

IN THE COURT OF PRINCIPAL DISTRICT JUDGE Vaishali

Execution Case No. 26 of 2025

C.N.R. No.-BRVA010084272025

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

..... Decree Holder

Versus

1. Perwez Alam son of Ashraf Ali near Ashiana MA Ashiana Colony Bacgmali Ward No. 6, Hajipur, Vaishali, Bihar, 844101

.....Judgement Debtor

Appearance:

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

Learned Counsel for the Judgement Debtor: None

Date of Order: 7th of May 2026**Present: Harshit Singh, Principal District Judge, Vaishali**

Order

The Decree Holder has filed the present case for the execution of award dated 17.02.2025 against the Judgment Debtors.

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

Perused the record.

From perusal of the record, it appears that Sri Manik Ahluwalia was appointed as **Sole Arbitrator by Kotak Mahindra Prime Ltd** and an **Award** 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.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

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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 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,

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'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.

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 17.02.2025 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

Principal District Judge