IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 16052 OF 2026

Ajazul Haque Khan ...Petitioner

Versus

ICICI Bank Limited ...Respondent

Mr. Vijay S. Tiwari, a/w *Mr. Aayush Pandey for the Petitioner.*

Mr. Mayur Khandeparkar, *Senior Counsel a/w Ms. Resham Vasant Savla i/b Manilal Kher Ambalal and Co. Advocates for Respondent, ICICI Bank Ltd.*

CORAM: SOMASEKHAR SUNDARESAN, J.

DATE: MAY 7, 2026

Oral Judgement:

Context and Factual Background:

1. This is a Petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("***the Act***") impugning an order dated January 15, 2026 ("***Impugned Order***") under Section 17 of the Act, attaching various bank accounts associated with the Petitioner's income-tax Permanent Account Number. The Impugned Order was passed ex parte, by an arbitrator

appointed by an online dispute resolution platform ("***ODR Platform***") appointed by the Respondent, ICICI Bank Ltd. ("***ICICI***").

2. The Petitioner has accused ICICI of mis-selling, incentivising him to retire his pre-existing loans from other lenders, only to realise that he did not get a better deal because those lenders charged him additionally for re-financing the loan, which was not explained to him. He also contends that monies were actually not fully given to him and the earlier lenders charged him additionally as well.

3. The Impugned Order is cryptic. It simply states that ICICI lent a personal loan to the Petitioner and it has not been repaid, and goes on to direct a disclosure of assets, furnishing of security in three days, and a debit freeze on all bank accounts. Based on this, Axis Bank would freeze the account of the Petitioner. Apparently a templated order, the Impugned Order records how no one has challenged the formation of the Arbitral Tribunal and therefore, that the right to challenge has been lost. The Impugned Order speaks about how the ODR Platform is recognised by this High Court and the Kerala High Court – a facet wholly irrelevant to an interim order apart from subtly hinting at assumed legitimacy of such an order.

4. Paragraph 8 of the Impugned Order states that ICICI "*referred*" the dispute to arbitration but does not indicate how and when arbitration was invoked and how the 30-day wait period for selection of arbitrator ran its

course. In the twelve paragraphs of the Impugned Order, apart from the date of the agreement, dates and events are absent in the narration of facts. It does not even speak about the date of the interim application under Section 17 or the contents of any such application.

5. The Impugned Order refers to the dispute resolution clause in the agreement between the parties and indicates that it provides for a 21-day period for mediation and conciliation to run its course under the ODR Platform's procedures, failing which, arbitration would commence. The Impugned Order contains no articulation of any facts in the context of a *prima facie* case, grave and irreparable injury and balance of convenience, except to simply state that there is a power to protect under Section 17 of the Act.

Withdrawal of Arbitration Proceedings:

6. Today, when the matter is called out, Mr. Mayur Khandeparkar, Learned Advocate for the ICICI submits that the Impugned Order may be set aside because the current arbitration proceedings would be withdrawn, which would work out this Petition. The parties agree to leave it to the Court to appoint an independent online dispute resolution platform for resolution of their disputes, considering the relatively small scale and size of the claim by ICICI against the Petitioner in respect of dues claimed pursuant to a personal loan.

7. In these circumstances, the Impugned Order is quashed and set aside by consent of the parties. All banks including Axis Bank, are directed to immediately lift any debit freeze on the Petitioner's bank accounts.

8. By consent of the parties, a new Arbitral Tribunal is appointed in the following terms, with a direction to the ODR Platform appointed by this order to conduct the proceedings in accordance with law:

A] Presolv360, an independent online dispute resolution institution is directed to appoint a sole arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above and administer the same;

B] The contact particulars of the Director, Presolv360 are set out below:-

Email id	:	info@presolv360.com
Contact No.	:	+91-9820167337
Address	:	1st Floor, Esperanca Building, Shahid Bhagat Singh Road, Colaba, Mumbai – 400 001.
Website	:	www.presolv360.com

C] A copy of this Order will be communicated to Presolv360 by the Advocates for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The

Applicant shall provide the contact and communication particulars of the parties to Presolv360 along with a copy of this Order;

D] It is clarified that Presolv360 being an ODR institution, all proceedings will be conducted online through electronic mode, unless otherwise agreed between the appointed Arbitrator and the parties, with appropriate notification to the administration of Presolv360.

E] The administration of Presolv360 is requested to appoint an independent arbitrator in compliance with the Act and its own rules consistent with the Act as soon as possible and in any event within a period of two weeks from receipt of a copy of this Order;

F] The parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the administration of Presolv360 and any other particulars as reasonably requested by the administration. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

G] All arbitral costs and fees of the arbitration shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs; and

H] The seat of the arbitration shall be deemed to be the same as the

seat discernible from the Agreement while the arbitration shall primarily be conducted online.

Illegality of Arbitral Proceedings:

9. However, it is imperative to point out that evidently and unmistakably, this is yet another case of arbitration proceedings being withdrawn by a lender (this time, a leading institution as large as ICICI), after the counterparty has challenged the unilaterally appointed arbitrator's orders attaching all bank accounts. While such withdrawal is routinely resorted to as a way out, the overall strategy is to maximise recoveries, with most counterparties not having the wherewithal to challenge such orders, and proceedings that are withdrawn being a small operating cost to incur.

10. I have had occasion to make detailed observations and issue directions about such cases in my judgement dated April 30, 2026, in the case of ***IIFL***[1], setting out the law as declared by the Supreme Court in the case of unilateral appointments. This is an issue of the rule of law and what the basic foundation of arbitration proceedings entail as a foundational requirement of law.

1 *DS Textiles v. IIFL Finance Limited - Judgement dated April 30, 2026 in a bunch of Petitions led by Arbitration Petition (L) 12097 of 2026*

11. There are two facets to unilateral appointments that have come to Court time and again. *First*, are cases of unilateral appointments by a party that is evidently not expected to be impartial and independent – say an office-bearer of one of the parties to the arbitration agreement being the arbitrator, thereby being a judge in one's own cause. Such an appointment, even if contained in the terms of the arbitration agreement have been held to be illegal. *Second*, are cases of one of the parties to the arbitration agreement alone making the appointment of the arbitrator. Such an arbitrator need not be connected with, or in the employment of that party and is therefore presented as "independent" and "impartial" but is indeed appointed only by one of the parties to the arbitration agreement.

12. Both types of unilateral appointments are bad in law in terms of the law unequivocally declared by the Supreme Court. The point in issue is whether the parties jointly have a say in making the appointment. Arbitration is a conscious contractual choice of the parties to forego their access to the sovereign public service of justice delivery by the Courts and to instead opt for a privatised alternate forum outside Courts to adjudicate disputes.

13. In the design of the law, there are only two methods known to law for appointment of an arbitrator – by consent of the parties or by appointment by the High Court under Section 11 of the Act, when the parties cannot agree

upon the identity of the arbitrator. There is no third means of validly appointing an arbitral tribunal.

Law Declared by the Supreme Court:

14. Even where party autonomy is relied upon by reducing to writing in the arbitration agreement, the power of one party to the dispute alone appointing an arbitrator (regardless of whether such arbitrator is conflicted or is independent of that party), the declaration of the law has evolved to stipulate that a contractual provision of that nature would be bad in law on all facets other than a commitment to go to arbitration.

15. I have dealt with the march of the law in ***IIFL***, and to avoid prolixity, I am not reproducing the content all over again. The law declared by the Supreme Court in ***TRF***[2], ***Perkins Eastman***[3], ***CORE***[4] (Constitution Bench), and more recently in ***Bhadra International***[5] (endorsing in it, the law declared by a Learned Single Judge in ***Lite Bite***[6], when interpreting and applying ***Perkins Eastman***[7]) unequivocally makes it clear that the process of appointment has to involve both parties or the appointment is to be by the Court under Section 11 of the Act. Paragraphs 8, 9 and 10 of IIFL extract from these precedents.

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2 *TRF Ltd. v. Energo Engg. Projects Ltd.- (2017) 8 SCC 377*
3 *Perkins Eastman Architects DPC v. HSCC (India) Ltd.- (2020) 20 SCC 760*
4 *Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company- (2025) 4 SCC 641*
5 *Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India- 2026 INSC 6*
6 *Lite Bite Foods Pvt. Ltd. v. Airports Authority of India -2019 SCC OnLine Bom 5163*
7 *Perkins Eastman Architects DPC and Anr. v. HSCC (India) Ltd.- (2020) 20 SCC 760*

16. For purposes of this judgement, extraction of just the following paragraph from ***Bhadra International*** would suffice:

> *38. One another good reason to hold the aforesaid is that, **although Section 11(2) of the Act, 1996, stipulates that the parties are free to agree on a procedure for appointing the arbitrator or arbitrators, yet this freedom is not unbridled**. The exercise of **party autonomy must operate within the framework of the Act, 1996**. In case of conflict, **mandatory provisions of the Act, 1996, prevail over the arbitration agreement**.*
>
> ***[Emphasis Supplied]***

17. This extraction is necessary because Mr. Khandeparkar would seek to distinguish the facts of this case by pointing to the nature of the arbitration clause in the contract. He would fairly submit that ICICI is reviewing its options after the declaration of the law in ***IIFL*** and pleads that no direction need be issued to the Audit Committee of ICICI to conduct a review of compliance with the law declared by the Supreme Court, as has been done in ***IIFL.***

Arbitration Agreement:

18. The arbitration agreement i.e. Clause 28 of the terms and conditions made applicable to the personal loan granted to the Petitioner is extracted below:

> ***28. Online Dispute Resolution (ODR)**: **Any claim or dispute whatsoever** (whether in contract, tort or otherwise) arising out of or in connection **under the terms of facility**, including any question regarding its construction, meaning, existence, validity,*

*breach, recall, recovery or termination, **shall be resolved and settled by mediation or conciliation** (**if the Borrower(s) and ICICI Bank agree to such mediation or conciliation**), administered **in accordance with the applicable mediation or conciliation rules of an independent online dispute resolution institution listed on ICICI Bank Limited website** ("ODR Institutions"). **Any party may appoint any listed ODR institutions to facilitate mediation or conciliation**. **If one Party appoints an ODR institution before the other, the ODR institution appointed by the first Party shall be binding on other party**. **If the Borrower(s) and ICICI Bank do not agree to mediation or conciliation**, or **if the mediation or conciliation fails to resolve** the claim or dispute within the period stipulated in such rules or **within a period of 21 days from the date of notice of appointment of mediator or conciliator** (whichever is earlier), **then the claim or dispute shall be taken forward for adjudication by arbitration in terms of the applicable rules of said ODR Institution**, and in accordance with the Arbitration and Conciliation Act, 1996, **which shall be conducted** (including for recording of evidence or tendering of documents), concluded and administered online by ODR Institution **through its website/platform or mobile application**. The **arbitral tribunal shall consist of an independent sole arbitrator appointed in accordance with the applicable arbitration rules of the ODR Institution**. The seat of arbitration proceedings shall be Mumbai. The law governing the arbitration proceedings shall be Indian law. The procedural law of arbitration shall be rules of ODR Institution.*

[Emphasis Supplied]

19. This is a problematic clause. A careful reading of the expansive verbiage in it, would show that the clause entails an agreement to resort to mediation or conciliation through an ODR Platform. The words in parentheses, namely, "*(if the Borrower(s) and ICICI Bank agree to such mediation or conciliation)*" are at the threshold of the provision. If the parties do not agree to mediation or conciliation by an ODR Platform, it begs the question as to how arbitration

could commence under the rules of that ODR Platform. For mediation or conciliation to fail, it has to commence. For it to commence, the parties have to agree. If the parties do not agree, it is inexplicable that the ODR Platform would proceed to conduct arbitration unless arbitration is invoked in accordance with law. That entails a notice under Section 21 of the Act, a wait for 30 days to build consensus over the Arbitral Tribunal, failing which resort could be had to Section 11 of the Act.

20. Leaving this lacuna aside, there is a semblance of choice of ODR Platforms that is sought to be suggested in the clause, but Mr. Khandeparkar fairly admits that at all times relevant to this Petition, the "list" of ODR Platforms contained only one name – the ODR Platform which picked the arbitrator who has passed the Impugned Order, now withdrawn.

21. More importantly, the clause does not indicate where on the ICICI website the list of ODR Platforms would be found. The counterparty would need to conduct a search to find out which institution is listed on the ICICI website. Mr. Khandeparkar submits that the Petitioner would have checked the ICICI website when he executed documentation with ICICI and would be deemed to have applied his mind to the identity of the named ODR Platform, which was the sole name on its website then, and therefore consciously agreed to the arbitration clause with knowledge of this ODR Platform being the chosen forum. A list indicating names of three ODR Platforms was tendered

by Mr. Khandeparkar across the bar as the current list of ODR Platforms on ICICI's website.

22. This does not turn the needle at all in favour of ICICI in terms of the rule of law in commencement of arbitration. Needless to say, who gets on to the list on ICICI's website and who stays out of it is purely a matter of ICICI's sole choice. It is a list curated by ICICI. There is no element of choice or exercise of party autonomy that lies at the foundation of arbitration agreements that would be in play.

23. The seeming choice in the arbitration agreement is also noteworthy – either party may initiate mediation or conciliation, but the ODR Platform suggested by the party that moves first would be the chosen ODR Platform. If the disputes are not resolved in 21 days (assuming the parties agreed for mediation or conciliation), the arbitration would kick in. This also raises the issue of when the arbitration proceedings actually commence, which under Section 21 of the Act, is the date of invocation of arbitration. The mere transposition of a curated list of ODR Platforms would not somehow cleanse the infirmity of one party alone selecting the catchment list of ODR Platforms, from which the other party has the seeming right to make an ostensible choice. In any case, a choice from a list curated by the other party, and that too with a first-mover advantage to the curating party initiating the mediation, runs counter to the bedrock of party autonomy.

24. To simply apply this contractual framework to the facts of this case, it is noteworthy that the Petitioner has been raising concerns about mis-selling to ICICI and his relationship manager. All that ICICI does when a customer raises such a grievance, is to pick an ODR Platform from the list and ask it to send a conciliation and mediation notice. This act would then, according to ICICI, bind the counterparty to eventual arbitration by an arbitral tribunal in the formation of which, the counterparty would have no say. All of this would run the course, if one ignores the fact that the words in parentheses extracted above (about the need for agreeing on mediation or conciliation) are ignored.

25. In the facts of this case, there was a list of only one name at all times relevant to the dispute. Therefore, there was no question of choice whatsoever in any case. Even if there had been more than one ODR Platform, giving room for an ostensible choice, it would have still been without compliance with the foundational principles of the Act. This is what has been declared in the judgements of the Supreme Court referred to above, and explained in more detail in ***IIFL***.

26. To be clear, this is not a case of parties having a contract with an agreed and named ODR Platform in their contract, but a clause permitting one of the parties to curate a list of ODR Platforms of its choice from which a purported choice could ostensibly be made later. If the agreement between the parties were to have a named independent arbitrator or arbitral institution, the

position in law could be different, but if one of the parties has, in substance, been contracted out of its right to choose an arbitrator by having a purported choice only from a list curated by the other party, it would endorse and build further upon the unequal strengths of the parties that disrupts party autonomy in making a choice.

Seventh Schedule:

27. Mr. Khandeparkar goes a step further to invoke Explanation 3 in the Seventh Schedule of the Act (which deals with the disqualifications in relation to independence and impartiality of arbitrators), which reads thus:

> *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.*
>
> ***[Emphasis Supplied]***

28. I am afraid this provision has nothing to do with entitling one party to unilaterally select an arbitrator or select an institution that would appoint the arbitrator. This is a provision that deals with the scenario of multiple arbitral proceedings being handled by the same arbitrator or set of arbitrators.

29. In any case, for a bank to conduct recovery proceedings at an industrial scale across multiple accounts through a self-chosen ODR Platform, from its curated pool of arbitrators, can lead to multiple cases being handled by the

same individual arbitrator. The ODR Platforms would need to enhance their catchment area and expand their pools, but recovery proceedings where orders under Section 17 are passed with barely any display of facts much less complex facts, would hardly fall within the ambit of the kinds of arbitration where it is a custom and practice to appoint from a specialised pool of arbitrators. There is nothing specialised in recovery proceedings akin to maritime disputes or commodities disputes for the pool to be a small and narrow one, to necessitate the mitigation in respect of multiple disputes of the same litigant being handled by the same individual arbitrator.

30. Therefore, Explanation 3 of the Seventh Schedule makes no difference to the analysis above. The issue in this judgement is one of the rule of law and compliance with the framework of the Act. What banks, particularly large ones need to do is to be compliant with the law declared by the Supreme Court and ensure that the process of appointment of arbitrators is genuinely independent and informed by consent of the parties, rather than control who can make the appointment, and thereby hope that the process of appointment would become independent. Indeed, such a practice can lead to concentration of multiple arbitration proceedings with individual arbitrators, necessitating invocation of Explanation 3 to claim specialisation akin to maritime law or complex commodities transactions.

31. Since Mr. Khandeparkar has assured that ICICI is in any case reviewing the process of appointment of arbitrators, no specific direction is passed about the Audit Committee having to examine the matter – that is a requirement by law and I have no reason not to take Mr. Khandeparkar's assurance that the approach will be reviewed.

32. The Petition is ***finally disposed of*** with the aforesaid observations and findings on law to ensure future compliance.

33. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]