

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE, VAISHALI AT HAZIPUR**

**Execution Case No.140 of 2023**

**C.N.R. No.-BRVA01-006218-2023**

1. M/S HDB Financial Services Limited, Mahalaxmi, Mumbai.

**..... Decree Holder**

**Versus**

1. Mr. Sumit Kumar Age about 37 years S/O Shambhu Singh

R/o Vill-Narayanpur Buzrg, P.O-Birna Lakahansen, P.S- Rajapakar Hajipur, District- Vaishali 844125

2. Mr. Shambhu Singh, Age about 50 years S/O Ramgopal Singh

R/o Vill-Narayanpur Buzrg, P.O-Birna Lakahansen, P.S- Rajapakar Hajipur, District- Vaishali 844125

**.....Judgement Debtor**

**Appearance:**

**Learned Counsel for the Decree Holder: Learned Advocate Sri Shyam Anand**

**Date of Order: 13 March, 2026**

**Present: Harshit Singh, Principal District Judge, Vaishali At Hajipur**

**Order**

The Decree Holder has filed the present case for the execution of award dated 15.11.2021 against the Judgment Debtors.

Case has been called out. Heard. Learned Counsel on behalf of Decree Holder on admission.

**It has been submitted in this Execution Case is as follows :-**

- 13.3.26
- (a) Decree Holder prayed the direction to the Judgment debtor to deposit the Arbitral Award / Decreed amount of Rs.10,82,421/- (ten lakh eighty two thousand four hundred twenty one) along with 18 % per annum interest from the date of filing the claim till realization of the amount said above and also to pay Cost of Rs.800/- as cost to the Claimant Company. By attachment & sale or sale without attachment of the movable and immovable properties of the judgment debtors. Warrant of attachment for the movable and immovable properties of the respondents may kindly be issued as provided Under Order XXI Rule 43 and 54 of the Code of Civil Procedure 1908. That the applicant craves liberty to add, alter, amend delete, and modify any of the submissions made in this

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application. That the Decreed holder has right to produce the list of other movable and immovable properties for attachment as & when required. By arresting the Judgment debtors and putting them in civil prison till payment/realization. Any other order(s) which your Honour may deem fit and proper for appropriation/satisfaction of decree. That, in view of the Award/Decree, the Decree Holder is entitled to the relief claimed in this petition as per Section 36 of the Arbitration and Conciliation Act, 1996.

- (b) That the Judgment Debtor resides within the jurisdiction of this Hon'ble court. The subject matter is within the jurisdiction of this Hon'ble court as provided U/s. 36, therefore this Hon'ble court has the jurisdiction to enforce the award in view of section 36 r/w Sec. 2 (e) of Arbitration and conciliation Act, 1996.
- (c) That the applicant craves the liberty to add, alter, amend, delete, modify, any of the submission made in this application.
- (d) That the applicant has sent pre-execution notice to the Judgment debtor to intimate the judgment debtor of the initiation of the execution proceedings and that the Judgment Debtor has also been provided a copy of arbitration award.
- (e) That as per the knowledge of Degree Holder the judgment Debtor has not challenged the said award before the competent forum within the period of limitation provided under section 34 of the Arbitration Act, 1996.
- (f) As the present application is preferred after expiry of the period of limitation prescribed U/s 34(3) of the said Act and there is no delay in filing the present proceedings.
- (g) That the decree Holder has the right to produce the list of other movable & immovable properties, saving bank account/fixed deposit account or any other source of income belongs to the Judgment debtor for attachment of the same as & when required.

Perused the record.

It itself appears in the petition that the decree holder has not mentioned the detail of the property of the Judgment Debtor. It is the duty of the decree holder to furnish the detail of the property.

From perusal of the record, it appears that **Mr. N. Sivathanu** was appointed as **Sole Arbitrator** and an **Award dated 15.11.2021** has been passed ex-parte against the Judgment Debtors.

*Section 12(5) of the Arbitration and Conciliation, Act 1996 incorporates "Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:*

*Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing."*

**THE SEVENTH SCHEDULE**

**Arbitrator's relationship with the parties or counsel**

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.

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2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.

10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11. The arbitrator is a legal representative of an entity that is a party in the arbitration.

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

***This extract is taken from TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72 : 2017 SCC OnLine SC 692 at page 404***

*54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the*

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*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. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so.*

The legal position regarding unilateral appointments has been settled by the Hon'ble Supreme Court in cases of '**TRF Ltd. Vs. Energo Engg. Projects Ltd.**' reported in (2017) 8 SCC 377, '**Bharat Broadband Network Ltd vs. United Telecoms Ltd.**' reported in (2019) 5 SCC 755, '**Perkins Eastman Architects DPC vs. HSCC (India) Ltd.**' reported in (2020) 20 SCC 760, '**Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. Vs. Ajay Sales and Suppliers**' reported in (2021) 17 SCC 248 and '**Ellora Paper Mills Ltd. vs. State of M.P.**' reported in (2022) 3 SCC 1, whereby the unilaterally appointed arbitrators have been held to be ineligible to adjudicate the disputes between the parties.

In present case the Arbitral Award has been passed by the sole arbitrator who was appointed unilaterally by the degree holder moreover arbitration agreement enabling one of the parties to unilaterally constitute Arbitrator tribunal do not inspire confidence of independence and impartiality. As such unilateral appointment of an arbitrator is void ab initio and arbitral award passed by sole arbitrator is without jurisdiction and non est in law. Thus, such an impugned award cannot be enforced. Consequently, award dated 15.11.2021 passed by the sole arbitrator is unenforceable.

In view of fact and circumstances and case laws as discussed above this execution case is dismissed.

Dictated

*Harshit Singh*  
*13.3.26*

Principal District Judge.