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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL EXECUTION APPLICATION (L) NO. 5277/2022

ALONGWITH

INTERIM APPLICATION NO. 1950/2022

IN

COMMERCIAL EXECUTION APPLICATION (L) NO. 5277/2022

L & T Finance Ltd.)
(Formerly Known As L & T Housing)
Finance Ltd))
Having its registered office at)
Brindavan, Plot No. 177, CST Road,)
Kalina Santacruz (East),)
Mumbai – 400 098)
HEAD OFFICE AT)
15th floor, Rupa Solitaire, Office Nos. 1508)
and 1509, Building No.A-1, Sector -1,)
Mahape, Millennium Business Park,)
Navi Mumbai – 400 710)
BRANCH OFFICE)
5th floor, DCM Building,)
16 Barakhamba Road Connaught Place,)
New Delhi – 110 001)

..... Applicant
(Judgment Creditor)

VS

1) Sangeeta Bhansali (Borrower))
A-102, B Wing, Juhu Trishul Building,)
Gulmohar Cross Road No.6, JVPD Scheme,)
Vile Parle (W), Mumbai)

2) Aditya Bhansali (Co-borrower))
A-102, B Wing, Juhu Trishul Building,)
Gulmohar Cross Road No.6, JVPD Scheme,)
Vile Parle (W), Mumbai)

..... Respondents
(Judgment Debtor)

Adv. Disha Karambar i/b. Disha Karambar & Associates for the Applicant.

Adv. Abhishek Sawant a/w. Adv. Vaishali Sanghavi, Adv. Pratik Shetty, Adv. Ameet Mehta i/b. M/s.Solicis Lex for the Respondent.

Adv. Rubin Vakil – *Amicus Curiae* is present.

CORAM : RAJESH S. PATIL, J.

RESERVED ON : 14 JANUARY, 2026

PRONOUNCED ON : 17 JANUARY, 2026

JUDGMENT :-

1) The dispute between the parties is arising out of Loan Agreements. The Respondent no. 1 is Borrower who had approached and applied for mortgaged loan facilities from the Applicant-claimant. The Respondent no. 2 is the Co-Borrower for the loan advanced to the Respondent no. 1. Since the dispute arose between the parties under the said agreement, the claimant invoked Arbitration Clause, hence the lender – L & T Finance, appointment Sole Arbitrator, and the matter was referred to Arbitration.

2) Before the Sole Arbitrator, the Judgment Debtor initially raised the issue of unilateral appointment of Sole Arbitrator, by filing an Application under Sections 12, 16 r/w. ground no. 22 of the Fifth Schedule of the Arbitration and Conciliation Act, 1996 (for short “Act, 1996”). The said Application filed by the Judgment Debtor was

rejected by the Sole Arbitrator by its Order dated 23 July, 2019.

3) Similarly, before the Sole Arbitrator, the Judgment Debtor had filed an Application u/s 13(2) of the Act, 1996, for termination of the mandate of the Sole Arbitrator. The said Application filed by the Judgment Debtor was also rejected by an Order dated 30 July, 2019.

4) The Sole Arbitrator proceeded further with the arbitration hearing and by his Order dated 7 August, 2019 passed an Award directing the Judgment Debtor to pay to the Claimant a sum of Rs.1,01,12,482/- and a sum of Rs.1,57,559/- in respect of two loan accounts and further to pay interest on the said principal amount along with costs and fees of the Arbitrator.

5) Admittedly, the Judgment Debtor did not challenge the Award by filing an Application under Section 34 of the Act, 1996.

6) Since the decretal amount was not paid, the Claimant, filed this Commercial Execution Application before this Court, in which an Interim Application for disclosure of assets along with other reliefs was sought. In reply to the said Interim Application, the Judgment Debtor has once again raised an issue about Unilateral appointment of the Sole Arbitrator is *void ab-initio*.

7) Learned Single Judge of this Court (Coram : Abhay Ahuja, J.) by order dated 14 October, 2025 appointed Counsel Mr. Rubin

Vakil as an *Amicus Curiae* in the present proceeding.

8) I have heard learned Counsel for the Decree Holder, Judgment Debtor and learned *Amicus Curiae*. I have also gone through the documents on record and judgments cited by the counsel.

9) Supreme Court in its recent judgment, decided on 5 January, 2026, in the matter of ***Bhadra International (India) Pvt. Ltd. and others vs. Airport Authority of India***, Civil Appeal No. 37-38 of 2026, was dealing with the facts where the sole arbitrator passed an Award whereby claims and counter claims of the respective parties were rejected. Aggrieved by the dismissal of its claim, the appellant challenged the award u/s 34 before the Single Judge of Delhi High Court. While the said application u/s 34 was pending, the appellant sought to amend its application and to contend that since the arbitrator was appointed ‘unilaterally’, the award was liable to be set aside. The said amendment application of the appellant was rejected by the Single Judge. Being aggrieved by the said rejection, the appellant preferred an appeal u/s 37, before the Division Bench, which was also dismissed, pursuant to which the appellant preferred an SLP before the Supreme Court.

10) The Supreme Court by its judgment dated 5 January, 2026, allowed the appeal and set aside the impugned judgment

passed by the Division Bench of the Delhi High Court and further set aside the award passed by the sole arbitrator. The Supreme Court in its analysis in paragraph no.33 has held that the principle of 'equal treatment of the parties' means that the parties must have the possibility of participating in the constitution of the arbitral tribunal on equal terms. Further in paragraph no.38, it held that one another good reason to hold the aforesaid is that, although Section 11(2) of the Act, 1996, stipulates that the parties are free to agree on a procedure for appointing the arbitrator, yet this freedom is not unbridled. The exercise of party autonomy must operate within the framework of the Act, 1996. In case of conflict, mandatory provisions of the Act, 1996, prevail over the arbitration agreement. And furthermore, in paragraph no. 67, it held that once the Chairman is rendered ineligible by operation of law, he cannot nominate or appoint another person as an arbitrator. To illustrate, one who cannot sit on a chair himself cannot authorise another to sit on it either.

11) So also, in paragraph no. 68, it held that the present case was squarely covered by the decisions of Supreme Court in *Perkins Eastman Architects DPC & ANR. vs. HSCC (India) Limited*, reported in (2020) 20 SCC 760 and *Bharat Broadband Network Ltd. vs. United Telecoms Ltd.*, reported in (2019) 5 SCC 755. Hence, the unilateral

appointment of a sole arbitrator is void-ab-initio, and the sole arbitrator so appointed is *de-jure* ineligible to act as an arbitrator in terms of Section 12(5) read with the VII Schedule of the Act, 1996. It further held in paragraph no.98, that thus, all the High Court decisions taking a contrary view to the present judgment would stand overruled.

12) Furthermore, in paragraph nos. 113 and 116, it held that a challenge to an arbitrator's ineligibility could be raised at any stage and even in execution. Paragraph nos. 113 and 116 read as under:-

113. A challenge to an arbitrator's ineligibility could be raised at any stage because an award passed in such circumstance is non-est, i.e., it carries no enforceability or recognition in law. We say so because an arbitrator does not possess the jurisdiction to pass an award. In arbitration, the parties vest the jurisdiction in the tribunal by virtue of a valid arbitration agreement and an appointment made in accordance with the provisions of the Act, 1996. The jurisdiction is grounded in the consent of the parties as explained in the foregoing paragraphs of this judgment.

116. This Court, in catena of decisions, has held that the validity of a decree can be challenged even in execution proceedings if the court passing such decree lacked subject-matter jurisdiction over the dispute. As a decree passed by a court without jurisdiction goes to the root of the matter. Any decision passed by a court lacking jurisdiction would be coram non judice, since a court cannot give itself jurisdiction. No act of the parties can cure an inherent lack of jurisdiction.

[Emphasis supplied]

13) The Bench further referred to the earlier judgments of

Supreme Court passed in (i) *Hira Lal Patni v. Kali Nath*, reported in *1961 SCC OnLine SC 42*, (ii) *Hindustan Zinc Ltd. vs. Ajmer Vidyut Vitran Nigam Ltd.*, reported in *(2019) 17 SCC 82* and (iii) *Kiran Singh vs Chaman Paswan*, reported in *AIR 1954 SC 340*, which held that it is a fundamental principle well-established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings.

14) The view taken by Supreme Court in *Bhadra International* (supra) is squarely applicable to the present proceeding.

15) The learned *Amicus Curiae* referred to the judgment passed by the Division Bench of the Delhi High Court in *Kotak Mahindra Bank vs. Narendra Kumar Prajapati* reported in *2023 SCC OnLine Del 3148* in which the Division Bench was considering the appeal of a bank, which challenged the order passed by the Single Judge, where the Bank's application for enforcement of an *ex-parte* arbitral award was rejected. Considering the judgment passed by Supreme Court in *TRF Ltd. vs. Energo Engineering Projects Ltd.*, reported in *(2017) 8 SCC 377*, *Perkins Eastman* (supra), *Bharat*

Broadband Network Limited (supra), the Division Bench dismissed the appeal. The bank carried the matter to the Supreme Court by way of an Special Leave Petition. The Supreme Court by its order dated 12 December, 2023, dismissed the Special Leave Petition on the ground that the arbitrator was unilaterally appointed and hence was ineligible to be appointed as an arbitrator by virtue of Section 12(5) of the Act, 1996. Hence, the view taken by Delhi High Court, was accepted.

16) So also, a Single Judge of the Gujarat High Court in the case of *Samunnati Finance Pvt. Ltd. vs. M/s. Ramdev International Castor Products Pvt.Ltd.* reported in *Civil Revision Application No.471 of 2025 dated 1 September, 2025* was deciding a question about whether an arbitral award passed by an arbitrator who was appointed by one party only, is executable or not ? Considering the judgment of the Supreme Court passed in *Sunder Dass vs. Ram Prakash* reported in (1977) 2 SCC 622 and the judgment passed in *Core vs. ESI Spic SMO MCML (JV)*, 2024 SCC OnLine SC 3219, *TRF Limited (supra)*, *Perkins Eastman (supra)*, *Bharat Broadband Network Ltd* (supra), and the judgment of Division Bench of Delhi High Court in *Kotak Mahindra Bank Ltd. vs. Narendra Kumar Prajapat*, reported in 2023 SCC Online Del 3148, set aside the arbitration award holding that the award as void ab initio and held that the award cannot be enforced,

as not a legal decree and thus is non executable.

17) I am in agreement with the view taken by the Delhi High Court Division Bench and the Single Judge of Gujarat High Court.

18) As far as the two other authorities referred in the present proceedings, one of which was decided by me i.e. *M/s. Truly Pest Solution Private Limited vs. Principal Chief Mechanical Engineering (P.C.M.E.) Central Railway dated 11 November, 2024 in Arbitration Petition No. 43 of 2023*, in paragraph no. 19, it has been specifically recorded by me that the claimants have by letter dated 18 December, 2020 signed waiver form and on their signature, they had sent it across to the respondents (Railways). The waiver letter also had a covering letter of the claimants wherein the claimants repeated its desire to waive as per the provisions of the, proviso to section 12(5) of the Arbitration Act.

18.1) Single Judge of Madras High Court in *Sundaram Finance Ltd. vs. S.M.Thangaraj* reported in *2025 SCC OnLine Mad 5428* has held that the executing court cannot go behind the decree unless it is shown that it was passed by a court inherently lacking jurisdiction. The learned Single Judge according to me in a true sense did not consider the findings recorded by the Supreme Court in *TRF Limited*

(supra) and *Perkins Eastman* (supra), though referred. And in any case, in the judgment of *Bhadra International* (supra) passed recently by the Supreme Court, in paragraph no. 98, it held that all the High Courts decision taking a contrary view would stand overruled. Therefore, in my view, even the finding recorded by the Single Judge of Madras High Court in *Sundaram Finance Ltd.* (supra) will not be helpful to the applicant in the present proceedings.

19) Therefore, considering the law laid down by the Supreme Court specifically in *Bhadra International* (supra), I have reached to a conclusion that the Award and the Commercial Execution Application needs to be set aside.

20) Hence, **Arbitral Award** dated 7 August, 2019 passed by the sole arbitrator is **set aside** and the **commercial execution application** also stands **dismissed**.

20.1) In sequel, **interim application**, also stands **disposed of** accordingly.

21) It would be open to the parties to initiate fresh arbitration proceedings in accordance with law.

22) As far as limitation is concerned, the period from invocation of arbitration till today be excluded in initiating fresh

arbitration proceedings.

23) This Court also expresses its appreciation for the valuable assistance and contribution rendered by the learned *Amicus Curiae*, Mr. Rubin Vakil.

(RAJESH S. PATIL, J.)