

21 OMP (I) (COMM.) 162/26

HERO HOUSING FINANCE LIMITED v. SHREYAS INFRA
AND ORS.

03.07.2026 (At 01:07 p.m.)

Present: Sh. Ashish Singh and Sh. Aditya Sharan, ld. counsels
for petitioner.

1. This petition was fixed for consideration/order on its maintainability.
2. This question was in reference to the relevant clauses in the relied upon agreement. Clause 13.15 of the HHFL Loan Agreement provides for right reserved with the lender/petitioner herein, to appoint Arbitrator. Apparently, such clause in the agreement is illegal, in view of settled law through various judicial pronouncements viz. **TRF Ltd. v. Energo Engineering Projects Ltd. (2017) 8 SCC 377**, **Perkins Eastman Architects DPC v. HSCC (India) Ltd. (2020) 20 SCC 760** and **Central Organisation for Railway Electrification v. M/s ECI-SPIC-SMO-MCML (JV) (2025) 4 SCC 641**, which declared that such contractual terms/clauses mandating unilateral appointments or restricted panel selections to be invalid. Ld. counsel for petitioner had submitted that such clause of the agreement can be ignored, and appointment of Arbitrator can be applied u/s. 11 of the Arbitration & Conciliation Act, 1996.
3. Hon'ble Supreme Court explained concept of severability in **Hindustan Construction Company (HCC) v. Bihar Rajya Pul Nirman Nigam Ltd. (2026) 3 SCC 264**, to hold that the negative covenant and the unilateral appointment power were void, but severable. The court ruled that the parties' core intention to submit their disputes to arbitration remained valid under Section

7. The court's duty was to sever the invalid appointment terms and utilize Section 11(6) to appoint a neutral arbitrator, preserving party autonomy and the integrity of the dispute resolution process. This severability framework ensures that procedural defects in legacy appointment clauses do not undermine the substantive agreement to arbitrate. The Division Bench of Delhi High Court also addressed and resolved this issue in **M/s. Intec Capital Ltd. v. Frontline Retail India Pvt. Ltd. & Ors.** 2025 SCC OnLine Del 7719. The Division Bench remitted the Section 9 petition to the Commercial Court for a decision on the merits, applying concept of severability of clause and holding that “the only consequence of an arbitration clause envisaging unilateral appointment of the arbitrator is that the clause becomes unworkable. The dispute does not thereby become non-arbitrable”.
4. In view of above-mentioned legal principles of severability of void portion of contract, petition can be admitted. However, on perusal of petition alongwith given description of date and events, I find inconsistent plea taken in respect of nature of loan and other features of agreements. There is some confusion regarding the purpose of loan, date of sanction and disbursement of loan, mortgage or sale deed being executed etc. Let petitioner file a rectified/amended petition with clarity over these aspects.
5. Put up on 04.08.2026 for filing of amended petition.

(Pulastya Pramachala)
District Judge (Commercial Court-01),
PHC/New Delhi/03.07.2026 (*r.k.*)