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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2026

PRONOUNCED ON : 24.02.2026

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Arb.OP(Com.Div).No.598 of 2023

Thomas Varghese
S/o. Varghese George
Kizhakkayil House Chengaroor PO
Mallapally 689594 Chengapoor
Pathanamthitta-689594. ..Petitioner

Vs.

1.M/s.Sundaram Finance Limited
21, Patullos Road
Chennai 600 002.

K.G.Varghese (died) ..Respondents

Prayer: Arbitration Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Arbitral Award dated 13/04/2023 bearing Arbitration Case No.SSP-SF-(MCCI)-1468 of 2022 passed by the Arbitral Tribunal in its entirety.

For Petitioner : Ms.R.Vaishali

For Respondent : Mr.Mukund
Senior Counsel
for Mr.M.Arunachalam

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O R D E R

The petitioner assails the award passed by the Sole Arbitrator dated 13.04.2023 by filing the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity, hereinafter referred to as 'the Act').

2.The respondent/claimant is a financial institution. The petitioner is said to have approached the respondent seeking for financial assistance for purchase of a vehicle. Accordingly, the petitioner and the respondent entered into a loan agreement dated 31.7.2019 and the father of the petitioner also signed in the said agreement in his capacity as the guarantor. A sum of Rs.20,15,000/- was lent towards purchase of vehicle and this amount had to be repaid together with interest in 42 monthly installments commencing from 17.8.2019 to 17.01.2023. The loan dues became outstanding and hence the respondent issued legal notice to the petitioner and his father on 05.6.2021 calling upon them to pay the outstanding dues of Rs.21,91,738.81.

3.On receipt of the above notice, the petitioner surrendered the hypothecated vehicle to the respondent on 11.11.2021.

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4.The hypothecated vehicle was sold by the respondent on 14.2.2022 for a sum of Rs.8,00,000/-. Thereafter, the respondent issued a notice dated 9.3.2022 calling upon the petitioner and his father to pay the shortfall amount of Rs.16,62,289.80 after appropriating the sale amount towards the outstanding dues.

5.The outstanding amount was not repaid back and hence the trigger notice under Section 21 of the Act was issued by the respondent on 05.06.2021 for appointment of an Arbitrator through Madras Chamber of Commerce and Industries [MCCI].

6.Pursuant to the above, the MCCI appointed Sole Arbitrator on 31.05.2022.

7.The respondent filed a claim statement on 26.8.2022 by making a claim of a sum of Rs.15,76,575.52 towards outstanding dues with interest.

8.After the statement of claim was filed by the respondent, an application also came to be filed before the Sole Arbitrator under Section 17 of the Act for a direction to the petitioner and his father to furnish

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security and on failure to attach the property belonging to the petitioner's father who stood as the guarantor for the loan.

9.The Sole Arbitrator issued notice on 23.9.2022 and directed the petitioner and his father to furnish security.

10.Inspite of service of notice, the petitioner and his father did not contest the claim. Hence, they were set ex-parte.

11.PW.1 was examined on the side of the respondent and Ex.A1 to Ex.A9 were marked.

12.In the absence of any contest on the side of the petitioner and his father, the Sole Arbitrator proceeded to deal with the claim and passed an award on 13.04.2023, by directing the petitioner and his father to pay a sum of Rs.15,76,575.52 along with further interest of 18% p.a. from 14.2.2022 till the date of realisation. The Sole Arbitrator also awarded cost. Aggrieved by the same, the present petition has been filed before this Court.

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13.The main ground that was urged by the learned counsel for the petitioner is that there was unilateral appointment of Sole Arbitrator and hence the award passed by the Sole Arbitrator is liable to be interfered by this Court on this ground alone in line with the judgment of the Apex Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.*** Reported in ***[(2020) 20 SCC 760].*** The further ground raised on the side of the petitioner is that the award was passed against a dead person viz., the father of the petitioner who died as early as on 26.01.2023 and hence, the award itself is non-est in the eye of law. The last ground that was raised on the side of the petitioner is that the petitioner did not get an opportunity to contest the case and hence there is violation of principles of natural justice.

14.Per contra, the learned Senior Counsel appearing on behalf of the respondent submitted that this is not a case where there is unilateral appointment of a Sole Arbitrator and the Sole Arbitrator was in fact appointed by the MCCI which is a recognized institution. It was further submitted that the demise of the petitioner's father was never informed to the respondent and in any case, if at all the award abates, it can be only as against the petitioner's father and the award will stand insofar as the petitioner is concerned. The learned Senior Counsel further submitted

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that notice was served on the petitioner and his father and they have not chosen to contest the claim and therefore they cannot be permitted to turn around and complain about lack of opportunity.

15.The learned Senior Counsel in order to substantiate his submission relied upon the following judgments:

(a) Sundaram Finance Ltd., (M/s.) .Vs. Ajith Lukose and Another reported in 2025 KHC OnLine 1733

(b) Jalaram Fabrics .Vs. Nisarg Textiles Pvt. Ltd., in Arbitration Petition No. 267 of 2024 with Interim Application (L) No. 35308 of 2022 dated 8.01.2026

(c) M/s. Balaji Enterprises and Others .Vs.Sundaram Finance Ltd. in EFA(COMM) 8/2025 & CM Appl. 40684/2025 and EFA(COMM) 9/2025 & CM Appl. 40686/2025 dated 24.07.2025

(d) The Member-Secretary, Chennai Metropolitan Development Authority, Egmore, Chennai-600 008. and another .Vs. H.P. Mohamed Madar reported in (1999) 2 LW 150

16.This Court has carefully considered the submissions made on either side and the materials available on record.

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17.This Court will first take up the issue raised by the petitioner by contending that the award itself is a nullity since it has been passed against a dead person.

18.In the case in hand, the petitioner and his father were served notice by the Sole Arbitrator and they have not chosen to appear before the Sole Arbitrator. Therefore, there was no occasion either for the respondent or for the Sole Arbitrator to become aware of the demise of the petitioner's father Mr.K.G.Varghese, who stood as guarantor, on 26.01.2023. In any case, whether there is knowledge or lack of knowledge, the award against a dead person is nullity in the eye of law. Therefore, the award passed on 13.04.2023 insofar as the petitioner's father is concerned is a nullity. Having held so, it must be made clear that such award cannot be held to be a nullity in its entirety and it will certainly bind the petitioner who was the principle borrower.

19.The second issue is regarding the lack of opportunity that was raised on the side of the petitioner. After the Arbitration proceedings were initiated, the Sole Arbitrator issued notice to the petitioner and his father on 09.6.2022. Once again notice was issued on 05.9.2022. The third notice was issued on 23.9.2022 after the respondent filed a petition

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under Section 17 of the Act. For reasons best known to the petitioner and his father, inspite of receiving the notice, they have chosen not to participate in the proceedings. In view of the same, the petitioner has to blame himself for not having participated in the proceedings and the petitioner will not be allowed to turn around and complain that there was lack of opportunity to defend himself in the Arbitral proceedings.

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. and Others Versus Airports Authority of India*** reported in ***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

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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.

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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

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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

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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

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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

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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

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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*

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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], Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust, [(2012) 1 SCC 455] and Amazon.com NV Investment Holdings LLC v. Future Retail Limited, [(2022) 1 SCC 209].

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,

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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.

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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

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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

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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

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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

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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.

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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

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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 ***M/s. Balaji Enterprises*** referred *supra* once again reiterated the above two judgments and even in

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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.

38.In view of the above, this Court is completely satisfied with the credibility of the arbitral institution namely MCCI and the parties having agreed to approach the said institution for appointment of Arbitrator, cannot be allowed to turn around and question the Arbitrator appointed by the arbitral institution. Hence, the award passed by the Arbitral Tribunal does not stand vitiated and the issue raised on the side of the petitioner in this regard stands rejected.

39.Insofar as the merits of the case is concerned, the Sole Arbitrator has properly appreciated the evidence and arrived at a factual conclusion which does not suffer from perversity or patent illegality warranting the interference of this Court.

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40.In the result, this petition stands dismissed and there shall be a direction to the petitioner to pay cost of a sum of Rs.25,000/- to the respondent.

.02.2026

Index:Yes/No
Speaking order/Non Speaking Order
NCC:Yes/No

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N.ANAND VENKATESH, J

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Pre Delivery Order in
Arb.OP(Com.Div).No.598 of 2023

24.02.2026

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