

01.03.2024

Present: **None.**

None has appeared on behalf of DH despite repeated calls and awaiting.

Record perused.

**ORDER**

1. This is an Execution Petition for execution of the Arbitral Award dated 22.04.2021 by which an amount of Rs.4,92,211/- has been awarded to the DH alongwith interest @ 18% p.a. from 24.11.2020 and cost of Rs.2500/- has been awarded.

2. It is considered that the *ex-parte* Award in question has been passed by Sole Arbitrator unilaterally appointed by the DH. Legal position in light of the facts of the present case has been considered. As per law, as Arbitrator unilaterally appointed by the claimant goes against spirit of Section 15 (5) R/W Schedule VII of Arbitration & Conciliation Act, 1996.

3. In this respect, Hon'ble High Court of Delhi has been pleased to consider and lay down the binding law in **EFA(COMM) 2/2023** CM APPL. 25636/2023, CM APPL. 25637/2023, CM APPL. 25638/2023, CM APPL. 25639/2023 & CM APPL. 25635/2023, in case titled '**Kotak Mahindra Bank Ltd. Vs. Narendra Kumar Prajapat**' vide order dated **17.05.2023**. Hon'ble High Court of Delhi has been pleased to hold that *an 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.* The finding of the Hon'ble High Court of Delhi have been fortified by Hon'ble Apex Court in **Special Leave Petition (Civil) Diary No(s). 47322/2023, vide order dated 17.05.2023.**

4. Accordingly, it is binding well settled law that the Arbitrator unilaterally appointed by the petitioner was ineligible to be appointed as an arbitrator by virtue of *Section 12(5) of the Arbitration and Conciliation Act, 1996* and such unilateral appointment of the Arbitrator, without consent of the other party is non-est in the eyes of law. Hence, any award which is non-est in the eyes of law, cannot be enforced.

5. The present petition is not maintainable as per law and is accordingly **dismissed.**

6. **File be consigned to Record Room, after due compliances.**

(Preeti Agrawal Gupta)  
District Judge (Commercial Court)-01  
North West/Rohini/Delhi/01.03.2024.y