) 11 Supreme Court



Cases 560, where the Supreme Court observed that “*Once the power has been exercised under the Arbitration Agreement there is no power left to, once again, refer the same disputes to arbitration under Section 11 of the 1996 Act, unless the order closing the proceedings is subsequently set aside.*”.

- vi. It is the respondent’s case that the petitioner had an available statutory remedy under Section 29A of the Act, which includes the power of the Court not only to extend the mandate of the arbitrator but also to substitute the arbitrator, if required. Therefore, there was no necessity for the petitioner to file a fresh application under Section 11. Reliance is placed on the recent judgment in ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.***, 2024 SCC OnLine SC 2494, where the Supreme Court clarified that recourse under Section 29A can serve as a complete remedy and observed that “*Section 29A(6) does not support the narrow interpretation of the expression “terminate”. It states that the court – while deciding an extension application under Section 29A (4) – may substitute one or all the arbitrators. Section 29A (7) states that if a new arbitrator(s) is appointed, the reconstituted arbitral tribunal shall be deemed to be in continuation of the previously appointed arbitral tribunal. This obliterates the need to file a fresh application under Section 11 of the A & C Act for the appointment of an arbitrator.*”



- vii. Reliance has also been placed on ***Raj Chawla And Co. Stock And Share Brokers Vs. M/S Nine Media and Information Services Ltd.*** 2023 SCC OnLine Del 520, ***Fedbank Financial Service Ltd Through Its Ao Zahid Sultan Versus Narendra H Shelar, Through Lrs & Ors***, 2020 SCC Online Bom 5252 and ***Swadesh Kumar Agarwal Vs Dinesh Kumar Agarwal And Others*** (2022) 10 SCC 235.
- viii. It is the case of the respondent no. 4 that the petitioner is attempting to reinvoke arbitration after nearly two years of inaction since the expiry of the mandate of the arbitrator on 19.04.2022.
- ix. Respondent no. 4 submits that the petitioner has already recovered a sum of ₹4.85 Crores through enforcement proceedings under the SARFAESI Act, 2002. This amount is significantly higher than the original claim of ₹2.31 Crores. Therefore, the debt stands discharged, and no further claims survive under the same cause of action. Arbitration proceedings cannot now be pursued for a satisfied claim.
- x. Relying on ***SBI General Insurance Co. Ltd. v. Krish Spinning*** (supra), the respondent argues that courts can examine the validity of the arbitration clause while considering appointment. Since the Petitioner's claim stands satisfied, the arbitration clause itself is rendered ineffective.
23. It is an admitted fact that the present petition concerns a second invocation of the arbitration clause of the Loan Agreement. The arbitration



clause was earlier invoked by the petitioner *vide* notice dated 15.11.2018, wherein the petitioner sought reference of disputes to arbitration. However, the said proceedings were terminated due to expiry of the arbitrator's mandate, and no application for extension was filed by the petitioner under Section 29A of the A&C Act. The petitioner has now issued a fresh notice invoking arbitration dated 15.01.2024.

24. The primary objection raised by the respondent no. 4 is that the petitioner, by failing to seek extension of the arbitrator's mandate in the earlier proceedings, effectively abandoned its claims. Consequently, it is contended that a second invocation of the arbitration clause is legally impermissible. In support of this contention, reliance is placed on the judgment of the Supreme Court in ***HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad***, 2024 SCC OnLine SC 3190 wherein it was held that a second application under Section 11(6) of the Act is not maintainable when the earlier application was withdrawn unconditionally, without seeking liberty to refile. The relevant portion of the judgment is reproduced as under-

*“66. If that is so, the unconditional withdrawal of a Section 11(6) petition amounts to abandoning not only the formal prayer for appointing an arbitrator but also the substantive prayer for commencing the actual arbitration proceedings. It amounts to abandoning the arbitration itself. It results in abandonment of the notional ‘arbitration proceeding’ that had commenced by virtue of Section 21 and thus amounts to an abandonment of a significant nature. Therefore, it is all the more important to import and apply the principles underlying Order 23 Rule 1 of the CPC to abandonment of applications under Section 11(6).”*

25. The legal position is well settled that an arbitration clause can be invoked multiple times, provided a fresh or continuing cause of action



exists. There is no bar to successive invocations of an arbitration agreement to address subsequent disputes or claims.

26. In ***Dolphin Drilling Ltd. v. ONGC***, (2010) 3 SCC 267, the Supreme Court addressed a similar issue where the arbitration agreement was invoked a second time. The respondent therein argued that the clause was a one-time measure. However, the Court rejected this contention, holding as under –

*“3. Mr Gaurav Agrawal, learned counsel appearing for the respondent, accepted the provision for arbitration vide Clause 28 of the agreement dated 17-10-2003. He also acknowledged that the dispute(s) raised by the applicant in the arbitration notice dated 29-1-2008 arose under the agreement dated 17-10-2003 and was/were fully arbitrable. Nevertheless, he resisted the applicant's prayer to refer the dispute(s) raised in the arbitration notice dated 29-1-2008 to arbitration on the plea that the applicant had already invoked the arbitration clause albeit in connection with a different dispute earlier arising under the agreement.*

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*8. The plea of the respondent is based on the words “all disputes” occurring in Para 28.3 of the agreement. Mr Agrawal submitted that those two words must be understood to mean “all disputes under the agreement” that might arise between the parties throughout the period of its subsistence. However, he had no answer as to what would happen to such disputes that might arise in the earlier period of the contract and get barred by limitation till the time comes to refer “all disputes” at the conclusion of the contract. The words “all disputes” in Clause 28.3 of the agreement can only mean “all disputes” that might be in existence when the arbitration clause is invoked and one of the parties to the agreement gives the arbitration notice to the other. In its present form Clause 28 of the agreement cannot be said to be a one-time measure and it cannot be held that once the arbitration clause is invoked the remedy of arbitration is no longer available in regard to other disputes that might arise in future.”*

27. Similarly, in ***Panipat Jalandhar NH1 Tollway Pvt. Ltd. v. NHAI***, 2022 SCC OnLine Del 1, this Court observed as under -

*“47. In the opinion of this Court multiple arbitrations can exist if the*



*cause of action continues or arises after constitution of a tribunal. This Court is informed that disputes pertaining to the year 2013 are pending before first arbitral tribunal. The suspension and termination of Concession Agreement in question are subject matter of consideration before the second arbitral tribunal. The petitioner has not been able to establish that the disputes, resolution of which is sought under the proposed third arbitral tribunal, cause of action thereof arose post suspension and termination of Concession Agreement. This fact is further substantiated by the language of Notice dated 4th June, 2021 invoking arbitration, which clearly stipulates that for resolution of differences which were subject matter of Notice of Dispute dated 25<sup>th</sup> October, 2019, the constitution of third arbitral tribunal is sought, which is already under consideration before the second arbitral tribunal and so, in the considered opinion of this court, it would lead to multiple observations and findings by two different tribunals, which cannot be permitted.”*

28. Even in **HPCL Biofuels** (supra), the Court clarified that a second invocation is barred only if the earlier application was based on the same cause of action and withdrawn without liberty. However, if a fresh cause of action arises subsequently, the arbitration clause can be re-invoked. The relevant portion of the judgment is reproduced as under –

*“52. One important aspect that needs to be kept in mind while applying the principles of Order 23 Rule 1 to applications under Section 11(6) of the Act, 1996 is that it will act as a bar to only those applications which are filed subsequent to the withdrawal of a previous Section 11(6) application filed on the basis of the same cause of action. The extension of the aforesaid principle cannot be construed to mean that it bars invocation of the same arbitration clause on more than one occasion. It is possible that certain claims or disputes may arise between the parties after a tribunal has already been appointed in furtherance of an application under Section 11(6). In such a scenario, a party cannot be precluded from invoking the arbitration clause only on the ground that it had previously invoked the same arbitration clause. If the cause of action for invoking subsequent arbitration has arisen after the invocation of the first arbitration, then the application for appointment of arbitrator cannot be rejected on the ground of multiplicity alone.”*

29. In the present case, the respondent no. 4 contends that no fresh cause of action exists. However, it is noticed that at the time of the first invocation,



the petitioner's claims pertained to recovery of entire outstanding as on 09.11.2018 under the loan agreement. During the pendency of the earlier arbitration, proceedings under the SARFAESI Act were initiated, pursuant to which the petitioner recovered ₹4,85,10,000/- through public auction of the secured assets of the respondents.

30. The petitioner now claims that despite the recovery under SARFAESI (which is a development subsequent to the earlier invocation), a substantial amount of ₹ 2,29,33,699.001 remains outstanding, and seeks to recover this through the present arbitration. It is the petitioner's case that in the peculiar factual context, a fresh cause of action arose in its favor for invoking arbitration.

31. In light of the above factual matrix, and considering the limited scope of judicial intervention under Section 11 of the Act, this Court is of the view that the issue/s as to (i) whether the present invocation is pursuant to any fresh cause of action; (ii) whether the claim/s sought to be raised in the present arbitration are maintainable or not (in the light of alleged abandonment of the earlier arbitration; or for any other reason), are mixed questions of facts and law, and ought to be adjudicated by the arbitral tribunal. This Court in ***Parsvnath Developers Limited and Another v. Rail Land Development Authority***, 2018 SCC OnLine Del 12399 has observed as under –

*“10. In my opinion, the existence of the Arbitration Agreement itself is not in dispute. The dispute is whether the claim now sought to be raised by the petitioner would be barred by the principles of Order II Rule 2 of the CPC and/or principles of res judicata and/or estoppel. It cannot be denied that an Arbitration Agreement can be invoked a number of times and does not cease to exist only with the invocation for the first time. The Supreme Court in Dolphin Drilling Ltd. v. Oil and Natural Gas*



*Corporation Ltd., (2010) 3 SCC 267, has held as under:*

*“8. The plea of the respondent is based on the words “all disputes” occurring in Para 28.3 of the agreement. Mr. Aggrawal submitted that those two words must be understood to mean “all disputes under the agreement” that might arise between the parties throughout the period of its subsistence. However, he had no answer as to what would happen to such disputes that might arise in the earlier period of the contract and get barred by limitation till the time comes to refer “all disputes” at the conclusion of the contract. The words “all disputes” in Clause 28.3 of the agreement can only mean “all disputes” that might be in existence when the arbitration clause is invoked and one of the parties to the agreement gives the arbitration notice to the other. In its present form Clause 28 of the agreement cannot be said to be a one-time measure and it cannot be held that once the arbitration clause is invoked the remedy of arbitration is no longer available in regard to other disputes that might arise in future.”*

*11. The question whether the claim of the petitioner would be barred by the principles of res judicata or estoppel or by Order II Rule 2 of the CPC are not matters to be considered by this Court while exercising its jurisdiction under Section 11 of the Act. (Indian Oil Corporation Ltd. v. SPS Engineering Ltd., (2011) 3 SCC 507)).*

*12. The legislature by amending the Act by way of the Arbitration and Conciliation (Amendment Act) 2015 and the insertion of Section 11 (6A) of the Act has also restricted the scrutiny of the Court at the stage of adjudicating an application under Section 11 of the Act only to the existence of the Arbitration Agreement.*

*13. In view of the above, I see no impediment in appointing a nominee Arbitrator for the respondent to adjudicate the disputes that are sought to be raised by the petitioners in relation to the abovementioned Development Agreement. In such proceedings, all objections of the respondent shall remain open and it would be for the Arbitral Tribunal to decide the same, may be as primary issues.”*

32. Furthermore, the unilateral appointment of the previously appointed arbitrator is not in dispute. In light of the authoritative pronouncements of the Supreme Court in **TRF Ltd. v. Energo Engineering Projects Ltd.**,



(2017) 8 SCC 377, **Perkins Eastman Architects DPC v. HSCC (India) Ltd.**, (2020) 20 SCC 760, and **Bharat Broadband Network Ltd. v. United Telecoms Ltd.**, 2019 SCC OnLine SC 547 and **Central Organisation for Railway Electrification v. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company**, 2024 INSC 857, it is now a settled proposition of law that any unilateral appointment of an arbitrator by one of the parties is legally invalid and void ab initio. Such an appointment is treated as *non-est* in the eyes of law.

33. In the context of a Section 11 petition being filed after unilateral appointment of an arbitrator, this Court in **Fiiitjee Ltd. v. Ashish Khare & Anr.**, 2023 SCC OnLine Del 1189, held as under -

“27. Sub-section (2) of Section 15 of the Act states that where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed in accordance to the rules that were applicable to the appointment of the arbitrator being replaced. In the present case, as the arbitration agreement provides for appointment of a sole arbitrator by the petitioner, the said arbitrator could not have been appointed in view of the judgment of the Supreme Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*<sup>7</sup> The petitioner has, therefore, rightfully approached this Court for appointment of an arbitrator.

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35. It is made clear that the arbitrator shall undertake the arbitration proceedings afresh. Any proceedings that had been undertaken by the earlier arbitrator shall be treated as *non-est*. In such arbitration proceedings all objections of the respondents shall remain open and the learned arbitrator shall decide the same remaining uninfluenced by any observation made hereinabove.”

34. The judgment in **ANTRIX Corporation Ltd. & Anr. v. Devas Multimedia Pvt. Ltd.** (supra), as relied upon by respondent no. 4, is clearly distinguishable on facts. In **ANTRIX**, the issue pertained to repeated



invocation of arbitration on the same cause of action. In contrast, the central contention of the petitioner in the present case is that a fresh and independent cause of action has arisen, thereby justifying a second invocation of the arbitration clause.

35. Similarly, the objections as regards the petitioner's failure to seek an extension of the mandate of the previous arbitrator, and the reliance placed on ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*** (supra), ***Raj Chawla and Co. Stock and Share Brokers v. M/s Nine Media and Information Services Ltd.*** (supra), ***Fedbank Financial Services Ltd. through its AO Zahid Sultan v. Narendra H Shelar through LRs & Ors.***, (supra), and ***Swadesh Kumar Agarwal Vs Dinesh Kumar Agarwal And Others*** (supra) do not really apply in the present case. These decisions pertain to scenarios where the parties sought to revive the same cause of action. In contrast, the petitioner herein seeks a fresh invocation of the arbitration clause based on a subsequent cause of action. Moreover, the aforesaid relied upon cases did not involve any "unilateral appointment" of the initially appointed arbitral tribunal (rendering the resultant proceedings non-est)

36. In the above circumstances, it cannot be said that the present petition is *ex facie* barred and/or that appointment of an arbitrator in these proceedings is altogether precluded on account of the circumstances highlighted by the respondent no. 4. These aspects require a detailed factual evaluation in the light of the extant legal position, an exercise which is best left to be conducted by a duly constituted arbitral tribunal.

37. The scope of examination in these proceedings is confined to



ascertaining *prima facie* whether there exists an arbitration agreement. This position has been comprehensively settled in ***Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re***, 2023 SCC OnLine SC 1666, and ***SBI General Insurance Co. Ltd. v. Krish Spinning***, 2024 INSC 532.

38. In the circumstances, since *prima facie*, there exists an arbitration agreement between the parties, this Court is inclined to constitute an Arbitral Tribunal to adjudicate the disputes between the parties.

39. Accordingly, Ms. Justice (Retd.) Deepa Sharma, former Judge, Delhi High Court, (Mob.: +91 9910384631) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

40. It is made clear that all objections raised by the respondent no. 4 *inter-alia*:

- (i) That the present arbitration is precluded on account of alleged abandonment of the previous arbitration;
  - (ii) Whether the present arbitration can be considered to be founded on any fresh cause of action;
  - (iii) Whether the claims are sought to be raised within limitation;
- and any other objections that may be raised by the respondents, shall be decided by the learned Arbitrator on its own merits. It is made clear that the observations made in the present judgment are for the limited purpose of considering whether an arbitral tribunal is required to be constituted or not.

41. This judgment shall not influence the arbitrator for the purpose of adjudging the preliminary/jurisdictional objections, raised by the respondent.



42. It is further clarified that the arbitration under each Loan Agreement shall be independent of each other even though a common learned arbitrator has been appointed for the sake of convenience. It shall be open for the learned arbitrator to have common hearings/ allow common evidence to be adduced, as may be deemed appropriate.

43. All rights and contentions of the respondents in this regard are expressly reserved.

44. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties the requisite disclosures as required under Section 12 of the A&C Act.

45. The learned Sole Arbitrator shall be entitled to fee in accordance with IV<sup>th</sup> Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

46. Needless to say, nothing in this order shall be construed as an expression of this court on the merits of the case.

47. The present petitions are disposed of.

**SACHIN DATTA, J**

**MAY 13, 2025/sv**