IN THE COURT OF SH. PULASTYA PRAMACHALA
DISTRICT JUDGE, (COMMERCIAL COURT)-01,
PATIALA HOUSE COURT, NEW DELHI

	INDEX	
Sl. No.	**HEADINGS**	**Page Nos.**

PULASTYA PRAMACHALA
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(Pulastya Pramachala)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi

OMP (COMM) No.224/2024

<u>**In the matter of**</u>: -

1. **Sh. Shailendra Datt Raturi**,
S/o Sh. Vidya Datt Raturi

2. **Seema Raturi**
W/o Sh. Shailendra Datt Raturi

Both R/o. G-144, Sec-25, Noida
Uttar Pradesh . **.....Petitioners**

VERSUS

M/s SM Finlease Ltd.
Through its MD/AR Sharad Maheshwari,
504, Cinema Complex, Greater Kailash-II,
New Delhi-110048.

...Defendant

Date of Institution	:	23.10.2024
Arguments heard on	:	18.05.2026
Decided on	**:**	**05.06.2026**
Decision	**:**	**Petition is Allowed.**

JUDGMENT

DESCRIPTION OF THE CASE

1. Petitioners have filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') challenging the arbitral award dated 31.07.2024 as passed by ld. Sole Arbitrator.

2. In the present case, initially the petition under Section 34 of Arbitration and Conciliation Act was filed by the petitioners

before Ld. District Judge (Comm), South East District, Saket Courts, New Delhi. The said petition was dismissed vide order dated 20.09.2024, on the grounds of lack of territorial jurisdiction. Thereafter, petitioners filed this petition before this court.

BRIEF FACTS OF THE CASE

3. Briefly stated, the case of petitioners, as set out in the pleadings, is that in 2020, petitioners approached respondent company seeking a loan of Rs.30,00,000/- to meet their financial needs, to which respondent agreed to lend the amount. Loan agreement dated 31.10.2020 was executed between the parties. On the allegations of breach of the loan agreement by petitioners in making defaults in tendering their EMIs as per schedule 1 of the agreement, respondent issued loan recall notice on 07.02.2023. Thereafter, petitioner no. 1 issued a cheque for Rs.26,00,000/- towards partial repayment of the loan, and the petitioner no. 2 issued a cheque for Rs.30,00,000/- as partial repayment. But both cheques were dishonored on presentation on 25.07.2023 due to insufficient funds.

4. As per petition, petitioners mortgaged their property located at Khata No. 34, Khasra No.1644 K Min, admeasuring 0.0569 hectares, Dehradun, by depositing the title deed with the respondent. The respondent initiated arbitral proceedings against the petitioners, with the alleged intention to take possession of the petitioners' property. Respondent appointed Sole Arbitrator, who passed award in favor of the respondent.

GROUNDS OF CHALLENGE

5. Aggrieved by the arbitral award dated 31.07.2024, petitioners have preferred present objections under Section 34 of the Act, inter alia, on the following relevant grounds: -

i. That the respondent despite receiving Rs.56.00 lakhs, still claims the full loan amount. Petitioners had returned Rs.23.00 lakhs on 31.10.2020 out of separate loan of Rs.50.00 lakhs;

ii. That petitioners have no interest liability after March 2022, because they had requested for exact closure amount, but respondent did not provide the same;

iii. That respondent, even after receiving of about entire amount, is still claiming the entire loan amount again;

iv. That the agreement is not legal as there was no such loan agreement executed between the parties as the respondent got signed some blank papers, which was misused by the respondent;

v. That the respondent had not issued any sanction letter;

vi. That there is no agreement regarding appointment of sole arbitrator;

vii. That the award is against spirit of law of the land;

REPLY OF RESPONDENT

6. No reply was filed by the respondent. However, written submission was filed on behalf of respondent, wherein respondent averred that the present petition is wholly misconceived, legally untenable, and liable to be dismissed in limine, being an impermissible attempt to assail a reasoned arbitral award, on grounds beyond the limited statutory scope of

interference. Respondent averred that it is a settled proposition of law that proceedings under Section 34 are supervisory and not appellate in nature, and this court cannot undertake re-appreciation of evidence or substitute its own view for that of ld. Arbitrator. Ld. counsel has relied upon **Delhi Airport Metro Express Pvt. Ltd. v. Delhi Metro Rail Corporation Ltd, (2022) 1 SCC131**. Respondent averred that petitioners have failed to disclose any ground falling within the ambit of Sections 34(2) or 34(2A) of the Act so as to warrant interference with the impugned award.

7. Respondent pleaded that pursuant to invocation of the arbitration clause contained in Clause 4.5 of the Loan Agreement dated 31.10.2020, Mr. Abhay Sahai, Advocate, was duly appointed as the Sole Arbitrator, who made the requisite disclosures under Section 12 of the Arbitration and Conciliation Act, 1996 and assumed jurisdiction in accordance with the express contractual mandate of the parties. Respondent averred that it is an admitted case that petitioners themselves approached the respondent for financial accommodation against mortgage/security of the subject property. Petitioner pleaded alleged repayment of substantial amounts towards the said liability; consequently, the petitioners cannot be permitted to simultaneously contend that the foundational contractual documentation, including the underlying transaction and consequential arbitral mechanism, is fabricated or non est. Such mutually destructive pleas strike at the very credibility of the challenge and render the present petition wholly untenable in law.

8. Respondent averred that the petitioner admits entering into a loan agreement dated 31.10.2020 with respondent for loan amount of Rs. 30,00,000/-, which was disbursed on 31.10.2020, for a tenure of 36 monthly instalments, strictly in accordance with the loan agreement executed between the parties, which stipulates that in the event of any delay in repayment, even of a single day, respondent would be entitled to levy penal interest at the rate of 3% per month, compounded monthly, without prejudice to its other rights and remedies, and that any payment received would be deemed to have been received on the last date of the month in which such payment was made. Despite these clear and binding obligations, the petitioner committed repeated defaults in payment of EMIs, thereby squarely attracting the clause 2 and 2.2.1. Respondent averred that ld. Sole Arbitrator was jointly appointed by both parties and is not a unilateral appointment. The loan agreement dated 31.10.2020 being the basis of the disputes between the parties herein, is an admitted document, which contains the arbitration agreement at Clause 4.5 and since both the parties being the signatories to the said agreement have jointly appointed the named Arbitrator, Mr. Abhay Sahai, Advocate, thus, it is not a case of unilateral appointment. Respondent averred that since ld. Arbitrator is not an employee of the respondent, no apprehension arises with respect to independence or impartiality of the Arbitrator. In support of his submission, ld. counsel relied upon **Indian Oil Corporation Ltd. and Ors. v. Raja Transport (P) Ltd., (2009) 8 SCC 520**, wherein in para 19, it has been held that : -

"19. While considering the question whether the arbitral procedure prescribed in the agreement for reference to a named arbitrator, can be ignored, it is also necessary to keep in view Clause (v) of Sub-section (2) of Section 34 of the Act which provides that an arbitral award may be set aside by the court if the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties (unless such agreement was in conflict with any provision of Part-I of the Act from which parties cannot derogate, or, failing such agreement, was not in accordance with the provisions of Part-I of the Act). The legislative intent is that the parties should abide by the terms of the arbitration agreement. If the arbitration agreement provides for arbitration by a named Arbitrator, the courts should normally give effect to the provisions of the arbitration agreement. But as clarified by Northern Railway Administration, where there is material to create a reasonable apprehension that the person mentioned in the arbitration agreement as the Arbitrator is not likely to act independently or impartially, or if the named person is not available, then the Chief Justice or his designate may, after recording reasons for not following the agreed procedure of referring the dispute to the named arbitrator, appoint an independent Arbitrator in accordance with Section 11(8) of the Act. In other words, referring the disputes to the named arbitrator shall be the rule. The Chief Justice or his designate will have to merely reiterate the arbitration agreement by referring the parties to the named arbitrator or named Arbitral Tribunal. Ignoring the named Arbitrator/Arbitral Tribunal and nominating an independent arbitrator shall be the exception to the rule, to be resorted for valid reasons."

9. Ld. counsel argued that pursuant to invocation of the arbitration clause contained in Clause 4.5 of the loan agreement dated 31.10.2020, Mr. Abhay Sahai, Advocate, was duly appointed as the Sole Arbitrator, who made the requisite disclosures under

Section 12 of the Arbitration and Conciliation Act, 1996 and assumed jurisdiction in accordance with the express contractual mandate of the parties.

10. Ld. counsel argued that vide order dated 01.12.2023, petitioner appeared for himself and petitioner no. 2 and sought 15 days' time to file statement of defense and gave assurance that "I and my wife, who are respondent in these matter state that we shall not dispose off or sell the properties/assets". Ld. counsel argued that petitioners have never raised objection to the appointment of the arbitrator. Respondent pleaded that no Section 16 application was preferred by the petitioners challenging that the Arbitral Tribunal does not have the jurisdiction nor was the appointment of ld. Arbitrator challenged.

ARGUMENTS OF PETITIONERS

11. Learned counsel for petitioners filed written submissions on the lines of the submissions made in the petition. Ld. counsel argued that there was no arbitral agreement executed between the parties and the respondent has manipulated the blank signed cheques, documents and papers of the petitioners. Ld. counsel argued that ld. Arbitrator intentionally and deliberately did not allow the petitioners to defend their case and without any consent letter, he started proceedings exparte. Ld. counsel argued that petitioners have already paid the entire amount to the respondent. Petitioner argued that they have paid total amount in both loans Rs.79,80,000/- to the respondent through bank transfer and

Rs.10.00 lakh as cash. In support of his submission, ld. counsel has relied upon following judgments: -

i. **State of Goa v. M/s Western Builders; (2006) 6 SCC 239;**

ii. **Bharat Broadband Network Ltd. v. United Telecoms Ltd.; (2019) 5 SCC 755;**

iii. **Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760.**

APPRECIATION OF ARGUMENTS, LAW & FACT, AND FINDINGS

12. I have carefully considered the submissions advanced by learned counsel for the petitioner, and have perused the arbitral record, the impugned award, and the materials placed on record.

13. The general principles are that Arbitrator is a Judge of the choice of the parties and his decision, unless there is an error apparent on the face of the award which makes it unsustainable, is not to be set aside by the court, even if the court of law could come to a different conclusion on the same facts. The court cannot reappraise the evidence and it is not open to the court to sit in appeal over the conclusion of the Arbitrator. It is not open to the court to set aside a finding of fact arrived at by the Arbitrator and only grounds on which the award can be set aside are mentioned in the aforesaid provision. Where the Arbitrator assigns cogent grounds and sufficient reasons and no error of law or misconduct is cited, the award will not call for interference by the court in exercise of the power vested in it.

14. Hon'ble Supreme Court in the case of ***Associate Builders vs. Delhi Development Authority, (2015) 3 SCC 49*** held that the interference with an arbitral award is permissible only when the findings of the arbitrator are arbitrary, capricious or perverse or when conscience of the Court is shocked or when illegality is not trivial but goes to the root of the matter. It was held that once it is found that the arbitrator's approach is neither arbitrary nor capricious, no interference is called for on facts. The arbitrator is ultimately a master of the quantity and quality of evidence, while drawing the arbitral award. Patent illegality must go to the root of the matter and cannot be of trivial nature.

15. Hon'ble Supreme Court in the case of ***Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India, 2019 SCC OnLine SC 677,*** held that under Section 34 (2A) of the Act, a decision which is perverse while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. A finding based on the documents taken behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties and therefore, would also have to be characterized as perverse. It was held that a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision, would be perverse and liable to be set aside on the ground of patent illegality.

(Pulastya Pramachala)
District Judge (Commercial Court)-01,
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16. It is well apparent that Order/judgment dated 20.09.2024, as passed by ld. District Judge (Comm-02), South East District, Saket Courts, New Delhi was in respect of territorial jurisdiction only. The court had not dealt with merits of the case on the parameters of Section 34 of Arbitration and Conciliation Act. As per provisions of Order VII Rule 10 CPC, for want of territorial jurisdiction, plaint is returned back to the plaintiff. In my opinion, in such case also, one of the options could have been to return back the petition for its presentation before the court having territorial jurisdiction. Nonetheless, if a fresh objection was filed, in my opinion same would not be barred to be decided on merits, because earlier judgment did not deal with the merits of the case.

17. In the present case on perusal of arbitral record, I could find relevant loan agreement containing the arbitration clause. Clause 4.5 of the loan agreement provides for arbitration and for appointment of arbitrator. This agreement is dated 31.10.2020 and the relevant part is reproduced as under: -

> *"Clause 4.5 Any dispute between the parties in relation to this agreement or in relation to any of the transaction under this agreement shall be amenable to Arbitration by a Tribunal of Sole Arbitrator Mr. Abhay Sahai, Advocate, whose decision shall be final and binding. The place of arbitration shall be Delhi, and the language shall be English, that without prejudice to arbitration, court in Delhi shall have exclusive jurisdiction".*

18. The aforesaid clause of the agreement is clearly in the teeth of law explained by Hon'ble Supreme Court in the case of **CORE v.**

ECI SPIC SMO MCML (2024 SCC OnLine SC 3219). In that case, Hon'ble Supreme Court not only declared the practice of unilateral appointment of arbitrator as illegal and against the norms of equity, the court also declared that all such kind of agreements providing any unilateral appointment of sole arbitrator shall be considered as null and void.

19. Therefore, I have no hesitation to say that aforesaid agreement itself was a void agreement and hence, on the basis of the same no appointment could have been made unilaterally by the respondent. The arbitrator was appointed unilaterally, is well reflected from the award itself. The award and first order passed by ld. Arbitrator refer to appointment of ld. Arbitrator, but there is no mention of any written consent/waiver if given by petitioners, for appointment of ld. Arbitrator by respondent. The argument that in the loan agreement itself, petitioners had given consent for appointment of ld. Arbitrator, does not stand the test of legal mandate. As per settled law after amendment in the Act w.e.f. 23.10.2015, it is mandatory to have written consent/waiver from the opposite party after dispute coming into existence. The case law relied upon by respondent pertains to pre amendment period, which cannot be applicable to this case. In ***Bharat Broadband Network Limited*** **v.** ***United Telecoms Limited,*** **(2019) 5 SCC 755**, Supreme Court rejected the contention that the waiver of a right to object the ineligibility of an arbitrator, under Section 12(5) of the A&C Act, could be inferred by conduct. That means that even if petitioners appeared before ld. Arbitrator or participated in the proceedings, such conduct cannot be used

as an excuse for non-compliance of mandate u/s 12 (5) of the Act.

DECISION

20. In view of my foregoing observations, discussions and findings, I do find that appointment of Sole Arbitrator by respondent, was without compliance of mandate of S. 12 (5) of the Act, thereby making the appointment illegal and arbitration proceedings void ab initio. Hence, petition is allowed and award is set aside.

21. File be consigned to record room after due compliance.

PULASTYA PRAMACHALA

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Pronounced in the Open Court on this 5th Day of June, 2026

(PULASTYA PRAMACHALA)
District Judge (Commercial Court)-01,
Patiala House Court, New Delhi