HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 17398/2024

M/s Sundaram Finance Limited, Office No. 21, Patullos Road, Chennai 600002, Through Its Authorised Signatory Shri Arun Khandelwal S/o Late Shri Bhajan Lal Khandewal.

----Petitioner

Versus

1 Hanuman Prasad S/o Bhanwarlal, R/o Billu, Tehsil Makrana, District Nagaur

2 Anita W/o Hanuman Prasad, R/o Billu, Tehsil Makrana, District Nagaur

----Respondents

For Petitioner(s)	:	Mr. R.K. Agarwal, Sr. Adv. Assisted by Mr. Adhiraj Modi & Mr. Naman Yadav
For Respondent(s)	:	

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment/Order

Reportable

Date of hearing and conclusion of arguments	02.04.2026
Date on which the judgment was reserved	02.04.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	24.04.2026

1. In the present appeal, the notices were issued to the respondents however, when service was not effected through ordinary mode, substituted mode of service was adopted. Vide order dated 09.10.2025, the application for substituted service was allowed and the petitioner was directed to effect service by way of publication in the daily newspaper. However, despite service through paper publication also when none appeared to

oppose the present writ petition, this court heard the matter in *ex-parte* and the order was reserved.

2. The present writ petition has been filed assailing the orders dated 09.05.2024 and 06.07.2024, passed by learned Commercial Court, Ajmer, in Execution Application No. 59/2024 and Civil Misc. Case No. 01/2024 (CIS No. 06/2024), whereby the execution application filed under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') was dismissed and even the review petition preferred by the petitioner was dismissed.

3. The facts in a nutshell are that in the year 2019, the respondents have approached the petitioner to avail a financial/loan transaction in the nature of a loan facility against the purchase of a vehicle to the tune of Rs.6,80,000/- vide loan agreement No. P010700530 dated 06.11.2019. The borrowers i.e. respondent No.1 and 2 in the capacity of borrower and co-borrower executed the loan agreement and agreed to adhere to the repayment schedule as envisaged.

3.1 Accordingly, the appellant in order to secure the repayment of the loan had hypothecated the vehicle i.e. Hyundai i20, 2020 Model bearing registration No. RJ 37 CB 1276, as secured asset, in favour of the petitioner.

3.2 The respondents-borrowers as per the terms of the loan agreement were jointly and severally liable to repay the loan amount. Further, the repayment of the aforesaid loan facility had to be made in equal monthly installments and the secured asset were to remain hypothecated in favour of the petitioner till the satisfaction of the loan agreement.

3.3 Due to the onset of the COVID-19, certain guidelines were issued by the Reserve Bank of India and in view of the same, the petitioner granted benefits of the moratorium to the respondents. Pursuant to the availing of the aforesaid loan facility and the benefits of the moratorium granted, the respondents failed to adhere to the repayment schedule and started committing default in repayment. The petitioner made several requests to the respondents, however they failed to repay the dues and even the handing over of the possession of the hypothecated asset.

3.4 As the respondents have defaulted in their repayment obligation, the petitioner in accordance with the arbitration clause under the loan agreement, issued a notice dated 22.04.2022, whereby the respondents were called upon to repay the outstanding amount of Rs.5,77,223.03/-. Despite the demand notice, the respondents failed to repay the outstanding dues. Thus, in furtherance of the arbitration clause in the loan agreement, the petitioner was compelled to initiate arbitration proceedings and as per Article 22 of the loan agreement, the parties had envisaged the reference for adjudication of the dispute through the 'Madras Chamber of Commerce and Industry' (hereinafter referred to as the 'MCCI').

3.5 Since the respondents have failed to repay the outstanding dues, the petitioner invoked the arbitration clause and approached the MCCI for appointment of a sole arbitrator vide letter dated 16.011.2022. In pursuance of the same, vide letter dated 30.11.2022, the MCCI appointed Mr. Murali Rathinasamy (hereinafter referred to as the 'Ld. Sole Arbitrator') as the sole arbitrator to adjudicate the matter.

3.6 The Ld. Sole Arbitrator thereafter issued a notice dated 08.12.2022 along with the declaration under Section 12(1)(b) of the Act of 1996 and the respondents were called upon to appear on 09.01.2023. However, they failed to appear before the Ld. Sole Arbitrator and inspite of granting opportunities, the respondents did not appear for the proceedings.

3.7 In such event, the Ld. Sole Arbitrator proceeded ex-parte and passed the arbitral award dated 13.04.2023 for Rs.4,23,102.90/-. The arbitral award was circulated by the Ld. Sole Arbitrator to the respondents vide registered post on 17.03.2023.

3.8 However, after expiry of statutory limit of three months under Section 34 of the Act of 1996, the petitioner preferred an execution petition bearing No. Execution Case No. 59/2024 before the Ld. Commercial Court, Ajmer for recovery of an outstanding amount of Rs.5,06,650/- as on the date of filing of the execution petition. During the execution proceedings, despite there being no objections by the respondents, the learned Commercial Court *suo moto* treating the appointment of arbitrator as unilateral appointment, vide order dated 09.05.2024, dismissed the execution petition on the ground of unilateral appointment and without due consideration of the facts and circumstances of the case.

3.9 Aggrieved of the order dated 09.05.2024, the petitioner preferred a review petition bearing No. 01/2024 (CIS No.06/2024) on the ground that the Ld. Sole Arbitrator was appointed by the MCCI in terms of the arbitration clause of the loan agreement and furthermore, MCCI is being an independent and impartial body,

the appointment cannot be termed as unilateral. However, even the review petition came to be dismissed vide order dated 06.07.2024.

3.10 Hence, aggrieved by the orders dated 09.05.2024 and 06.07.2024, the petitioner has preferred the present civil writ petition.

4. Learned counsel for the petitioner at the outset submitted that the learned Commercial Court had wrongly dismissed the execution and review petition of the petitioner without adequately examining the evidence and legal principles violating the principles of natural justice, fairness and rule of law.

4.1 Learned counsel for the petitioner submitted that the learned Commercial Court has made unreasonable findings on multiple folds which includes the observation made with regard to the arbitration venue i.e. the Ld. Sole Arbitrator was appointed at Chennai whereas the respondent was from Nagaur. Learned counsel submitted that the learned Commercial Court has failed to apply the principle of party autonomy as enshrined under Section 20(1) of the Act of 1996, which explicitly provides that the parties to an arbitration agreement have the autonomy to mutually decide the place of arbitration. Learned counsel drew attention to the contractual stipulation wherein the parties to the loan agreement have unanimously agreed the place of arbitration as Chennai. Learned counsel thus, submitted that the dismissal of the execution petition on account of territorial jurisdiction was without any basis.

4.2 Learned counsel for the petitioner further submitted that the finding as arrived by the learned Commercial Court with regard to

the appointment of arbitrator not being in compliance with the statutory provision is perverse and incorrect as there exists no bar under the Act of 1996 which restrains a party to appoint an Arbitrator rather under Section 11 (2) of the Act of 1996, the parties are empowered to agree on a procedure for appointment of an arbitrator. However, vide impugned orders, the learned Commercial Court has completely invalidated the procedure agreed by the parties. Moreover, Article 22 of the loan agreement had clearly stipulated the law and jurisdiction clause that would govern the parties to the agreement.

4.3 Learned counsel for the petitioner contended that vide impugned order, the learned Commercial Court has held that the petitioner has unilaterally appointed the Ld. Sole Arbitrator and has not obtained the consent of the respondents, whereas in the loan agreement entered between the parties, it has been clearly stipulated that all the disputes arising between the parties shall be settled through a sole arbitrator to be appointed by the MCCI, which is independent and impartial body having no connection or influence of the petitioner.

4.4. Learned counsel for the petitioner further submitted that this is not a case where there is unilateral appointment of a Sole Arbitrator rather the Sole Arbitrator was appointed by the MCCI, which is a recognised institution. In order to support his argument, learned counsel for the petitioner relied upon the list of 'Permanent Ordinary Members' issued by the Indian Council of Arbitration wherein MCCI is included bearing Membership No. OP/ICA/0051. Similarly, the name of MCCI is also reflected in the Membership Directory, 2026 issued by the International Council

for Commercial Arbitration, wherein the MCCI finds place under the list of arbitral institutes in India.

4.5 Learned counsel for the petitioner submitted that the learned Commercial Court has failed to appreciate the fact that the Union of India had issued a letter dated 18.09.2020 bearing No. 'F.No. A-60011/97/2018-admn.III(LA)' (Annexure 9) whereby a list of institutions offering Alternate Dispute Resolution has been designated and promulgated wherein the MCCI has been considered as one of such institution by the Department of Legal Affairs. Thus, the finding as arrived by the learned Commercial Court is *non-est* as in a case where the parties decide to rely upon Institutional Arbitration, the proceedings are governed by the rules and regulations framed by the Institution. Learned counsel thus submitted that the reasoning of learned Commercial Court assuming the delegation of the power of the appointment of the Ld. Sole Arbitrator by the MCCI is misplaced and liable to be quashed.

4.6 Learned counsel for the petitioner further contended that the learned Commercial Court proceeded on patently erroneous factual premises in holding that the Ld. Sole Arbitrator failed to make the requisite disclosure. The record, however, demonstrates that the Arbitrator had duly complied with the mandate of Section 12 read with Sixth Schedule of Act of 1996 and furnished the disclosure in the prescribed form. The finding of the learned Commercial Court, therefore, is vitiated by a clear misappreciation of facts.

4.7 Learned counsel for the petitioner with regard to the application of disqualification provision under Section 12(5) of the

Act of 1996 submitted that the learned Commercial Court applied the said provision in a mechanical manner without examining whether the case falls within any of the categories enumerated under the Seventh Schedule. The statutory scheme makes it clear that ineligibility under Section 12 (5) of the Act of 1996 only arises when there exists a relationship between the parties/counsel with the arbitrator or the subject matter squarely falls within specified categories. However, in the present case, the case of arbitrator does not squarely fall within the category so mentioned in the schedule. Moreover, the disclosure clearly reveals that neither the Arbitrator nor any parties had any relationship or association with the petitioner that could give rise to ineligibility.

4.8 Learned counsel for the petitioner submits that after participation in the arbitral proceedings without demur amounts to a waiver.

4.9 Learned counsel for the petitioner additionally submitted that the learned Commercial Court further erred in assuming jurisdiction to decide upon the alleged ineligibility at the stage of enforcement. The issue of *de jure* ineligibility, if at all, could only have been raised in appropriate proceedings under Section 14 or 34 of the Act of 1996.

4.10 Learned counsel for the petitioner contended that the learned Commercial Court has exceeded its jurisdiction by adjudicating upon the issue of ineligibility without calling for the arbitral record or permitting parties to lead evidence. The finding regarding alleged disqualification is thus rendered without any foundational material and is liable to be set aside. Learned counsel argued that while the former may be raised before the Arbitral

Tribunal itself under Section 12 and 16 of the Act of 1996, the latter is to be determined strictly in accordance with Section 34 of the Act of 1996, by a Competent Court. Learned counsel thus, submitted that the learned Commercial Court has conflated these distinct remedies, thereby committing a jurisdictional error.

4.11 Learned counsel for the petitioner submitted that the if the impugned order is allowed to stand, the same would erode the sanctity of arbitration agreements and dilute the principle of party autonomy. Furthermore, such approach would introduce uncertainty and unpredictability in commercial transactions, contrary to the settled principles governing arbitration jurisprudence.

4.12 Learned counsel for the petitioner lastly submitted that the impugned orders thus suffer from manifest errors of law, jurisdictional infirmities, and misapplication of the statutory provisions. Thus, the impugned orders deserve to be quashed and set aside and the arbitral award as passed by the Ld. Sole Arbitrator be enforced in accordance with law.

4.13 Learned counsel for the petitioner relied upon the following judgments to buttress his arguments:

(i) ***Rafique Bibi (Dead) By Lrs. Vs Sayed Waliuddin (Dead) by Lrs. & Ors.****; (2004) 1 SCC 287.*

(ii) ***Vasudev Dhanjibhai Modi vs Rajabhai Abdul Rehman & Ors.****; (1970) 1 SCC 670.*

(iii) ***Dhurandhar Prasad Singh vs Jai Prakash University and Ors.****; (2001) 6 SCC 534.*

(iv) ***Thomas Varghese vs Sundaram Finance Ltd.****; 2026 SCC OnLine Mad 1768.*

(v) ***Sundaram Finance Limited vs S.M. Thangaraj and Ors.****; 2025 SCC OnLine Mad 5428.*

(vi) ***Nandan Biomatrix Limited vs D 1 Oils Limited****; (2009) 4 SCC 495.*

(vii) ***Sanjeev Kumar Jain vs Raghubir Saran Charitable Trust and Ors.****; (2012) 1 SCC 455.*

(viii) ***Sundaram Finance Ltd. vs Ajith Lukose and Anr.****; 2025 SCC OnLine Ker 6754.*

(ix) ***Balaji Enterprises and Ors. vs Sundaram Finance Ltd.****; 2025 SCC OnLine Del 8195.*

(x) ***Jalaram Fabrics vs Nisarg Textiles Pvt. Ltd.****; 2026 SCC OnLine Bom 32.*

(xi) ***KNR Tirumala Infra Pvt. Ltd. vs NHAI****; 2025 SCC OnLine Del 5701.*

(xii) ***Five Star Business Finance Ltd. Through Amit Shrivastava vs Keval Bai and Ors.****; Arbitration Appeal No. 208 of 2025 (Decided on: 16.01.2026) {High Court of Madhya Pradesh, Bench Indore}.*

(xiii) ***Paramjeet Singh Patheja vs ICDS Ltd.****; (2006) 13 SCC 322.*

5. Heard learned counsel for the parties and perused the material available on record.

6. At the outset, the rejection of the execution petition on the ground of place of arbitration is concerned, this Court is of the firm opinion that the same is legally untenable as Section 20(1) of

the Act of 1996 enshrines the principle of 'Party Autonomy'. In a recent judgment in the case of ***J&K Economic Reconstruction Agency vs Rash Builders India Private Limited****; 2026 INSC 368*, the Hon'ble Apex Court while relying upon the landmark judgment passed by a Constitution Bench in the case of ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc.*** *(2012) 9 SCC 552* emphasized that the agreement between parties regarding the seat of arbitration is paramount. Once the parties signed the loan agreement fixing the seat at Chennai, the learned Commercial Court could not invalidate the proceedings merely on the grounds of geographical inconvenience. The relevant paragraph of ***J&K Economic Reconstruction Agency*** (supra) is reproduced herein below:

> *"13. A Constitution Bench of this Court Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (2012) 9 SCC 552, recognised that arbitration is anchored to the seat or place chosen by the parties, and that the law of that seat governs the arbitration. It was observed that Section 20 of the Arbitration and Conciliation Act, 1996 embodies party autonomy in the choice of seat, while also permitting, under sub-section (3), the holding of hearings at a place convenient to the parties."*

7. This Court, further having scanned the record and considered the submissions of the learned counsel for the petitioner, finds that the primary controversy hinges upon whether the learned Commercial Court was legally justified in *suo moto* declaring the award passed by sole arbitrator as non-executable on the grounds of 'unilateral appointment', notwithstanding that the appointment

was facilitated by an independent arbitration institution as per the contractual agreement entered between the parties.

8. On a careful consideration of the arbitration clause, it is undisputed that the clause in the loan agreement expressly provided for reference of disputes to arbitration under the aegis of the MCCI. The said institution, upon invocation of the arbitration clause by the petitioner, appointed the learned Sole Arbitrator. Thus, it is clear from the record that the appointment was not made by the petitioner in its individual capacity but through an agreed institutional mechanism.

It is pertinent to reproduce below the Article 22 pertaining to the Arbitration Clause as contained in the Loan Agreement dated 31.07.2019:

> "
> ***Article 22***
> *Law, Jurisdiction, Arbitration*
> *22. (A) All disputes, differences and/or claim, arising out of this agreement, whether during its subsistence or thereafter shall be settled by arbitration 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 an Arbitrator nominated by the Madras Chamber of Commerce and Industries (MCCI), presently having its office at "Karumuttu Centre", 1 Floor, 634, Anna Salai, Chennai-600 035 or nominated by the Managing Director of the Lender. The proceedings shall be governed by the Rules and Regulations of the MCCI governing arbitration proceedings. If the sole arbitrator is nominated by the Managing Director of the Lender such an arbitrator may follow his/her own rules and procedure. The award given by the sole*

arbitrator shall be final and binding on the parties to this agreement.

It is a term of this agreement that in the event of such an arbitrator to whom the matter has been originally referred, dying or being unable to act for any reason, MCCI or Managing Director of the Lender, as the case may be, shall nominate another person to act as arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his/her predecessor.

(b) The venue of arbitration proceedings shall be CHENNAI.

(c) The arbitrator so appointed herein above shall also be entitled to pass an Award on the hypothecated asset and also on any other securities furnished by or on behalf of any of the parties to the Arbitration."

9. From a bare perusal of the above-mentioned Arbitration Clause, it is evident that the parties had consciously agreed to refer disputes to a Sole Arbitrator appointed by the MCCI i.e. an institutional mechanism. True it is that a letter dated 16.11.2022 (Annexure 5) was issued by the petitioner to the MCCI for appointment of a sole arbitrator which clearly clarifies the fact that the appointment of the arbitrator was thus, not made by the petitioner in its individual capacity, but by the designated institution in accordance with the agreed procedure.

10. The Court further observes that, under the earlier scheme of the Arbitration and Conciliation Act, 1996, the Chief Justice of a High Court had the authority to recognize institutions for the appointment of arbitral tribunals. After the amendment, however, Section 2(c)(a) of the Act of 1996 redefined an 'arbitral institution' as one designated by the Supreme Court or a High Court under

the Act. In addition, Section 11(3-A) of the Act of 1996 granted these courts the power to designate such institutions from time to time, subject to their grading by the Council under Section 43-I of the Act of 1996. Unfortunately, neither Section 2(c)(a) nor Section 11(3-A) of the Act of 1996 has been brought into force, as they have not yet been notified. As a result, the situation remains at a standstill.

11. This Court finds strength in the petitioner's reliance on the recent judgment of ***Thomas Varghese*** (supra) decided on 24/02/2026, wherein the High Court of Madras has categorically held that where the arbitration agreement provides for appointment of an arbitrator through an independent institution, such appointment cannot be characterized as unilateral merely because one of the parties initiates the process. The Court emphasized that institutional arbitration ensures neutrality, independence, and adherence to established procedures, thereby negating any apprehension of bias. The relevant paragraphs of ***Thomas Varghese*** (supra) are reproduced herein below:

> *20. The last and the most important issue to be dealt with is the appointment of Sole Arbitrator by MCCI. It was contended that even though the Sole Arbitrator was appointed by MCCI, that institution is not a recognised institution and hence it tantamounts to unilateral appointment of the Sole Arbitrator which runs against the dictum of the Apex Court in Perkins case referred supra and also the judgment of the Apex Court in Bhadra International (India) Pvt. Ltd. v. Airports Authority of India, 2026 SCC OnLine SC 7.*

21. It will be relevant to extract the Arbitration Clause contained in the Loan Agreement dated 31.07.2019 hereunder:

ARTICLE 22

LAW, JURISDICTION, ARBITRATION

(a) All disputes, differences and/or claim, arising out of this agreement, whether during its subsistence or thereafter shall be settled by arbitration 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 an Arbitrator nominated by The Madras Chamber of Commerce and Industries (MCCI), presently having its office at "Karomuttu Centre", I Floor, 634, Anna Salai, Chennai-600035 or nominated by the Managing Director of the lender. The proceedings shall be governed by the Rules and Regulations of the MCCI governing arbitration proceedings. If the sole arbitrator is nominated by the Managing Director of the Lender, such an arbitrator may follow his/her own rules and procedure. The award given by the sole arbitrator shall be final and binding on the parties to this agreement. It is a term of this agreement that in the event of such an arbitrator to whom the matter has been originally referred, dying or being unable to act for any reason, MCCI or Managing Director of the Lender, as the case may be, shall nominate another person to act as Arbitrator. Such a person shall be entitled to proceed with the reference from the stage at which it was left by his/her predecessor.

(b) The venue of arbitration proceedings shall be CHENNAI.

(c) The arbitrator so appointed herein above shall also be entitled to pass an Award on the hypothecated asset and also on any other securities furnished by or on behalf of the parties to the arbitration.

22. A careful reading of the above Clause shows that the dispute/differences arising out of the parties will be referred to the Sole Arbitrator nominated by the MCCI or the Managing Director of the respondent financial company. If the Sole Arbitrator had been appointed by the Managing Director of the respondent financial institution, straight away it will be hit under Section 12(5) of the Act and the judgment of the Apex Court in Perkins case and Bhadra International case will come into play and the award itself will become a nullity in the eye of law.

23. In the case in hand, admittedly, the Sole Arbitrator was not appointed by the Managing Director of the respondent financial institution.

24. The respondent by communication dated 05.5.2022 addressed to the Registrar of MCCI, requested for appointment of an Arbitrator to adjudicate the claim/dispute between the parties. A copy of this letter was sent to the petitioner as well as the petitioner's father who stood as the guarantor. Even prior to sending such communication to MCCI, the trigger notice was issued under Section 21 of the Act on 09.3.2022. The MCCI appointed a Sole Arbitrator who was a retired District and Sessions Judge and the Sole Arbitrator issued notice to the petitioner and his father along with claim statement and documents filed by the respondent.

25. The crucial issue to be considered by this Court is as to whether such appointment of Sole Arbitrator made by MCCI is valid or it is tainted on the ground that even such appointment will be construed as unilateral appointment of a Sole Arbitrator.

26. In the earlier avatar of the Arbitration Act, there was a mechanism for the Chief Justice of a High Court to recognise an institution for the purpose of appointment of an Arbitral Tribunal. For instance, Nani Palkhivala Arbitration Centre [NPAC] is one such Centre which was designated by the Chief

Justice of the High Court of Madras through a notification as an institution under Section 11(6) of the Act r/w Rule 3 of appointment of Arbitrator by the Chief Justice of the Madras High Court Scheme, 1996.

27. After the amendment was carried out in the Arbitration Act, Section 2(c)(a) defined an arbitral institution to mean an institution designated by the Supreme Court or the High Court under the Act. Similarly, Section 11(3-A) also vested with power to designate arbitral institutions from time to time which have been graded by the Council under Section 43-I for the purposes of the Act. Unfortunately, neither Section 2(c)(a) nor Section 11(3-A) have come into effect till date since it has not been notified. Therefore, there is a stalemate as on today since the Chief Justice has now been replaced by the term 'Court' and there is no mechanism for the Court to designate any arbitral institutions.

28. This Court must also take judicial notice of the fact that many of the financial institutions in order to get over the judgment of the Apex Court in Perkins case have formed associations and given them the name of an arbitral institutions which is manned by their own Arbitrators and they make it look as if the Arbitrator is appointed by the institution. This is clearly a ruse to get over the judgment of the Apex Court and try to achieve indirectly what cannot be achieved directly. Therefore, Courts must be wary and ensure that the genuineness or otherwise of the institution is gone into before recognising the Arbitrator appointed by such arbitral institutions.

29. On the one hand, a party can approach the Court under Section 11(6)(c) for appointment of an Arbitrator if the parties had agreed for the procedure of appointment of an Arbitral Tribunal by an arbitral institution and such institution fails to perform its function. On the other hand, the Act as it stands, does not have a mechanism for the Court to designate arbitral institutions. Hence, the Court has

to perform a balancing act by enquiring on the credibility about the arbitral institution agreed between the parties in the Arbitration Clause and if there is no questionable integrity regarding the arbitral institution, the Court cannot disregard the Arbitrator appointed by such Arbitral Tribunal. Such appointment of an Arbitrator by the arbitral institution cannot be construed as an unilateral appointment of an Arbitrator since the institution is performing its function by appointing an Arbitrator as agreed between the parties and which to an extent is recognised under Section 11(6) of the Act.

30. If one of the party to the agreement approaches an arbitral institution named in the agreement for appointment of Arbitral Tribunal, on receipt of notice, it is always left open to the other party to refuse to give consent if the other party is able to establish that such arbitral institution is nothing but a ruse adopted by the party who approached the institution to get over the issue of unilateral appointment of Arbitrator by having their own team of Arbitrators in the so called arbitral institutions. In such a scenario, the concerned party can workout their remedy by approaching the Court for appointment/termination and substitution of Arbitral Tribunal in accordance with law.

31. The appointment of Arbitral Tribunal by an institution that is agreed upon between the parties per se cannot be dealt with in the same manner in which the Court deals with an unilateral appointment of an Arbitrator. It becomes a question of fact which has to be gone into on a case to case basis and the credibility of the arbitral institution whose services are sought, has to be tested whenever objections are raised by the other party.

32. There is no need for the Court to perform all these balancing acts if only the executive notifies the amendments to enable Courts to designate arbitral institutions under Section 11(3-A) of the Act. Hence, this Court makes a

fervent appeal to the executive to notify the relevant provisions and bring those provisions into effect so that the Supreme Court and High Courts can designate arbitral institutions graded by the Council under Section 43 I of the Act and it will enable the parties to agree upon such designated arbitral institutions for appointment of Arbitral Tribunal and to a great extent, filing applications before the High Court under Section 11 of the act will come down and it will save the precious time of the Courts. Hopefully this clarion call is heard by the executive to immediately take steps to notify the relevant provisions under the Act to designate arbitral institutions.

33. In the light of the above discussion, this Court has to test the credibility of MCCI which has appointed the Sole Arbitrator in this case. The MCCI was came into force much before the law of Arbitration was even conceived. It was started in the year 1836 and it is affiliated to Indian Council of Arbitration. The same is evident from the website of the Indian Council of Arbitration as on 12.11.2025. Even insofar as the list of institutions recognised by the International Council for Commercial Arbitration, the MCCI is recognised as one of the institutions in India.

34. At this juncture, it will be relevant to take note of the judgment of the Kerala High Court in Sundaram Finance Ltd. Case referred supra. In that case, the Arbitral Clause was almost the same and the arbitral institution was MCCI. The learned Single Judge of the Kerala High Court took into consideration Article 22 of the Loan Agreement and held as follows:

> *15. The petitioner's senior counsel, Shri. S. Mukunth, distinguished the present case from the Hedge Finance Ltd. (supra) ruling. He contended that the latter was irrelevant as the arbitrator's appointment was not unilateral by either party. Instead, he pointed out that Article 22 of the Agreement*

mandated a request to the Madras Chamber of Commerce and Industry (MCCI) for the appointment of the sole arbitrator. He relied on a judgment of the supreme court in Nandan Biomatrix Limited v. D1 Oils Limited, [(2009) 4 SCC 495 : (2009) 2 SCC (Civ) 227], Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust, [(2012) 1 SCC 455 : (2012) 1 SCC (Civ) 275] and Amazon.com NV Investment Holdings LLC v.Future Retail Limited, [(2022) 1 SCC 209 : (2022) 1 SCC (Civ) 384].

16. On the other hand, the counsel for the respondent relied on Hedge Finance (supra), wherein this court held thus:

"On an analysis of the amended provisions of the Arbitration and Conciliation Act, 1996 and the exposition of the law laid down by the Hon'ble Supreme Court in the afore – cited decisions, it is abundantly clear that the law mandates that there should be neutrality not only for the Arbitrator but also in the arbitrator selection process as well. Thus, in the post-2015 amendment era, there are only two modes of appointment of a sole Arbitrator (i) by express agreement in writing between the parties, post the dispute, agreeing to waive the applicability of Section 12 of the Act or (ii) by order of appointment by the High court under Section 11 of the Act. If the appointment of a sole arbitrator is made other than by the above 2 methods, the appointment is ex facie bad and is in contravention of the provisions of the Act, which goes to the roots of the matter, and the Arbitrator becomes de jure ineligible to act as an arbitrator by the operation of law.".

17. In the present case, Article 22 of the loan agreement stipulates that the sole arbitrator shall be

nominated by the MCCI Arbitration, Mediation and Conciliation Centre (MAMC), an entity operated by the Madras Chamber of Commerce and Industry (MCCI). Thus, the arbitrator's nomination does not originate from either party. The petitioner requested the institution to make the nomination, and the nomination was subsequently carried out by this independent body, which adheres to its own rules for Arbitration and Conciliation. Consequently, this nomination cannot be construed as one prescribed by the petitioner. The court's judgment in Hedge Finance (supra) addressed a scenario where one party unilaterally nominated the arbitrator without the other party's concurrence or a prior agreement as contemplated under Section 12(5) or its proviso of the Arbitration Act.

18. The apex court in Nandan Biomatrix Limited (supra) held that the crucial determination for the court is the existence of an agreement to refer the dispute to arbitration, with the intention to be discerned from the clauses within the loan agreement. A reading of Article 22 of the loan agreement unequivocally demonstrates the parties' agreement to resolve disputes through institutional arbitration, as opposed to an ad-hoc arrangement.

19. When an institution is approached for arbitration, it is the institution itself that nominates the arbitrator in accordance with its established rules. Neither party holds the prerogative to choose the arbitrator. The apex court in Sanjeev Kumar (supra), in paragraph 39, affirmed that an arbitrator can be appointed directly by the parties, without court intervention, or by an institution specified in the arbitration agreement. In the absence of consensus regarding the arbitrator's appointment, or if the

designated institution fails to fulfill its function, the party seeking arbitration is entitled to file an application under Section 11 of the Act for the appointment of arbitrators.

20. Section 2(6) of the Arbitration Act grants parties the autonomy to determine certain issues, including the right to authorize any person or institution to resolve disputes between them. Furthermore, Section 19(2) of the Act empowers parties to agree on the procedural rules to be followed by the arbitral tribunal in conducting its proceedings.

21. The Counsel also invoked Section 13 of the Act, which mandates that a party intending to challenge an arbitrator must, within 15 days of becoming aware of the arbitral tribunal's composition or any circumstances outlined in Section 12(3), submit a written statement detailing the reasons for the challenge to the arbitral tribunal. Section 12(3) specifies that unless the challenged arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal shall rule on the challenge. If the challenge is unsuccessful, the arbitral tribunal shall continue the arbitral proceedings and issue an arbitral award. In the present case, the respondent has, to date, not approached the Arbitral Tribunal to challenge the arbitrator's appointment.

22. As previously noted, the appointment in Hedge Finance (supra) was made unilaterally by one of the parties to the agreement, namely Hedge Finance. The relevant clause in Hedge Finance (supra) stipulated that all differences or disputes arising from the loan agreement would be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996, or its statutory amendments, and referred to a sole arbitrator appointed by 'HFL'. Thus, in that case,

the sole arbitrator was appointed by HFL, a party to the agreement, without the other party's consent and without an express agreement under the proviso to Section 12 of the Act.

23. Turning to the facts of this case, there was no unilateral appointment by the petitioner. The appointment resulted from a nomination by an institution. Therefore, the court's judgment in Hedge Finance (supra) is not applicable to the present circumstances. Therefore, the appointment in this case stands on a distinct footing.

24. As mentioned earlier, it is true that Hedge Finance (supra) explicitly stated that, following the 2015 amendment to the Arbitration Act, there are only two permissible modes of appointment : (1) by express written agreement waiving the application of Section 12, or (2) by the High Court under Section 11 of the Act. Consequently, it is evident that the decision in Hedge Finance (supra) did not address a situation where an institution was requested to nominate a sole arbitrator. The District Judge failed to consider this crucial distinction while dismissing the aforementioned CMA (Arb) cases. In these circumstances, I am firmly of the opinion that the impugned orders warrant interference, and I hereby do so.

35. It is also relevant to take note of the judgment of the Bombay High Court in Jalaram Fabrics case referred supra. In that case, the institution involved was the Bharat Merchants' Chamber. The Bombay High Court followed the judgment of the Kerala High Court in Sundaram Finance case and it was held as follows:

> *23. The issue of institutional arbitration not suffering from the vice of unilateral appointment is otherwise*

no more res integra and is covered by several decisions of various High Courts. In Sundaram Finance (supra), a Single Judge of Kerala High Court has dealt with the case where arbitration agreement provided for nomination of arbitrator by MCCI Arbitration Mediation and Conciliation Centre run by the Madras Chamber of Commerce and Industry (MCCI). The Petitioner therein had invoked arbitration clause and referred the dispute to MCCI for nomination of arbitrator. The Registrar of MCCI was requested to appoint arbitrator and accordingly the sole Arbitrator was appointed by MCCI. In the light of the above position, the Kerala High Court held in paras-17, 18, 19, 21 and 23 as under:

> *17. In the present case, Article 22 of the loan agreement stipulates that the sole arbitrator shall be nominated by the MCCI Arbitration, Mediation and Conciliation Centre (MAMC), an entity operated by the Madras Chamber of Commerce and Industry (MCCI). Thus, the arbitrator's nomination does not originate from either party. The petitioner requested the institution to make the nomination, and the nomination was subsequently carried out by this independent body, which adheres to its own rules for Arbitration and Conciliation. Consequently, this nomination cannot be construed as one prescribed by the petitioner. The court's judgment in Hedge Finance (supra) addressed a scenario where one party unilaterally nominated the arbitrator without the other party's concurrence or a prior agreement as contemplated under Section 12(5) or its proviso of the Arbitration Act.*
>
> *18. The apex court in Nandan Biomatrix Limited (supra) held that the crucial determination for the*

court is the existence of an agreement to refer the dispute to arbitration, with the intention to be discerned from the clauses within the loan agreement. A reading of Article 22 of the loan agreement unequivocally demonstrates the parties' agreement to resolve disputes through institutional arbitration, as opposed to an ad-hoc arrangement.

19. When an institution is approached for arbitration, it is the institution itself that nominates the arbitrator in accordance with its established rules. Neither party holds the prerogative to choose the arbitrator. The apex court in Sanjeev Kumar (supra), in paragraph 39, affirmed that an arbitrator can be appointed directly by the parties, without court intervention, or by an institution specified in the arbitration agreement. In the absence of consensus regarding the arbitrator's appointment, or if the designated institution fails to fulfill its function, the party seeking arbitration is entitled to file an application under Section 11 of the Act for the appointment of arbitrators.

21. The Counsel also invoked Section 13 of the Act, which mandates that a party intending to challenge an arbitrator must, within 15 days of becoming aware of the arbitral tribunal's composition or any circumstances outlined in Section 12(3), submit a written statement detailing the reasons for the challenge to the arbitral tribunal. Section 12(3) specifies that unless the challenged arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal shall rule on the challenge. If the challenge is unsuccessful, the arbitral tribunal

shall continue the arbitral proceedings and issue an arbitral award. In the present case, the respondent has, to date, not approached the Arbitral Tribunal to challenge the arbitrator's appointment.

23. Turning to the facts of this case, there was no unilateral appointment by the petitioner. The appointment resulted from a nomination by an institution. Therefore, the court's judgment in Hedge Finance (supra) is not applicable to the present circumstances. Therefore, the appointment in this case stands on a distinct footing.

(emphasis added)

24. In Balaji Enterprises (supra), the Division Bench of the Delhi High Court has dealt with a case where arbitration clause provided for resolution of disputes by sole arbitrator nominated by Madras Chamber of Commerce and Industry. The Award was sought to be challenged on the ground that the appointment of Arbitrator was unilateral. The issue before the Delhi High Court is captured in para-2 of the judgment and has been decided in paras-4 and 6 as under:

2. The short question that arises for consideration in these appeals is whether the learned Arbitrator had been unilaterally appointed by the respondent, thereby rendering the Award a nullity in terms of the Judgment of the Supreme Court on this issue.

4. From the above clause, it is apparent that where any dispute arises between the parties in relation to the Agreement, the same was to be referred to a Sole Arbitrator to be nominated either by the Madras Chamber of Commerce &

Industry (in short 'MCCI') or by the Managing Director of the lender. In the present case, the respondent admittedly did not choose the second option; instead, by notice dated 21.08.2023, they invoked the Arbitration Agreement and requested the MCCI to appoint an Arbitrator.

6. Upon receiving the said notice, the MCCI, by its notice dated 27.09.2023, appointed a Sole Arbitrator to adjudicate the disputes between the parties. This notice was also duly sent to the appellants herein. Therefore, it cannot be said that the appointment of the learned Arbitrator was unilaterally made by the respondent. On the contrary, the appointment was made by the Institution which, as per the agreement, had been earmarked by the mutual consent of the parties, as the appointing authority. Such an appointment, in terms of Section 11 of the Arbitration and Conciliation Act, 1996, would be a valid appointment and would not fall foul of Section 12(5) of the said Act.

36. The Delhi High Court in the case of Balaji Enterprises referred supra once again reiterated the above two judgments and even in that case, MCCI was the arbitral institution which appointed the Arbitral Tribunal.

37. Thus, the consistent view of atleast three High Courts shows that such appointment of Arbitrator by an arbitral institution, per se cannot be construed as unilateral appointment of an Arbitrator. The credibility of MCCI was the subject matter in two of the judgments and the Arbitrator appointed by the said institution was upheld."

(emphasis supplied)

12. However, in the present case the learned Commercial Court, proceeded on the premise that the appointment was unilateral.

This finding, in the considered opinion of this Court, suffers from a patent misapplication of both facts and law. Once the parties have contractually agreed to an institutional mechanism for appointment, such procedure falls squarely within the ambit of party autonomy as recognized under Section 11(2) and Section 20(1) of the Act of 1996 and hence, the sanctity of such agreement cannot be lightly disregarded.

13. Further, testing upon touchstone of credibility of MCCI, it is clear from the record that the MCCI was came into force much before the law of Arbitration was even conceived. It was started in the year 1836 and it is affiliated to Indian Council of Arbitration. The same is evident from the website of the Indian Council of Arbitration as on 12.11.2025. Even insofar as the list of institutions recognised by the International Council for Commercial Arbitration, the MCCI is recognised as one of the institutions in India. Further, in view of the consistent view taken by the other High Courts with regard to the credibility of the arbitral institution namely MCCI, this Court is of the opinion that such appointment of Arbitrator by an arbitral institution, per se cannot be construed as unilateral appointment of an Arbitrator.

14. With regard to the other limb of arguments advanced by the learned counsel for the petitioner pertaining to inherent jurisdiction and the executing court, this Court is of the opinion that the learned Commercial Court acted as an appellate body over the award rather than an executing court. It is a well-entrenched principle of law that an executing court cannot go behind the decree or award unless it is shown to be a total nullity

for a patent lack of inherent jurisdiction. Since the arbitrator was appointed via a neutral institution and the respondents failed to challenge the award under Section 34, the award attained finality. As held in ***Vasudev Dhanjibhai Modi*** (supra), a Court will not permit a collateral attack on an award at the execution stage on grounds that were available during the trial or challenge stage. The relevant paragraph of the judgment reads as below:

> *"6. A court executing a decree cannot go behind the decree: between the parties or their representatives it must take the decree according to its tenor, and cannot entertain any objection that the decree was incorrect in law or on facts. Until it is set aside by an appropriate proceeding in appeal or revision, a decree even if it be erroneous is still binding between the parties.*
>
> *7. When a decree which is a nullity, for instance, where it is passed without bringing the legal representative on the record of a person who was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in a proceeding for execution. Again, when the decree is made by a court which has no inherent jurisdiction to make objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record: where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction. In Jnanendra Mohan Bhaduri v. Rabindra*

Nath Chakravarti [LR 60 IA 71] the Judicial Committee held that where a decree was passed upon an award made under the provisions of the Indian Arbitration Act, 1899, an objection in the course of the execution proceeding that the decree was made without jurisdiction, since under the Indian Arbitration Act, 1899, there is no provision for making a decree upon an award, was competent. That was a case in which the decree was on the face of the record without jurisdiction."

15. A bare perusal of the record specifically letter dated 08.12.2022 at page 75 of the paper book of writ petition, demonstrates that the Ld. Sole Arbitrator furnished a disclosure under Section 12 of the Act of 1996. Thus, the finding of the learned Commercial Court of *de jure* ineligibility under Section 12(5) of the Act of 1996 is a misapplication of law. As noted in ***Keval Bai*** (supra), ineligibility only arises if the arbitrator falls under the specific categories of the Seventh Schedule. However, in the present case, the arbitrator was an independent professional appointed through independent institution and there was no evidence produced to show any relationship between the Ld. Sole Arbitrator and the petitioner.

16. Further, the Act of 1996 provides a well-defined mechanism for raising objections to the independence or eligibility of an arbitrator. Challenges to impartiality are to be raised before the arbitral tribunal under Sections 12 and 16, while questions of *de jure* ineligibility fall within the domain of Section 14. The validity of the award itself can only be assailed under Section 34. The learned Commercial Court has conflated these distinct remedies

and dismissed the execution suo-moto without any objections of respondents, which is impermissible. The respondents, having failed to participate in the arbitral proceedings and having chosen not to challenge the award within the statutory period then the executing court cannot *suo moto* dismiss the execution petition when the appointment of arbitrator was not unilateral by the party to the contract but the appointment was by an independent reputed institution. Further this court finds that there is nothing on record to demonstrate that in the functioning of MCCI in any manner there is control of the petitioner.

17. In light of the aforesaid discussion, the writ petition deserves to be and is hereby **allowed**. The impugned orders dated 09.05.2024 and 06.07.2024 passed by the learned Commercial Court, Ajmer are quashed and set aside. The learned Commercial Court is directed to proceed with the execution application afresh and conclude the same expeditiously in accordance with law.

18. No order as to costs.

19. Record of the learned Commercial Court be sent henceforth.

20. Pending applications, if any, stand disposed of.

(BIPIN GUPTA),J

Anand Tanwar/131