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

% ***Judgment reserved on: 03.11.2026***
Judgment pronounced on: 06.11.2026
Judgment uploaded on: 06.11.2026

CNR No. DLHC010320642025

\+ EFA(COMM) 5/2025 & CM APPL. 31472/2025

M/S. V. K. JAIN AND SONS .....APPELLANT

Through: Mr. Anshul Sharma and Mr. Vishesh Tomar, Advs.

versus

NEERAJ JAIN .....RESPONDENT

Through: Mr. Rajeev Gupta & Mr. Sandeep Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Execution First Appeal has been preferred by the Appellant under Section 13 of the Commercial Courts Act, 2015, read with Order XXI Rule 58 of the Code of Civil Procedure, 1908, assailing the order dated 28.01.2025[1] passed by the learned District Judge (Commercial) in Execution (Comm.) No.14/2024, whereby the objections preferred by the Respondent/Judgment Debtor were allowed and the execution petition seeking enforcement of the arbitral award dated 31.01.2020[2] was dismissed.

2. The principal controversy arising in the present Appeal concerns the validity of the appointment of the Sole Arbitrator by the Executive Committee of the Paper Merchants Association (Regd.),

[1] Hereinafter, the 'Impugned Order'
[2] Hereinafter, the 'Award'

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Delhi, in terms of the arbitration clause printed on the invoices issued by the Appellant. The question which falls for consideration is whether such appointment can be regarded as a unilateral appointment attracting the prohibition contained in Section 12(5)[3] of the Arbitration and Conciliation Act, 1996[4], particularly when the appointment was made by the Executive Committee of the Association and not by either of the parties themselves.

FACTUAL MATRIX:

3. The relevant facts, necessary for adjudication of the present Appeal, may be briefly noticed.

4. The Appellant, M/s V.K. Jain & Sons, is engaged in the wholesale business of sale and purchase of paper. The Respondent, Mr. Neeraj Jain, was carrying on business as the proprietor of M/s Sarika Enterprises. The parties admittedly had commercial dealings with each other, in the course of which the Appellant supplied paper to the Respondent.

5. According to the Appellant, an amount of Rs.2,18,234/- remained outstanding against the Respondent in terms of the running ledger account maintained by it. The Appellant asserts that the Respondent had issued Cheque No.000074 dated 02.03.2017 for the aforesaid amount towards discharge of the outstanding liability. The Appellant further claims that, despite acknowledging the liability, the Respondent failed to make payment.

[3] Hereinafter, the 'Section 12(5)'
[4] Hereinafter, the 'A&C Act'

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6. The Appellant relies upon the terms and conditions printed on the invoices issued during the course of business between the parties. Clauses 5 and 6 of the said invoice dated 23.12.2016, which form the basis of the present controversy, read as under:

> *"5. Subject to "Delhi" Jurisdiction only.*
>
> *6. In case of any dispute including dispute of non payment in respect of this bill the same shall be referred to the "Paper Merchant Association (Regd.) Delhi" for sole arbitration and the judgement given by the Arbitrator/Arbitrators appointed by the Executive Committee shall be final & binding on both the parties."*

7. In terms of the aforesaid clause, the Appellant approached the Paper Merchants Association (Regd.), Delhi, whereupon the Executive Committee appointed Mr. Satya Narain Gupta as the Sole Arbitrator. The arbitral proceedings commenced in 2019. The Respondent did not participate in the proceedings despite notices being issued to him. The learned Sole Arbitrator ultimately passed an Award, allowing the principal claim of Rs.2,18,234/-, interest of Rs.30,475/- and further interest at the rate of 15% per annum until payment.

8. The Appellant thereafter instituted Execution Petition No.187/2022 for enforcement of the aforesaid Award. The said petition was dismissed for non-prosecution. Subsequently, the Appellant instituted a fresh execution petition, being Execution (Comm.) No.14/2024, before the learned Commercial Court.

9. During the pendency of the execution proceedings, the Respondent filed objections, *inter alia*, contending that the award had been passed by a unilaterally appointed Arbitrator and was, therefore, incapable of enforcement. It was specifically contended that the Respondent had never consented, in writing, after the disputes had

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arisen, to the reference of the dispute to the Paper Merchants Association or to the appointment of an Arbitrator by its Executive Committee.

10. The learned Commercial Court, *vide* the Impugned Order dated 28.01.2025, accepted the objections. It held that the Respondent's membership of the Paper Merchants Association had neither been pleaded nor established by the Appellant. It was further held that the mere fact that the Respondent had made part-payments against the invoices did not establish his acceptance of the arbitration clause. The learned Commercial Court consequently concluded that the appointment of the Sole Arbitrator, on the request of a member of the Association, was hit by Section 12(5) and that the award was a nullity.

11. Aggrieved by the aforesaid order, the present Appeal has been preferred.

CONTENTIONS OF THE PARTIES:

12. Heard learned counsel representing the parties and, with their able assistance, perused the record.

13. Learned counsel representing the Appellant has assailed the Impugned Order primarily on the ground that the learned Commercial Court failed to appreciate the distinction between an appointment made unilaterally by one of the parties and an appointment made by an independent body in terms of an arbitration agreement between the parties. The following submissions have been advanced on behalf of the Appellant:

i. The arbitration clause printed on the invoices expressly provides that disputes between the parties shall be referred to the

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Paper Merchants Association (Regd.), Delhi, for sole arbitration and that the Arbitrator shall be appointed by its Executive Committee. The power of appointment, therefore, was neither vested in the Appellant nor exercised by it. The Executive Committee, being an independent body, was authorised to appoint the Arbitrator in terms of the agreed procedure.

ii. Both parties were engaged in the business of paper and had maintained regular commercial dealings. The Respondent had accepted the invoices containing the arbitration clause and had made part-payments in respect of the transactions. Such conduct, according to the Appellant, constituted acceptance of the terms and conditions printed on the invoices and established a valid arbitration agreement within the meaning of Section 7 of the A&C Act[5].

iii. Reliance is placed upon the judgment of this Court in ***SRF Limited v. Jonson Rubber Industries Limited***[6], to contend that an arbitration agreement can be inferred from invoices containing an arbitration clause where the parties have been maintaining regular commercial dealings, the invoices have been received and part-payments have been made.

iv. The learned Commercial Court erred in relying upon ***Taipack Limited and Others v. Ram Kishore Nagar Mal***[7], since the arbitration clause in the present case expressly uses the words 'sole arbitration' and specifically identifies the Executive Committee of the Association as the authority competent to

[5] Hereinafter, the 'Section 7'
[6] MANU/DE/2009/2024
[7] 2007 SCC OnLine Del 804

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appoint the Arbitrator. Unlike ***Taipack*** *(supra)*, there was no contradictory purchase order or competing contractual stipulation in the present case.

v. Reliance is also placed upon ***Rajesh Jain Proprietor, M/s Pioneer Paper Agency v. M/s Shiv Shakti Impex***[8], to contend that the arbitration mechanism of the Paper Merchants Association has been recognised by this Court and that the learned Commercial Court failed to appreciate the distinction between the existence of an arbitration agreement and the membership of the parties in the Association.

vi. The learned Commercial Court further failed to appreciate that the Respondent had issued a cheque for Rs.2,18,234/- towards the outstanding liability. This, according to the Appellant, corroborates the existence of the underlying commercial transactions and the acceptance of the liability arising therefrom.

vii. The learned Commercial Court exceeded the permissible scope of jurisdiction of an executing court by going behind the arbitral award and adjudicating upon objections which ought to have been raised in proceedings under Section 34 of the A&C Act[9]. The Respondent was duly served with notices of the arbitral proceedings but chose not to participate. He also did not challenge the award within the period prescribed under Section 34. Reliance is placed upon ***Punjab State Civil Supplies***

[8] 2023:DHC:5328-DB
[9] Hereinafter, the 'Section 34'

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Corporation Ltd. & Anr. v. M/s Atwal Rice & General Mills[10] and ***Sahayaraj v. Selvakumar***[11].

viii. It is further contended that the learned Commercial Court erred in holding that the arbitration clause was hit by Section 12(5) of the A&C Act, despite the fact that the Appellant had no role in the appointment of the Arbitrator and the appointment was made by the Executive Committee of the Association.

14. *Per contra*, learned counsel representing the Respondent has supported the Impugned Order and submitted that the Award sought to be executed is the result of an arbitration conducted by an Arbitrator appointed unilaterally, without the Respondent's consent. The following submissions have been advanced on behalf of the Respondent:

i. It is contended that the Respondent was never a member of the Paper Merchants Association (Regd.), Delhi, and was not bound by its constitution, rules or regulations. The Appellant, being a member of the Association, could not invoke its internal mechanism to secure the appointment of an Arbitrator against a non-member.

ii. It is further submitted that the Respondent never entered into any express agreement, after the disputes had arisen, consenting to the appointment of an Arbitrator by the Association. The requirement under the proviso to Section 12(5) is mandatory and cannot be dispensed with merely on the basis of

[10] (2017) 8 SCC 116
[11] CRP (MD) No.576/2024

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alleged acceptance of invoices or participation in commercial transactions.

iii. Reliance is placed upon ***Union of India v. M/s M.V. Omni Projects (India) Ltd.***[12] and ***Kotak Mahindra Bank Limited v. Narendra Kumar Prajapat***[13] in support of the proposition that an award passed pursuant to an appointment which is contrary to Section 12(5) is unenforceable.

iv. Reliance is also placed upon ***Taipack Limited*** *(supra)* and ***Rajesh Jain*** *(supra)* to contend that an arbitration clause printed on an invoice issued unilaterally by a member of an Association cannot bind a non-member merely because the latter has entered into commercial transactions with the issuing party.

v. It is further contended that the executing court was competent to examine whether the award was a nullity for want of a valid arbitration agreement and that the failure of the Respondent to institute proceedings under Section 34 would not validate an award passed without jurisdiction.

15. No other submissions have been advanced by learned counsel representing the parties.

ANALYSIS AND FINDINGS:

16. This Court has considered the submissions advanced on behalf of the parties and examined the material placed on record, including the Impugned Order, the arbitral award and the pleadings filed before the learned Commercial Court.

[12] OMP (COMM.) 355/2023
[13] 2023:DHC:3705-DB

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17. The controversy essentially requires examination of three aspects: *first*, whether the arbitration clause printed on the invoices constitutes an arbitration agreement within the meaning of Section 7; *second*, whether the appointment of the Sole Arbitrator by the Executive Committee of the Paper Merchants Association amounts to a unilateral appointment attracting Section 12(5); and *third*, whether the executing court was justified in refusing enforcement of the award on the ground that it was a nullity.

I. Whether the arbitration clause constitutes a valid arbitration agreement:

18. Section 7 defines an arbitration agreement and recognises that such an agreement may be contained in a contract or in the form of a separate agreement. The statutory requirement is that the agreement be in writing. Section 7(4) further recognises an arbitration agreement contained in an exchange of communications or other means of communication which provide a record of the agreement, as well as an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

19. It is, therefore, not necessary that an arbitration agreement must invariably be contained in a separately executed document bearing the signatures of both parties. The essential requirement is that the material placed on record must demonstrate *consensus ad idem* between the parties to refer their disputes to arbitration.

20. In the present case, the arbitration clause relied upon by the Appellant is not an ambiguous stipulation merely referring disputes to the Paper Merchants Association for resolution. The clause expressly provides that disputes, including disputes relating to non-payment,

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shall be referred to the Association for 'sole arbitration'. It further identifies the Executive Committee as the authority which would appoint the Arbitrator and stipulates that the decision rendered by the Arbitrator would be final and binding upon both parties.

21. The language of the clause, therefore, clearly manifests an intention to refer disputes to arbitration. The mere fact that the clause is contained in an invoice issued by the Appellant would not, by itself, render it incapable of constituting an arbitration agreement. The question would be whether the invoices were received and accepted by the Respondent and whether the surrounding circumstances demonstrate acceptance of the arbitration stipulation.

22. In ***SRF Limited*** *(supra)*, this Court considered a similar objection concerning an arbitration clause incorporated in invoices exchanged between parties having regular commercial dealings. The Court held that an arbitration agreement need not be separately signed, provided the requirements of Section 7 are otherwise satisfied. The Court also noticed the significance of the receipt of invoices, the existence of a running account and the making of part-payments while examining whether the parties had accepted the arbitration clause.

23. The aforesaid judgment, however, was rendered in proceedings under Section 11 of the A&C Act, where the Court was examining whether a *prima facie* case for reference to arbitration had been made out. The decision cannot be understood as laying down that every invoice containing an arbitration clause automatically binds the recipient, irrespective of whether the invoice was received or whether the terms contained therein were accepted. Nevertheless, the principle that an arbitration agreement can be inferred from the commercial

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dealings and conduct of the parties is equally relevant while examining the requirements of Section 7.

24. The learned Commercial Court, in the present case, rejected the Appellant's reliance upon part-payments by observing that payment against an invoice does not necessarily amount to acceptance of the arbitration clause printed thereon. Such a proposition, if understood as an absolute rule, cannot be accepted. The acceptance of invoices containing an arbitration clause, particularly in the context of a continuing commercial relationship and part-payments made against such invoices, is a relevant circumstance in determining the existence of consensus between the parties.

25. The cheque relied upon by the Appellant, however, requires to be considered in its proper perspective. The issuance of a cheque towards an outstanding commercial liability may corroborate the existence of the underlying transaction and the liability claimed by the Appellant. It does not, by itself, establish acceptance of the arbitration clause or validate the appointment of the Arbitrator. The question of consent to arbitration must be determined from the invoices and the surrounding circumstances, and cannot be inferred merely from an acknowledgment of monetary liability.

26. In this regard, reliance placed upon ***Taipack Limited*** *(supra)* by the Respondent also requires consideration. In the said case, this Court found that the arbitration stipulation relied upon by the claimant was vague and incomplete and that the parties had exchanged documents containing inconsistent terms. The Court, therefore, held that there was no consensus between the parties to refer their disputes to arbitration.

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27. The facts of the present case, insofar as the language of the arbitration clause is concerned, are materially distinguishable. The clause expressly provides for sole arbitration and identifies the authority competent to appoint the Arbitrator. There is no material in the pleadings before this Court to suggest that the Respondent had issued a purchase order containing a contradictory dispute-resolution mechanism. The ratio of ***Taipack*** *(supra)*, therefore, cannot be mechanically applied to invalidate the arbitration clause in the present case.

28. Similarly, the judgment in ***Rajesh Jain*** *(supra)* does not lay down that a person who is not a member of the Paper Merchants Association is, in all circumstances, incapable of entering into an arbitration agreement which identifies the Association as the appointing authority. The said judgment considered the applicability of the Association's constitution and regulations where both parties were members and had agreed to be bound by those regulations. It distinguished ***Taipack*** *(supra)* on its facts, particularly having regard to the absence of membership of one party and the existence of contradictory contractual stipulations.

29. The distinction which emerges from the aforesaid decisions is that membership of the Association may be relevant for determining whether its internal rules and regulations bind a particular party. However, membership is not, by itself, the only legally permissible basis on which a person may agree to have disputes referred to an arbitral mechanism administered or facilitated by an Association. A party may independently agree, through a written contractual

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stipulation, to refer its disputes to an arbitral tribunal appointed by a specified third-party institution or body.

30. In the present case, the arbitration clause expressly identifies the Paper Merchants Association as the forum for arbitration and its Executive Committee as the appointing authority. The fact that the Respondent's membership of the Association has not been established cannot, without further examination of the contractual stipulation and the parties' conduct, be treated as conclusive proof that no arbitration agreement existed between them.

II. Whether the appointment of the Arbitrator was hit by Section 12(5) of the A&C Act:

31. Having considered the existence of the arbitration agreement, it is necessary to examine whether the appointment of the Sole Arbitrator was contrary to the statutory requirements governing independence and impartiality.

32. Section 12(5), introduced by the Arbitration and Conciliation (Amendment) Act, 2015, provides that notwithstanding any prior agreement to the contrary, a person whose relationship with the parties, counsel or the subject matter of the dispute falls within any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an Arbitrator.

33. The proviso to Section 12(5) permits the parties, subsequent to disputes having arisen between them, to waive the applicability of the said provision by an express agreement in writing.

34. The statutory prohibition under Section 12(5), therefore, is attracted where the Arbitrator himself or herself has a relationship

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with the parties, their counsel or the subject matter of the dispute which falls within one of the categories enumerated in the Seventh Schedule. The mere fact that the appointment has been made through a particular contractual mechanism does not, by itself, establish that the person appointed is ineligible under the said provision.

35. In ***Perkins Eastman Architects DPC & Anr. v. HSCC (India) Ltd.***[14], the Supreme Court held that a person who is himself ineligible to act as an Arbitrator cannot exercise the power to nominate another person as an Arbitrator. The principle was founded upon the requirement that a party interested in the outcome of the dispute cannot have exclusive control over the appointment of the person who is to adjudicate that dispute.

36. The aforesaid principle has also been considered by the Supreme Court in ***Bhadra International (India) Pvt. Ltd. v. Airports Authority of India***[15], wherein the Court examined the scope of Section 12(5), the relationship between Sections 12(5) and 14(1)(a) of the A&C Act, and the requirement of an express agreement in writing for waiver of statutory ineligibility. The Supreme Court reiterated that an Arbitrator who falls within the categories specified in the Seventh Schedule is *de jure* ineligible to act, and that the statutory requirement of waiver cannot be dispensed with by merely relying upon the conduct or participation of the parties.

37. The aforesaid judgments, however, proceed on the premise that the appointment is made by a person who is himself ineligible under Section 12(5), or that the Arbitrator appointed has a relationship

[14] (2020) 20 SCC 760
[15] 2026 INSC 6

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falling within the Seventh Schedule. They do not render every appointment made through a contractual mechanism invalid merely because one of the parties to the dispute is a member of the institution or association which has made the appointment.

38. In the present case, the arbitration clause does not confer the power of appointment upon the Appellant. It specifically provides that the disputes shall be referred to the Paper Merchants Association and that the Arbitrator shall be appointed by its Executive Committee. The distinction between the Appellant and the appointing authority is material. The Appellant may have invoked the arbitration clause, but the appointment itself was made by the Executive Committee.

39. The learned Commercial Court has proceeded on the basis that, since the Respondent was not shown to be a member of the Association, the appointment made by the Executive Committee at the instance of a member of the Association was necessarily unilateral and consequently hit by Section 12(5). In doing so, the learned Commercial Court has not identified the particular relationship of the appointed Arbitrator with either party which would attract any of the categories specified in the Seventh Schedule of the A&C Act.

40. There is no finding in the Impugned Order that the learned Sole Arbitrator was an employee, consultant, advisor or had any other business relationship with the Appellant. Equally, there is no finding that the Arbitrator was himself a member of the management of the Appellant or otherwise had an interest in the outcome of the dispute. The Impugned Order does not identify any specific item of the Seventh Schedule which rendered the Arbitrator ineligible.

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41. The distinction between a unilateral appointment by a party and an appointment by an independent third-party body cannot be overlooked. In the former situation, the appointing party itself exercises control over the constitution of the Arbitral Tribunal. In the latter, the appointment is made by an independent body in accordance with the mechanism agreed upon between the parties. The latter arrangement cannot be equated with the former merely because one party happens to be a member of the institution concerned.

42. It is also necessary to clarify that the fact that the Executive Committee was the appointing authority does not, by itself, establish that the appointment was necessarily neutral. If the constitution or rules of the Association, or the circumstances surrounding the appointment, demonstrate that the appointing authority was effectively controlled by or was acting in the interest of one of the parties, the appointment would have to be examined in the light of the principles of independence, impartiality and equal treatment embodied in Sections 12 and 18 of the A&C Act. However, such a conclusion must be founded upon material demonstrating the relevant relationship or control and cannot be presumed merely from the membership of one party.

43. The Appellant's submission that both parties had equal rights to refer their disputes to the Association also requires some qualification. The arbitration clause provides for appointment by the Executive Committee and not by either of the parties. Thus, the parties did not possess an independent right to appoint the Arbitrator. Their right under the clause was to invoke the agreed arbitral mechanism. Whether the Executive Committee was, in fact, an independent

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appointing authority is a separate consideration from the question whether the Arbitrator appointed by it was ineligible under Section 12(5).

44. The mere absence of proof of the Respondent's membership of the Association cannot, therefore, be treated as sufficient to establish that the Executive Committee was an interested party or that the Arbitrator appointed by it fell within any of the categories of the Seventh Schedule. The learned Commercial Court has conflated the question of membership and the applicability of the Association's internal regulations with the distinct statutory question of the Arbitrator's eligibility under Section 12(5).

45. Insofar as the Respondent has relied upon ***M.V. Omni Projects*** *(supra)*, the said judgment concerned an appointment mechanism under which the power to appoint the Sole Arbitrator was vested in an authority of one of the parties to the dispute. Similarly, in ***Narendra Kumar Prajapat*** *(supra)*, the Supreme Court declined to interfere where the Arbitrator had been unilaterally appointed by the Bank and his ineligibility under Section 12(5) was an admitted position.

46. The aforesaid decisions do not assist the Respondent in the absence of material demonstrating that the Executive Committee of the Paper Merchants Association was itself an interested or ineligible appointing authority, or that the Arbitrator appointed by it suffered from any disqualification under the Seventh Schedule of the A&C Act. The factual foundation necessary to attract the ratio of those decisions is absent in the present case.

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47. It is also pertinent to note that the requirement of an express agreement in writing under the proviso to Section 12(5) arises only where the Arbitrator is otherwise rendered ineligible under the substantive provision. The proviso cannot be invoked independently to invalidate an appointment where no relationship falling within the Seventh Schedule has been established in the first place.

48. Consequently, the absence of a separate written agreement executed after the disputes had arisen cannot, by itself, render the appointment invalid. The question of waiver would arise only after the statutory ineligibility contemplated under Section 12(5) has been established. The learned Commercial Court has not undertaken this anterior exercise.

49. At the same time, the Appellant's contention that the Respondent's failure to participate in the arbitral proceedings or to challenge the award under Section 34 would amount to a waiver of any objection under Section 12(5) cannot be accepted. In ***Bhadra International*** *(supra)*, the Supreme Court has reiterated that the statutory requirement of an express agreement in writing cannot be substituted by acquiescence, participation or conduct. Thus, the Respondent's absence from the arbitral proceedings would not, by itself, cure an appointment which is otherwise hit by Section 12(5).

50. The finding of the learned Commercial Court that the appointment of the Sole Arbitrator was necessarily unilateral and contrary to Section 12(5), therefore, cannot be sustained on the reasoning adopted in the Impugned Order.

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III. Scope of interference by an Executing Court:

51. The next question which arises is whether the learned Commercial Court was justified in examining the validity of the arbitral award in execution proceedings, particularly when the Respondent had not instituted any proceedings under Section 34.

52. Section 35 of the A&C Act provides that an arbitral award shall be final and binding upon the parties. Section 36 provides for enforcement of the award in the same manner as if it were a decree of the Court, subject to the statutory requirements contained therein.

53. The scope of jurisdiction of an executing court has been explained by the Supreme Court in ***Punjab State Civil Supplies*** *(supra)*. The Supreme Court held that an executing court is ordinarily required to execute the decree as it stands and cannot go behind it or undertake an inquiry into the merits of the adjudication. However, the executing court retains a limited power to examine jurisdictional issues which go to the root of the decree and may render it a nullity.

54. The aforesaid principle is relevant in the context of an arbitral award as well. An award which is sought to be enforced under Section 36 of the A&C Act cannot ordinarily be subjected to a fresh examination on merits in execution proceedings. At the same time, where an objection is raised that the award is a nullity for want of jurisdiction, the executing court is not precluded from examining such an objection within the limited scope recognised by law.

55. In the present case, the Respondent's objection was not founded upon any alleged error in the appreciation of evidence by the Arbitrator or any infirmity in the computation of the amount awarded.

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The objection went to the very constitution of the Arbitral Tribunal and the authority of the Arbitrator to adjudicate the dispute. Such an objection, if established, would go to the root of the award and could not be rejected merely on the ground that the Respondent had not preferred a petition under Section 34.

56. The Supreme Court in ***Bhadra International*** *(supra)* has also reiterated that an objection concerning the inherent jurisdiction of an Arbitral Tribunal cannot be treated as waived merely because it was not raised at an earlier stage of the proceedings. The distinction, however, is between an objection which genuinely establishes inherent lack of jurisdiction and an objection which merely seeks to reopen an issue that has attained finality.

57. Therefore, the Appellant's contention that the executing court had no jurisdiction whatsoever to examine the objection raised by the Respondent cannot be accepted. The learned Commercial Court was entitled to examine whether the award was a nullity for want of a valid arbitration agreement or on account of the appointment of an ineligible Arbitrator. However, such examination had to remain confined to the jurisdictional defect alleged and could not extend to a general reassessment of the arbitral proceedings.

58. The fact that the Respondent did not institute proceedings under Section 34 within the prescribed period would ordinarily result in the award attaining finality and becoming enforceable under Section 36 of the A&C Act. However, the expiry of the limitation period cannot, by itself, confer jurisdiction upon an Arbitral Tribunal which inherently lacked authority to adjudicate the dispute. The question, therefore, is not merely whether the Respondent failed to challenge the award

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within time, but whether the objection raised by him establishes that the award was a nullity.

59. The reliance placed by the Appellant upon ***Sahayaraj*** *(supra)*, to contend that a party which remained absent during arbitration and did not challenge the award under Section 34 cannot subsequently raise objections in execution, need not be examined any further. The present decision does not proceed on the basis that the Respondent waived a statutory objection by remaining absent. It proceeds on the basis that the particular statutory disqualification relied upon by the Respondent has not been established.

CONCLUSION:

60. For the reasons discussed hereinabove, the Respondent has failed to establish that the appointment of the Sole Arbitrator by the Executive Committee of the Paper Merchants Association violated Section 12(5) of the A&C Act merely because the Respondent was not a member of the Association. Therefore, the learned Commercial Court could not have declared the arbitral award a nullity on this ground alone.

61. Consequently, the Impugned Order dated 28.01.2025 passed by the learned District Judge (Commercial) in Execution (Comm.) No.14/2024 is set aside.

62. The objections filed by the Respondent/Judgment Debtor, insofar as they challenge the enforceability of the arbitral award solely on the ground of an alleged unilateral appointment attracting Section 12(5) of the A&C Act, are rejected.

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63. The execution petition is restored to its original number and is remitted to the learned Commercial Court for proceeding further in accordance with law. The learned Commercial Court shall proceed with the execution of the award without reopening the question of the validity of the appointment on the grounds decided herein.

64. The learned Commercial Court shall consider any other permissible objections, if surviving and not already adjudicated, strictly within the limited jurisdiction available to an executing court.

65. The present Appeal is allowed in the aforesaid terms. The pending application also stands closed.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

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