

IN THE COURT OF PRINCIPAL DISTRICT JUDGE Vaishali

Execution Case No. 25 of 2025

C.N.R. No.-BRVA010083622025

1. Kotak Mahindra Prime Limited, through its authorized Representative Mr Sharaswat Sagar.

..... Decree Holder

Versus

1. Gaurav Kumar aged about 41 years, resident of Khijirpur, Milk urf Chak Wake Bishunpur Vaishali, Bihar 844126.

.....Judgement Debtor

Appearance:

Learned Counsel for the Decree Holder: Learned Advocate Sri Alok Swamy.

Learned Counsel for the Judgement Debtor: None

Date of Order: 24.06.2026

Present: Harshit Singh, Principal District Judge, Vaishali

Order

1. The Decree Holder has filed the present case for the execution of award dated 11.02.2025 against the Judgment Debtor.

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

Perused the record.

2. From perusal of the record, it appears that **Mr. Niyaz Ahmeed, Ld Advocate** was appointed as **Sole Arbitrator by Kotak Mahindra Prime Ltd** and an **Award** has been passed ex-parte against the Judgment Debtors.

3. It is not in dispute that the Award Holder, being a non-banking financial company and the very party which extended the financial assistance giving rise to the present dispute, is directly and materially interested in the outcome of the arbitral proceedings. The Award Holder, presumably conscious of the legal infirmity that would attend a direct appointment, caused the referral to be made through Presolv-360 Centre for ADR, an Arbitration Institution. The Sole Arbitrator was thereupon appointed by the said Institution at the instance, and under the mechanism, set in motion unilaterally by the Award Holder.

4. **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.
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.

5. ***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.*

24.6.24

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 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.

6. 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. The above legal position is also affirmed by the Apex Court in the recent Judgement **Bhadra International (India) Pvt. Ltd. v. Airports Authority of India** 2026 SCC OnLine SC 7. It is also pertinent to mention that Airports Authority of India has filed review against the order dated 05.01.2026 which was also dismissed by the Hon'ble Apex Court vide order dated 21.04.2026 in **Airports Authority of India vs Bhadra International (India) Pvt. Ltd.** 2026 SCC OnLine SC 758.

7. Recently in **In Cholamandalam Investment and Finance Company Limited Versus Sayan Goswami and Another** 2026 SCC OnLine Cal 5270 delivered on 15.05.2026, The Hon'ble High Court, while considering the relevant case laws, laid down law regarding appointment of arbitrator in para -30 which is as follows: -

30. Upon a holistic consideration of the statutory framework, the authoritative pronouncements of the Supreme Court in **TRF Ltd. v. Energo Engineering Projects Ltd.**, reported as (2017) 8 SCC 377, **Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)**, reported as (2025) 4 SCC 641 and **Bhadra International (India) Pvt. Ltd. v. Airports Authority of India**, reported as 2026 SCC OnLine SC 7, and the decisions of various High Courts noticed hereinabove, this Court is of the considered opinion as follows:

(i) The arbitration clause in the Loan agreement dated 25-5-2023 vested the right of appointment of the Sole arbitrator in the Award Holder, who is an interested party. Such a clause is, by operation of the law declared by the Hon'ble Supreme Court, legally unsustainable and contrary to the mandatory provisions of Section 12(5) of the Act.

(ii) The Award Holder's act of unilaterally invoking the services of SICCI-Centre for ADR for the appointment of the Sole arbitrator, without the consent or participation of the Award Debtor, amounts in substance to the exercise of the very power of unilateral appointment that is prohibited in law. The institutional form does not alter the substantive nature of the act.

(iii) The Sole arbitrator so appointed was de jure ineligible by operation of law. His mandate never legally commenced. The Arbitral Tribunal was, accordingly, constituted in derogation of the mandatory provisions of the Act and was devoid of inherent jurisdiction to adjudicate the disputes between the parties.

(iv) The ex parte Award dated 13-5-2025, rendered by a Tribunal lacking inherent jurisdiction, is void ab initio and is non-est in the eyes of law. It carries no enforceability or recognition in law and cannot be executed as a decree of this Court under Section 36 of the Act.

(v) The non-participation of the Award Debtor at all stages of the proceedings, including the stage of constitution of the Tribunal, precludes any inference of waiver, consent or acquiescence, which in any event could only be established by an express agreement in writing subsequent to the arising of the dispute.

The Hon'ble High Court declined to enforce the ex-parte Arbitral Award and dismissed Execution Petition.

8. 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 11.02.2025 passed by the sole arbitrator is unenforceable.

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

Dictated
Harshit Singh

Principal District Judge