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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 09.09.2025

+ **O.M.P. (COMM) 71/2022 & I.A. 1508/2022, I.A. 7622/2023**

RAMANBHAI CHHAGANBHAI PATELPetitioner

Through: Mr. Yashasvi Virendra Adv., Mr.
Wadhwa Adv., Ms. Gitika Dixit, Adv.

versus

RELIGARE FINVEST LTD.Respondent

Through: Mr. Sanjeev Singh, Adv., Ms.
Sandipa Bhattacharjee, 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 to challenge the *ex-parte* Arbitral Award dated 22.08.2019, wherein the Sole Arbitrator awarded the respondent a sum of Rs. 16,03,07,236.80/- along with interest @ 18% p.a.
2. The facts are that the petitioner opened a trading account with the respondent, which is a Non Banking Finance Company, wherein as per the transaction the respondent advanced a loan of Rs. 4 crores to the petitioner based on the pledged shares of the petitioner. In lieu of the same, a Loan Agreement dated 20.02.2009 was executed between the parties.
3. The said Loan Agreement contains an arbitration clause being Clause No. 16.1, which reads as under:-



“16.1 Any and all disputes, claims, differences arising out of or in connection with this Agreement and the Schedule(s) of Terms/ Repayment 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 Lender and award thereupon shall be final, conclusive and binding upon the parties to this Agreement. The place of Arbitration shall be in Delhi, the proceedings shall be conducted in accordance with the provision of the Arbitration and Conciliation Act, 1996 and any statutory amendments thereof. Each party shall bear the cost of preparing and presenting the case and the cost of arbitration including fee and expenses of the arbitrator, shall be shared equally by the parties unless the award otherwise provides.”

4. Subsequently, disputes arose between the parties, and the respondent initiated the arbitration proceedings. The Sole Arbitrator passed the impugned Award dated 22.08.2019, wherein Sole Arbitrator awarded the respondent a sum of Rs. 16,03,07,236.80/- along with interest @ 18% p.a.
5. Aggrieved by the said Award, the petitioner has filed the present petition.
6. At the outset, without getting into the merits of the matter, Mr. Wadhwa, learned counsel for the petitioner states that the impugned Award is patently illegal as the Sole Arbitrator was unilaterally appointed by the respondent. He submits that the appointment of the



Sole Arbitrator was done by the respondent without obtaining any consent from the petitioner.

7. He further states that the impugned Award is in contravention of public policy of India and against the principal of natural justice, since the Sole Arbitrator proceeded with the arbitration proceedings *ex-parte* against the petitioner, without giving any opportunity to the petitioner to contest his case and without following the due process of law. Further, in support of his submission that the petitioner was not duly served with the notice of arbitration, he draws my attention to the following paragraph of the impugned Award:-

“Copy of statement of Claim as was filed by the Claimant with annexure was forwarded to the opposite party vide notice dated 15.09.2018 sent under speed post to his last given address for filing his defence/objection to the statement of claim of claimant by 03.10.2018. On 03.10.2018 the date of hearing neither the opposite party appeared before the tribunal nor sent any defence/counter to the statement of claim of claimant or any request for adjournment despite issuance of notice dated 15.09.2018 sent to the opposite party at his last given address through speed post. The Proof of dispatch of the notice dated 15.09.2018 was on the record. Under the circumstances and in the interest of justice another opportunity was given to the opposite party for filing his defence/counter to the statement of claim by 26.10.2018 and a notice dated 03.10.2018 was sent to the opposite party through Speed



post at his last given address. On 26.10.2018 again neither the opposite party attended the proceeding nor sent any counter/defence to the statement of Claim of claimants. The notice dated 03.10.2018 was received back as un-delivered with postal remarks “UNCLAIMED”. The proof of dispatch of notice 03.10.2018 and delivery report downloaded from the website of India Post was on record.”

8. *Per contra*, Mr. Singh, learned counsel for the respondent submits that the respondent had issued a Letter of Reference to arbitration dated 06.07.2018 and the same was sent to the petitioner on his last known address, which is also the current address of the petitioner. He states that the Letter of Reference was effectively received by the petitioner, as the same was not returned back to the respondent, which shows effective service as per Section 27 of the General Clauses Act, 1897. He further states that the petitioner had several opportunities but neither did he appear for any hearing nor sent any reply/objections to the letter/ notices duly received by the petitioner and hence, under such circumstances the Sole Arbitrator proceeded with the arbitration proceedings *ex-parte* and passed the Award dated 22.08.2019.
9. He further submits that thereafter the respondent filed an Execution Petition bearing No. 3/2021 on 08.03.2021 before the Senior Civil Judge, Vadodara to execute the Award dated 22.08.2019. He further states that the petitioner is in receipt of the notice dated 16.03.2021 to show cause issued by Senior Civil Judge, Vadodara, which was sent at the same address of the petitioner as the Letter of Reference to



arbitration and notice of Statement of Claims. Hence, he submits that it cannot be said that the petitioner was not served with the Letter of Reference or notice of Statement of Claims.

10. I have heard learned counsels for the parties.
11. The principles with regard to the limited scope of interference by a Court under Section 34 of the 1996 Act against an Arbitral Award have been reiterated time and again by the Hon'ble Supreme Court¹. To set aside an Arbitral Award, the Award must fall under any of the grounds as mentioned in Section 34 of the 1996 Act. One of the grounds, amongst other, pertains to contravention of the fundamental policy of India, which includes contravention of the most basic principles of natural justice, reliance is placed on **OPG Power Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417**, wherein the Hon'ble Supreme Court observed as under:-

“55. The legal position which emerges from the aforesaid discussion is that after “the 2015 Amendments” in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase “in conflict with the public policy of India” must be accorded a restricted meaning in terms of Explanation 1. The expression “in contravention with the fundamental policy of Indian law” by use of the word “fundamental” before the phrase “policy of Indian law” makes the expression narrower in its application than the phrase “in

¹ *Consolidated Construction Consortium Limited v. Software Technology Parks of India, 2025 INSC 574 (paragraph No. 23).*



contravention with the policy of Indian law”, which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.

56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:

- (a) violation of the principles of natural justice;*
- (b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and*
- (c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.*

However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii). “

- 12.** Sub-section (c) of Section 25 of the 1996 Act provides the Arbitral Tribunal with powers to proceed *ex-parte*, which reads as under:-

“25. Default of a party.- Unless otherwise agreed by the parties, where, without showing sufficient cause,-

- (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the*



arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.

(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.”

13. As provided in Section 25(c) of the 1996 Act, in a case where a party fails to appear for hearing or produce documentary evidence “*without showing sufficient cause*”, the Arbitral Tribunal may proceed with the arbitration proceedings and pass the Award based on the evidence before it. It is inbuilt in Section 25 of the 1996 Act that all steps must be taken to serve the parties through all possible means and only if despite service the respondent is not appearing, *ex-parte* proceeding can be commenced.
14. In the present case, a perusal of the paragraph (reproduced above) from the impugned Award shows that the Sole Arbitrator before proceeding with the arbitral proceedings *ex-parte* didn't satisfy that there was sufficient cause for non-appearance of the petitioner. In fact, the Sole Arbitrator himself states that the notice dated 03.10.2018 issued to the petitioner herein asking him to file his



defence/ counter to the Statement of Claims was received back undelivered with the postal remarks “UNCLAIMED”.

15. To my mind, it was incumbent upon the Sole Arbitrator to comply with the principles of natural justice and make every endeavour to serve the petitioner, before proceeding with the arbitral proceedings *ex-parte*. Once the notice was received back undelivered with the postal remarks “UNCLAIMED”, the Sole Arbitrator should have tried to serve the petitioner through substituted service, *dasti* process, or publication in the newspaper, however, none of these procedures were adopted by the Sole Arbitrator. Additionally, there is no affidavit of service filed by the respondent that states that the petitioner stood served with the notice and thereby, the Sole Arbitrator could have proceeded with the arbitral proceedings *ex-parte*.
16. In view of the aforesaid, the approach of the Sole Arbitrator to proceed with the arbitral proceedings *ex-parte* suffers from violation of principles of natural justice, which cannot be countenanced, as also observed by a Coordinate Bench of this Court in ***Mittal Pigments (P) Ltd. v. Gail Gas Ltd.***, 2023 SCC OnLine Del 977, wherein an *ex-parte* Arbitral Award dated 21.10.2019 was set aside on the ground that the Arbitrator did not issue a show cause notice or any peremptory notice before proceeding *ex-parte*. The operative portion of ***Mittal Pigments (supra)*** is extracted below:-

“27. Therefore, it is abundantly clear that, though not stipulated under the Act in clear terms, it has always been preferred and encouraged that an Arbitrator provides a preemptory notice to any party against whom it is seeking to



proceed ex-parte. There is no doubt to the fact that in the instant case the learned Arbitrator did not communicate the facts of proceedings being initiated, continued and proceeded with ex-parte to the petitioner, which it ought to have at some point of time before making the Award. Strong observations have been made on this question by the Courts and hence, this Court also submits to the observations as quoted in the foregoing paragraphs. The action on part of the learned Arbitrator was erroneous and hence, warrants interference from this Court.

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39. The Arbitral Award dated 21st October 2019 was passed without proper communication to the petitioner, before proceeding ex-parte, and without affording reasonable opportunity to present its case. The learned Arbitrator did not make adequate efforts to be satisfied that sufficient cause was to be shown for non-appearance before proceeding ex-parte against the petitioner. Further, it was incumbent for the learned Arbitrator to furnish reasons for his findings in favour of the respondent.

(Emphasis added)

17. In the present case, irrespective of the fact that respondent issued a Letter of Reference to arbitration to the petitioner which was not returned back to the respondent, it was incumbent upon the Sole Arbitrator to make satisfactory efforts to serve the petitioner with notice of arbitration proceedings and satisfy that despite being served



the petitioner did not appear, before proceeding with the arbitral proceedings *ex-parte*. It was not so done by the Sole Arbitrator.

18. Additionally, the law on unilateral appointment of an Arbitral Tribunal is no longer *res integra*. It is settled law 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 the arbitration proceedings, including the stage of appointment of the Arbitrator(s). The Hon'ble Supreme Court in ***TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 8 SCC 377*** and further in ***Perkins Eastman Architects DPC and Ors. v. HSCC (India) Ltd., (2020) 20 SCC 760***, has held that a person who has an interest in the outcome of the dispute must not have the power to appoint Arbitrator(s), as the same leads to apprehension of bias and prejudice. In the present case, the unilateral appointment of the Sole Arbitrator by the respondent, without the consent of the petitioner, is in teeth of the law laid down by the Hon'ble Supreme Court.
19. In light of the above discussion, the impugned Award cannot be sustained. The Sole Arbitrator proceeded with the arbitral proceedings *ex-parte* against the petitioner without ensuring that adequate steps had been taken to serve the petitioner. The Sole Arbitrator without ensuring that the petitioner had been duly served with the notice for arbitration, proceeded with the arbitral proceedings *ex-parte* and passed an *ex-parte* Award, which is in contravention to the principles of natural justice. The petitioner was un-served and un-aware of the arbitration proceedings and did not get any opportunity to present his case. Any Award passed in violation of principles of natural justice is



contravention of public policy of India, as observed by the Hon'ble Supreme Court in ***OPG Power Generation (supra)***.

20. Further, the *ex-parte* impugned Award is patently illegal as it was passed by the Sole Arbitrator who was unilaterally appointed by the respondent and the same is contrary to the law as laid down by the Hon'ble Supreme Court in ***TRF Ltd. (supra)*** and ***Perkins Eastman (supra)***.
21. For the aforesaid reasons, the petition is allowed and the impugned Award dated 22.08.2019 is set aside.
22. Since, the petition is allowed the pending applications, if any, have become infructuous.

JASMEET SINGH, J

SEPTEMBER 9, 2025/AS

(Corrected and released on 17.09.2025)