

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 728 of 2023

With

R/SPECIAL CIVIL APPLICATION NO. 6844 of 2022

With

R/SPECIAL CIVIL APPLICATION NO. 8468 of 2021

With

R/SPECIAL CIVIL APPLICATION NO. 17868 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

M/S RICH AND ROYAL THROUGH ITS PROPRIETOR MR. RAVINDRABHAI RAMESHBHAI GAMIT

Versus

AUTHORISED OFFICER , HINDUJA LEYLAND FINANCE LTD.

Appearance:

MR VISHWAS K SHAH FOR MS BHAVNA V SHAH(11047) for the Petitioner(s) No. 1,2,3

for the Respondent(s) No. 2

MR YASH JAIN FOR MR RITURAJ M MEENA(3224) for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 07/10/2023

CAV JUDGMENT

1. By this petition under Article 226 of the Constitution of India the petitioners have challenged the awards passed by the Sole Arbitrator appointed by the respondent no.1- Non Banking Finance Company (for short "NBFC") on the ground that the arbitration awards are passed *ex parte* by the Sole Arbitrator and Sole Arbitrator could not have been unilaterally appointed by the respondent no.1 as per the settled legal position.

2. Heard learned advocate Mr.Vishwas K. Shah for the petitioners of the respective petitions, learned advocate Mr.Yash Jain for learned advocate Mr.Rituraj Meena for respondent no.1 in Special Civil Application No.728 of 2023, learned advocate Mr.P.M.Dave for learned advocate Mr.Aditya P.Dave for the respondent nos.2 and for respondent no.1 in Special Civil Application No.723 of 2023 and learned advocate Mr.P.R.Abhichandani for newly added respondents in Special Civil Application no. 6844 of 2022. Though served non one appeared for respondents in Special Civil Application no.17868 of 2022.

3. Rule returnable forthwith. Learned advocates for the respective parties waived service of notice of rule.

4. It is the case of the petitioners that the petitioners availed financial assistance from the respondent NBFC. The petitioners could not repay the outstanding dues and therefore the respondent NBFC invoked the arbitration by appointment of the Sole Arbitrator respondent no.2 to adjudicate the dispute between the parties. The respondent no.2 arbitrator passed ex parte award in Special Civil Application no.728 of 2023, Special Civil Application no.6844 of 22 and Special Civil Application no.8468 of 2021, whereas notice issued by the Sole Arbitrator is under challenge in Special Civil Application no.17868 of 2022. As the common issue with regard to the jurisdiction of the Sole Arbitrator is arising in all these petitions, the same were heard analogously and are being disposed of by this common order.

5. The list of events for the petitioners in each of the petitions are as under:

Special Civil Application No.728 of 2023

Sr. No.	Date	Particulars
1	---	That the Petitioners herein are alleged borrowers of Respondent no.1 Non-Banking Finance Company.
2	26.07.2016	As per demand notice of Respondent No 1, Petitioners allegedly availed financial assistance from them to the tune of Rs. 1,70,86,032/-
3	12.02.2020	That Respondent Bank classified the Account of Petitioners as Non-Performing Asset.
4	04.09.2021	That on account of alleged defaults in repayment by Petitioners, Respondent no.1 sent demand notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (in short "Securitisisation Act") demanding payment of Rs. 1,97,14,136/- .
5	04.09.2021	That Respondent no.1 sent intimation letter for classification of loan account of Petitioners as NPA to the Petitioner no.1, although the classification of NPA already took place on 12.02.2020.

6	21.06.2022	That Respondent no.1 issued possession notice under Section 13(4) of Securitisation Act, 2002 to the Petitioners.
7	27.06.2022	That the said possession notice came to be published in two newspapers, being English and Vernacular.
8	22.07.2022	That Respondent no.1 through their advocates sent legal notice to the Petitioners for making payment of Rs 2,01,61,084/- towards their alleged outstanding dues within 7 days.
9	01.08.2022	Respondent no.1 sent notice to the Petitioners invoking arbitration and solely appointed Respondent no.2 as arbitrator to adjudicate the dispute between the parties in pursuance to Facility agreement no. GJSXSE00041 dated 26.07.2016.
10	10.08.2022	That, Respondent no.2 sent a notice intimating initiation of arbitration and asking Petitioners to remain present on 29.08.2022 at 3 P.M. at Chennai.
11	02.09.2022	That Respondent no.2 sent notice intimating second meeting of arbitration to be held on 27.09.2022 at 3 P.M. at Chennai stating that in case Petitioners fail to remain present on said date then proceedings will be held

		in their absence.
12	01.11.2022	That impugned award came to be passed by Respondent no.2, ex-parte, in favor of Respondent no. 1.
13	January 2023	Hence this writ petition.

Special Civil Application No.6844 of 2022

Date	Particulars
31.03.2019	The Edelweiss Finance Limited (EFL) disbursed a loan to the Harsiddhi Engineering Proprietor Shri Chetankumar Kishorbhai Shukla to the tune of Rs. 6,50,000/-.
09.04.2019	The Harsiddhi Engineering Proprietor Shri Chetankumar Kishorbhai Shukla obtained Loan insurance namely Edelweiss Tokio Life Group Credit Protection Policy.
30.09.2019	The Harsiddhi Engineering Proprietor Shri Chetankumar Kishorbhai Shukla expired due to Heart Attack.
15.11.2019	The Petitioner initiated the insurance claim vide claim reference No. G6589/19-20.
08.01.2020	The Insurance Company rejected the claim of the Petitioner and intimated the same to the Petitioner.
16.01.2020	The Sole Arbitrator, unilaterally appointed by EFL,

	issued a notice to the Harsiddhi Engineering Proprietor Shri Chetankumar Kishorbhai Shukla for appearing before him in the dispute raised by the EFL, though the EFI knew that the said person had already died.
05.02.2020	EFL filed a Statement of Claim before the Sole Arbitrator.
03.08.2020	The Sole Arbitrator passed an ex-parte award in favour of the EFL.
10.03.2022	The Petitioner issued a notice through Consumer Protection & Analytic Committee and contended that though there is an insurance policy specifically obtained over the loan, the Insurance Company has falsely rejected the claim and the recovery proceedings through unilateral arbitration cannot sustain.

Special Civil Application No.8468 of 2021

Sr. No.	Date	Particulars
1	----	It is a case of the Respondent NBFC that the Petitioners have availed Car Loan facility for purchase of Car-Maruti Suzuki Nexa S.
2	19.05.16	Loan Agreement pertaining to Car Loan came to be executed by Petitioners, as per version of Respondent NBFC. Loan agreement contains

		arbitration clause by virtue of which exclusive power to appoint sole Arbitrator is assigned to Respondent No. 1. Subsequently Confirmation Letter dated 01.06.16 along with repayment schedule was also sent to petitioners.
3	17.05.18	Car loan availed by Petitioner no. 1 was topped up and subsequently Loan Agreement bearing no. CF-15764278 was executed.
4	15.02.21	Sole Arbitrator issued communication in context of statutory disclosure in context of 6th Schedule appended to Arbitration Act to the parties. It states that Arbitrator is conducting 2039 arbitrations and has experience of 6 arbitrations.
5	19.02.21	Respondent no. 1 sent Reference Notice to Petitioner no. 1 demanding payment of outstanding dues and conveying about appointment of Sole Arbitrator to arbitrate the dispute.
6	20.02.21	Respondent no. 2 sole Arbitrator sent notice to Petitioners to appear and file reply to claim petition and Section 17 application filed by Respondent no. 1. No documents and claim Petition papers were served

		to the Petitioners along with Notice/Summons.
7	04.03.21	Respondent no. 2 sent notice to Petitioner directing to appear before Respondent no. 2 on 22.03.21 as last chance to defend themselves.
8	04.03.21	Interim Order u/s 17(1) of Arbitration and Conciliation Act, 1996 was passed by Respondent no. 2 in absence of Petitioners, authorizing Respondent no. 1 to take possession of Vehicle and sell it.
9	25.03.21	Physical Possession of Petitioner's car was taken by people claimed to be officials of Respondent no. 1 by force and without following Covid protocols.
10	28.03.21	Mr. Gheewala- Director of Petitioner no. 2 fell ill and subsequently tested Covid Positive and was admitted to hospital for further treatment.
11	07.04.21 To 18.04.21	Mr. Gheewala was getting treated for Covid19 at private hospital at Surat and later shifted to Civil Hospital, Surat due to complications and better facilities.
12	05.05.21	Impugned award passed by Respondent no. 2 in absence of petitioners, directing to pay Rs. 4,44,612.72 along with 18% interest per annum.

13	22.05.21	Post Sale Notice sent by Respondent no. 1 to Petitioners directing petitioner no. 1 to pay outstanding amount in loan account remaining after taking into accounts proceeds from sale of vehicle. Thus, petitioners came to the knowledge that the car was sold by Respondent No. 1 without auction and without publicity. No individual Notice was issued to the Petitioners prior to the Sale of Car.
14	14.06.21	Hence this Petition.

Special Civil Application No.17868 of 2022

Sr. No.	Date	Particulars
1	2017	Petitioners availed financial assistance to the tune of Rs. 1,21,51,000/-
2	16.03.21	As per the version of Respondent bank account of Petitioners came to be declared as Non-Performing Asset ("NPA").
3	06.09.21	On account of alleged defaults in repayment by Petitioners, Respondent no.1

		sent demand notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
4	06.11.21	Petitioners replied to aforesaid demand notice raising objections under Section 13(3A) of Securitisation Act, 2002.
5	19.11.21	Respondent no.1 issued alleged possession notice under Section 13(4) of Securitisation Act, 2002.
6	Jan-22	Petitioners filed Securitisation Appeal no. 07 of 2022 before Ld. DRT-II, Ahmedabad against illegal Securitisation measures initiated by Respondent no.1 NBFC.
7	22.07.22	Respondent no.1 sent impugned notice invoking arbitration and mentioning that sole arbitrator i.e., Respondent no.2 was appointed as sole Arbitrator.
8	10.08.22	Respondent no.2 sent impugned notice intimating initiation of arbitration and asking Petitioners to remain present on 29.08.2022 at 3 P.M. at Chennai.

6. Learned advocate Mr. Vishwas Shah for the petitioners submitted as under:

1. No party to an arbitration agreement can make unilateral appointment of arbitrator. Respondent no.1 has unilaterally appointed Sole Arbitrator without giving any chance of say to the petitioner which is contrary to law. Reliance was placed on the following decisions:

(a) Perkins Eastman Architects DPC and Anr. Vs. HSCC (India) Limited (2020) 20 SCC 760;

(b) TRF Ltd. V. Energo Engg. Projects Ltd. (2017) 8 SCC 377;

(c) Lite Bite Foods Pvt. Ltd. v. Airports Authority of India, 2019 SCC OnLine Bom 5163;

(d) Naresh Kanayalal Rajwani v. Kotak Mahindra Bank Limited, 2022 SCC OnLine Bom 6204;

(e) Sital Dass Jewellers v. Asian Hotels (North) Ltd., 2021 SCC OnLine 78 Del 3914;

7. Relying upon the above judgments, it was submitted that appointment of Arbitrator

cannot be made by one party without consensus of another party irrespective of arbitration clause. It was submitted that as held by the Hon'ble Supreme Court where only one party has right to appoint a Sole Arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution and therefore the persons who has interest in outcome or decision of the dispute must not have a power to appoint a Sole Arbitrator.

8. It was submitted that in view of the Decision of the Hon'ble Supreme Court, the impugned award deserves to be quashed and set aside as it is passed by the Sole Arbitrator appointed by the respondent NBFC without consent of the petitioner. Reliance was also placed on the decision of the Bombay High Court in case of Naresh Kanayalal Rajwani v. Kotak Mahindra Bank Limited, wherein award of the arbitrator was challenged on the ground of unilateral appointment and such award was quashed and set aside by the Bombay High Court.

9. With regard to the maintainability of these petitions under Article 226 of the Constitution of India challenging the Arbitration Award directly before this Court

learned advocate relied upon the following decisions:

1. *SREI Infrastructure Finance Limited v. Tuff Drilling Private Limited (2018) 11 SCC 470*
2. *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) I SCC 75*
3. *Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708*
4. *M/s Benaullim Cable TV Network v. M/s Blits Global Technologies Pvt. Ltd, SLP(C) No. 3586 of 2019 dated 14.02.2020*
5. *Narmada Clean-Tech & Ors. V. Indian Council Of Arbitration, LPA No. 52 308 of 2020*
6. *Deep Industries Ltd. v. ONGC, (2020) 15 SCC 706*
7. *Punjab State Power Corpn. Ltd. v. Emta Coal Ltd., (2020) 17 SCC 93*
8. *Anupam Industries Ltd. v. the State*

Level Industry Facilitation Council, SCA No. 2825 of 2020

9. Heirs of Legal of Sidhrajsinhji Pragrajsinhji and Ors. v. Bengal Cynosure Development Private Limited and Ors., SCA No. 11903 of 2015

10. Reliance was also placed on the decision of the Hon'ble Division Bench of this Court in Letters Patent Appeal No.1011 of 2022 in Special Civil Application No.8727 of 2019 in case of ***Pahal Engineers VS. The Gujarat Water Supply and Sewerage Board*** dated 30.01.2023 wherein the Hon'ble Division Bench allowed the LPA quashing and setting aside the arbitral award with a liberty to both the sides to move for the appropriate orders seeking for extension of the mandate in the petition filed under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (for short "the Act").

11. From the facts emerging in each of the petition, the respondent-NBFC has appointed the Sole Arbitrator unilaterally for adjudication of the dispute between the petitioners and the NBFC with regard to the

outstanding liability of the financial assistance provided to the petitioners and in three petitions *ex parte* arbitration award is passed by the Sole Arbitrator appointed by the respondent NBFC. Aggrieved by the order of the Sole Arbitrator the petitioner has preferred the petition under Article 227 of the Constitution of India. Therefore, the question arises as to whether such petitions are maintainable under Article 226 and 227 of the Constitution of India.

12. The Hon'ble Supreme Court in case of ***Bhaven Constructions (Supra)*** while considering the issue as to whether the arbitral process could be interfered under Article 226 and 227 of the Constitution of India and under what circumstances after considering the Scheme of the Arbitration Act as well as the decisions in case of ***Nivedita Sharma Vs. Cellular Operators Association of India (2011) 14 SCC 337*** and the decision in case of ***Deep Industries Ltd. Vs. ONGC, (2020) 15 SCC 706*** has held as under:

"20. In the instant case, Respondent No. 1 has not been able to show exceptional

circumstance or 'bad faith' on the part of the Appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by the Respondent No. 1 in a separate Section 34 application, which is pending."

13. In view of the above observation of the Hon'ble Apex Court and considering the facts of each of the case, though the petitioners are required to challenge the *ex parte* arbitration award before the District Court under Section 34 of the Arbitration and Conciliation Act, 1996, (for short 'the Act') the challenge to impugned Award/Notice before this Court in these proceedings under Article 226 and 227 of the Constitution of India is entertained in view of the settled legal position that the *ex parte* award passed by the Arbitral Tribunal is vitiated as no party can be permitted to appoint unilaterally an arbitrator as the same would defeat the

purpose of unbiased adjudication of dispute between the parties in view of the pertinent observation of the Hon'ble Supreme Court in case of **Perkins Eastman Architects DPC (Supra)** wherein it is categorically stated that

"...in cases where one party has right to appoint a sole arbitrator, choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a Sole Arbitrator".

14. Moreover, there is flagrant violation of principle of natural justice as also certain procedural infirmities as to the manner in which the learned arbitrator conducted the proceedings and pronounced the impugned awards. It also emerges from the record that the manner in which the learned arbitrator proceeded in the matter indicating that proper opportunity was not granted to the petitioners to lead evidence particularly in the backdrop of the admitted position on perusal of the impugned awards, the issues were not framed during the Arbitral

Proceedings, nor any reasons are assigned for coming to conclusion to award the claim amount.

15. It is also pertinent to note that the respondent no.2- Sole arbitrator in each of the petition has also not adhered to provision of section 12(1) and 12(5) of the Act which reads as under:

“ 12. Grounds for challenge.

When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances, –

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation1.–The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as

to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.

XXXX

(5) Notwithstanding any prior agreement 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 the Seventh Schedule 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 subsection by an express agreement in writing.

XXXXX

THE SEVENTH SCHEDULE

[See section 12(5)]

Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.

2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.

5. 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.

6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

8. 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.

9. 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.

10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11. The arbitrator is a legal representative of an entity that is a party in the arbitration.

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

14. 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.

15. 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.

16. The arbitrator has previous involvement in the case. Arbitrator's direct or indirect interest in the dispute

17. 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.

18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

19. 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, specialised 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.”

16. The section 12(5) of the Act inserted by way of an amendment with effect from 23.10.2015, starts with non obstante clause which indicates that even if any agreement prior to introduction of the aforesaid amendment provides for appointment of the arbitrator that would be contrary to the provision of Section 12(5) of the Act, read with Seventh Schedule and the provision would apply to such arbitration agreement also, more over proviso to Section 12(5) specifies the manner in which the parties may waive the applicability of the provision by an express

agreement in writing. However, in the facts of the case, the respondent NBFC invoked the arbitration in the year 2021 in Special Civil Application No.8468 of 2021, whereas in the Special Civil Application No.728 of 2023 it was invoked in the year 2022, in Special Civil Application No.6844 of 2022 it was invoked in 2020 and in in Special Civil Application No.17868 of 2022, it was invoked in the year 2022. It is therefore apparent that there is no compliance of the provision of section 12 of the Act.

17. The petitioners never participated in the arbitration proceedings and therefore even the provision of Section 4 of the Act, would also not apply which provides for waiver of right to object. The Apex Court in case of **Perkins Eastman Architects DPC (Supra)** considered the effect of Section 12(5) of the Act read with Seventh Schedule after referring to the earlier judgment in case of **TRF Ltd. (Supra) as under:**

"20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. where the Managing Director himself is named as an arbitrator with an additional power to

appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Ltd., all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an Arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an Arbitrator.

21. But, in our view that has to be the logical deduction from TRF Ltd. Paragraph 50 of the decision shows that this Court was concerned with the issue, "whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an Arbitrator" The ineligibility referred to therein, was as a result of operation of law, in 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 anyone 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 an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an

interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (Act 3 of 2016) and recognised by the decision of this Court in TRF Ltd.”

18. Thus, the Hon'ble Apex Court has held that a person having an interest in a dispute or in the outcome thereof is ineligible not only to act as an arbitrator but is also rendered ineligible to appoint anyone else as an arbitrator. It is an admitted position in each of the petition that the arbitration clause gave power and authority to the respondent NBFC unilaterally to appoint the sole arbitrator and accordingly the Sole Arbitrator was appointed unilaterally which is contrary to the decision of the Apex Court in the context of Section 12(5) of the Act read with Seventh Schedule thereof.

19. Therefore, even though the petitioners are required to challenge the award under Section 34 of the Act, the petitioners have been able to show exceptional circumstances and bad faith on the part of respondent NBFC

to invoke the remedy under Article 226 and 227 of the Constitution of India whose ambit is broad and pervasive as held by the Supreme Court in case of ***Bhaven Construction (Supra)*** after considering the position of law with regard to the challenge to the arbitration proceedings under Article 226 and 227 of the Constitution of India. Therefore, in the exceptional circumstances as emerging from the facts of these petitions, these petitions are entertained instead of relegating the petitioners to avail appropriate remedy under Section 34 of the Act.

20. In light of above discussion and considering the facts of the case, it becomes evident that from the very inception i.e. from the stage of appointment of the sole arbitrator, the proceedings were vitiated and the impugned *ex parte* arbitral awards are therefore rendered unsustainable. The impugned awards are therefore liable to be quashed and set aside with a liberty to the respondent NBFC to initiate fresh proceedings in accordance with the settled legal position as held by the Hon'ble Division Bench of this Court in case of *Pahal Engineers (Supra)* by appointing the arbitrator either with the

consent of the petitioners or by approaching this Court under Section 11 of the Act.

21. In view of foregoing reasons, the Special Civil Application Nos.6844 of 2022, 8468 of 2021 and 728 of 2023 are allowed whereas Special Civil Application No.17868 of 2022 is concerned the constitution of the Arbitral Tribunal i.e. respondent no.2 therein initiated vide notice dated 10.08.2022 is hereby quashed and set aside with a liberty to the respondent NBFC to initiate the Arbitration Proceedings in accordance with law and settled legal position. Rule is made absolute to the aforesaid extent. No order as to costs.

Sd/-

(BHARGAV D. KARIA, J)

URIL RANA