

**IN THE COURT OF THE DISTRICT JUDGE, THIRUVANANTHAPURAM**  
**PRESENT : SMT. NAZEERA.S, DISTRICT JUDGE**

*On Monday, 23<sup>rd</sup> March, 2026 / 2<sup>nd</sup> Chaithra, 1948*

**EP (Com) No. 617/2024**  
**IN**  
**Arbitration Case No. 2045 of 2020**

**DECREE HOLDER :-**

Maxvalue Credits and Investments Ltd.  
Cee Key Plaza, Opp. Metropolitan Hospital,  
Koorkenchery, Thrissur-680007. Represented  
by its Authorized Representative, Sinoy Alex,  
aged 31 years, S/o K L Alex, Kokken House,  
Nest Karippai Lane, Chelakkottukara,  
Thrissur-680005, Deputy Manager, Legal Department.

***By Advs. SM Rajeevan, S S Shajimon, Visakh R, Shibi S Anup  
and Nikhil Krishna A S***

**JUDGMENT DEBTORS :-**

1. Vineetha U, residing at Puthuval Veedu,  
Chudukadu, Varkala PO, Varkala Village,  
Varkala Taluk, Thiruvananthapuram-695141.
2. Sandhya, residing at Puthuval Veedu, Chudukadu,  
Varkala PO, Varkala Village, Varkala Taluk,  
Thiruvananthapuram-695141.

***JD1 and 2 called absent.***

This Execution Petition having been finally heard on 26-02-2026 and the court on 23-03-2026 passed the following :-

## ORDER

This is an Execution Petition filed under Order XXI Rule 10 and 11 of the Code of Civil Procedure.

2. This Execution Petition is filed seeking execution of the award passed by the sole Arbitrator in Arbitration case No.2045/2020 dated 30.10.2020 as against judgment debtors Nos. 1 and 2 by way of attachment and sale of immovable property. The execution petitioner herein has initiated arbitration proceedings on the basis of the loan agreement dated 4.12.2017 entered into between the petitioner and the respondents. On reference by the claimant the arbitral award was passed allowing the petitioner/claimant to realise from the respondents 1 and 2 jointly and severally Rs.38,835/- with interest together with cost of Rs.2,500/-.

3. A perusal of the award shows that it is passed by the sole arbitrator appointed by the petitioner. So a question is raised as to whether the award is enforceable and whether the Execution Petition is maintainable in view of the fact that the award is passed by the sole arbitrator.

4. It is held by the Hon'ble High Court of Kerala in M/s Hedge Finance Private Limited v. Bijesh Joseph (2022 ICO 1375) as follows:-

*The law mandates that there should be neutrality not only for the Arbitrator but also in the arbitrator selection process as well. Thus, in the post -2015 amendment era, there are only two modes of appointment of a sole Arbitrator (I) by express agreement in writing between the parties, post the dispute, agreeing to waive the applicability of Section 12 of the Act or (ii) by order of appointment by the High Court under Section 11 of the Act. If the*

*appointment of a sole arbitrator is made other than by the above two methods, the appointment is ex facie bad and is in contravention of the provisions of the Act, which goes to the roots of the matter, and the Arbitrator becomes de jure ineligible to act as an arbitrator by the operation of law.*

It is further held that

*an interim award passed by an arbitrator who was appointed in contravention of the provisions of the Act and the law laid down by the Honourable Supreme Court extracted above, is bad in law and as a corollary to the same, the award is unenforceable.*

5. In view of the dictum laid down in this decision it is to be considered whether the appointment of arbitrator in this case is in accordance with law. It is borne out from the award that the loan agreement was executed on 4.12.2017 that is after coming into force of the Amendment Act 3 of 2016 (with effect from 23.10.2015). It is stated that on 10.03.2020 the petitioner sent notice demanding the balance amount then due from the respondents and also intimating that on default the matter will be referred to the sole arbitrator nominated by the petitioner. Thereafter since the respondents failed to pay the amount due and settle the transaction the claimant referred the dispute as per the agreement to the sole arbitrator nominated by the petitioner for passing an award. So it is clear that the sole arbitrator was appointed unilaterally without the consent or the consensus of the other party.

6. The learned counsel for the decree holder submits that after initiation of the arbitral proceedings, registered notice were issued to the parties, in spite of which the respondents failed to appear before the arbitrator or to file any objection and

thereafter the award is passed and the certified copy of the award dated 30.10.2020 was also served on the judgment debtors by the arbitrator by registered post. It is further submitted that even after service of the copy of the award, the judgment debtors did not file any objection for recourse to set aside the award u/s 34 of the Arbitration and Conciliation Act. So it is contended by the decree holder that the execution court need not go behind the award/decreed.

7. It is held by **M/s Sundaram Finance Limited vs. S.M.Thangaraj and others** that *the executing court cannot go into the validity of the arbitral award and the issue of ineligibility of the arbitrator cannot be raised during the pendency of the execution proceedings*. It is held therein that as long as an aggrieved party to the award did not challenge the award passed against him in the manner known to him, the arbitral award shall be final and binding under the parties and the persons claiming under them respectively.

8. However, the constitution bench of the Hon'ble Supreme Court in the case of **Central Organisation for Railway Electrification v. ECI SPIC SMO MCML(JV), a Joint Venture Company (2024 (6) CTC 495)** in a majority view has held that *Unilateral appointment clauses in public-private contracts are violatve of Article 14 of the Constitution and the principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties*. In this regard the counsel for the petitioner argued that the law laid down in this

decision as held by the Apex Court will apply prospectively to arbitrator appointments to be made after the date of judgment which is 8.11.2024.

9. In this decision it is observed by Hon'ble **Justice Pamidighantam Sri Narasimha** as follows:- .....

VII. *“Arbitration agreements enabling one of the parties to unilaterally constitute arbitral tribunal do not inspire confidence of independence and may violate the public policy requirement of constituting an independent and impartial tribunal. The court will, therefore, scrutinize the agreement and hold them to be invalid if it considers it appropriate.”*

VIII. *“The occasion for the court to examine the constitution of the independent and impartial tribunal under the arbitration clause will arise when one of the parties makes an application under Sections 11, 14, or 34. It is not permissible for the court to give an advance declaration that all such agreements which enable one of the parties to unilaterally constitute the arbitral tribunal would be void per se. No two agreements are the same and it is necessary for the Court to examine the text and context of the agreement.”*

10. Pith and Core of the law laid down by the Hon'ble Apex Court is that every agreement appointing the arbitrator should be based upon the principle of independence and impartiality of the arbitrator. It is clear that, in case of unilateral appointment of the arbitrator, the test of independence and impartiality of the appointment of the arbitrator is to be considered. Based on these principles settled by

law it is found that the sole arbitrator appointed in this case was unilaterally appointed by the decree holder without the consensus of judgment debtor. Apparently there is no express agreement in writing between the parties, post the dispute, agreeing to waive the applicability of Section 12 of the Act. In such circumstance the principle laid down by the Hon'ble High Court of Kerala in M/s Hedge Finance Private Limited need to be applied here. So it is found that the appointment of a sole arbitrator in this case is ex facie bad and is in contravention of the provisions of the Act, which goes to the roots of the matter and the arbitrator becomes de jure ineligible to act as an arbitrator by the operation of law and so the award is not enforceable.

In view of my discussion above, this Execution Petition is dismissed as not maintainable.

*Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in Open Court, on this the 23<sup>rd</sup> day of March, 2026.*

Sd/-  
**NAZEERA S**  
**DISTRICT JUDGE**

**APPENDIX : Nil**

Id/-  
**DISTRICT JUDGE**

(Copies : 3)  
Typed by : Rifa  
Compared by : Anupama FCS

(True Copy)

By Order  
**SHERISTADAR**

Copy of Order in  
EP (Com) No. 617/2024  
Dated: 23-03-2026

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