

Execution (Comm.) No.449/2022 (14)
Shri Ram City Union Finance Limited V/s Eklovya Bagri
CNR No.DLNW010123932022

15.03.2024

Present: None for the Decree Holder.

ORDER

1. Matter has been called out several times since morning. Nobody has appeared for the Decree Holder.

2. This is an execution petition which arises out of Arbitral Award dated 24.06.2021, passed by the sole Arbitrator namely Shri K.V Prasad, Advocate at Chennai. From the perusal of the requisite paragraph(s) of the said Arbitral Award, it is clearly evident that there is no mutuality in the appointment of Arbitrator by the DH and the same is in flagrant violation of the provisions of Section 12(5) r/w Schedule VII of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as “**Act**”).

3. (i) The Hon’ble Supreme Court of India in case reported as, “**(2020) 20 SCC 760**”, titled as, “**Perkins Eastman Architects DPC V/s HSCC India Limited**” has been pleased to lay down that unilateral appointment of Arbitrator without consent of the other party is non-est in law.

(ii) Even the Hon’ble High Court of Delhi in cases reported as, “**2023 Latest Case Law 709 Del**”, titled as, “**Kotak Mahindra Bank**

Limited V/s Narendra Kumar Prajapat”, (DOD: 17.05.2023) and “FAO (Comm.) No.150/2023”, titled as, “GTB Hospital Through Its Medical Superintendent V/s M/s Richpal Singh & Anr.” (DOD: 21.07.2023) has been pleased to authoritatively lay down that the Award rendered by an Arbitrator, who is ineligible to act as an Arbitrator by virtue of Section 12(5) of the “Act” is a nullity and, therefore, cannot be enforced.

(iii) It is pertinent to mention herein that aggrieved by the order dated 17.05.2023, passed by Hon’ble High Court of Delhi in the case of **Narendra Kumar Prajapat** (supra), Kotak Mahindra Bank Limited preferred an SLP (Civil) against the same before the Hon’ble Supreme Court of India. Even the Hon’ble Supreme Court vide its order dated 12.12.2023, passed in **SLP (Civil) Diary No(s).47322/2023**, titled as, **“Kotak Mahindra Bank Limited V/s Narendra Kumar Prajapat”** has been pleased to dismiss the said SLP, thereby upholding the order dated 17.05.2023, passed by the Hon’ble High Court of Delhi.

4. Even recently, the Division Bench of Hon’ble High Court of Delhi in case reported as, **“EFA (Comm.) No.5/2023”, titled as, “Mercedes Benz Financial Services India Pvt. Ltd. V/s M/s Khokher Enterprises” (DOO: 16.01.2024)**, while making reference to order dated 17.05.2023 in case of **Narendra Kumar Prajapat** (supra) as also order dated 12.12.2023 of the Hon’ble Supreme Court, passed in SLP (Civil) No.47322/2023 has been pleased to lay down that **even if no objection is filed by JD, the Court shall not execute an Award passed by unilaterally appointed Arbitrator.**

5. As guided by the law laid down in the aforesaid judgments, the Arbitral Award in question cannot be executed, being nullity in the eyes of law.
6. The execution petition is accordingly dismissed.
7. File be consigned to Record Room after completion of necessary formalities.
8. Dasti.

(Vinod Yadav)
District Judge (Commercial Court)-02
North-West/Rohini Courts/15.03.2024