

Fresh petition received by way of assignment. It be checked and registered.

Present: Sh. Rit Arora, Ld counsel for petitioner joined proceedings through VC.

O R D E R

22.05.2026

1. On Court query, Ld counsel for the petitioner has pointed out that the arbitration clause is contained in 73 of the Loan Agreement.
2. The said clause provides that the disputes shall be referred to arbitration by a single arbitrator to be appointed by the petitioner.
3. I am not satisfied about the maintainability of the present petition.
4. No notice under Section 21 of the Act was sent to the respondent. Further, the arbitration clause provides for appointment of sole arbitrator unilaterally by the petitioner.
5. It is now a settled law that that an agreement providing for appointment of sole unilaterally appointed arbitrator is null and void. Such agreement is non est.
6. Reliance is placed on the case of *M/s Voestalpine Schienen GMBH vs Delhi Metro Rail Corporation Ltd*, (2017) 4 SCC 665, wherein the Hon'ble Supreme Court held:

“17) Keeping in mind the afore-quoted recommendation of the Law Commission, with which spirit, Section 12 has been amended by the Amendment Act, 2015, it is manifest that the main purpose for amending the provision was to provide for neutrality of arbitrators. In order to achieve this, sub-section (5) of Section 12 lays down that 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, he shall be ineligible to be appointed as an arbitrator. In such an eventuality, i.e., when the arbitration clause finds foul with the amended provisions extracted above, the appointment of an arbitrator would be beyond pale of the arbitration agreement, empowering the court to appoint such arbitrator(s) as may be permissible. That would be the effect of non-obstante clause contained in sub-section (5) of Section 12 and the other party cannot insist on appointment of the arbitrator in terms of arbitration agreement.

...

19) Independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental

principles of natural justice which applied to all judicial and quasi judicial proceedings. It is for this reason that notwithstanding the fact that relationship between the parties to the arbitration and the arbitrators themselves are contractual in nature and the source of an arbitrator's appointment is deduced from the agreement entered into between the parties, notwithstanding the same non-independence and non-impartiality of such arbitrator (though contractually agreed upon) would render him ineligible to conduct the arbitration. The genesis behind this rational is that even when an arbitrator is appointed in terms of contract and by the parties to the contract, he is independent of the parties. Functions and duties require him to rise above the partisan interest of the parties and not to act in, or so as to further, the particular interest of either parties. After all, the arbitrator has adjudicatory role to perform and, therefore, he must be independent of parties as well as impartial.

...
22) *It also cannot be denied that the Seventh Schedule is based on IBA guidelines which are clearly regarded as a representation of international based practices and are based on statutes, case law and juristic opinion from a cross-section on jurisdiction. It is so mentioned in the guidelines itself.”*

(emphasis supplied)

7. Reliance is also placed in the case of *TRF Ltd. v. Energo Engg. Projects Ltd, (2017) 8 SCC 377*, which was upheld in the case of *Central Organisation for Railway Electrification vs. M/s ECI SPIC SMO MCML (JV) A Joint Venture Company, 2024 INSC 857* and it was observed:

“...A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;...”

8. Therefore, in the considered opinion of this Court the arbitration agreement is not enforceable, being void.

9. The petitioner is at liberty to file citations, if any in support of the maintainability of the petition.

10. Put up for further consideration and order on **02.06.2026**.

(Richa Gusain Solanki)
District Judge-02, South-West,
Dwarka Courts, Delhi
22.05.2026