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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 16.02.2026***
Judgment pronounced on: 05.05.2026
Judgment uploaded on: 05.05.2026

\+ EFA(COMM) 8/2024

MATSYA FINCAP PVT LTD .....Appellant
Through: Mr. Bhupendra Kumar Gupta, AR.

versus

GOVIND LAL .....Respondent
Through: Mr. Pramod Kumar and Mr. Gaurav, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.

1. Through the present Appeal, the Appellant (Decree Holder) assails the correctness of the order dated 01.04.2024 [hereinafter referred to as 'Impugned Order'], passed in EX. (COMM.) No.287/2023, whereby the learned District Judge declined to enforce the *ex-parte* arbitral award dated 22.10.2022 [hereinafter referred to as 'the Award'] primarily on the ground that the receipt-cum-acknowledgement dated 16.09.2020 [hereinafter referred to as 'acknowledgement letter'] containing the arbitration clause was not signed by the Appellant.

2. The learned District Judge has held that since the acknowledgement, though signed by the Respondent (Judgment Debtor) and handed over to the Appellant, did not bear the Appellant's signature, it did not constitute a valid arbitration agreement within the

meaning of Section 7 of the Arbitration and Conciliation Act, 1996[1].

3. Therefore, the issue that arises for consideration before this Court is whether an acknowledgment letter issued by the Respondent to the Appellant, containing an arbitration clause but signed by only one of the parties, constitutes a valid arbitration agreement within the meaning of Section 7 of the A&C Act, and consequently, whether the initiation of the arbitral proceedings pursuant thereto was legally sustainable in the facts of the present case.

FACTUAL MATRIX:

4. In order to appreciate the controversy, it is necessary to briefly advert to the relevant facts.

5. The Appellant is a company registered under the Companies Act, 2013, acting through its Authorised Representative ('AR'), Mr. Bhupendra Kumar Gupta. The Appellant filed the Execution Petition bearing Ex. (Comm.) No. 287/2023 seeking enforcement of the *ex-parte* Award passed by the learned Sole Arbitrator, whereby a sum of Rs.10,00,000/- along with interest was awarded against the Respondent.

6. Upon service of notice, the Respondent entered appearance and filed objections to the maintainability of the Execution Petition. The principal objection raised was that there existed no valid arbitration agreement between the parties and, therefore, the learned Sole Arbitrator lacked jurisdiction to initiate arbitral proceedings and render the Award.

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[1] A&C Act

7. The acknowledgment letter, relied upon by the Appellant as containing the arbitration clause, *inter alia*, recorded that in the event of disputes arising between the parties, the same would be referred to arbitration and adjudicated by a sole arbitrator appointed in terms thereof. The arbitration clause contained therein provided that disputes or differences between the parties would be settled through arbitration in accordance with the provisions of the A&C Act. The said document, however, admittedly bore the signature of the Respondent and did not bear the signature of the Appellant. The acknowledgement letter is reproduced hereinbelow for ready reference:

Receipt cum Acknowledgement

I Govind lal S/o Inti Lal, Age 39 Years, taking responsibility of all loans those availed by many known persons on behalf of my oral guarantee from Matsya Fincap Pvt Ltd , later those loans was not repaid by the borrowers (as hereunder) to Matsya Fincap Pvt Ltd, I am issuing a cheque no. 008518 dated 10.09.2021, amount Rs.1000000/- Rupees Ten Lakh for repayment in favour of Matsya Fincap Pvt Ltd. And I promise that this cheque will be honoured at the time mentioned in the cheque.

The list of borrowers, those not repaid the loan amount availed by them on my behalf as hereunder-

S.no	Name of Borrowers	Loan Date	Loan Amount
1	Sumit	26-12-2018	100000/-
2	Vishnu Dutt	28-12-2018	100000/-
3	Yogesh	14-12-2018	75000/-
4	Lalit Sharma	04-12-2018	50000/-
5	Nand Kishor	05-01-2019	100000/-
6	Sarika	26-12-2018	75000/-
7	Sanjay Marothy	14-12-2018	50000/-
8	Rajpal Rawat	14-12-2018	100000/-
9	Digpal Rawat –	05-01-2019	100000/-
10	Sourav Rawat	10-12-2018	100000/-

All disputes relating to this transaction between us will be resolved by the sole arbitrator in accordance of Arbitration and conciliation Act 1996 and Sh. Manohar Lal Saini Advocate Court Campus, Alwar, Rajasthan, would be sole arbitrator for this purpose. The Arbitration proceedings Would be take place in Alwar, Rajasthan in case any dispute.

Date – 16.09.2020
Place – New Delhi

8. The learned Sole Arbitrator, in Paragraph No.20 of the Award, observed that disputes had arisen under the acknowledgment letter, which contained an arbitration clause for the settlement of disputes between the parties. It was further recorded that the said acknowledgment letter bore the signatures of the parties to the arbitration and that, by virtue of the powers contained therein, the Appellant had appointed the learned Sole Arbitrator to adjudicate the disputes.

9. The learned Executing Court, *vide* the Impugned Order, held the Execution Petition to be not maintainable on the following grounds:

i. Although the acknowledgment letter contained an arbitration clause, the absence of the Appellant's signature rendered it insufficient to constitute a written arbitration agreement under Section 7 of the A&C Act.

ii. No material had been placed on record to establish the existence of an arbitration agreement through exchange of communications between the parties.

iii. In the absence of a valid arbitration agreement, the learned Sole Arbitrator lacked jurisdiction, and the Award was a nullity.

iv. Such a jurisdictional objection could be entertained by the Executing Court under Section 47 of the Code of Civil

Procedure, 1908[2].

10. Aggrieved by the same, the present Execution First Appeal has been preferred by the Appellant (Decree Holder).

CONTENTIONS OF THE PARTIES:

11. Heard learned Counsel for the parties and, with their able assistance, perused the paperbook.

12. The AR of the Appellant submits as under:

i. The arbitral proceedings were validly initiated on the basis of the acknowledgment letter issued by the Respondent, which contained an arbitration clause.

ii. Even assuming that the acknowledgment letter did not bear the signature of the Appellant, the existence of an arbitration agreement can be made out in terms of Section 7(4)(b) of the A&C Act, through exchange of letters or other means of communication, including electronic communications, which provide a record of the agreement between the parties.

iii. The objections raised by the Respondent before the learned Executing Court were not maintainable under Section 47 of the CPC, and any challenge to the validity or jurisdiction of the Award ought to have been raised by way of an application under Section 34 of the A&C Act.

13. *Per contra*, learned Counsel for the Respondent submits as

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[2] CPC

under:

i. There was no arbitration agreement signed by both parties and, in the absence of a valid arbitration agreement, the learned Sole Arbitrator lacked jurisdiction to commence arbitral proceedings. The Award itself records that the acknowledgment letter bore the signatures of the parties; however, since the said document was admittedly not signed by the Appellant, it could not constitute a valid arbitration agreement under Section 7 of the A&C Act, nor form the basis for initiation of arbitral proceedings.

ii. In the absence of a valid arbitration agreement, the Award is a nullity and unenforceable in law. Therefore, the objection to its executability was rightly entertained by the learned Executing Court under Section 47 of the CPC.

14. No other submissions have been made by the learned Counsel representing the parties.

ANALYSIS AND FINDINGS:

15. It is trite that Section 7 of the A&C Act embodies the foundational principle that arbitration is a consensual dispute resolution mechanism. The same is reproduced hereunder for ready reference:

> ***"7. Arbitration agreement.****—(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*
>
> *(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*

(3) An arbitration agreement shall be in writing.

(4) An arbitration agreement is in writing if it is contained in—

(a) a document signed by the parties;
(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or
(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract."

16. Sub-section (1) of Section 7 of the A&C Act defines an arbitration agreement as an agreement by the parties to submit to arbitration disputes which have arisen or may arise between them in respect of a defined legal relationship. Sub-section (2) provides that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement. Sub-section (3) mandates that such an agreement shall be in writing. Further, Sub-section (4) clarifies when an arbitration agreement is said to be "in writing".

17. The statutory scheme thus makes it clear that two elements are indispensable:

i. Existence of *consensus ad idem* to refer disputes to arbitration; and

ii. A written record evidencing such consensus in one of the modes contemplated under Section 7(4) of the A&C Act.

18. A bare perusal of Section 7 of the A&C Act also makes it evident that the requirement of writing is not an empty formality; it ensures certainty, clarity and mutuality in the parties' intention to oust the jurisdiction of ordinary civil courts and submit disputes to a private forum. An arbitration agreement cannot be inferred merely because one party asserts its existence. There must be demonstrable evidence of mutual assent.

19. In the present case, the Appellant relies upon the acknowledgment letter, which contains the following clause:

> *"All disputes relating to this transaction between us will be resolved by the sole arbitrator in accordance of Arbitration and conciliation Act 1996 and Sh. Manohar Lal Saini Advocate Court Campus, Alwar, Rajasthan, would be sole arbitrator for this purpose. The Arbitration proceedings Would be take place in Alwar, Rajasthan in case any dispute."*

20. It is not in dispute that the said acknowledgment letter bears the signature of the Respondent but does not bear the signature of the Appellant. Therefore, it does not satisfy the requirement of a "document signed by the parties" under Section 7(4)(a) of the A&C Act.

21. Further, the Appellant has sought to invoke Section 7(4)(b) of the A&C Act, contending that the existence of an arbitration agreement may be inferred from the exchange of communications. However, no letters, emails, electronic correspondence or any other material providing a record of mutual agreement to arbitrate have been placed on record. The Award itself does not refer to any such exchange forming the basis of jurisdiction. In the absence of

documentary material evidencing a meeting of minds, Section 7(4)(b) is not attracted.

22. At this stage, it would be apposite to examine whether the acknowledgment letter relied upon by the Appellant can, in itself, be said to constitute an enforceable contract. The law in this regard is well settled. Under the Indian Contract Act, 1872, a valid and binding contract must disclose the essential elements of offer, acceptance, lawful consideration, and an intention to create legal relations, culminating in consensus *ad idem* between the parties.

23. It is equally settled that a contract need not necessarily be signed by both parties in order to be binding. However, in the absence of signatures, there must be clear and cogent material to evidence acceptance of the terms by the party sought to be bound, whether by way of exchange of communications, conduct unequivocally referable to the agreement, or other contemporaneous material demonstrating mutual assent. The requirement, therefore, is not of form, but of substance, namely, the existence of a meeting of minds.

24. In the present case, the acknowledgment letter admittedly bears the signature of the Respondent but does not bear the signature of the Appellant. More importantly, no correspondence, communication, or conduct has been brought on record to demonstrate that the Appellant accepted the terms contained therein so as to give rise to a binding bilateral arrangement. As noticed earlier, the said document is sought to be relied upon not merely as an acknowledgment of liability, but as the very foundation of the contractual relationship as well as the arbitration clause, in the absence of any independently executed loan

or guarantee agreement. When these circumstances are viewed cumulatively, the acknowledgment letter cannot be construed as a concluded and enforceable contract in law, but remains, at best, a unilateral record insufficient to establish mutual obligations between the parties.

25. It is also significant that the learned Sole Arbitrator, in Paragraph 20 of the Award, proceeded on the assumption that the acknowledgment letter bore the signatures of the parties. That factual premise stands contradicted by the admitted position on record. Jurisdiction founded on an erroneous assumption regarding the existence of a valid arbitration agreement cannot be sustained.

26. In arbitration law, jurisdiction flows from consent. Where the existence of a valid arbitration agreement itself is not established in accordance with Section 7 of the A&C Act, the arbitral tribunal lacks inherent jurisdiction. Such a defect is not a mere procedural irregularity but goes to the root of the matter.

27. Additionally, the Appellant has contended that the Respondent ought to have challenged the Award under Section 34 of the A&C Act and that the learned Executing Court could not have examined the validity of the arbitration agreement while exercising jurisdiction under Section 47 of the CPC.

28. A perusal of the Impugned Order shows that the learned District Court was conscious of the limited scope of Section 47 of the CPC. The Executing Court recorded that though it cannot go behind the

Award or examine its correctness on merits, it would not be powerless where the Award is a nullity in the eyes of law.

29. In support of this proposition, the learned District Court placed reliance upon the judgment of the Hon'ble Supreme Court in ***Dhurandhar Prasad Singh v. Jai Prakash University & Ors.***[3], wherein it was held that the exercise of power under Section 47 of the CPC is narrow and microscopic; however, an objection to executability can be entertained if the decree is void *ab initio* or a nullity on account of an inherent lack of jurisdiction. The Supreme Court clarified that while mere irregularities cannot be examined in execution, a jurisdictional defect striking at the root of the decree can be considered.

30. Proceeding on the aforesaid principle, the learned Executing Court examined whether there existed a valid arbitration agreement within the meaning of Section 7 of the A&C Act, as the existence of such an agreement is the very foundation of the arbitral tribunal's jurisdiction. The finding that the Award suffered from a foundational jurisdictional defect was thus returned within the limited contours permissible under Section 47 of the CPC.

31. In that view of the matter, the reliance placed by the learned District Court on the aforesaid judgment cannot be said to be misplaced, as the inquiry undertaken was confined to the issue of inherent jurisdiction and not to a re-appreciation of the merits of the Award.

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[3] (2001) 6 SCC 534

32. Before proceeding further, this Court has also perused the Trial Court Record ('TCR'), including the list of borrowers forming part of the acknowledgment letter, the pleadings of the parties, and the orders passed in the connected proceedings. The scrutiny of the record discloses certain features which assume significance while examining the question of jurisdiction and the *bona fides* of the arbitral process adopted by the Appellant.

33. At the outset, the arbitration clause embedded in the acknowledgment letter not only names a specific individual as the sole arbitrator, but it also transpires from the record that the said arbitrator has been appointed by the Appellant in a series of proceedings arising against multiple alleged borrowers. The list of borrowers appended to the acknowledgment letter forms part of the TCR. The appointment of the same named arbitrator in all such matters indicates that the arbitral mechanism was structured entirely at the instance of the Appellant. While party autonomy is a recognised feature of arbitration law, the repetitive appointment of the same-named individual in all disputes against the alleged borrowers, particularly when the existence of a valid arbitration agreement itself is in serious doubt, raises legitimate concerns regarding neutrality and fairness in the constitution of the tribunal.

34. Further, a perusal of the list of borrowers and accompanying details reveals that the Respondent was not reflected as the original guarantor in the loan documentation executed between the Appellant and the said borrowers. The TCR does not contain any independently executed guarantee agreement signed by the Respondent in favour of the Appellant with respect to the loans advanced to the listed

borrowers. On the contrary, the record reflects that the assertion regarding the Respondent having orally guaranteed the loans is founded solely upon the disputed acknowledgment letter. In the absence of any primary contractual document evidencing the Respondent's status as guarantor, the very substratum of the claim referred to arbitration appears tenuous.

35. Moreover, the Respondent has consistently disputed the execution of any arbitration agreement or acknowledgment letter. It is reflected from the record that he has denied having signed such a document and has further initiated proceedings under Section 340 of the Code of Criminal Procedure, 1973, alleging fabrication. While this Court is not called upon to adjudicate the merits of the said application, the pendency of such proceedings and the categorical denial of execution by the Respondent reinforce the necessity of strict compliance with Section 7 of the A&C Act. In circumstances where execution of the very document containing the arbitration clause is in dispute, the arbitral tribunal was required to demonstrably establish the existence of a valid and binding arbitration agreement. The Award, however, proceeds on the erroneous assumption that the acknowledgment letter bore the signatures of both parties.

36. Furthermore, the TCR further reflects that the Respondent had taken a personal loan of Rs.1,00,000/- from the Appellant, which, according to the record, stands repaid. The communication placed on record in the proceedings indicates that the Respondent's direct financial liability, if any, pertained to that limited transaction. The claim of Rs.10,00,000/- awarded *ex-parte* by the Sole Arbitrator is not predicated upon any independent loan agreement executed by the

Respondent but is entirely premised upon the alleged role of guarantor in respect of third-party borrowers. This again underscores that the arbitral proceedings were not founded upon a clearly established contractual relationship directly evidenced by primary documentation.

37. In addition, when the record is viewed cumulatively, certain aspects cast doubt on the *bona fides* of the process adopted by the Appellant. The reliance on an acknowledgment letter admittedly not signed by the Appellant; the absence of any contemporaneous exchange evidencing mutual consent to arbitrate; the lack of independent guarantee agreements; the appointment of the same named arbitrator in a series of matters arising from similar documents; and the assumption in the Award that both parties had signed the acknowledgment letter, collectively suggest that the arbitral proceedings were initiated on a fragile jurisdictional foundation. Arbitration, being a creature of consent, cannot be invoked through unilateral documentation and subsequently legitimised by an *ex-parte* award.

38. This Court is conscious that in execution proceedings it is not permissible to undertake a reappreciation of evidence or to examine the correctness of findings on merits. However, where the material on record itself discloses that the very basis of the arbitral tribunal's jurisdiction is doubtful and unsupported by primary contractual evidence, the defect transcends the realm of mere irregularity and enters the domain of inherent lack of jurisdiction. The scrutiny undertaken herein is confined strictly to that jurisdictional aspect.

39. There is yet another significant aspect which bears consideration. The arbitration clause extracted above not only

provides for reference of disputes to a sole arbitrator but also specifically names Sh. Manohar Lal Saini, Advocate, as the sole arbitrator. From the TCR, it further emerges that the said arbitrator has been appointed by the Appellant in a series of proceedings in relation to multiple borrowers whose names appear in the appended list. The repeated appointment of the same named individual in all such matters indicates that the constitution of the arbitral tribunal was structured entirely at the instance of the Appellant.

40. In this backdrop, it becomes necessary to examine whether such a course of appointment can be regarded as a valid exercise of party autonomy or whether, in substance, it amounts to a unilateral constitution of the arbitral tribunal.

41. The law in this regard is no longer *res integra*. While arbitration is founded on party autonomy, such autonomy is subject to the fundamental requirement that the arbitral process must be fair, impartial and independent. It is also well established that a party interested in the outcome of the dispute cannot have exclusive control over the appointment of a sole arbitrator. At the same time, it is equally well settled that the mere naming or pre-designation of an arbitrator in an agreement is not, by itself, impermissible, provided such stipulation flows from a valid and mutually accepted arbitration agreement between the parties.

42. The aforesaid principle has been reiterated and further elucidated in recent decisions, including ***Bhadra International (India)***

Pvt. Ltd. & Ors. v. Airport Authority of India[4], wherein the Supreme Court has underscored that party autonomy in arbitration cannot be construed in a manner that permits one party to unilaterally structure or dominate the constitution of the arbitral tribunal. It has been emphasised that the legitimacy of the arbitral process rests upon the existence of a fair and balanced appointment mechanism reflecting mutual consent, and any arrangement which, in effect, enables one party to secure a position of advantage in the constitution of the tribunal would be contrary to the foundational principles governing arbitration.

43. In the present case, however, the arbitration clause designating the named arbitrator is contained in a document which does not bear the signature of the Appellant and whose execution itself is disputed by the Respondent. As discussed hereinabove, the said acknowledgment letter does not constitute a concluded and enforceable contract, nor is there any material evidencing mutual assent to the arbitration clause. In such circumstances, the pre-designation of the arbitrator cannot be treated as a product of a mutually agreed procedure. The Appellant, acting solely on the basis of the said disputed document, has invoked arbitration and proceeded to appoint the named arbitrator in multiple similar matters. The process, therefore, though ostensibly traceable to the clause, in effect operates as a unilateral constitution of the arbitral tribunal, lacking the foundational element of consent.

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[4] Civil Appeal Nos.37-38 of 2006

44. At this stage, it would also be apposite to examine whether the constitution of the arbitral tribunal in the present case attracts the ineligibility contemplated under Section 12(5) of the A&C Act, read with the Seventh Schedule. The said provision renders an arbitrator ineligible if his relationship with the parties, counsel or the subject-matter of the dispute falls within any of the categories specified in the Seventh Schedule. One of the circumstances contemplated therein pertains to situations where an arbitrator is repeatedly appointed by one of the parties within a proximate period, thereby giving rise to concerns of dependence or lack of independence. However, such ineligibility is attracted only when the conditions specified in the Schedule are clearly established on the basis of material on record.

45. In the present case, the record does indicate that the same arbitrator has been appointed by the Appellant in a series of similar matters arising from identical documents. However, in the absence of specific material demonstrating the frequency, duration and nature of such appointments so as to bring the case squarely within the parameters of the Seventh Schedule, this Court refrains from returning a definitive finding of statutory ineligibility under Section 12(5). Nonetheless, the pattern of repeated appointments, when read in conjunction with the absence of a valid arbitration agreement and the unilateral invocation of the clause by the Appellant, lends further support to the conclusion that the constitution of the arbitral tribunal lacked the necessary indicia of independence and neutrality.

46. Further, unilateral arrangements which purport to confer appointment powers upon one party are impermissible unless

validated by an express written waiver after the dispute has arisen. Mere participation in arbitral proceedings, or any form of acquiescence in the appointment, does not constitute such a waiver under Section 12(5) of the A&C Act. Consequently, a sole arbitrator appointed in such a manner would lack the requisite independence, and any award rendered by a tribunal so constituted would be rendered vulnerable on the ground of inherent lack of jurisdiction.

CONCLUSION:

47. In view of the foregoing discussion, this Court finds that the absence of a valid arbitration agreement rendered the Award a nullity and incapable of execution. The objection to executability was rightly entertained under Section 47 of the CPC.

48. Accordingly, the Impugned Order dated 01.04.2024 is upheld, and the present Appeal is dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 05, 2026
s.godara/shah