

Smt. Jagmohini Dilawar Singh vs M/S Kotak Mohindra Prime Limited on 4 January, 2023

DLCT010089152021

IN THE COURT OF MS. ILLA RAWAT :
DISTRICT JUDGE COMMERCIAL COURT- 03:
(CENTRAL) : TIS HAZARI : DELHI.

OMP (COMM) No. 48/2021
CNR NO. : DLCT010089152021

In the matter of :-
Smt. Jagmohini Dilawar Singh
w/o Shri Rajender Singh
r/o H.No.120, Plot No.489,
L-Block, Near Hotel Radison Blue,
Delhi-110032.

Versus

M/S Kotak Mohindra Prime Limited
2nd Floor, Kotak House,
Plot No.7, Sector-125,
Noida-201313, Uttar Pradesh

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Date of Institution	:	16.07.2021
Order reserved on	:	02.01.2023
Order passed on	:	04.01.2023

Application / Petition u/s. 34 of the Arbitration and
Conciliation Act, 1996 to set aside the Arbitral Award
dated 27.02.2019.

ORDER

1 Vide this order I shall dispose off an application / petition under Section 34 of Arbitration and Conciliation Act (hereinafter referred to as 'Act') filed on behalf of petitioner for setting aside ex-parte award dated 27.02.2019 passed by Ms. Shaheen, Sole Arbitrator, in Arbitration Case No.21 of 2018, titled as 'Kotak Mahindra Prime Ltd. vs. Jagmohini Dilawar Singh'.

2 Briefly stated facts as averred in the petition which are relevant for the disposal of abovementioned application are that :-

(i) In the mid of March, 2018 petitioner was approached by two agents, who told her

that they can arrange a loan facility at low interest for her from HDFC Bank to purchase a BMW car. After so inducing the petitioner they obtained her signatures on some blank forms and papers and also took copies of her identity card and some coloured passport size photographs.

They also induced her to take loan facility on the Honda car owned by her in similar manner.

(ii) On 16.03.2018 an amount of Rs.9,43,500/- (Rupees Nine Lakh Forty Three Thousand Five Hundred only) was credited, through RTGS from HDFC Bank, as a loan, in the bank account bearing No. 00292010093200 of M/S Rajinder Jagriti-E- Education Society with Oriental Bank of Commerce, Mahipal Pur Branch, Vasant Kunj Road, New Delhi, from which BMW 320D bearing registration No. HR-26-BN-3936 was purchased. Separate loan amount was credited in petitioner's bank account No.00292010019520 from HDFC Bank in respect of her Honda City car hypothecated with the bank.

(iii) It is further stated by the petitioner that she was unable to pay the monthly installments / EMIs to bank on time due to which her BMW car was illegally and forcibly lifted by the bank officials in the month of January - February, 2019 from its place of parking i.e. from the parking of RJ Public School. When petitioner and her husband came to know of the said illegal act, they went to the local Police Station Vasant Kunj North to report the matter where instead of taking action against the wrong doers petitioner and her husband were threatened by the police and 2 - 3 other persons representing to be bank officials. They not only refused to lodge complaint but also refused to release the vehicle. When the petitioner insisted that they show her order of Court and / or of a competent authority, she was threatened further. At that point of time the persons who represented themselves as bank officials to the petitioner assured her and her husband that bank would sell the car and that the amount of sale proceeds would be adjusted in her loan account only if petitioner and her husband did not raise their voice any further. The market value of the car was more than Rs.10 lakhs at that time. The petitioner and her husband agreed to the offer of said persons on assurance that she would not have to pay anything to the bank.

3 It is further stated that on 15.04.2021 petitioner received summons in execution petition bearing No.205/2020 titled as "Kotak Mahindra Prime Ltd. vs. Jagmohini Dilawar Singh" from the Court of Shri Ajay Garg, Ld. ADJ, Patiala House Courts, New Delhi, and for the first time she came to know about impugned order dated 27.02.2019 passed against her. She also came to know that she was alleged to have taken loan of Rs.9,60,000/- from the respondent bank under alleged agreement CF15513746 dated 14.03.2018.

4 Though when her BMW car was repossessed petitioner was under bonafide impression that the persons who had come were of officials of HDFC Bank, she came to know then that they were agents / goonda elements, who worked for various banks and that their job was to repossess the vehicle illegally and forcibly as per directions of their client bank against remuneration. The petitioner states that after receiving summons in Ex.No.205/2020 she went to office of HDFC Bank and was informed that her vehicle was not repossessed at their instance. On further inquiry she came to know that her vehicle had been repossessed at the instance of respondent bank in the month of

March, 2019. She was never told about the arbitration proceedings or the arbitral award dated 27.02.2019 when her vehicle was repossessed in the month of January - February, 2019.

5 The petitioner states that she approached her counsel in the month of May, 2021 and was advised to inspect the arbitration file and to file present petition under Section 34 of the Act for setting aside arbitral award dated 27.02.2019 passed by Ms. Shaheen, Ld. Sole Arbitrator. On advise of her counsel petitioner also checked statement of her bank account and came to know that the two installments of loan which had been paid by her were credited in the account of respondent bank and not the HDFC Bank. The petitioner remained under bona fide impression till March, 2021 that she had made payment of these two monthly installments to HDFC Bank because she was regularly paying loan installments in respect of her Honda City Car also to HDFC Bank.

6 The petitioner further states that on 03.05.2021 she appointed her counsel Shri Dharam Raj Ohlam and Shri Deepanker Mohan, who requested Sole Arbitrator on 07.05.2021 for permission to inspect the arbitration file No.21/2018 and also to provide certified copy / e scanned copies of the entire file but due to onset of second wave of Covid 19 pandemic and rescheduling by the arbitrator, her counsels could inspect the arbitration file only on 23.06.2021 and to obtain certified / true copies of the arbitration file and only thereafter the present petition could be finalized. The petitioner has challenged the arbitral award on following grounds :-

(i) That there is no privity of contract between the petitioner and the respondent as petitioner had never taken any loan facility from respondent bank at any point of time nor had she signed any arbitration agreement with the respondent bank.

(ii) That the petitioner had merely signed some blank forms and papers at the instance of two agents for loan facility for her BMW car and Honda City car in the mid of March, 2018 and received the loan amount, as detailed by her, from HDFC Bank.

(iii) That the loan documents do not bear her signatures while pointing at the column of "Second Party" on the e-stamp paper of Rs.50/- dated 24.01.2018, it is claimed that since the name of petitioner is not mentioned therein it is apparent that the said e-stamp paper was not got issued by the respondent bank with intent to give loan facility to the petitioner and the same has been misused to defraud the petitioner.

(iv) That the petitioner never received any written communication or alleged notice dated 03.10.2018 from the respondent. It is stated that the courier receipt (undated) No.5241595516 and 5236511114 of M/S Overnight Express Limited which have been produced as proof of service of alleged notice dated 03.10.2018 neither bear "name of the Shipper", or the "consignee", "date", "addresses of consignee or Shipper" and "Mobile Number of consignee or Shipper". The fact that said courier receipts are blank is claimed to be proof of the fact that the alleged notice dated 03.10.2018 was never sent to the petitioner.

(v) That the petitioner never received any alleged "letter of intent for appointment of Sole Arbitrator dated 16.11.2018" at any point of time. Referring to postal receipts dated 19.11.2018, it is stated that the addressee therein is "Jagmohini, 21 Delhi, Pin 110032" and "Jagmohini, 21. Delhi, Pin: 110037" respectively.

It is stated that the number "21" mentioned on the postal receipt as address is neither the plot number nor the house number or street number or Municipal number or block number of the petitioner. The Pin Code of the petitioner is 110037 and not 110032. If at all notices were sent on alleged addresses then same were intentionally sent on the wrong addresses and were never served upon petitioner. Even otherwise, it is stated, that the postal receipts which were filed by respondent before the Sole Arbitrator are not accompanied by tracking reports. The respondent has also not filed / placed any postal receipts or receiving in writing from the Sole Arbitrator in respect of the communication of alleged letter dated 16.11.2018 sent to the Arbitrator and thus it is apparent that no letter was sent by respondent either to the petitioner or the Arbitrator.

(vi) That the petitioner never received any alleged "Arbitration Reference Notice dated 28.11.2018" at any point of time. In this regard the averments made qua Letter of Intent dated 16.11.2018 have been reiterated. Referring to Section 21 of the Act, it is stated that the arbitration proceedings in respect of a particular dispute commences on the date on which a request for that dispute to be referred to the arbitration is received by the opposite party / respondent (petitioner herein). Since no such notice was ever sent to petitioner or was received by the petitioner arbitration proceedings cannot be deemed to have been commenced in any manner and started in contravention of Section 11 of the Act. Even otherwise it is contended that respondent never gave prior notice to the petitioner regarding appointment of Sole Arbitrator or Arbitral Tribunal and of sending / referring the alleged matter / dispute to the Arbitral Tribunal. The respondent malafidely appointed the Sole Arbitrator without giving any prior notice / communication to petitioner.

(vii) That the Sole Arbitrator was neither independent nor an impartial person but an agent associated with respondent bank, who acted at the instance of respondent and passed the impugned award dated 27.02.2019. It is stated that perusal of letter of intent dated 16.11.2018, notice for reference to arbitration dated 28.11.2018 (alleged to have been sent on 05.12.2018), Disclosure Letter dated 24.11.2018 and consent letter dated 27.11.2018 reveal that the appointment of arbitrator was done much prior to the date when the cause of action arose and / or prior to the date of alleged reference of dispute to arbitration. It is stated that since the Sole Arbitrator was appointed prior to referral of dispute it stands proved that the Sole Arbitrator was a person associated with respondent bank and the procedure adopted by respondent was in contravention of provisions of the Act. In this regard reference has also been made to the case number i.e. Arbitration case No. 21/2018 to aver that the said case number further proves that the arbitrator had dealt with 20 arbitration cases in the year 2018, prior to adjudication of the case No.21/18, but in "Disclosure u/s.12 (1)

(b) r/w Sixth Schedule" the arbitrator mentioned under the head of "Number of On-going Arbitrations" as "NIL" thereby making a false disclosure.

(viii) That the arbitrator failed to peruse the documents placed before her by the respondent bank properly and overlooked the fact that the arbitration clause / agreement did not bear signatures of either the petitioner or the respondent bank.

(ix) That due to her direct relations with and professional interest in / with the respondent bank the arbitrator passed the impugned award without following the due process of law and failed to adhere to the principle of natural justice. Even the Disclosure Letter dated 24.11.2018 and consent letter were never received by the petitioner at any point of time for they were deliberately sent at wrong addresses.

(x) That the arbitrator did not give applicant / petitioner opportunity of being heard and that all the notices were deliberately sent at the wrong address and an ex-parte arbitral award dated 27.02.2019 was passed against applicant / petitioner, despite the fact that the petitioner never availed of the loan facility from the respondent bank nor had the respondent paid a sum of Rs.9,60,000/- to petitioner at any point of time.

(xi) That the respondent played fraud upon arbitrator by concealing correct facts and if these facts were within the knowledge of arbitrator than she exceeded her power and passed arbitral award at the instance of respondent. Thus the arbitral award is not only bad in law and on facts but is even otherwise against the public policy and is liable to be set aside.

(xii) That the petitioner never received the impugned award dated 27.02.2019 at any point of time. In this regard the averments made with respect to mentioning of wrong addresses qua notices dated 16.11.2018 and 28.11.2018 have been reiterated.

7 The petitioner states that she got knowledge of the impugned award only on 15.04.2021 when she received notice of the execution petition filed against her by the respondent. She has thus prayed for grant of extension of period of limitation by virtue of order dated 27.04.2021 in miscellaneous application No.665/2021 in SMW (C) No.3/2020 wherein the Hon'ble Supreme Court vide order dated 08.03.2020 and 08.03.2021 extended the period of limitation prescribed under general or special law in respect of all judicial or quasi-judicial proceedings.

8 Based on these averments and grounds taken in the petition it is prayed that ex-parte award dated 27.02.2019 passed by Sole Arbitrator Ms. Shaheen be set aside and petitioner be granted proper opportunity to present her case. It is also prayed that the operation of impugned arbitral award be stayed during pendency of the present petition. Lastly it is prayed that respondent be directed to disclose on affidavit the amount for which it had sold the vehicle in question i.e. BMW 320D registration No. HR-26-BN-3936 having Chasis No.WBAPG950XONN32301 and Engine No.B5771854.

9 The respondent has contested the petition by filing a detailed reply. Several preliminary objections have been taken as to maintainability of petition. Firstly, it is averred that petition filed by the petitioner is not accompanied by statement of truth and does not bear signatures of petitioner on each and every page and hence pleadings made in the plaint deserve to be struck off as per

provisions of Order VI Rule 15 A (1) of CPC.

10 The petition being barred by limitation having been filed after a period of more than two years of the impugned award, has also been taken as ground to pray for dismissal of the petition. It is contended that the impugned award was passed on 27.02.2019 and that the limitation to file objection petition expired on 30.06.2019 whereas present petition was filed on 16.07.2021 on a pretext that petitioner became aware of the arbitral award only on 15.04.2021 which is incorrect. The arbitral award was delivered at the address of petitioner on 01.03.2019 at the very address as is mentioned by the petitioner in the memo of parties and her affidavit. It is stated that from the perusal of the tracking report enclosed by learned Arbitrator also it is evident that the arbitral award was served upon the Gurgaon Road S.O. Post Office, which is area covered under Pin Code 110037 as per official website of Indian Post. It is thus averred that petition has been filed by the petitioner as an after thought to evade her legal liability towards the respondent.

11 Another objection taken by the respondent is with respect to plea of the petitioner that she had no financial relationship with it. It is stated that respondent company had entered into a service provider agreement dated April, 2019 with partnership firm by the name of 'Prishti' and vide the said agreement the service provider was to provide the respondent company with marketing and sales service for finance of vehicle. The service provider was to contact the customer and apprise them about the scheme of the respondent company for finance of their respective vehicle. The car of petitioner was also financed by the respondent company through the said service provider. It is stated that the petitioner was well aware of the fact that her car had been financed by the respondent as the copy of passbook, filed by her in the Court, reflects EMI payment of Rs.32,811/- (Rupees Thirty Two Thousand Eight Hundred and Eleven only), by the petitioner, to the respondent company.

12 It is further stated that Loan Application Form along with Car Finance Agreement and stamp paper bears signatures of petitioner. Further the RC of the vehicle also finds mention of name of the respondent company as financier of the vehicle. The petitioner had even availed of a loan facility from HDFC bank for another vehicle but not the vehicle financed by the respondent company which further clarifies that plea taken by the petitioner is false and incorrect.

13 Contradicting the contention of the petitioner that she was never served with Letter of Intent dated 16.11.2018 for Appointment of Sole Arbitrator and Arbitration Reference Notice dated 28.11.2018, it is stated that the petitioner herself has mentioned the said address i.e. "Plot No.489, L Block, House No.120, Gali No.15, Mahipalpur Extension, Near Behind Hotel Radison Blue, Delhi-110032, also at C/o R.J. Public School, Block-2, Street No.15, Mahipalpur Extension, Delhi-110037", in the present petition as well as loan application form and that the same address was mentioned on all communications sent by respondent as well as the Sole Arbitrator to the petitioner. It is contended that case number 21 mentioned on postal receipt does not portray the address of the petitioner but the arbitration case number allocated by the Sole Arbitrator and that this is amply clear from the perusal of the case number of arbitral award challenged by the petitioner. It is then contended that the loan application form and car finance agreement bear the signatures of petitioner and its terms are valid and legally binding upon the petitioner who in order

to mislead and misguide the Court placed on record incomplete car finance agreement with a plea that it did not bear her signatures.

14 On merits each and every averments made by the petitioner in her petition has been controverted. It is reiterated that the respondent company had entered into service provider agreement dated April, 2019 with partnership firm with name of 'Prishti' and that the said service provider had contacted the petitioner for finance of her vehicle and that this fact was well within the knowledge of the petitioner.

15 As regards the repossession of petitioner's vehicle, it is stated that the said vehicle was repossessed in compliance of arbitral award dated 27.02.2019. It is stated that the petitioner accepted repossession of the vehicle and has thus waived her right to object to it now. The communication between petitioner and her counsel with the arbitrator are denied for want of knowledge. It is also denied that petitioner had signed only some blank forms and papers and on copy of her identity proof at the instance of two agents who approached her for providing loan facility on her BMW Car and Honda City car in the mid of March, 2018.

16 The objections taken by the petitioner with respect to e-stamp paper and other loan documents have also been controverted. It is stated that the arbitration reference notice was duly served upon the petitioner at both her addresses. While referring to Section 3 of the Act, it is contended that any written communication is deemed to be duly served when the same is delivered on the habitual residence of the parties as was in the present case.

17 It is denied that the arbitrator was not independent or impartial person or had given award at the behest of the respondent. All the objections taken with respect to arbitration proceedings have been controverted. It is stated that the fact that the arbitrator was handling 20 cases in the year 2018 per se does not prove that all of the cases were being handled for the respondent company and no adverse inference can be attached to the number of arbitration award.

18 It is further stated that arbitrator had provided several opportunities to petitioner to appear and present her case before her but petitioner deliberately refrained from appearing before arbitrator on the pretext that since her car had been repossessed there were no legal dues payable by her to the respondent. It is stated that the arbitration award does not suffer from any infirmity and it is prayed that the petition filed by the petitioner be dismissed forthwith with exemplary cost.

19 Arguments were addressed by Shri Avinash Chaurasia, counsel for the petitioner, and Ms. Sucharu Garg, counsel for the respondent.

20 Counsel for petitioner has reiterated averments made in the petition during the course of arguments. He has submitted that there is no privity of contract between the petitioner and the respondent as petitioner has availed of loan facility from HDFC Bank for purchase of a BMW Car and a Honda City Car and that too at the instance of loan agents in mid of March, 2018. The loan amount was credited in account bearing No. 00292010093200 of M/S Rajinder Jagriti-E-Education Society with Oriental Bank of Commerce, Mahipal Pur Branch, Vasant Kunj Road, New Delhi, from

which BMW 320D bearing registration No. HR-26-BN-3936 was purchased. Separate loan amount was credited in petitioner's bank account No.00292010019520 from HDFC Bank in respect of her Honda City car hypothecated with the bank. Since petitioner had not availed of any loan from the respondent, the loan documents specially schedule I, II and III do not bear her signatures. Moreover the e-stamp paper of Rs.50/- dated 24.01.2018 does not find mention of name of the petitioner and was purchased much prior to the date when petitioner is stated to have availed the loan facility which is a clear indicator that the said e-stamp was never got issued by respondent bank with intent to give loan facility to petitioner.

21 The next contention raised by counsel for petitioner is that the address of petitioner has been wrongly mentioned in the loan documents as well as communications claimed to have been sent by the respondent as well as the arbitrator to the petitioner from time to time. In this regard specific averments made in the petition with respect to address of the petitioner as also absence of complete particulars thereof from courier and / or other postal receipts, of various notices, have been reiterated. It is stated that surprisingly the respondent mentioned correct address of petitioner in the execution petition filed by it and this clearly brings out the mala fide on the part of the respondent as well as sole arbitrator appointed by it. Since petitioner came to know of the impugned arbitral award only upon receipt of notice of execution petition and thereafter despite her diligence could inspect the arbitration record and obtained copies thereof on 23.06.2021, the present objection petition could be filed by her only thereafter i.e. on 16.07.2021. The petition filed by her is thus within period of limitation when computed from the date of knowledge of award. In this regard orders pertaining to extension of the period of limitation for various judicial proceedings, as granted by Hon'ble Supreme Court, during Covid-19 pandemic has been relied upon.

22 The next contention of counsel for petitioner is with respect to the choice of arbitrator by the respondent. It is contended that the arbitrator appointed by respondent is neither neutral nor impartial but a person who is on the rolls of respondent having conducted multiple arbitrations on behalf of the respondent company. It is stated that the serial number of the arbitration case wherein the disputed award was passed is 21 which itself indicates that the arbitrator had conducted and / or was conducting at least 20 other arbitration cases on behalf of the respondent company and thus it stands established that the arbitrator acted at the behest of the respondent company and against the well established principles of natural justice, equity and public policy to give an award in favour of the respondent company without affording any opportunity to petitioner to put forth her defence. On these grounds it is prayed that impugned award be set aside and petitioner be given opportunity to defend the claim made by respondent against her.

23 Per contra counsel for respondent has contended that petitioner has filed the petition belatedly, much beyond the specified period of limitation, and thus her petition is liable to be dismissed in limine on this ground only. She has relied upon following judgments in this regard :-

(a) Union of India vs. Popular Construction Co., (2001) 8 SCC 470

(b) State of Himachal Pradesh & Anr. vs. Himachal Techno Engineers & Anr., (2010) 12 SCC 210

24 It is further contended that petitioner has filed the petition in order to evade her liability and that the loan documents were signed by her voluntarily to avail of loan facility for purchase of a BMW car. After availing of the loan facility and purchasing the said car, petitioner paid EMIs from her bank account to the respondent as is brought out from photocopy of her statement of account. The car in question was duly hypothecated with the respondent company and in these circumstances it does not lie with the petitioner to deny that the loan documents were signed by her under some misconception or that she does not have privity of contract with the respondent. It is further contended that the loan documents bear the same very addresses of the petitioner as are mentioned by her in the petition. Similarly all the communications from the respondent company as well as arbitrator were duly sent to the petitioner at the same address as mentioned by her in the memo of parties to the petition. Further the arbitration award was also received by her at this very address. In these circumstances it does not lie with the petitioner to deny that respondent had given a wrong address to ensure that none of the communications and / or award were served upon her. It is also stated that number '21' mentioned on receipt pertains to the arbitration case number and not the pin code or house number or plot number. The receipts of various notices sent to petitioner are duly supported by tracking report and that all the notices as well as award were served upon the correct address of petitioner as is given by her in the memo of parties and affidavit attached with the petition. Since the petitioner was duly served with the copy of award, her petition is barred by limitation and that the plea taken by her that she came to know of the arbitral award when she received notice of the execution petition filed by the respondent and the time she claims was taken, in inspection of the arbitration proceedings and obtaining copies thereof, is without any merit. On these grounds it is prayed that the petition filed by the petitioner be dismissed.

25 I have heard the learned counsels for the parties and also perused the record carefully. It is deemed appropriate that objections raised by petitioner be taken up sequentially for consideration.

(I) Lack of Privity of Contract between the petitioner and the respondent 26 On behalf of petitioner it has been contended that there is no privity of contract between the petitioner and the respondent as petitioner had availed of loan facility for purchase of BMW car in mid of March, 2018 at the instance of two agents / persons who assured her that they can arrange loan facility at low interest for her from HDFC Bank. Said persons also induced petitioner to take loan facility for Honda City car. At that time signatures of petitioner were obtained on some blank forms, papers and stamp papers. Copies of her identity card and coloured passport size photographs were also taken for the said loans. It is thus averred that petitioner never signed the alleged loan documents in favour of respondent at any point of time.

27 It is also claimed by the petitioner that she paid regular monthly installments to HDFC Bank in respect of her BMW car. She further claimed that after receiving notice of the execution petition, when she contacted her counsels, she was asked to check statement of her bank account and only then she came to know that two monthly loan installments, paid by her in respect of BMW car, were credited in account of respondent and not HDFC Bank. The petitioner has filed photocopies of statement of account No.00292010093200 in the name of M/S Rajender Jagriti E-education Society as well as account No.00292010019520 in her own name in support of these contentions.

28 The perusal of photocopy of statement of account No. 00292010093200 reveals that a sum of Rs.32811.00 was debited on 01.06.2018 through NACH mandate in favour of respondent company. Similarly from perusal of statement of account No. 00292010019520 it is revealed that a sum of Rs.32811.00 was debited on 04.04.2018 through NACH mandate in favour of respondent company. As admitted by the petitioner, she was not regular in payment of EMIs of the BMW car. Further the two installments, which petitioner subsequently claims were paid by her to HDFC Bank, were in fact credited in favour of respondent company on 04.04.2018 and 01.06.2018 respectively from account Nos. 00292010019520 and 00292010093200, which are in different names, as is evident from the documents filed by petitioner. The installments have been deducted as per NACH mandate.

29 The scheme for NACH debit was introduced by National Payments Corporation of India (NPCI) for banks, financial institution, corporates and Government and is web based solution to facilitate the process of collecting recurring payments like EMIs, bills, etc. easier for organization. It helps automatically deduct funds from a large pool of customers in a safe and secure way by means of single settlement.

30 In order to avail NACH services, a customer is required to visit website of the concerned financial institution and to fill in the details which redirects customer to the website of designated bank / financial institute. It is only after the customer authenticates the request using his / her net banking credential that the request is accepted by the bank and future transactions are scheduled by allocation of UMRN (Unique Mandate Reference Number). It is apparent that the facility of NACH debit could not have been availed off by the petitioner without her consent and active participation and that too from two separate bank accounts in different names. The documents placed on record by the petitioner themselves belie her claim that she came to know that the two loan installments paid by her had been credited in the account of respondent company only after she checked her bank account, as per advise of her counsel, after she received the notice of the execution petition. This also negates the claim of the petitioner that she has no privity of contract with the respondent company or that she had signed loan documents for HDFC Bank and not to avail loan from respondent company. The objections raised by petitioner in this regard have no force.

(II) Deliberate concealment of correct address of petitioner and violation of S.21 of the Act 31 The petitioner has alleged that she never received any written communication or notice dated 03.10.2018 from respondent company and that she never received letter of intent for appointment of sole arbitrator dated 16.11.2018 and that she never received disclosure letter dated 24.11.2018 and consent letter dated 27.11.2018 and that she never received any arbitration reference notice dated 28.11.2018. She further did not receive notice of arbitration proceedings and the arbitral award dated 27.02.2019. It is stated that as no invocation notice was served upon petitioner the arbitration proceedings are vitiated for violation of provisions of Section 21 of the Act.

32 In support of the objection, petitioner has relied upon courier receipt (undated) No.5241595516 and 5236511114 of M/S Overnight Express Limited, which have been produced as proof of service of notice dated 03.10.2018. It is stated that the said receipts neither bear "name of the Shipper", or the "consignee", "date", "addresses of consignee or Shipper" and "Mobile Number of consignee or Shipper" and are sufficient proof of the fact that notice dated 03.10.2018 was never sent to

petitioner. As regards letter of intent for appointment of arbitrator dated 16.11.2018, arbitration reference notice dated 28.11.2018 and other notices sent by arbitrator, it is stated that the postal receipts of these notices find addressee named as "Jagmohini, 21 Delhi, Pin 110032" and "Jagmohini, 21. Delhi, Pin: 110037" respectively. It is stated that the number "21" mentioned on the postal receipt as address is neither the plot number nor the house number or street number or Municipal number or block number of the petitioner. The Pin Code of the petitioner is 110037 and not 110032. It is thus stated that none of the notices and the arbitral award were ever received by the petitioner for her address was wrongly mentioned thereupon.

33 On the other hand on behalf of respondent it is contended that all the notices prior to and after commencement of arbitration proceedings as well as the arbitration award were duly served upon petitioner at same address as is mentioned by her in the memo of parties and affidavit relied upon with the petition. In this regard receipts of various notices and arbitral award sent to petitioner, which form part of the arbitration proceedings, have been relied upon on behalf of respondent. It is also stated that non mentioning of the complete address on the receipt of the notices and arbitration award sent through courier and / or speed post by concerned courier agency / official of postal department do not entitle petitioner to claim that she was never served with the said notices / arbitral award. It is thus contended that all the mandatory provisions were duly complied with on behalf of the respondent as well as by the arbitrator and that this objection has been raised by the petitioner only with a view to delay the proceedings.

34 As brought out from the reply filed on behalf of respondent company as well as arguments addressed by counsel for respondent on its behalf, the address at which various notices i.e. notice dated 03.10.2018 from respondent company, letter of intent for appointment of sole arbitrator dated 16.11.2018, disclosure letter dated 24.11.2018 and consent letter dated 27.11.2018 and arbitration reference notice dated 28.11.2018 were sent to petitioner at the same address as has been mentioned by her in the memorandum of parties appended to petition and affidavit filed along with the petition. Similarly the notice dated 12.12.2018 and 28.12.2018, sent by the arbitrator to petitioner, to appear before her on 27.12.2018 and 11.01.2019 respectively were also sent to the petitioner at the addresses mentioned by her in the petition and accompanying affidavit. The signed copy of arbitral award dated 27.02.2019 was also sent to petitioner at these addresses. In these circumstances petitioner's claim of non-receipt of notices is without any basis.

35 During the course of arguments counsel for petitioner tried to justify the anomaly by stating that there was typographical error in the address of petitioner, given in the memorandum of the parties appended to the petition as well as accompanying affidavit, by the previous counsel of the petitioner. Even assuming that the address mentioned on petition and affidavit was attributable to typographical mistake / error by the previous counsel for petitioner, this anomaly must have come to the notice of the petitioner and / or her counsel when the respondent company filed their reply to the petition. Despite there being a specific averment in this regard in respondent company's reply no steps were taken by petitioner to rectify the alleged typographical error in the memorandum of parties and the affidavit filed with the petition and thus the contention of counsel for petitioner that there was typographical error in mentioning the address of the petitioner cannot be sustained.

36 Coming to the contention that arbitration proceedings and impugned arbitration award are vitiated for want of service of notice of invocation of arbitration upon petitioner.

37 Section 21 of the Act governs the invocation of the arbitration proceedings and provides as under :-

"21. Commencement of arbitral proceedings.

- Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."

38 Hon'ble Delhi High Court in a judgments titled Alupro Building Systems Pvt. Ltd. vs. Ozone Overseas Pvt. Ltd. OMP-03/2015, decided on 28.02.2017, gave an interpretation and clarity to the object and purpose of issuance of notice under Section 21 of the Arbitration and Conciliation Act. Section 21 of the Act is mandatory in nature and cannot be dispensed with. It forms a preceding act in initiation and reference of the dispute between the parties. A party cannot straightway file a claim before arbitrator without issuance of notice under Section 21 of the Act.

39 The notice under Section 21 is mandatory in nature to make the party, against whom the claim is made, aware of it. It also provides an opportunity to the recipient of the notice to identify if the claims are time barred or barred by any law.

40 It is brought out from record that loan agreement dated 14.03.2018 executed between the parties contained clause 31 which provided that all disputes, differences, and / or claim arising out of the agreement shall be settled by arbitration. The said clause 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 provisions of the Arbitration and Conciliation Act, 1996 or any statutory amendments thereof and shall be referred to the sole arbitration of a sole arbitrator to be nominated by the Lender. In the event of death, refusal, neglect, inability or incapability of a person so appointed to act an arbitrator, the LENDER may appoint a new arbitrator. The arbitrator shall not be required to give any reasons for the award and the award of the arbitrator shall be final and binding on all parties concerned. The arbitration proceedings shall be conducted in English language and held at the place more particularly mentioned in the SCHEDULE-I of the present agreement hereunder."

41 The Schedule-I finds mention of the place of arbitration as Delhi.

42 Further the loan recall notice dated 03.10.2018, sent by respondent company to petitioner clearly finds mention that in case petitioner failed to make payment of outstanding amount of Rs.99,5858/-

within seven days of the receipt of the notice then respondent would be constraint to take suitable recourse as per the loan agreement No. CF15513746 dated 14.03.2018 executed between the parties including but not limited to repossession and sale of the vehicle. Thus letter dated 03.10.2018 meets the requirement of Section 21 for it not only summarizes the facts leading to dispute but also the nature of respondent's claim and legal recourse intended to be taken by respondent if the payment was not made. Through subsequent communication dated 16.11.2018 the intention of respondent to appoint a sole arbitrator and the name of the arbitrator so chosen by respondent was communicated to the petitioner. Thereafter letter / communication dated 28.11.2018 was also sent to petitioner whereby she was informed about reference of dispute to the arbitrator Ms. Shaheen. All these letters / communications sent by respondent to petitioner constitute a sufficient notice under Section 21 of the Act. Reliance is placed upon judgment in case of Badri Singh Vinimay Private vs. MMTC Limited, O.M.P. 225/2015, decided on 06.01.2020 by HMJ Prateek Jalan, in this regard.

43 Though petitioner has denied having received the notices / communications dated 03.10.2018, 16.11.2018 and 28.11.2018, as already observed in foregoing paragraphs, the addresses at which the said notices / communications were sent are the same very address as have been mentioned by the petitioner in the memorandum of parties appended to the petition and accompanying affidavit.

44 As per Section 3 of the Arbitration and Conciliation Act, 1996 (a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence, or mailing address, and; (b) if none of the places referred to clause (a) can be found after making a reasonable inquiry, written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

45 Further Section 27 of General Clauses Act, 1897 postulates that where any Act authorizes any document to be served by post, where the expression 'serve' or either of the expression 'give' or 'send' or any other expression is used, that unless a different intention appears, the service shall be deemed to be effected by properly addressing pre-paying and posting by registered post. Hence service by post implies service by registered post.

46 Further in case of C.C. Alavi Haji vs. Palapetty Muhammed & Anr. (2007) 6 SCC 555, the Hon'ble Supreme Court opined that Section 27 of the General Clauses Act, 1897 gives rise to presumption that service of notice has been effected when it is sent to the correct address by registered post..... Unless and until, the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

47 Additionally Section 114 of Indian Evidence Act also contains legal proposition in context of presumption of service by registered post. As per Section 114 of the Indian Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case.

48 To summarize briefly, the objection taken by petitioner that her correct address was deliberately and fraudulently concealed by respondent is without any merit for her own petition and affidavit accompanying it bely this plea. In view of the same as well as taking into account the interplay of Section 3 of the Act r/w Section 114 of the Indian Evidence Act and Section 27 of the General Clauses Act facts in the matter give rise to presumption that petitioner was duly served with notices / communications prior to invocation of arbitration by the respondent, upon appointment of arbitrator and subsequently of commencement of arbitration proceedings by the arbitrator and upon conclusion thereof pronouncement of arbitral award by sending its copy to the petitioner. The plea of petitioner that she acquired knowledge of the arbitral award only upon receiving summons in execution petition bearing No.205/2020 is also without substance.

49 The counsel for respondent has relied upon judgment in case Union of India (Supra) wherein it was observed that the award become immediately enforceable upon expiry of period under Section 34 of the Act. It was further held in case of State of Himachal Pradesh (Supra) that, :-

"5. Having regard to the proviso to Section 34(3) of the Act, the provisions of Section 5 of the Limitation Act, 1963 will not apply in regard to petitions under Section 34 of the Act.

While Section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of Section 34 of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days, but not thereafter". Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned."

50 In view of the observations made in aforesaid judgment as also considering the fact that the petitioner could not substantiate her plea that respondent company and the learned arbitrator had given wrong address on communication / notices / award sent to her, the petition filed by petitioner is held to be barred by limitation as award in question was passed on 27.02.2019 where as present petition was filed by her only on 16.07.2021, much beyond the prescribed period of three months as per Section 34 of the Act.

(III) Arbitral award is invalid, perverse and patently illegal 51 Counsel for petitioner has contended that arbitrator appointed by respondent was neither neutral nor impartial but a person who was on rolls of respondent and had conducted multiple arbitration on behalf of the respondent company. She failed to give declaration in accordance with Schedule 7 of the Act and hence the arbitration proceedings were conducted in violation of the provisions of the Act and arbitration award passed by her is liable to be set aside.

52 Section 12(5) and Schedule 7 were introduced in Arbitration and Conciliation Act, 1996 by way of Arbitration and Conciliation (Amendment) Act, 2015 and was notified w.e.f. 23.10.2015. The Section

12(5) and Schedule 7 are as under :-

Section 12 (5) : Grounds of Challenge -

Notwithstanding any prior agreements to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in Schedule 7 shall be ineligible to be appointed as an arbitrator.

"Provided that parties may, subsequent to disputes having arisen between them waive the applicability of this suit by an expressed agreement in writing."

"The Seventh Schedule"

- i. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
- ii. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
- iii. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
- iv. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
- v. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
- vi. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being invoked himself or herself.
- vii. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
- viii. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
- ix. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
- x. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate in one of the parties.
- xi. The arbitrator is a legal representative of an entity that is a party in the arbitration.
- xii. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
- xiii. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

xiv. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

Relationship of the Arbitrator to the dispute xv. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.

xvi. The arbitrator has previous involvement in the case.

Arbitrator's direct or indirect interest in the dispute xvii. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held. xviii. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

xix. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1 - The term "close family member" refers to a spouse, sibling, child, parent or life partner.

Explanation 2 - The term "affiliate"

encompasses all companies in one group of companies including the parent company.

Explanation 3 - For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialized pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above."

53 Section 12(5) provided additional ground for challenging the appointment of arbitrator for there is a disqualification to appointment as Arbitrator of any person whose relationship with parties, counsel or the subject matter of dispute fell under the categories set out in the 7th schedule.

54 In case of Voestalpine Schienen GMVH vs. Delhi Metro Rail Corporation Ltd., the Hon'ble Supreme Court discussed the objective of the Arbitration and Conciliation Act, 1996 and various amendments brought in it by way of Amendment Act No.3 of 2016 w.e.f. 23.10.2015 and emphasized that these amendments were brought in consonance with Law Commission of India's 176th and 246th report. It stressed upon importance of neutrality, independence and impartiality of the arbitrators and observed that the amendments ruled out unilateral appointment of arbitrators by making following observations :-

"We may mention here that there are number of judgments of this Court even prior to the amendment of Section 12 where courts have appointed the arbitrators, giving a go-by to the agreed arbitration clause in certain contingencies and situations, having

regards to the provisions of unamended Section 11(8) of the Act which, inter alia, provided that while appointing the arbitrator, Chief Justice, or the person or the institution designated by him, shall have regard to the other conditions as are likely to secure the appointment of an independent and impartial arbitrator."

Taking note of the below mentioned judgments.

Datar Switchgears Ltd. v. Tata Finance Ltd. & Anr. (2000) 8 SCC 151 Punj Lloyd Ltd. v. Petronet MHB Ltd. (2006) 2 SCC 638 Union of India v. Bharat Battery Manufacturing Co. (P) Ltd. (2007) 7 SCC 684 Deep Trading Co. v. Indian Oil Corporation (2013) 4 SCC 35.

Union of India v. Singh Builders Syndicate (2009) 4 SCC 523 Northern Eastern Railway v. Tripple Engineering Works (2014) 9 SCC 288 Union of India and others v. Uttar Pradesh State Bridge Corporation (2015) 2 SCC 52.

the Hon'ble Supreme Court summed up the position by observing :-

20. "Independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which applied to all judicial and quasi judicial proceedings. It is for this reason that notwithstanding the fact that relationship between the parties to the arbitration and the arbitrators themselves are contractual in nature and the source of an arbitrator's appointment is deduced from the agreement entered into between the parties notwithstanding the same non-independence and non-impartiality of such arbitrator (though contractually agreed upon) would render him ineligible to conduct the arbitration. The genesis behind this rational is that even when an arbitrator is appointed in terms of contract and by the parties to the contract, he is independent of the parties. Functions and duties require him to rise above the partisan interest of the parties and not to act in, or so as to further, the particular interest of either parties. After all, the arbitrator has adjudicatory role to perform and, therefore, he must be independent of parties as well as impartial.

30. Time has come to send positive signals to the international business community, in order to create healthy arbitration environment and conducive arbitration culture in this country.

Further, as highlighted by the Law Commission also in its report, duty becomes more onerous in Government contracts, where one of the parties to dispute is the Government or public sector undertaking itself and the authority to appoint the arbitrator rests with it."

55 In case of TRF Ltd. vs. Energo Engineering Projects Ltd. (2017) 8 SCC 377, the question before the Court was "whether a person who is ineligible to preside an Arbitral Tribunal on account of operation of law i.e. Section 12(5) read with Schedule 7 of the Act would be eligible to nominate another person as Arbitrator." While comparing the unamended Section 12 of the Act with the

amended Section 12 of the Act, post 2015 Amendment, Hon'ble Supreme Court ruled :

"12. Sub-Section (5) of Section 12, on which immense stress has been laid by the learned counsel for the appellant, as has been reproduced above, commences with a non- obstante clause. It categorically lays down that if a person whose relationship with the parties or the counsel for the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. There is a qualifier which indicates that parties may subsequent to the disputes arisen between them, waive the applicability by express agreement in writing. The qualifier finds place in the proviso appended to sub-section 5 of Section 12. On a careful scrutiny of the proviso, it is discernible that there are fundamentally three components, namely the parties can waive the applicability of the sub- section; the said waiver can only take place subsequent to dispute having arisen between the parties; and such waiver must be by an express agreement in writing."

56 A distinction was drawn between arbitral agreements where both sides were required to appoint one arbitrator each who, in turn, appoint a third neutral arbitrator with cases where arbitration clause gave full power only to one party to appoint a sole arbitrator and observed as under :-

"53. The aforesaid authorities have been commended to us to establish the proposition that if the nomination of an arbitrator by an ineligible arbitrator is allowed, it would tantamount to carrying on the proceeding of arbitration by himself. According to learned counsel for the appellant, ineligibility strikes at the root of his power to arbitrate or get it arbitrated upon by a nominee.

54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so."

57 In case of Perkins Eastman Architects vs. HSCC (India) 2019 (9) SCC Online SC 1517, derelictious effect of unilateral appointment of arbitrator on neutrality, independence and impartiality of arbitration proceedings was examined and it was observed that, 'a person having an interest in the dispute or in the outcome or decision thereof must not only be ineligible to act as an arbitrator but

must also not be eligible to appoint any one else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint a sole arbitrator.' 58 The issue of appointment of sole arbitrator by one of the parties was again examined in the case of Bharat Broadband Network Vs. United Telecoms Limited, (2019) 5 SCC 755. While referring to Voestalpine Schienen Hon'ble Supreme Court ruled that, "Section 12(5), on the other hand, is a new provision which relates to the de jure inability of an arbitrator to act as such. Under this provision, any prior agreement to the contrary is wiped out by the non-obstante clause in Section 12(5) the moment any person whose relationship with the parties or the counsel or the subject matter of the dispute falls under the 7th Schedule. The sub-Section then declares that such person shall be "ineligible" to be appointed as arbitrator. The only way in which this ineligibility can be removed is by the proviso, which again is a special provision which states that parties may, subsequent to disputes having arisen between them, waive the applicability of Section 12(5) by an express agreement in writing. What is clear, therefore, is that where, under any agreement between the parties, a person falls within any of the categories set out in the 7th Schedule, he is, as a matter of law, ineligible to be appointed as an arbitrator. The only way in which this ineligibility can be removed, again, in law, is that parties may after disputes having arisen between them, waive the applicability of this sub-section by an "express agreement in writing". The express agreement in writing has reference to a person who is interdicted by the 7th Schedule, but who is stated by parties (after the disputes have arisen between them) to be a person in whom they have faith notwithstanding the fact that such person is interdicted by the 7th Schedule.

59 In case of Haryana Space Application Centre (HARSAC) and Anr. vs. Pan India Consultants, (2021) 3 SCC 103, the Hon'ble Supreme Court ruled that the application of Section 12(5) read with Schedule 7 of the Act is mandatory and not derogable and the Apex Court ruled, "We are of the view that the appointment of the Principal Secretary, Government of Haryana as the nominee arbitrator of HARSAC which is a Nodal Agency of the Government of Haryana, would be invalid under Section 12(5) of the Arbitration and Conciliation Act, 1996 (as amended by the 2015 Amendment Act) provides that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, or counsel falls within any of the categories specified in the 7th Schedule, shall be ineligible to be appointed as an arbitrator

The arbitrator is a manager, director or part of the management of has a similar controlling influence, in an affiliate of one of the parties if he affiliate is directly involved in the matters in dispute in the Section 12(5) read with the 7th Schedule is a mandatory and non- derogable provision of the Act. In the facts of the present case, the Principal Secretary to the Government of Haryana would be ineligible to be appointed as an arbitrator, since he would have a controlling influence on the Appellant Company being a nodal agency of the State.

The counsel for both parties during the course of hearing have consented to the substitution of the existing tribunal, by the appointment of a Sole Arbitrator to complete the arbitral proceedings."

60 Further in case of Proddatur Cable TV Digi Services vs. Siti Cable Network Ltd., O.M.P. (T) (COMM.) 109/2019 and I.A. 17896/2019 delivered on 20.01.2020, wherein Hon'ble Delhi High Court has held that, "24. The underlying principle in arbitration no doubt is party autonomy

but at the same time fairness, transparency and impartiality are virtues which are equally important. If the Authority appointing an Arbitrator is the Head or an employee of a party to the agreement then its interest in its outcome is only natural. It goes without saying that once such an Authority or a person appoints an Arbitrator, the same ineligibility would translate to the Arbitrator so appointed. The procedure laid down in the Arbitration Clause cannot be permitted to override considerations of impartiality and fairness in arbitration proceedings.

25. Insofar as the reliance by the respondent on the judgments permitting unilateral appointment by the Authority designate of one party to the agreement is concerned, in my view, the same will have no relevance in view of the judgment of the Supreme Court in the case of Perkins (Supra). The argument of the respondent that in the Arbitration Clause before the Supreme Court in the case of Perkins was with regard to the power of a Managing Director to appoint an Arbitrator whereas in the present case it is the Company only merits rejection. First and foremost, one has to see the rationale and the reasoning behind the judgment in the case of Perkins (Supra). The Supreme Court held that the Managing Director was ineligible from appointing an Arbitrator on the simple logic that a Managing Director of a Company would always have an interest in the outcome of the arbitration proceedings. The interest in this context takes the shape of bias and partiality. As a natural corollary, if the Managing Director suffers this disability, even if he was to appoint another person as an Arbitrator, the thread of biasness, partiality and interest in the outcome of the dispute would continue to run. Seen in this light, it can hardly be argued that the judgment in Perkins (supra) will not apply only because the designated Authority empowered to appoint an Arbitrator is other than a Managing Director.

29. Lastly, the reliance of the respondent on the judgment of the Supreme Court in the case of Central Organisation (supra) is also of no avail to the respondent. In the said case, the Supreme Court was dealing with an arbitration clause which required a panel of Arbitrators to be provided by the Railways to the other party to the contract, in terms of clause 64.3 (a)(ii) of the GCC. The Court held that since one party was to provide a panel and the other party had the choice to short list the Arbitrator of its choice from the panel and only from the shortlisted names, Railways was bound to appoint at least one Arbitrator to constitute the Arbitral Tribunal, the parties had a level playing field. The Arbitrator appointed by the Railways of its choice was balanced by the second Arbitrator being of the choice of the other party. Thus, the elements of fairness, transparency and impartiality were taken care of."

61 Since in the instant case respondent unilaterally appointed sole arbitrator, the said appointment can only be considered nonest and void ab initio in view of mandate contained in Section 12(5) and Schedule 7 of the Act as well as the observations made by Hon'ble Supreme Court in judgments referred to in foregoing paragraphs. Since the appointment of sole arbitrator Ms. Shaheen by respondent company itself is held to be illegal and void ab initio, the alleged infirmities pointed out in the procedure followed by said arbitrator, by the petitioner, do not require any further consideration or discussion.

62 In these circumstances, I am thus of the considered opinion that notwithstanding the facts that petition filed by petitioner is barred by limitation there is grounds to set aside the impugned award

for the respondent company appointed a sole arbitrator, unilaterally without giving petitioner choice to appoint arbitrator and by appointing the one without her consent.

63 The nutshell of foregoing discussion is that the arbitration award dated 27.02.2019 passed by sole arbitrator Ms. Shaheen is hereby set aside. Petition u/s. 34 of Arbitration and Conciliation Act filed by the petitioner is disposed off accordingly. In the facts and circumstances of the case, the parties are, however, left to bear their own costs.

No order as to cost.

File be consigned to Record Room after due
compliance.

ILLA

Announced in the open Court

RAWAT

on 4th January, 2023

(ILLA RAWAT)
District Judge Commercial Court-03
Central District, THC, Delhi.

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Date

2023
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