

OMP (COMM.)/12/2021
CNR NO. : DLNW010057792021
FOCUS IMAGING AND RESEARCH CENTRE PVT LTD
THROUGH ITS DIRECTOR
VS.
RATTAN INDIA FINANCE PVT LTD

27-07-2023

Present: Sh. Priyank Kher, counsel for petitioner.
Sh. Abhishek Garg, counsel for respondent.

Heard. File perused.

Vide separate detailed order of even date, the impugned arbitral award dated 02-03-2021 is set aside and petition is allowed and disposed off

Arbitral record be sent back alongwith copy of order.

Original documents, if any, be returned to parties concerned against acknowledgment / receipt after retaining true copy of the same on record.

File be consigned to record room.

(GURDEEP SINGH)
DISTRICT JUDGE (COMMERCIAL COURT)
NORTH WEST/ROHINI/DELHI
27-07-2023

IN THE COURT OF SH. GURDEEP SINGH
DISTRICT JUDGE (COMMERCIAL COURT)-01
NORTH WEST DISTRICT, ROHINI COURTS, DELHI.

CNR NO.: DLNW01-005779-2021

OMP (COMM.) NO. : 12/2021

IN THE MATTER OF :-

1. FOCUS IMAGING & RESEARCH CENTRE PVT. LTD.
THROUGH ITS MANAGING DIRECTOR
MR. PRASHANT SARIN
HAVING ITS REGISTERED OFFICE AT
H-10, GREEN PARK EXTENSION
NEW DELHI
 2. VINOD KUMAR SHARMA
S/O SH. LATE MITHAN LAL SHARMA
AGED 50 YEARS
DIRECTOR OF PETITIONER NO.1
AND HAVING ITS RESIDENCE AT
S-627, SCHOOL BLOCK, SHAKARPUR
NEW DELHI – 110 092
 3. PRASHANT SARIN S/O LATE SH. R. P. SARIN
DIRECTOR OF PETITIONER NO.1
AND HAVING ITS RESIDENCE AT
N-17 A, 2ND FLOOR, GREEN PARK EXTENSION
NEW DELHI-110016
-PETITIONERS
- VERSUS
1. RATTAN INDIA FINANCE PVT. LTD.
HAVING ITS REGISTERED OFFICE AT
5TH FLOOR, TOWER-B, WORLDMARK-1
AEROCITY, SOUTH WEST
DELHI-110037
-RESPONDENT

DATE OF INSTITUTION	:	06-08-2021
DATE OF RESERVING ORDER	:	23-05-2023
DATE OF PRONOUNCEMENT OF ORDER	:	27-07-2023

ORDER/ 27-07-2023

1. Vide this order, I shall decide present objection petition
under S. 34 of Arbitration & Conciliation Act, 1996

(hereinafter referred to as 'Act, 1996' in short) filed by petitioner for setting aside the impugned arbitral award dated 02-03-2021 passed by Sole Arbitrator.

2. Relevant facts as narrated by the petitioner are that petitioner is a company. In 2018, petitioner and respondent no.1 had agreed to execute a loan agreement dated 18-10-2018 and respondent sanction/ disburse a loan of Rs.50 lakhs in favour of petitioner and petitioner continue to pay regularly all the installments and have not defaulted at any point of time. It is further stated that due untoward circumstances owing to a sudden closure of Petitioner's ICICI Bank account due to reasons attributed to fresh guidelines issued by the RBI and with a delay in renewal of HDFC Bank Cash Credit Account, petitioner's electronic clearance services were stressed and came to a complete standstill. In view of same, there was delay in repayment of loan. Petitioner continued to communicate with the respondent and negotiate to reduce monthly installments.
3. It is further submitted that on 22-11-2019, a major fire broke out in one of the petitioner no.1's former centre at C-10, Green Park Extension, New Delhi whereby loss to the tune of several crores was caused to the petitioner. FIR was also registered. In the meantime, the petitioner received acceptance letter of the arbitrator dated 22-01-2020. The respondent invoked arbitration clause and appointed sole arbitrator unilaterally. Petitioner raised objection vide letter dated 06-02-2020 regarding unilateral appointment of arbitrator. Thereafter ex parte award was

passed against petitioner. Hence the present petition.

4. The impugned arbitral award has been questioned primarily on the grounds that without dealing with the objections of jurisdiction and without dealing with the correspondences exchanged with the petitioner, the award was passed and hence same is liable to be set aside on this ground alone. Further, the respondent has sought to unilaterally appoint a sole arbitrator which is contrary to public policy and in support of his submission cited judgment of Hon'ble Apex Court in case titled as *Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.* [2019 SCC Online SC 1517].
5. Further it is also averred that arbitration clause contained in the contract would not exist for want of stamp duty. However, copy of loan agreement was not available with the petitioner and therefore this ground is only presumptive ground.
6. Notice of the petition was issued to respondent. Respondent appeared through counsel and filed reply contesting the objections. It is stated that respondent no.1 granted loan to the applicant of Rs.50 lakhs which was repayable in equated monthly installments (EMIs). However, the petitioner did not adhere to payment discipline and defaulted and hence loan recall notice was issued to the petitioner. Thereafter dispute was referred to the sole arbitrator. In response to judgment cited on behalf of petitioner, respondent cited judgment of Hon'ble High Court of Delhi in case titled *Kanodia Infratech Ltd. v. Dalmia Cement (Bharat) Limited.*

7. Arbitral record was called, received and perused.
8. I have heard counsel for parties and gone through the record.
9. Written submissions was also filed on behalf of petitioner. I have also gone through same.
10. It is submitted by learned counsel for petitioner that he only relied upon judgment of Hon'ble Apex Court in case of Perkins (supra) as in the present case arbitration agreement provides for unilateral appointment of arbitrator, which is contrary to public policy and hence award is liable to be set aside.
11. On the other hand, learned counsel for respondent submitted that in Perkins case, the issue was appointment of arbitrator under S. 11 of Act, 1996 and therefore same is not applicable to the present case and relied upon judgment of our own Hon'ble High Court in case of Kanodia (supra) as notice for appointment of arbitrator was given to petitioner who deliberately chose not to appear.
12. It is relevant here to mention arbitration clause as mentioned in agreement :-

23. Governing Law, Arbitration and Jurisdiction

(a) the agreement shall be governed by and construed in accordance with the laws of India.

(b) All claims, disputes, differences or questions of any nature arising between the parties to this Agreement, whether during or after the termination of the Agreement, in relation to the construction, meaning or interpretation of any term used or clause of this Agreement or as to the rights, duties, liabilities, the Parties arising out of this Agreement, shall be referred to the sole arbitrator appointed by the Lender. The parties hereto mutually agree and confirm that the arbitration proceedings shall be conducted in English and in accordance with the

Arbitration & Conciliation Act, 1996 as amended from time to time and the proceedings shall be held at Delhi or Gurgaon or Mumbai or at any other place at the discretion of the Lender. Pending the giving of the Award including interim award, the Borrower shall be liable to perform all its obligation under this Agreement.

13. Therefore as per agreement, the arbitrator is to be appointed by the lender (herein respondent) which amounts to unilateral appointment by the respondent.
14. Now coming to the cited judgments. There is no dispute with legal proposition. After judgment in case of Kanodia (supra), judgment of Hon'ble Division Bench in case titled *Kotak Mahindra Bank Limited v. Narendra Kumar Prajapat* dated 17-5-2023 reiterated and followed the judgment of Perkins (supra) whereby it is stated that arbitrator appointment unilaterally is without jurisdiction and even execution filed on the basis of award passed by arbitrator unilaterally appointed is not enforceable and liable to be set aside.
15. Therefore in the totality of the facts and circumstance and in view of law laid down in case of Perkins (supra), the arbitral award is set aside. Accordingly, the petition is allowed and disposed off.
16. Arbitral record be sent back alongwith copy of order.
17. File be consigned to record room.

Announced in open court
today i.e. 27-07-2023

GURDEEP
SINGH

Digitally signed
by GURDEEP
SINGH
Date:
2023.07.27
15:26:27 +0530

(GURDEEP SINGH)

DISTRICT JUDGE (COMMERCIAL COURT)-01
NORTH WEST/ROHINI/DELHI