



Somanna Kalappa
Principal Associate

UNILATERAL APPOINTMENT OF ARBITRATOR OPEN TO CHALLENGE

The Madras High Court (“**HC**”), in *Saraj Jyoti Dey* case,¹ held that any right to unilaterally appoint an arbitrator is open to challenge under the Arbitration and Conciliation Act, 1996 (“**A&C Act**”)² and that the court can rectify this error.

Brief Facts.

This judgement concerns a dispute that has its genesis from a loan agreement executed by and between Saraj Jyoti Dey and Bijay Sen (“**Lendees**”) and IndusInd Bank Limited (“**IndusInd**”).

An award by a sole arbitrator (“**Arbitral Tribunal**”) granted in favour of IndusInd was challenged by the Lendees.

Contentions of Lendees.

The appointment of the Arbitral Tribunal is against the law; it violates the principles of natural justice since it is a unilateral appointment.

They were not given a sufficient opportunity to be heard by the Arbitral Tribunal.

The arbitral award is contrary to the public policy.

Relying on *Perkins Eastman Architects DPC* case³ of the Supreme Court (“**SC**”), wherein it made clear that unilateral appointment of sole arbitrator by one of the parties would be ineligible by operation of law.

Contentions of IndusInd.

The remedy available to challenge the unilateral appointment lies under the provision⁴ specifically provided for in the A&C Act before the same Arbitral Tribunal. The Lendees did not resort to this remedy and hence are not entitled to challenge the award.

HC’s Judgement and Reasoning.

The HC:

- Relied on *Perkins Eastman Architects DPC* case (supra), stating that a unilateral appointment of arbitrator is ineligible by operation of law.

¹ *Saraj Jyoti Dey and Another Vs. M/s. IndusInd Bank Limited*, 2023 SCC OnLine Mad 1931.

² Section 34 of the A&C Act providing for “*Application for setting aside arbitral award*”.

³ *Perkins Eastman Architects DPC Vs. HSCC (India) Ltd*, 2019 SCC OnLine SC 1517.

⁴ Section 13 of the A&C Act providing for “*Challenge procedure*”.

- Held that the Lendees are entitled to challenge the appointment of the arbitrator under the A&C Act,⁵ even if they participated in the arbitration proceedings.
- Highlighted its responsibility to address errors in decisions to prevent miscarriages of justice.
- Followed its decision by citing *Hindustan Zinc* case⁶ in which it was determined that a plea of inherent lack of jurisdiction can be raised at any stage, including collateral proceedings.
- Cited its decision in *Sanjay Pukraj Bafna* case⁷ to support the conclusion that an improper arbitrator appointment invalidates the arbitration award as it affects the foundation of the process.
- Concluded that, from the outset, the arbitration proceedings were flawed due to the IndusInd's unilateral appointment of the sole arbitrator. It also noted that the Arbitral Tribunal failed to provide the Lendees with a fair opportunity to present their case, further violating the principles of natural justice.
- Ruled in favour of the Lendees, setting aside the arbitral award.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: info@counselence.com. Past issues of *Counselence Connect* are available at the 'Newsletters' page of our website (www.counselence.com).

⁵ Section 34 of the A&C Act.

⁶ *Hindustan Zinc Ltd. v. Ajmer Vidyut Vitran Nigam Ltd.*, (2019) 17 SCC 82.

⁷ *Sanjay Pukraj Bafna v. Volkswagen Finance (P) Ltd.*, 2020 SCC OnLine Bombay 6362.