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Arbitration Original Petition (Com.Div.) No.713 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arbitration Original Petition (Com.Div.) No.713 of 2025
and A.No.5650 of 2025

1. Mr.Ramanujam A.P.,
S/o.Mr.Sri Parthasarathy A.v.,

2. Mr.V.Vasanth,
S/o.Sri Viswanathan

3. Mr.Vijaykumar.K,
S/o.Kadambavanesan

.... Petitioners

Vs.

M/s.Rockcity Nidhi Ltd.,
(previously known as Trichy Rockcity benefit fund Ltd.,)
By its Director Mr.P.E.Vazhuthy,
Having its registered office at No.14,
1st Floor, Chitra Complex,
Thiruchirapalli – 620 002.

.... Respondent

Arbitration Original Petition (Com.Div.) filed under Section 34(2) (b)(ii) of the Arbitration and Conciliation Act, 1996, read with Rule (ii) of the Madras High Court Arbitration Rules, 2020 and Section 2(1)(C)(i) and Section 10(2) of the Commercial Courts Act, 2015, to set aside the Arbitral Award dated 03.11.2023 passed by the learned Sole Arbitrator.



Arbitration Original Petition (Com.Div.) No.713 of 2025

For Petitioner : Ms.Rohini Ravikumar
For Respondent : Mr.N.C.Ashok Kumar

ORDER

This petition has been filed challenging the award passed by the sole arbitrator dated 03.11.2023.

2. The respondent had extended loan facilities to the petitioner and on the alleged non-payment of the loan amount, arbitration proceedings were initiated by the respondent.

3. An award came to be passed and the same has been put to challenge mainly on the ground that there was unilateral appointment of Arbitrator on the side of the respondent and the same goes against the judgment of the Apex Court in the case of ***Perkins Eastman Architects DPC v. HSCC (India) Ltd. [(2020) 20 SCC 760]***.

4. When the petition came up for hearing on 19.11.2025, this Court passed the following order:

“The main issue that has been raised by the learned counsel for petitioners is that there was unilateral



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Arbitration Original Petition (Com.Div.) No.713 of 2025

appointment of an Arbitrator, which was objected by filing an application under Section 16 of the Arbitration and Conciliation Act and the same was rejected by the sole Arbitrator. Thereafter, the award has been passed on merits.

2. A prima facie has been made out and hence there shall be an order of interim stay of the award.

3. Notice to the respondent returnable by 11.12.2025. Private notice is also permitted.

4. Post this petition under the caption 'for orders' on 11.12.2025."

5. After service of notice, the respondent was represented through counsel. This Court advised both the parties to go for a settlement and to resolve the dispute amicably among themselves. In view of the same, this Court directed both sides to file their memo of calculation. Accordingly, the memo of calculation was filed by both sides. There was a huge variation in the amounts that were mentioned in the memo of calculation. In view of the same, this Court suggested a figure and directed the parties to take instructions. Accordingly, an order was passed on 05.01.2026 as follows:

"After hearing both sides, this Court found that both the parties are not able to reach an amicable settlement. Hence, this Court on the facts of the case, suggested the amount which can be settled by the petitioner and a quietus



can be reached in these cases.

2. Learned counsel for the petitioner seeks for time.

3. Post this case under the same caption on 07.01.2026”

6. When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that she has convinced her parties to pay the amount that was suggested by this Court and that eight (8) weeks time is required to repay the amount.

7. *Per contra*, Mr.N.C.Ashok Kumar, learned counsel for the respondent submitted that the amount that was suggested by this Court is not acceptable to the respondent. Since the respondent is running a financial business and if the amount suggested by this Court is accepted, the respondent will be put to irreparable loss and hardship.

8. In the considered view of this Court, an attempt was made to resolve the dispute amicably between the parties to give a quietus to the issue. If ultimately, the parties are not able to reach a settlement, this Court cannot push for a settlement. This Court has to necessarily deal with the case in accordance with law.



9. In the case in hand, there was unilateral appointment of an Arbitrator by the respondent and that by itself is a ground to set aside the award passed by the sole Arbitrator in line with the judgment of the Apex Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd. [(2020) 20 SCC 760]***. This judgment was later considered by the Constitution Bench of the Apex Court in ***Central Organisation for Railway Electrification Vs. ECI SPIC SMO MCML (JV) [2025 4 SCC 641]***.

10. In the latest judgment of the Apex Court in ***Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India [Civil Appeal Nos.37-38 of 2026 dated 05.01.2026]***, the scope of Section 12(5) of the Arbitration and Conciliation Act, 1996 has been considered in detail and the following principles have been laid down:

“123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:-

- i. The principle of equal treatment of parties provided in Section 18 of the Act, 1996, applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators. Equal treatment of the parties entails that the parties must have an equal say in the constitution of the arbitral tribunal.*
- ii. Sub-section(5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be*



appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid.

- iii. The words “an express agreement in writing” in the proviso to Section 12(5) means that the right to object to the appointment of an ineligible arbitrator cannot be taken away by mere implication. The agreement referred to in the proviso must be a clear, unequivocal written agreement.*
- iv. When an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. In such circumstance, an aggrieved party may approach the court under Section 14 read with Section 15 for appointment of a substitute arbitrator. Whereas, when an award has been passed by such an arbitrator, an aggrieved party may approach the court under Section 34 for setting aside the award.*
- v. In arbitration, the parties vest jurisdiction in the tribunal by exercising their consent in furtherance of a valid arbitration agreement. An arbitrator who lacks jurisdiction cannot make an award on the merits. Hence, an objection to the inherent lack of jurisdiction can be taken at any stage of the proceedings.”*

11. In view of the above, the party autonomy while appointing an Arbitrator has been sufficiently safeguarded by the judgments of the Apex Court referred supra. In the above judgments, the Apex Court reiterated that the award passed by an Arbitrator, who is unilaterally appointed will be non-est in the eye of law.



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12. Hence, this Court has to necessarily interfere with the award passed by the sole Arbitrator on 03.11.2023 and accordingly the same is hereby set aside.

13. In the result, this petition is allowed in the above terms.
Connected application is closed.

07.01.2026

Index:yes/no
Speaking order/Non-speaking order
NCC:yes/no
mp



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Arbitration Original Petition (Com.Div.) No.713 of 2025

N.ANAND VENKATESH, J.

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Arbitration Original Petition (Com.Div.) No.713 of 2025

07.01.2026