

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION NO. 3481 OF 2024

IN

COMMERCIAL EXECUTION APPLICATION NO. 49 OF 2025

Kotak Mahindra Bank Ltd

... Applicant

Versus

Yogesh Ajeet Kate and others

... Respondents

.....

Ms. Reet Jain alongwith Ms. Shrutika Mane instructed by S.I. Joshi & Co., Advocate for the Applicant.

None for the Respondents.

.....

CORAM : ABHAY AHUJA, J.

DATE : 6 APRIL 2026

PC. :

1. When the matter is called out, Ms. Jain, learned Counsel, appears for the Applicant and submits that the Respondent No.4 be deleted as he has passed away.

2. Upon a query from this Court to Ms. Jain as to whether the award is joint and several, Ms. Jain submits that although the award is joint and several, she has instructions only to proceed against the Respondents No.1 to 3 and not to take steps to bring the legal heirs/representatives of the deceased Respondent No.4 on record.

3. While this Court was perusing the award to ascertain as to whether the award is joint and several, it has been observed from the paragraph 2 of the award dated 30th November 2017 that in the agreement between the Applicant and Respondents, there is a condition No.17.1, whereby it has been agreed that any dispute and/or differences and/or claims arising between parties or any of them touching or concerning the agreement or any condition or as to the rights, duties or liabilities of the parties or any of them either during the continuance of the agreement or after termination or purported termination shall be referred to the sole arbitrator to be appointed by the Lender, viz. the Applicant, according to the provisions of the Arbitration and Conciliation Act, 1996 (the “said Act”) and Rules thereunder and any amendment thereto from time to time shall apply.

4. In the case of *Bhadra International (India) Pvt. Ltd. and others vs. Airports Authority of India*¹, the Hon’ble Supreme Court has clearly observed that unilateral appointment of arbitrator is void ab initio and the ineligibility can be raised at any stage and even in execution.

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5. In view of the aforesaid, the award dated 30th November 2017 is therefore set aside and the Execution Application as well as the connected Interim Applications stand disposed.

6. It would be open to the parties to initiate fresh arbitration proceedings in accordance with law.

7. As far as limitation is concerned, the period from the invocation of the arbitration till today be excluded in initiating fresh arbitration proceedings.

8. Liberty to apply in the event there exists an express agreement in writing in terms of proviso to Section 12(5) of the said Act waiving the ineligibility of the sole arbitrator or the right to object under Section 12(5) of the said Act.

(ABHAY AHUJA, J.)