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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 08.09.2026***Judgment pronounced on: 16.09.2026******Judgment uploaded on: 16.09.2026***

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CNR No. DLHC010810302024

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FAO (COMM) 221/2024

MATSYA FINCAP PVT LTD

.....Appellant

Through: Ms. Nikita Kumari, Adv.

versus

MOHD HASSINUDDIN

.....Respondent

Through: Mr. Amit Sinha, Adv.

CORAM:**HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MS. JUSTICE SHAIL JAIN****J U D G M E N T****ANIL KSHETARPAL, J.:**

1. The present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the 'A&C Act'], read with Section 13 of the Commercial Courts Act, 2015, assails the order dated 31.08.2024 [hereinafter referred to as the 'Impugned Order'] passed by the learned District Judge-05 (Commercial Court), Central District, Tis Hazari Courts, Delhi in OMP (COMM) No.7/2024, whereby the learned District Judge allowed the Petition under Section 34 of the A&C Act [hereinafter referred to as 'Section 34 Petition'] and set aside the *ex-parte* arbitral award dated 12.10.2020 [hereinafter referred to as the 'Award'] passed by the learned Sole Arbitrator, Sh. Manohar Lal Saini, Advocate.



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2. The principal challenge raised by the Appellant before this Court is that the learned District Judge had no territorial jurisdiction to entertain the Section 34 Petition as the Award was made at Alwar, Rajasthan. The Appellant further contends that the Section 34 Petition was barred by limitation and that the learned Sole Arbitrator had been named in the arbitration agreement itself and, therefore, his appointment was bilateral and not unilateral. It is also contended that the learned District Judge erred in applying the provisions of the Rajasthan Money-Lenders Act, 1963 [hereinafter referred to as 'Money-Lenders Act'], to the Appellant, which is stated to be a Non-Banking Financial Company ('NBFC') registered with the Reserve Bank of India ('RBI').

3. The controversy, therefore, essentially concerns the territorial jurisdiction of the Court entertaining the Section 34 Petition, the validity of the constitution of the arbitral tribunal, and the applicability of the Money-Lenders Act to the transaction in question.

FACTUAL MATRIX:

4. The relevant facts, necessary for adjudication of the present Appeal, may be briefly noticed.

5. The Appellant is a finance company which had advanced a business loan of Rs.2,00,000/- to Mr. Allahuddin s/o Mr. Islamuddin under a Loan Agreement dated 07.05.2019 [hereinafter referred to as the 'Loan Agreement']. The Respondent herein is stated to have executed a Deed of Guarantee, undertaking to repay the outstanding amount in the event of default by Mr. Allahuddin in repayment of the said loan. As recorded in the Award, the Respondent was required to



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repay a total amount of Rs.2,34,000/- in ninety (90) daily instalments. The said agreement also provided for late payment charges at the rate of 36% per annum in the event of default.

6. Disputes arose between the parties on account of alleged defaults in repayment of the loan. The Appellant invoked the arbitration clause and proceedings were initiated before Sh. Manohar Lal Saini, Advocate, who acted as the Sole Arbitrator.

7. The arbitral proceedings were conducted in the absence of the Respondent. The learned Sole Arbitrator proceeded *ex parte* and, *vide* Award dated 12.10.2020, awarded a sum of Rs.5,18,600/- in favour of the Appellant, along with interest at the rate of 18% per annum from 01.07.2020 till realization, besides costs of the arbitral proceedings.

8. The Award records that the subject matter of the arbitration arose out of the Loan Agreement. It further records that the Appellant had sent a Letter of Intent for appointment of the learned Sole Arbitrator and that the learned Arbitrator had thereafter issued an acceptance letter. The Award was made, sealed and signed at Alwar, Rajasthan on 12.10.2020. The office of the learned Sole Arbitrator was also at Alwar, Rajasthan.

9. The Respondent thereafter preferred the Section 34 Petition before the learned District Judge, Central District, Tis Hazari Courts, Delhi, challenging the Award. The Respondent, *inter alia*, contended that the aforesaid loan agreement was void on account of the rate of interest stipulated therein and that the learned Sole Arbitrator had been unilaterally appointed by the Appellant. It was also contended that the



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learned Arbitrator was repeatedly appointed by the Appellant in similar matters.

10. The learned District Judge, *vide* the Impugned Order, accepted the challenge to the Award. The learned District Judge held that the rate of interest contemplated under the agreement was contrary to the maximum rate prescribed under the Money-Lenders Act and, consequently, the agreement itself was rendered void. The learned District Judge further held that the appointment of the learned Sole Arbitrator was unilateral and that there was no subsequent express agreement in writing between the parties, after the disputes had arisen, waiving the applicability of Section 12(5) of the A&C Act.

11. The proceedings before the learned District Judge also merit notice. Respondent No.1 was duly served with notice of the Section 34 Petition on 29.01.2024 and again on 14.02.2024, but did not enter appearance or file any Reply. On 12.03.2024, the learned District Judge accordingly proceeded against Respondent No.1 *ex parte* and closed its right to file Reply. Respondent No.2, the learned Sole Arbitrator, was also served on 30.01.2024 but did not appear or produce the arbitral record despite repeated directions. The orders dated 24.04.2024, 18.05.2024, 04.06.2024 and 24.07.2024 record the continued absence of Respondent No.2 and the non-production of the arbitral record.

12. Aggrieved by the Impugned Order, the Appellant has preferred the present Appeal.



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CONTENTIONS OF THE PARTIES:

13. Heard learned counsel representing the parties and, with their able assistance, perused the record.

14. Learned counsel representing the Appellant has made the following submissions:

i. Learned District Judge erred in entertaining the Section 34 Petition as the Award was passed at Alwar, Rajasthan and, consequently, only the Courts at Alwar could exercise jurisdiction over a challenge to the Award. Reliance has been placed upon the judgment of the Supreme Court in **BGS SGS SOMA JV v. NHPC Ltd.**¹

ii. The Section 34 Petition was filed beyond the period prescribed under Section 34(3) of the A&C Act and learned District Judge failed to determine the question of limitation.

iii. Learned Sole Arbitrator was specifically named in the arbitration clause forming part of the agreement executed between the parties. According to the Appellant, it merely invoked the agreed arbitration clause and referred the dispute to the arbitrator already named by the parties. Therefore, the appointment cannot be characterised as unilateral.

iv. There was no relationship between the learned Sole Arbitrator and the Appellant falling within the categories specified in the Seventh Schedule to the A&C Act.

¹ (2020) 4 SCC 234



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Consequently, according to the Appellant, Section 12(5) of the A&C Act was not attracted and no subsequent waiver was required.

v. The Money-Lenders Act has no application to an NBFC registered with the RBI. Reliance is placed upon the judgment of the Supreme Court in ***Nedumpilli Finance Company Limited v. State of Kerala & Ors.***²

15. *Per contra*, learned counsel representing the Respondent, while supporting the Impugned Order, has made the following submissions:

i. The Award itself records that the Appellant appointed the learned Sole Arbitrator *vide* letter dated 18.08.2020. Thus, the appointment was not the result of any consensual constitution of the tribunal after the dispute had arisen, but was made by the Appellant itself.

ii. Learned Sole Arbitrator was repeatedly appointed by the Appellant in similar matters and that the learned District Judge was justified in taking note of such circumstances while examining the legality of the constitution of the arbitral tribunal.

iii. The absence of a post-dispute express agreement in writing waiving the applicability of Section 12(5) is fatal to the appointment, in view of the judgment of the Supreme Court in ***Bharat Broadband Network Limited v. United Telecoms Limited***³.

² Civil Appeal No.5233/2012

³ (2019) 5 SCC 755



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iv. Learned District Judge correctly applied the provisions of the Money-Lenders Act to the transaction and rightly held the agreement to be unenforceable in view of the rate of interest stipulated therein.

16. No other submissions have been advanced by learned counsel representing the parties.

ANALYSIS AND FINDINGS:

17. Before examining the rival contentions, it is necessary to delineate the scope of appellate interference under Section 37 of the A&C Act. The jurisdiction under Section 37 is narrower than that under Section 34 and is essentially supervisory in nature. The appellate Court is concerned with examining whether the Court exercising jurisdiction under Section 34 has acted within the statutory limits and applied the correct legal principles. It is not open to the appellate Court to reappraise evidence or interfere merely because another view on the facts or merits is possible.

18. The aforesaid principles are well settled by the Supreme Court in *McDermott International Inc. v. Burn Standard Co. Ltd. & Ors.*⁴; *MMTC Ltd. v. Vedanta Ltd.*⁵; *Punjab State Civil Supplies Corporation Ltd. v. Sanman Rice Mills*⁶ and, by the three-Judge Bench in *UHL Power Company Ltd. v. State of Himachal Pradesh*⁷. Interference is therefore warranted only where the order under Section

⁴ (2006) 11 SCC 181

⁵ (2019) 4 SCC 163

⁶ 2024 SCC OnLine SC 2632

⁷ (2022) 4 SCC 116



34 discloses a jurisdictional error, patent illegality, manifest perversity or failure to exercise jurisdiction in accordance with law.

19. The rival submissions are accordingly examined within the aforesaid limited scope, to determine whether the learned District Judge committed any such error while exercising jurisdiction under Section 34 of the A&C Act.

20. The first contention raised by the Appellant concerns the territorial jurisdiction of the learned District Judge. It is contended that since the Award was made and signed at Alwar, the Courts at Alwar alone had jurisdiction to entertain a Section 34 Petition.

21. There can be no quarrel with the proposition that where the parties have designated a particular place as the juridical seat of arbitration, the Courts exercising supervisory jurisdiction over such seat would ordinarily have exclusive jurisdiction in respect of proceedings arising under Part I of the A&C Act. The judgment of the Supreme Court in **BGS SGS SOMA JV** (*supra*) lays down the said principle.

22. However, the Appellant cannot succeed merely by relying upon the fact that the Award bears the place of execution as Alwar. The place where an Award is signed is not, by itself and in every case, determinative of the juridical seat. The question has to be examined from the terms of the arbitration agreement and the circumstances in which the arbitral proceedings were conducted.

23. It is also significant that the objection as to territorial jurisdiction was not pursued before the learned District Judge by



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Respondent No.1, which, despite service, did not enter appearance in the Section 34 proceedings and was proceeded *ex parte*. The Appellant, which seeks to assail the jurisdiction of the learned District Judge before this Court, has not placed on record any material to demonstrate that the question of territorial jurisdiction was raised before the learned District Judge or that the Court was invited to adjudicate upon the same. The Appellant cannot, after having remained absent from the proceedings before the learned District Judge, seek to assail the Impugned Order on a jurisdictional objection which was neither urged nor adjudicated upon by that Court.

24. It is also relevant that, in the present case, the Appellant's office is situated in Delhi, the Guarantee Agreement was executed at Delhi, and the Respondent also resides in Delhi. Further, for execution of the Award, the Appellant had itself filed an Execution Petition before the Court at Delhi, which came to be dismissed on 08.05.2024 on the ground that the Arbitrator had been unilaterally appointed.

25. In any event, the mere fact that the Award was made and signed at Alwar does not, in itself, establish that the Courts at Alwar alone had jurisdiction. As noticed hereinabove, the arbitral record was not produced before the learned District Judge despite repeated directions to the learned Sole Arbitrator. The Appellant, having chosen not to participate in the Section 34 proceedings despite service, cannot now seek to rely upon the absence of the arbitral record to advance an objection as to territorial jurisdiction which it did not place before the learned District Judge.



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26. The next contention concerns the alleged limitation of the Section 34 Petition. Section 34(3) prescribes a period of three (03) months from the date on which the party making the application had received the arbitral award, with a further period of thirty (30) days being available where sufficient cause is shown. The commencement of the period is, therefore, linked to receipt of the Award and not merely to the date on which the Award was made.

27. In the present case, the Respondent specifically pleaded that he had not been served with the Award and had come to know of the Award during the execution proceedings. The Section 34 proceedings were thereafter instituted by the Respondent. At the cost of repetition, it is material to note that, despite service of the Section 34 Petition, the present Appellant did not enter appearance before the learned District Judge and was proceeded *ex parte* on 12.03.2024. The orders passed thereafter also record that the Appellant did not file any reply to the Section 34 Petition.

28. The Appellant has also not demonstrated that this objection was raised before the learned District Judge despite due service of the Section 34 Petition. More importantly, the Appellant has not placed before this Court any material establishing the precise date on which the Respondent received the signed copy of the Award so as to demonstrate that the Section 34 Petition was *ex facie* beyond the statutory period prescribed under Section 34(3) of the A&C Act. In the absence of such material, and particularly when the Respondent had pleaded that knowledge of the Award was acquired subsequently during the execution proceedings, the mere date of the Award cannot, by itself, establish that the Section 34 Petition was barred by



limitation. The Appellant, having remained absent despite service and having not placed the relevant material before the learned District Judge, cannot now seek to make good that omission in the present proceedings under Section 37 of the A&C Act.

29. The principal issue which arises for consideration is the validity of the constitution of the arbitral tribunal. Section 12(5) of the A&C Act provides that notwithstanding any prior agreement to the contrary, a person whose relationship with the parties, counsel or the subject matter of the dispute falls within any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. The proviso permits the parties, subsequent to disputes having arisen, to waive the applicability of Section 12(5) by an express agreement in writing.

30. The Appellant seeks to distinguish the present case from cases of unilateral appointment by contending that the name of Sh. Manohar Lal Saini was already incorporated in the arbitration agreement and, therefore, the parties had mutually agreed upon his appointment.

31. It is correct that the mere pre-designation of an arbitrator in an arbitration agreement cannot, by itself, be treated as invalid. Party autonomy permits parties to agree in advance upon a procedure for constitution of the arbitral tribunal, subject to the statutory requirements of independence and impartiality. However, the Court must examine the actual procedure followed in constituting the arbitral tribunal and not merely the nomenclature employed by a party.

32. In the present case, the Award itself records that the Appellant sent a Letter of Intent to appoint the learned Sole Arbitrator and that



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the learned Arbitrator thereafter issued an acceptance letter. The Award further specifically records that “*the Claimant appointed the undersigned to adjudicate these disputes vide letter dated 18.08.2020*”.

33. It is relevant in this context that the learned Sole Arbitrator was served with notice of the Section 34 Petition on 30.01.2024 and was repeatedly directed by the learned District Judge to produce the arbitral record. Despite such service and repeated directions, the arbitral record was not produced before the learned District Judge. The orders dated 16.02.2024, 12.03.2024, 24.04.2024, 04.06.2024 and 24.07.2024 record the continued non-appearance of the learned Sole Arbitrator and the non-production of the arbitral record.

34. Thus, on the material available before this Court, the constitution of the arbitral tribunal, after the dispute had arisen, was brought about by an act of the Appellant. The mere fact that the name of the learned Arbitrator was contained in the agreement does not, by itself, establish that the subsequent appointment was bilateral, particularly when the Respondent neither participated in the constitution of the tribunal nor consented to the appointment after the dispute had arisen.

35. The distinction sought to be drawn by the Appellant between a named arbitrator and a unilateral appointment is, therefore, of no assistance in the facts of the present case. A named arbitrator may validly constitute the tribunal where the designation itself represents the parties’ mutual and continuing consent to such constitution. However, where the record demonstrates that one party alone invokes



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the clause and appoints the named person after the dispute has arisen, the Court is required to examine the appointment in the context of the statutory safeguards contained in the A&C Act.

36. The Supreme Court in **TRF Limited v. Energo Engineering Projects Limited**⁸, and subsequently in **Bharat Broadband Network Limited (supra)**, has emphasised the mandatory nature of the statutory restrictions governing eligibility and the requirement of an express written waiver contemplated under the proviso to Section 12(5) of the A&C Act. The principle that a party interested in the outcome of the dispute cannot unilaterally constitute the arbitral tribunal has also been recently reiterated by the Supreme Court in **Bhadra International (India) Pvt. Ltd. & Ors. v. Airport Authority of India**⁹. The aforesaid authorities underscore that party autonomy, though fundamental to arbitration, cannot be exercised in a manner which permits one party to retain exclusive control over the constitution of the arbitral tribunal.

37. The said principle has also been applied by this Court in **Kotak Mahindra Bank Limited v. Narendra Kumar Prajapat**¹⁰, where it was held that a party's failure to object to the appointment of a sole arbitrator cannot, in the absence of the statutory requirements, be construed as a waiver of its right under Section 12(5) of the A&C Act.

38. The same principle would apply with greater force where the record demonstrates that the tribunal was constituted entirely at the instance of one party and the opposite party neither participated in the

⁸ (2017) 8 SCC 377

⁹ Civil Appeal Nos.37-38/2026

¹⁰ 2023 SCC OnLine Del 3148



appointment nor subsequently waived its objection in the manner contemplated by the statute.

39. In the present case, there is admittedly no express agreement in writing executed by the Respondent, after the disputes had arisen, waiving the applicability of Section 12(5) or expressly consenting to the appointment of the learned Sole Arbitrator.

40. The Appellant's submission that no waiver was necessary since the learned Arbitrator had no relationship with the Appellant falling within the Seventh Schedule proceeds on a misconception of the issue which arose before the learned District Judge. The question was not merely whether the learned Arbitrator had a specific relationship enumerated in the Seventh Schedule. The Court was also required to examine whether the arbitral tribunal had been constituted through a procedure consistent with the statutory requirement of neutrality and independence.

41. The record further discloses that the same learned Arbitrator had been appointed by the Appellant in a number of proceedings arising out of similar transactions. The learned District Judge has taken note of the material placed before it in connected execution proceedings concerning the appointment of the same Arbitrator. It is also relevant to notice that this Court had occasion to consider a matter concerning the same Appellant and the same learned Sole Arbitrator in EFA (COMM) No.8/2024 captioned ***Matsya Fincap Pvt. Ltd. v. Govind Lal***. The controversy in the said Appeal, however, arose in the context of the validity of an arbitration agreement contained in an acknowledgement letter and the effect of the absence



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of the Appellant's signature thereon. The said decision, therefore, does not directly determine the question arising for consideration in the present Appeal.

42. The said decision is nevertheless noticed as part of the factual background, particularly since it concerned the same Appellant and the same learned Sole Arbitrator. The question of validity of the constitution of the arbitral tribunal in the present case, however, has to be determined independently on the basis of the arbitration agreement and the manner in which the learned Sole Arbitrator came to be appointed.

43. The mere fact that the same Arbitrator may have been appointed in several proceedings cannot, by itself, establish statutory ineligibility under the Seventh Schedule to the A&C Act. The significance of the said circumstance has to be assessed along with the manner in which the tribunal was constituted in the present case and the absence of any post-dispute express agreement in writing waiving the applicability of Section 12(5) of the A&C Act.

44. The contention that the Respondent had waived his objection by not participating in the arbitral proceedings is equally untenable. The statutory requirement under the proviso to Section 12(5) is an express agreement in writing executed after the disputes have arisen. No such agreement has been placed on record. In this regard, it is also relevant that the arbitral record was not produced before the learned District Judge despite repeated directions to the learned Sole Arbitrator. The absence of such record cannot be used to presume a waiver which the statute expressly requires to be in writing.



45. The next issue concerns the applicability of the Money-Lenders Act. The learned District Judge has held that the Appellant fell within the definition of a ‘money-lender’ under Section 2(10) of the said Act and that the interest stipulated under the aforesaid loan agreement exceeded the maximum rate prescribed by the State Government. The learned District Judge consequently held the agreement to be invalid in view of Section 29(3) of the said Act read with Sections 23 and 24 of the Indian Contract Act, 1872.

46. The Appellant has relied upon the judgment of the Supreme Court in *Nedumpilli Finance Company Limited (supra)*, to contend that a NBFC regulated by the RBI falls outside the regulatory field of State money-lending legislation. The said judgment does recognise the primacy of the regulatory framework governing RBI-regulated NBFCs in the field occupied by the Reserve Bank of India Act, 1934. However, the applicability of that principle to the present transaction would necessarily depend upon the precise statutory framework, the nature of the Appellant’s registration and the extent to which the provisions of the Money-Lenders Act are sought to be applied.

47. In the present proceedings under Section 37 of the A&C Act, this Court is not required to undertake an independent determination of the entire regulatory field in which the Appellant operates, particularly when the Appellant did not participate in the Section 34 proceedings despite service and did not place its defence before the learned District Judge. The present Appeal cannot be permitted to become an occasion for the Appellant to supply the material or raise objections which it chose not to place before the learned District Judge.



48. In any event, the finding regarding the constitution of the arbitral tribunal is independently sufficient to sustain the setting aside of the Award. Once the tribunal itself was constituted in a manner inconsistent with the statutory scheme governing impartiality and independence, the Award cannot be sustained merely by establishing that one of the alternative findings returned by the learned District Judge may require further examination.

49. The objection of the Appellant that the learned District Judge proceeded in a mechanical manner by relying upon orders passed in connected matters also does not merit acceptance. The Impugned Order sets out the relevant provisions of the Money-Lenders Act, examines the contractual rate of interest and separately considers the validity of the appointment of the learned Sole Arbitrator. It is also material that the Appellant, despite due service, did not appear before the learned District Judge, did not file a reply to the Section 34 Petition and did not place before that Court the material which it now seeks to rely upon in the present Appeal. The Appellant cannot, therefore, assail the Impugned Order on the ground that the learned District Judge did not consider submissions which were never advanced before it.

50. It is settled that an arbitral award rendered by a tribunal constituted contrary to the mandatory statutory requirements cannot be sustained merely on the ground of party autonomy. Party autonomy is subject to the statutory framework prescribed by the A&C Act. The requirement of an independent and impartial tribunal is integral to the arbitral process.



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51. Consequently, even if the contentions of the Appellant regarding the applicability of the Money-Lenders Act or the territorial jurisdiction of the learned District Judge were to be considered independently, the finding regarding the constitution of the arbitral tribunal furnishes an independent basis for sustaining the setting aside of the Award. This Court, therefore, finds no ground to interfere with the Impugned Order.

CONCLUSION:

52. In view of the foregoing discussion, the present Appeal is devoid of merit. The Appellant has failed to demonstrate any perversity, patent illegality or jurisdictional error in the Impugned Order warranting interference under Section 37 of the A&C Act.

53. Accordingly, the present Appeal is dismissed. The Impugned Order dated 31.08.2024 passed in OMP (COMM) No.7/2024 is upheld.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

SEPTEMBER 16, 2026

s.godara/shah