

5EX CIVIL 955/22
Kotak Mahindra Bank Limited Vs. Nidhi Soni

02.03.2024

Present: Sh. Vidhur Sikka, Ld. counsel for DH (through VC).

The Division Bench of Hon'ble High Court of Delhi in the case of Kotak Mahindra Bank Ltd vs Narendra Kumar Prajapat EFA (COMM) No. 3/2023, decided on 17.05.2023 has held that an arbitral award passed by an arbitrator unilaterally appointed by a party is a nullity and thus, cannot be enforced.

In the present case, the arbitral award reflects that the Claimant/DH has appointed the sole arbitrator. Subsequently, upon ex-parte arbitral award, the DH has filed present execution petition as the arbitral award is deemed to be a decree/order of the Court. Thus, the said act of the DH reflects that the authority was with the DH to appoint the Sole Arbitrator. On the face of it, the appointment of Arbitrator without the consent of JD was unilateral and Award passed by such Arbitrator is not enforceable.

Furthermore, if a single party to the agreement is allowed to unilaterally appoint the Arbitrator, then it would defeat the purpose of the impartial arbitration adjudication of the disputes between the parties. As per the provisions of the Arbitration and Conciliation Act, 1996, the Arbitrator either has to be appointed with consensus of the parties or by the court. Cases wherein the clause of contract between the parties give right of appointment of Arbitrator to one party only,

contd...2/-

: 2 :

the said clause clothes one of the parties to the contract with the exclusive right to appoint the arbitrator. Such a clause is not enforceable in law and is also violative of section 12(5) of the Arbitration and Conciliation Act, 1996. Thus, it is established that the appointment of Arbitrator by DH is unilateral and the same is contrary to the provisions of the Arbitration and Conciliation Act.

Hence, in view of above discussion, present execution petition stands dismissed as the arbitral award is not enforceable.

File be consigned to record room after due compliance.

Anuradha Jindal
ACJ-CCJ-ARC/South West
Delhi: 02.03.2024