



2025:DHC:4232



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% Date of decision: 16th May, 2025+ **O.M.P. (T) (COMM.) 40/2024 & I.A. 9891/2024****BALLARPUR INDUSTRIES LIMITED**PetitionerThrough: Mr. Kaustubh Prakash, Ms. Hita
Sharma and Ms. Tanya Singh, Advocates.

versus

SG ENTERPRISES & ORS.RespondentsThrough: Mr. Keshav Gulati and Mr. Rangon
Choudhary, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)**

1. This petition is filed on behalf of the Petitioner under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking termination of the mandate of the learned Sole Arbitrator.
2. Petitioner and Respondent No. 1 entered into a Distribution Agreement on 01.07.2009 for distribution of stationery products of the Petitioner. The Distribution Agreement contained an arbitration clause 20, which is extracted hereunder, for ready reference:-

"20. ARBITRATION AND JURISDICTION

The parties will use their best effort to settle any disputes concerning the interpretation of application of this agreement amicably through negotiation. In case of failure to settle the dispute amicably within a period of 30 days the same shall be referred for arbitration to a sole arbitrator. The parties hereto shall mutually appoint the sole arbitrator and if the parties could not mutually agree on the name of the arbitrator,



then within a period of 15 days of the notice requesting for appointment of the arbitrator, the sole arbitrator shall be appointed by the Managing Director of the Company. The decision of the Arbitrator shall be final and binding on both the parties and the arbitration shall be held in accordance with the provisions of the Indian Arbitration & Conciliation Act, 1996 or any statutory enactment thereof. The venue of the arbitration shall be New Delhi.

This agreement is subject to New Delhi jurisdiction only and no other courts shall have the jurisdiction over this agreement.”

3. During the course of business, certain disputes arose between the parties inasmuch Petitioner claimed certain outstanding dues while Respondent No. 1 took a position that excess payments had been made to the Petitioner. Respondent No. 1 filed a suit for declaration being Title Suit No. 1228/2018 in the Court of learned Civil Judge, Alipore. As averred in the petition, erstwhile Management of the Petitioner Company filed an application under Sections 5 and 8 of the 1996 Act on 08.06.2019 in the suit seeking reference of the disputes to arbitration.

4. During pendency of the suit and the application, NCLT, Mumbai on 17.01.2020, initiated Corporate Insolvency Resolution Process (CIRP) against the Petitioner and on initiation, moratorium was issued under Section 14 of IBC, 2016 ('IBC'). By order dated 02.05.2022, learned Civil Judge allowed Petitioner's application referring the disputes to arbitration and disposing of the suit with liberty to the parties to appoint an Arbitrator. In furtherance thereto, Respondents sent a letter dated 27.06.2022 proposing the name of the Arbitrator. Petitioner did not respond to the letter, however, instead of taking recourse to the procedure under Section 11(6) of the 1996 Act and approaching the referral Court for appointment, Respondents unilaterally appointed a Sole Arbitrator.



5. It is stated that on 15.07.2022, the Arbitrator entered upon reference and vide order dated 24.09.2022 forfeited the right of the Petitioner to file Statement of Defence, which was in the teeth of Section 14 of IBC. Petitioner sent a letter dated 10.10.2022 to the Arbitrator through the Resolution Professional, as soon as it gained knowledge of the arbitral proceedings requesting the Arbitrator not to proceed further. In the meantime, Resolution Plan submitted by Finquest Financial Solutions Pvt. Ltd. (Finquest) was approved. On 05.03.2024, the Arbitrator issued notice to Finquest based on a letter by the Respondents to be impleaded in the arbitral proceedings. Current management of the Petitioner which gained control of the business and operations of the Petitioner sent a letter dated 15.03.2024 to the Respondents for providing the arbitral record. Through a counsel, Petitioner entered appearance before the Arbitrator on 04.04.2024 and informed the Arbitrator that her appointment was without the consent of the Petitioner, but the Arbitrator decided to proceed.

6. Learned counsel for the Petitioner seeks termination of the mandate of the Sole Arbitrator on the ground that the appointment is a unilateral appointment by the Respondents in the teeth of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC and Another v. HSCC (India) Limited***, (2020) 20 SCC 760 and ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company***, 2024 SCC OnLine SC 3219 and of this Court in ***Proddatur Cable TV Digi Services v. Siti Cable Network Limited***, 2020 SCC OnLine Del 350, ***Smaaash Leisure Ltd. v. Ambience Commercial Developers Pvt. Ltd.***, 2023 SCC OnLine Del 8322 and ***Power Grid Corporation of India Ltd. v. Mirador Commercial Pvt. Ltd.***, 2024 SCC OnLine Del 6366.



7. It is argued that arbitration clause 20 provides that the Arbitrator would be appointed by mutual consent of the parties and in case of failure to do so, Arbitrator would be appointed by the Managing Director of Respondent No. 1, which cannot be sustained, as appointment by the Managing Director would clearly be a unilateral appointment and against the principles of party autonomy, impartiality and independence of the Arbitrator. Reliance is placed on the judgment of this Court in ***Proddatur Cable TV Digi Services (supra)***, wherein it was held that unilateral appointment would tantamount to *de jure* inability of the Sole Arbitrator under Section 14(1)(a) of the 1996 Act.

8. Without prejudice to the said submission, it is also argued that the arbitral proceedings are even otherwise *non-est* since the Arbitrator entered upon reference during subsistence of moratorium under Section 14 of IBC, which unequivocally prohibits continuation or initiation of arbitral proceedings during moratorium. It is also urged that the Arbitrator not only proceeded illegally but also forfeited the right of the Petitioner to file its Statement of Defence. To support the proposition, reliance is placed on the judgment of the Supreme Court in ***Alchemist Asset Reconstruction Company Limited v. Hotel Gaudavan Private Limited and Others, (2018) 16 SCC 94***.

9. The next argument is that claims of the Respondent do not survive in any event inasmuch as the alleged debt is prior to initiation of CIRP of the Petitioner. Under the Scheme of IBC, a public announcement is made by IRP/RP under Section 15 of IBC read with Regulation 6 of CIRP Regulations, whereby claims are invited from all creditors of the corporate debtor. IRP thereafter constitutes a Committee of Creditors under Section 21



of IBC which evaluates the resolution plans submitted by persons including companies to acquire the debt ridden corporate debtor. The CoC either approves the Resolution Plan under Section 30 of IBC or resolves to initiate liquidation, either of which are to be approved by the NCLT. It is settled that on the date of approval of the Resolution Plan by the Adjudicating Authority, all claims which are not part of the Resolution Plan stand extinguished and no one is entitled to initiate or continue any proceeding in respect of the extinguished claims, not part of the Resolution Plan. It is urged that a bare perusal of Clauses 4.7.1 and 4.7.3 of the Resolution Plan indicates that Respondent No. 1 failed to file its claims during the CIRP process and therefore, the alleged liability of the Petitioner arising in relation to the period prior to 31.03.2023 and purported dues for the period prior to 17.01.2020 are deemed to be extinguished and in this light, Respondents cannot even resort to fresh arbitration proceedings for agitating these claims.

10. Learned counsel for the Respondents, on instructions, fairly concedes that in light of the settled law, appointment of the present Sole Arbitrator cannot be sustained, being unilateral. However, he strongly refutes the contention of the Petitioner that the claims raised in the arbitral proceedings are extinguished and submits that this issue be left open to be decided as and when fresh arbitration is invoked, to which counsel for the Petitioner has no objection.

11. In light of the judgments of the Supreme Court in ***Perkins Eastman (supra)*** and ***Central Organisation for Railway Electrification (supra)*** and judgments of this Court in ***Proddatur Cable TV Digi Services (supra)***, ***Smaaash Leisure Ltd. (supra)*** and ***Power Grid Corporation of India Ltd.(supra)***, unilateral appointment of an Arbitrator is untenable in law.



Following the ratio of the aforementioned two judgments of the Supreme Court, there can be no doubt that a unilateral appointment by an authority interested in the outcome or decision of the dispute is impermissible in law. The clause in question no doubt envisages the appointment of the Arbitrator by mutual consent but upon failure, it is the Managing Director of Respondent No. 1 who is empowered to appoint a Sole Arbitrator. It can hardly be disputed that the Company acting through its Managing Director will have interest in the outcome of the dispute and therefore, appointment of Sole Arbitrator will be directly hit by the law laid down by the Supreme Court. Party autonomy as also impartiality and independence of the Arbitrator appointed to adjudicate *inter se* disputes between the parties are the foundational pillars of arbitration and therefore, the appointment by the Managing Director of Respondent No. 1 is unsustainable.

12. Section 14(1)(a) of the 1996 Act envisages termination of the mandate of the Arbitrator when the Arbitrator either becomes *de jure* or *de facto* incapable of functioning as an Arbitrator. In my view, Section 14(1)(a) get squarely attracted in the present case and mandate of the Arbitrator is terminated *de jure*.

13. Ordinarily, this Court may have appointed a substitute Arbitrator, however, considering that there are disputed issues of the claims of the Respondents having extinguished in light of the IBC regime, it is left open to the parties to take recourse to further proceedings for appointment of Arbitrator in accordance with law, making it clear that this Court has not expressed any opinion either on the merits of the case or on the objections raised by the Petitioner on the claims of the Respondents having been extinguished.



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14. Petition along with pending application stands disposed of in the aforesaid terms.

MAY 16, 2025/shivam

JYOTI SINGH, J