2026:DHC:7227

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 24.08.2026***

\# **CNR No. DLHC010283322026**

\+ **O.M.P. (T) (COMM.) 66/2026 and 17050/2026**

MADHYACHAL STEELS PRIVATE LIMITED & ORS.
.....Petitioners

Through: Ms. Tesu Gupta, Advocate.

versus

CLIX CAPITAL SERVICES PRIVATE LIMTIED .....Respondent

Through: Mr. Ravi Shankar Garg, Ms. Mamta Garg and Ms. Akansha Maheshwari, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*Oral*)

1. The present petition has been filed by the petitioners under Section 14 read with Section 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "**the A&C Act**") seeking termination of the mandate of the learned Sole Arbitrator, Mr. Nishant S. Diwan, Advocate, in the arbitral proceedings titled *M/s Clix Capital Services Pvt. Ltd. v. M/s Madhyachal Steels Pvt. Ltd. & Ors.*, bearing Arbitration Case No. CC/NSD/CNICA/58/2026.

2. The petitioner no.1 is a company incorporated under the Companies Act, 2013, engaged in the manufacture and supply of industrial steel products at Indore, Madhya Pradesh. The petitioner nos.2 and 3 are its directors, and are also arrayed as co-borrowers in respect of the facility in question. The respondent is a non-banking financial company registered with

the Reserve Bank of India, engaged in the business of extending lending and credit facilities.

3. The petitioners approached the respondent for financial assistance for their business operations. Pursuant thereto, the parties executed a Business Loan – Sanction Cum Facility Agreement dated 30.04.2025 (hereinafter referred to as "**the Facility Agreement**"), bearing Loan Account No. SIDBUSI000843345, whereunder a facility in the sum of Rs.35,24,981/- (Rupees Thirty Five Lakhs Twenty Four Thousand Nine Hundred and Eighty One only) came to be sanctioned in favour of the petitioners.

4. Disputes are stated to have arisen between the parties on account of alleged non-repayment of the said facility. The respondent issued a loan termination/recall notice dated 14.11.2025, claiming a sum of Rs.37,32,637/- to be due and outstanding as on that date.

5. Clause 10.5 of the Facility Agreement, which constitutes the arbitration agreement between the parties, reads as under:

> *"10.5. Arbitration: In case of any dispute arising out of or in relation to the Facility Documents, the Parties shall settle the dispute through arbitration under the Indian Arbitration and Conciliation Act, 1996 (as amended or restated from time to time). The arbitration shall be referred to a sole arbitrator appointed by the Lender. The seat of arbitration proceedings shall be New Delhi, India. All proceedings shall be in English. The award of the arbitrator shall be final and binding on the Parties and the expenses of the arbitration shall be borne in such manner as the arbitrator may determine."*

6. It is thus evident, on the face of the record, that the arbitration agreement between the parties vests the power of appointment of the sole arbitrator exclusively in the respondent/lender.

7. By notice dated 26.11.2025, the respondent informed the petitioners that it proposed to "confer" its right of appointing the sole arbitrator under the Facility Agreement upon the Council for National and International Commercial Arbitration (hereinafter referred to as "**CNICA**"), and that CNICA would appoint the sole arbitrator.

8. By notice dated 24.12.2025, CNICA appointed Mr. Nishant S. Diwan, Advocate, as the learned Sole Arbitrator to adjudicate the disputes arising under the Facility Agreement. The said notice records that the appointment was made pursuant to the sole request of the respondent.

9. It is not in dispute that the petitioners were at no stage consulted in regard to the constitution of the arbitral tribunal, and that they did not concur in the appointment so made.

10. It is the case of the petitioners that the learned Sole Arbitrator proceeded to pass interim directions for the marking of lien over their bank accounts. In this regard, the petitioners have placed on record:

(i) letter dated 05.03.2026 issued by Kotak Mahindra Bank to the petitioner no.3, intimating the marking of a lien in the sum of Rs.12,44,212/- upon Account No.1911302443, stated to be pursuant to an order dated 13.02.2026;

(ii) letter dated 23.04.2026 issued by Kotak Mahindra Bank to the petitioner no.2, intimating the marking of a lien in the sum of Rs.18,66,318/- upon Account No.5111292016, stated to be pursuant to an order dated 11.04.2026, a copy whereof is stated never to have been supplied to the petitioners; and

(iii) an intimation by HDFC Bank, Trade House Branch, Indore, to the petitioner no.2 with regard to the marking of a lien upon Account No.00361000274479.

11. In the aforesaid backdrop, the present petition has been filed, seeking termination of the mandate of the learned Sole Arbitrator. Additionally, by way of I.A. 17050/2026, the petitioners seek a stay of the operation, implementation and effect of the orders/ directions passed by the learned Sole Arbitrator, including the directions pursuant to which lien has come to be marked upon their bank accounts, as also a stay of further proceedings in Arbitration Case No. CC/NSD/CNICA/58/2026.

12. Learned counsel for the petitioners submits that the appointment of the learned Sole Arbitrator is *ex facie* contrary to the settled position of law. It is submitted that Clause 10.5 of the Facility Agreement reserves the power of appointment solely to the respondent, which is itself an interested party, and that the appointment stands vitiated on that ground alone.

13. It is further submitted that the interposition of CNICA does not cure the vice, inasmuch as the conferral of the appointing power upon CNICA was itself a unilateral act of the respondent, undertaken after the disputes had arisen, and that CNICA in turn made the appointment at the sole request of the respondent. It is submitted that the learned Sole Arbitrator has consequently become *de jure* unable to perform his functions within the meaning of Section 14(1)(a) of the A&C Act, and that the proceedings held before him, including the interim directions on the basis of which lien has come to be marked upon three bank accounts of the petitioners, are *non est*.

14. During the course of the hearing, the respective counsel for the parties have consented to the termination of the mandate of the learned Sole



Arbitrator, who came to be unilaterally appointed at the request of the respondent.

15. The question as to whether an arbitration agreement contemplating the appointment of an arbitrator by only one of the parties to the dispute is permissible under the scheme of the A&C Act is no longer *res integra*.

16. In ***TRF Ltd. v. Energo Engineering Projects Ltd.***, (2017) 8 SCC 377, the Supreme Court observed that once a person becomes ineligible by operation of law to act as an arbitrator, he cannot nominate another person as an arbitrator.The relevant portion has been produced hereunder:

> *"54. ..... By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse ....."*

17. Furthermore, in ***HRD Corporation (Marcus Oil and Chemical Division) v. GAIL (India) Ltd.***, (2018) 12 SCC 471, it was observed that ineligibility goes to the root of the appointment, and that once an arbitrator becomes ineligible under Section 12(5) read with the Seventh Schedule, he becomes *de jure* unable to perform his functions within the meaning of Section 14(1)(a) of the A&C Act. The relevant portion has been produced hereunder:

> *"13. .....Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(a), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible"....."*

18. The principle in *TRF Ltd.* (supra) was carried to its logical conclusion in***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (2020) 20 SCC 760, wherein it was observedthat a party having an interest in the outcome of the dispute cannot be permitted to have the exclusive right to appoint a sole arbitrator:

> *"21. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the Arbitration Application No.32 of 2019 Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd. course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator."*

19. The position was thereafter set at rest by a Constitution Bench of the Supreme Court in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)***, (2025) 4 SCC 641, which observed that the principle of equal treatment of parties enshrined in Section 18 of the A&C Act operates at the stage of the constitution of the arbitral tribunal as well, and that an appointment procedure which permits a party interested in the dispute to unilaterally appoint the sole arbitrator is impermissible in law.

20. Most recently, in ***Bhadra International (India) Pvt. Ltd. and Others v. Airports Authority of India***, 2026 SCC OnLine SC 7 : 2026 INSC 6, the Apex Court, upon a conspectus of the aforesaid decisions, has observed as under:

> *"123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:—*

I. The principle of equal treatment of parties provided in Section 18 of the Act, 1996, applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators. Equal treatment of the parties entails that the parties must have an equal say in the constitution of the arbitral tribunal.

II. Sub-section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid.

III. The words 'an express agreement in writing' in the proviso to Section 12(5) means that the right to object to the appointment of an ineligible arbitrator cannot be taken away by mere implication. The agreement referred to in the proviso must be a clear, unequivocal written agreement.

IV. When an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. In such circumstance, an aggrieved party may approach the court under Section 14 read with Section 15 for appointment of a substitute arbitrator. Whereas, when an award has been passed by such an arbitrator, an aggrieved party may approach the court under Section 34 for setting aside the award.

V. In arbitration, the parties vest jurisdiction in the tribunal by exercising their consent in furtherance of a valid arbitration agreement. An arbitrator who lacks jurisdiction cannot make an award on the merits. Hence, an objection to the inherent lack of jurisdiction can be taken at any stage of the proceedings."

21. Additionally, a Division Bench of this Court in ***M/s Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi***, 2025 SCC OnLine Del 4241, has observed as under:

"37. Hence, a unilateral appointment of the sole arbitrator or the presiding arbitrator by a party to the arbitrations seated in India is strictly prohibited and considered as null and void since its very inception. Resultantly, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are also nullity and cannot result into an enforceable award. Any award passed by the unilaterally appointed Arbitral Tribunal is against public policy of India and can be

> *set aside under Section 34 of the Act and/or refused to be enforced under Section 36 of the Act."*

22. It has likewise been observed by a coordinate Bench of this Court in ***Proddatur Cable TV Digi Services v. Siti Cable Network Ltd***., 2020 SCC OnLine Del 350, that a unilateral appointment tantamountsto a *de jure* inability on the part of the arbitrator to perform his functions.

23. That the aforesaid position applies with equal force to arbitrations arising out of lending transactions between non-banking financial companies and their borrowers is evident from the decision of a Division Bench of this Court in ***Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat***, 2023 SCC OnLine Del 3148, wherein it was observed that an arbitrator unilaterally appointed by the lender lacks inherent jurisdiction, and that an award rendered by such an arbitrator is a nullity and is incapable of enforcement. To similar effect is the decision of a coordinate Bench of this Court in ***M/s Upper India Trading Co. Pvt. Ltd. v. M/s Hero Fincorp Ltd.***, 2024 SCC OnLine Del 1477, rendered in the context of a facility agreement executed by a non-banking financial company which reserved the power of appointment of the sole arbitrator to the lender. It was observedas under:

> *"14. The facts in the present case are similar. The Sole Arbitrator has been appointed by the respondent unilaterally. The same is clearly hit by the judgments of "Perkins Eastman Architects DPC" (supra) and "TRF Limited" (supra) As the appointment is barred u/s 12(5) read with the Seventh Schedule of the Arbitration and Conciliation Act, 1996 , the whole arbitration proceedings are non-est in law."*

24. Applying the above, a perusal of Clause 10.5 of the Facility Agreement leaves no manner of doubt that the power of appointment of the sole arbitrator was reposed exclusively in the respondent/lender, and that the



petitioners had no say whatsoever in the constitution of the arbitral tribunal. Such an appointment procedure is impermissible in law.

25. The circumstance that the appointment was formally made by CNICA, and not by the respondent itself, does not detract from the above position. Clause 10.5 does not provide for institutional arbitration, nor does it designate CNICA or any other arbitral institution. The purported "conferral" of the appointing power upon CNICA was itself a unilateral act of the respondent, undertaken after the disputes had arisen, and without the concurrence of the petitioners. The notice dated 24.12.2025 issued by CNICA records that the appointment was made at the instance of the respondent. In substance, therefore, the constitution of the arbitral tribunal emanated wholly and solely from one of the contracting parties. As held in *TRF Ltd.* (supra), a person who is himself ineligible in law cannot appoint an arbitrator, whether directly or indirectly. A unilateral nomination of an appointing authority, made by an interested party after the disputes have arisen, cannot be permitted to achieve indirectly that which the law forbids to be done directly.

26. There is nothing on record to indicate any express agreement in writing between the parties, subsequent to the arising of the disputes, waiving the applicability of Section 12(5) of the A&C Act. On the contrary, it is not in dispute that the petitioners did not participate in the arbitral proceedings and have assailed the constitution of the arbitral tribunal at the earliest available opportunity.

27. In these circumstances, the learned Sole Arbitrator must be held to have become *de jure* unable to perform his functions, and his mandate stands terminated in terms of Section 14(1)(a) of the A&C Act. This conclusion is



fortified by the consent of the parties to the termination of the said mandate, as recorded hereinabove.

28. Furthermore, in view of the legal position noticed above, the appointment of the learned Sole Arbitrator being *void ab initio*, the arbitral proceedings held pursuant thereto, and the orders/ directions passed therein, are *non est* in law and are incapable of being acted upon.

29. Accordingly, it is directed as under:

(i) The arbitral proceedings in Arbitration Case No. CC/NSD/CNICA/58/2026, and all orders and directions passed therein, including the orders dated 13.02.2026 and 11.04.2026, being *non est* in law, shall not be given effect to or acted upon in any manner whatsoever.

(ii) Consequently, the lien purportedly marked upon Account No.1911302443 and Account No.5111292016, maintained by the petitioner nos.3 and 2 respectively with Kotak Mahindra Bank, and upon Account No.00361000274479 maintained by the petitioner no.2 with HDFC Bank, Trade House Branch, Indore, pursuant to the said orders, would not operate.

(iii) The petitioners shall be at liberty to communicate a copy of this order to the concerned banks, which shall act thereupon.

30. The reliefs sought in I.A. 17050/2026 stand subsumed in the directions issued hereinabove. The application is disposed of accordingly.

31. The termination of the mandate of the learned Sole Arbitrator does not bring the reference itself to an end. In terms of Section 15(2) of the A&C Act, a substitute arbitrator is required to be appointed.

32. Respective counsel for the parties jointly submit that an independent sole arbitrator be appointed by this Court to adjudicate the disputes between the parties.

33. In view of the above, there is no impediment in appointing an independent Sole Arbitrator to adjudicate the disputes between the parties.

34. Accordingly, Dr. Abhimanyu Chopra, Advocate (Mob: +91 9891434361), is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

35. The learned Sole Arbitrator so appointed may proceed with the arbitral proceedings subject to furnishing to the parties the requisite disclosure as required under Section 12 of the A&C Act. Since the proceedings held before the erstwhile Sole Arbitrator are *non est* in law, the learned Sole Arbitrator now appointed shall enter upon the reference afresh.

36. It is agreed between the parties that the arbitration shall take place under the aegis of and under the rules of Delhi International Arbitration Centre (DIAC).

37. All rights and contentions of the parties in relation to their respective claims and counter-claims are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

38. Needless to say, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the case.

39. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

AUGUST 24, 2026/*at/sd*