



2026:DHC:6441



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

Date of decision: 06<sup>th</sup> AUGUST, 2026

IN THE MATTER OF:

# **CNR No.DLHC010338262022**

+ **O.M.P. (COMM) 375/2022 & I.A. 14481/2022, I.A. 14485/2022,  
I.A. 14486/2022**

UNION OF INDIA

.....Petitioner

Through: Mr. Bhagvan Swarup Shukla, CGSC  
with Mr. Sarvan Kumar, Mr.  
Pradyumn Singh, Mr. Mukesh Kumar  
Pandey, Mr. Dashmesh Tripathi and  
Ms. Jyoti Yadav, Advocates

versus

M/S GOODRICH FOODTECH LTD

.....Respondent

Through: Mr. Jayant Mehta, Senior Counsel,  
Mr. Parthiv Goswami, Senior Counsel  
with Mr. Deepanshu Jain, Mr.  
Shaantanu Jain and Ms. Jahanvi  
Khanna, Advocates

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**JUDGMENT**

1. The present Petition under Section 34 of the Arbitration and Conciliation Act, 1996 [**“Arbitration Act”**], has been filed against the Arbitral Award dated 27.04.2022, modified on 06.05.2022, passed in favor of the Respondent by the learned Sole Arbitrator [**“Impugned Award”**].
2. A brief factual background leading to the filing of the present Petition is stated as under:

- (i) The Petitioner invited online bids from indigenous bidders and floated the tender documents on the official website, with a



2026:DHC:6441



submission deadline of 28.04.2017. Through this bid, the Petitioner called upon the registered and unregistered vendors interested in meeting the terms and conditions of the Request for Proposal dated 17.04.2017 [**“RFP”**], for supply of malted milk food with cocoa [**“MMF with Cocoa”**] as per the Defence Food Specification No. 51A [**“the Project”**].

(ii) The Respondent emerged as the successful bidder for Defence procurement of 1390 MT of MMF with Cocoa for the consumption year 2017-18.

(iii) The parties entered into five identical contracts through the Petitioner communicating the acceptance for and on behalf of the Union of India, by issuing separate letters regarding acceptance of tender on 19.05.2017 for the quoted delivery period. All the five acceptance letters are identically worded in the terms and conditions mentioned therein. Details of the five contracts between the parties are stated as under:

| <b>Sr. No.</b> | <b>AT No.</b>                         | <b>Delivery Period</b> | <b>Quantity (MT)</b> |
|----------------|---------------------------------------|------------------------|----------------------|
| 1.             | 62879/Q/AT/13/MMF/2017-18/APO/PUR.IV  | June 2017              | 40                   |
| 2.             | 62879/Q/AT/8/MMF/2017-18/APO/ PUR.IV  | November 2017          | 450                  |
| 3.             | 62879/Q/AT/19/MMF/2017-18/APO/ PUR.IV | December 2017          | 100                  |
| 4.             | 62879/Q/AT/10/MMF/2017-18/APO/ PUR.IV | January 2018           | 400                  |



2026:DHC:6441



|    |                                           |            |     |
|----|-------------------------------------------|------------|-----|
| 5. | 62879/Q/AT/12/MMF/2017-<br>18/APO/ PUR.IV | March 2018 | 400 |
|----|-------------------------------------------|------------|-----|

(iv) In accordance with the terms of the Contracts between the parties, five Performance Bank Guarantees totaling to an amount of Rs. 2,49,87,020/- were furnished by the Respondent.

(v) Out of the total of 1390MT of MMF with Cocoa to be supplied to the Petitioner, approximately 70% was scheduled for delivery by the end of January 2018. Out of this, 40% of the supplies as contained in the three contracts, AT/13 of 40MT, AT/8 of 450 MT and AT/19 of 50 MT was duly made by the Respondent, against which payments were also released by the Competent Financial Authority to the Respondent.

(vi) Disputes arose between the parties when the Petitioner issued a Defect Notice dated 19.01.2018 to the Respondent, alleging that the Respondent's product contained soya protein and non-milk fat (palm oil), which was contrary to the specifications under the five Contracts.

(vii) The Petitioner thereafter issued a Show-Cause Notice dated 24.03.2018 *inter alia* alleging the violation of the Warranty provisions contained in Clause 7.2 of the RFP. Later, the Petitioner terminated the four contracts on 21.08.2018, forfeiting the BGs submitted by the Respondent and went ahead to encash them.

(viii) Against the Termination Letter dated 21.08.2018, the Respondent approached this Court by way of a writ petition bearing W.P. (C) No. 10986/2018, *inter alia* praying for the quashing of the Termination Letter dated 21.08.2018 and restraining the Petitioner



from taking further coercive actions against the Respondent. However, this Writ Petition came to be withdrawn on 12.10.2018, though the Coordinate Bench of this Court granted to the Respondent a liberty to avail alternative remedies.

(ix) Consequently, the Respondent invoked arbitration on 25.10.2018 invoking Clause 21 contained in Part I, Clause 3 contained in Part III of the RFP read with Form DPM-7 of the Defence Procurement Manual [**“Arbitration Clause”**]. The Arbitration Clause reads as under:

***“21.Arbitation.** All disputes or differences arising out of or in connection with the Contract shall be settled by bilateral discussions. (Refer Part III and other terms and conditions of this RFP).*

***3.Arbitation.** All disputes or differences out of or in connection with the Contract shall be settled by bilateral discussions. Any dispute, or question arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard clause of arbitration is as per Forms DPM-7 and DPM-9 (Available on MoD website and can be provided on request). The arbitrator will be appointed by the Competent Financial Authority (CFA) and it will be binding on both the parties.”*

(x) The learned Sole Arbitrator, appointed with approval of the Competent Authority, Ministry of Defence (Army), who is stated to be the competent authority to appoint the officials nominated by the Department of Legal Affairs, Ministry of Law and Justice, entered into reference on 14.01.2021.



(xi) The Respondent filed its Statement of Claims on 13.05.2019, while the Petitioner filed its Statement of Defence cum Counter Claims on 07.08.2019. Based on the pleadings, the learned Sole Arbitrator framed four issues for adjudication of the disputes between the parties, all of which were found against the Petitioner.

(xii) The final reliefs granted by the learned Sole Arbitrator are stated as under:

**“11. RELIEF**

**(1) Claim No.1:-**

*The 1<sup>st</sup> claim is made under to the contract AT/19 (December, 2017) which relates to the finished stock amounting to Rs.77,15,336/- and the Unpaid Amount against supplies amounting to Rs. 55,84,852/- and Rs. 1,30.689/- towards samples. Total amount Rs.1,34,30,877/- is fully awarded.*

**(2) Claim No.2:-**

*The 2<sup>nd</sup> claim is made under the contract AT/10 (January, 2018) which relates to the finished stock amounting to Rs. 5,01,66,660/- is also awarded.*

**(3) Claim No.3:-**

*The 3<sup>rd</sup> claim is made under to the contract AT/10 (January, 2018) which relates to the raw materials amounting to Rs. 27,30,003/- is rejected.*

**(4) Claim No.4:-**

*The 4<sup>th</sup> claim is made under to the contract AT/10 (January. 2018) & AT/12 (March, 2018) which relates to the packing materials including outer cartons, 500gm Refill paths, Liner amounting to Rs.6,04,140/- is rejected.*

**(5) Claim No. 5:-**



The 5<sup>th</sup> claim is made relatable to the dedicated investment as per the terms of the contract which has been assessed at a value of 72,42,446/- is also rejected.

**(6) Claim No.6:-**

The 6<sup>th</sup> claim is made relatable to the dedicated manpower as per the terms of the contract which has been assessed at a value of 27,05,407/- is also liable to be rejected.

**(7) Claim No.7:-**

The 7<sup>th</sup> claim is made for the refund of the amount of bank guarantees for a sum of Rs.2,41,99,300/-. This claim is awarded in favour of claimant. The amount is to be refunded alongwith interest at the rate of 8% p.a. from the date of forfeiture of Bank Guarantee till the date of its realisation.

**(8) Claim No.8:-**

The claimant has also claimed the interest as per the MSME Act, 2006. Since nothing is mentioned in the contract about grant of interest as per MSME Act, only reasonable interest as per Sub Section 7 of Section 31 of Arbitration Act, is to be allowed, In my opinion in view of facts circumstances and nature of case interest @ 8% p.a. is allowed on the sum awarded under claim 1 and 2 i.e. Rs.1,34,30,877/- plus Rs.5,01,66,660/-, totalling Rs.6,35,97,537/- from the date of institution of claim to the date of its payment.

(9) Apart from above, the following relief is also being guaranteed in favour of claimant

a) The termination letter dated 21.08.2018, terminating the contract for 450 MT malted milk food and forfeiture of bank guarantee dated 31.05.2017 for amount Rs.80,02,800/- is hereby quashed.



(b) The letters dated 06.09.2018 and 24.10.2018 for freezing of stock and refund of amount mentioned therein is also quashed.

(c) The debarment letter dated 20.11.2018 dedarring the claimant from participating in procurement with Army Purchase Organization is quashed being issued without following the principle of natural justice.”

3. Against the aforesaid findings and directions, the Petitioner has now approached this Court praying for Impugned Award to be set aside under Section 34 of the Arbitration Act.

4. Though the Petitioner has raised numerous grounds against the Impugned Award *inter alia* alleging that the findings are against the provisions of the Indian Contract Act, 1872, etc., this Court, during the course of final hearing, noted that the learned Sole Arbitrator was unilaterally appointed by the Petitioner pursuant to the Arbitration Clause contained in the RFP. Against this *prima facie* observation, the learned Senior Counsel appearing for the Respondent submits as under:

(i) *Vide* the invocation letter dated 25.10.2018, the Respondent itself called upon the Competent Financial Authority to appoint an arbitrator in terms of the Arbitration Clause. For this reason, it cannot be said that the Respondent in any way was opposed to the unilateral appointment of a sole arbitrator by the Petitioner and this, in itself, can be considered a waiver of Section 12(5) of the Arbitration Act.



(ii) The Apex Court's observations in the case of Bhadra International (India) (P) Ltd. v. Airports Authority of India, 2026 SCC OnLine SC 7, make it abundantly clear that there is no set format of a waiver under Section 12(5) of the Arbitration Act. As such, the Respondent's invocation letter dated 25.10.2018 and participation in the arbitration proceedings *sans* any objection to the appointment of the learned Sole Arbitrator, must be seen as a waiver of the applicability of Section 12(5) of the Arbitration Act.

(iii) Even in the present Petition, the Petitioner has failed to raise the ground of the Impugned Award being bad in law on account of unilateral appointment of the learned Sole Arbitrator.

5. Heard the learned Counsels for the parties and perused the material on record.

6. The relevant observations of the Apex Court in Bhadra International (Supra), on which reliance has been placed by the learned Senior Counsel for the Respondent reads as under:

*“84. Undoubtedly, the statute does not prescribe a format for the agreement. However, the absence of a prescribed format cannot be construed to mean that the waiver may be inferred impliedly or through conduct. We say so because the legislature has consciously prefaced the term “agreement” with the word “express” and followed it with the phrase “in writing”. This semantics denote the intention of the legislature that the waiver under the proviso to Section 12(5) must be made only through an express and written manifestation of intention.*

*85. The conscious use of the prefatory expression also serves to differentiate such waiver from ‘deemed waiver’ as stipulated under Section 4 of the Act, 1996.*



*We must be mindful of the fact that if the legislature intended that waiver under Section 12(5) could similarly arise by implication or conduct as mentioned under Section 4, it would have refrained from introducing a heightened and mandatory requirement, more particularly, in light of the rigours of the Seventh Schedule. The statutory design therefore makes it evident that the bar under Section 12(5) can be removed only by a clear, unequivocal, and written agreement executed after the dispute has arisen, and not by any form of tacit acceptance or procedural participation.*

*86. The mandate of an express agreement in writing in the present case may looked at from one another angle. The unilateral appointment of an arbitrator is assessed from the viewpoint of the parties. However, when the parties later execute an express written agreement waiving the ineligibility of the proposed arbitrator, the position gets altered. Such written waiver supplies the very consent that was previously missing, thereby placing the appointment on the same footing as a mutually agreed appointment and addresses concerns regarding neutrality and fairness.*

*87. In Bharat Broadband (supra), this Court categorically held that the expression “express agreement in writing” refers to an agreement made in words and cannot be inferred by conduct. The word “express” denotes that the agreement must be entered into with complete knowledge that although the proposed arbitrator is ineligible to be appointed as an arbitrator, yet they express their confidence in him to continue as the arbitrator. The relevant observations read thus:—*

*“20. This then brings us to the applicability of the proviso to Section 12(5) on the facts of this case. Unlike Section 4 of the Act which deals with*



*deemed waiver of the right to object by conduct, the proviso to Section 12(5) will only apply if subsequent to disputes having arisen between the parties, the parties waive the applicability of sub-section (5) of Section 12 by an express agreement in writing. For this reason, the argument based on the analogy of Section 7 of the Act must also be rejected. Section 7 deals with arbitration agreements that must be in writing, and then explains that such agreements may be contained in documents which provide a record of such agreements. On the other hand, Section 12(5) refers to an “express agreement in writing”. The expression “express agreement in writing” refers to an agreement made in words as opposed to an agreement which is to be inferred by conduct. Here, Section 9 of the Contract Act, 1872 becomes important. It states:*

*“9. Promises, express and implied.—Insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express. Insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.”*

*It is thus necessary that there be an “express” agreement in writing. This agreement must be an agreement by which both parties, with full knowledge of the fact that Shri Khan is ineligible to be appointed as an arbitrator, still go ahead and say that they have full faith and confidence in him to continue as such. The facts of the present case disclose no such express agreement. The appointment letter which is relied upon by the High Court as indicating an express agreement on the facts of the case is dated 17-1-2017. On this date, the Managing Director of the appellant was certainly not aware that Shri Khan could not be*



*appointed by him as Section 12(5) read with the Seventh Schedule only went to the invalidity of the appointment of the Managing Director himself as an arbitrator. Shri Khan's invalid appointment only became clear after the declaration of the law by the Supreme Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] which, as we have seen hereinabove, was only on 3-7-2017. After this date, far from there being an express agreement between the parties as to the validity of Shri Khan's appointment, the appellant filed an application on 7-10-2017 before the sole arbitrator, bringing the arbitrator's attention to the judgment in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] and asking him to declare that he has become de jure incapable of acting as an arbitrator. Equally, the fact that a statement of claim may have been filed before the arbitrator, would not mean that there is an express agreement in words which would make it clear that both parties wish Shri Khan to continue as arbitrator despite being ineligible to act as such. This being the case, the impugned judgment is not correct when it applies Section 4, Section 7, Section 12(4), Section 13(2) and Section 16(2) of the Act to the facts of the present case, and goes on to state that the appellant cannot be allowed to raise the issue of eligibility of an arbitrator, having itself appointed the arbitrator. The judgment under appeal is also incorrect in stating that there is an express waiver in writing from the fact that an appointment letter has been issued by the appellant, and a statement of claim has been filed by the respondent before the arbitrator. The moment the appellant came to know that Shri Khan's appointment itself would be invalid, it filed*



*an application before the sole arbitrator for termination of his mandate.” (Emphasis supplied)*

**88.** In *CORE II* (*supra*), this Court underscored the rationale behind the first two essentials of the proviso. It reads thus:—

*“121. An objection to the bias of an adjudicator can be waived. [Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 808, para 30 : (2016) 3 SCC (Civ) 492 : (2016) 3 SCC (Cri) 173 : (2016) 2 SCC (L&S) 253] A waiver is an intentional relinquishment of a right by a party or an agreement not to assert a right. [State of Punjab v. Davinder Pal Singh Bhullar, (2011) 14 SCC 770, para 41 : (2012) 4 SCC (Civ) 1034 : (2012) 4 SCC (Cri) 496 : (2014) 1 SCC (L&S) 208] The Arbitration Act allows parties to waive the application of Section 12(5) by an express agreement after the disputes have arisen. However, the waiver is subject to two factors. First, the parties can only waive the applicability of Section 12(5) after the dispute has arisen. This allows parties to determine whether they will be required or necessitated to draw upon the services of specific individuals as arbitrators to decide upon specific issues. To this effect, Explanation 3 to the Seventh Schedule recognises that certain kinds of arbitration such as maritime or commodities arbitration may require the parties to draw upon a small, specialised pool. [“Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently, to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while*



*applying the rules set out above.”] The second requirement of the proviso to Section 12(5) is that parties must consciously abandon their existing legal right through an express agreement. Thus, the Arbitration Act reinforces the autonomy of parties by allowing them to override the limitations of independence and impartiality by an express agreement in that regard.” (Emphasis supplied)*

**89.** *What can be discerned from the above discussion is that the ineligibility of an arbitrator can be waived only by an express agreement in writing. In the present case, there is no agreement in writing, after the disputes arose, waiving the ineligibility of the sole arbitrator or the right to object under Section 12(5) of the Act, 1996.*

**90.** *The conduct of the parties is inconsequential and does not constitute a valid waiver under the proviso. The requirement of the waiver to be made expressly in the form of agreement in writing ensures that parties are not divested of their right to object inadvertently or by procedural happenstance.*

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**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.”*

7. Another relevant decision which requires reference has been delivered by a Division Bench of this Court in Mahavir Prasad Gupta & Sons v. State (NCT of Delhi), 2025 SCC OnLine Del 4241, wherein the following observations were made:

**“Objection by the party that made the unilateral appointment itself:**



74. This issue requires consideration of following questions:

a) When a party itself has unilaterally appointed the arbitrator, whether that party can object to the unilateral appointment of the arbitrator at any stage during or after the arbitration proceedings?

b) If a party has unilaterally appointed an arbitrator, can that party be deemed to have given express waiver in writing under Section 12(5) of the Act while making the appointment itself?

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**81. Accordingly, the party that unilaterally appointed the arbitrator cannot be deemed to have agreed in writing to waive the ineligibility of the arbitrator by act of appointment. When appointment itself is ineligible under the provisions of Section 12(5) of the Act read with Seventh Schedule of the Act, it does not take away the right of the party to challenge such an appointment merely because that party had made the appointment in absence of express agreement in writing between the parties to waive the applicability of Section 12(5) of the Act.**

82. Hence, a party which unilaterally appointed the arbitrator has right to object to such appointment irrespective of fact that that party itself made the appointment of the arbitrator. Mere fact of making appointment in writing will not make the ineligible appointment a valid appointment unless there is express agreement in writing waiving such ineligibility.

83. Although it appears disingenuous, a party appointing an the sole or presiding arbitrator unilaterally can challenge the award on the ground that the award has been rendered in contravention of Section 12(5) of the Act read with Seventh Schedule of



the Act notwithstanding that the said party itself made such an appointment. When the Arbitral Tribunal inherently lacked jurisdiction to act, the arbitration proceedings are void ab initio, rendering the award unenforceable irrespective of which party made such unilateral appointment. The arbitral proceedings and an award made by an unilaterally appointed sole or presiding arbitrator, who is de jure ineligible to be appointed as an arbitrator by virtue of the Seventh Schedule of the Act are void ab initio. The waiver under the proviso to Section 12(5) of the Act must be express and subsequent to the disputes having been arisen between the parties. Hence, the party which appointed the sole or presiding arbitrator unilaterally can also challenge the award under Section 34 of the Act on the ground of such ineligibility.

### **CONCLUSION**

**84.** In view of the above discussion, the legal position on the unilateral appointment of the Sole and Presiding Arbitrator is summarized as under:

a) **Mandatory Requirement:** Any arbitration agreement providing unilateral appointment of the sole or presiding arbitrator is invalid. A unilateral appointment by any party in 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 being 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.

b) **Deemed Waiver:** The proviso to Section 12(5) of the Act requires an express agreement in writing. The conduct of the parties, no matter how acquiescent or conducive, is inconsequential and cannot constitute a valid waiver under the proviso to Section 12(5) of the



*Act. The ineligibility of a unilaterally appointed arbitrator can be waived only by an express agreement in writing between the parties after the dispute has arisen between them. Section 12(5) of the Act is an exception to Section 4 of the Act as there is no deemed waiver under Section 4 of the Act for unilateral appointment by conduct of participation in the proceedings. The proviso to Section 12(5) of the Act requires an 'express agreement in writing' and deemed waiver under Section 4 of the Act will not be applicable to the proviso to Section 12(5) of the Act.*

*c) **Award by an Ineligible Arbitrator is a Nullity:** An award passed by a unilaterally appointed arbitrator is a nullity as the ineligibility goes to the root of the jurisdiction. Hence, the award can be set aside under Section 34(2)(b) of the Act by the Court on its own if it 'finds that' an award is passed by unilaterally appointed arbitrator without even raising such objection by either party.*

*d) **Stage of Challenge:** An objection to the lack of inherent jurisdiction of an arbitrator can be taken at any stage during or after the arbitration proceedings including by a party who has appointed the sole or presiding arbitrator unilaterally as the act of appointment is not an express waiver of the ineligibility under proviso to Section 12(5) of the Act. Such objection can be taken even at stage of challenge to the award under Section 34 of the Act or during the enforcement proceedings under Section 36 of the Act."*

*(emphasis supplied)*

8. Thus, the position of law now settled dictates that after amendment of Section 12(5) of the Arbitration Act an employee of a party in dispute can neither be appointed arbitrator nor can nominate or appoint any other person as an arbitrator. The unilateral appointment in absence of an express agreement in writing between the parties to waive applicability of Section



12(5) of the Act is *void ab initio*. Moreover, mere participation in the arbitral proceedings, such as filing of the statement of claim, also cannot be construed as a valid waiver under the *proviso* to Section 12(5) of the Arbitration Act [Ref: TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377]. Most importantly, after the judgment of the Division Bench of this Court in Mahavir Prasad (Supra), it is settled that the unilateral appointment of an arbitrator can be objected to for the first time under Section 34 of the Arbitration Act, even by the very same party who unilaterally appointed the arbitrator.

9. A perusal of the Judgment passed by the Division Bench of this Court indicates that just because the party has unilaterally appointed its own arbitrator, does not mean that it has deemed to have agreed in writing to waive the ineligibility of the arbitrator by act of appointment. In fact, the said Judgment further goes on to say that the party which has unilaterally appointed the arbitrator also has the right to object to such appointment, irrespective of the fact that that party itself has appointed the arbitrator. It is thus clear that the mere fact of making appointment in writing will not make the ineligible appointment, a valid appointment. In this view of the matter, the argument of the learned Senior Counsel for the Respondent, relying on the Judgment of the Apex Court in Bhadra International (supra) that there is no fixed format of a waiver under Section 12(5) is of no consequence against the unilateral appointment. Further, the argument that no ground has been raised by the Petitioner, does not bar the Petitioner from making such a point when the appointment is contrary to the law laid down by the Apex Court, which the law of the land under Article 141 of the Constitution of India.



2026:DHC:6441



10. In the present case, the Arbitration Clause provides that for all disputes, or questions arising out of or relating to the Contract or relating to construction or performance, which cannot be settled amicably, may be resolved through arbitration and the arbitrator shall be appointed by the Competent Financial Authority, who is a part of the Ministry of Defence, and thus, an official of the Petitioner/Union of India, who is a party to the dispute herein and as such, not qualified to appoint an arbitrator.

11. In the absence of compliance of proviso to Section 12(5) of the Arbitration Act by the parties, the appointment of the arbitrator by the petitioner is in violation of Section 12(5) read with Seventh Schedule of the Arbitration Act. The appointment of the arbitrator is void *ab-initio* and renders the Impugned Award nullity.

12. The Petition accordingly stands allowed and the Impugned Award is set aside.

13. Pending application(s), if any, also stand disposed of.

**SUBRAMONIUM PRASAD, J**

**AUGUST 06, 2026**

**AP**