

**IN THE HIGH COURT AT CALCUTTA  
(COMMERCIAL DIVISION)  
ORIGINAL SIDE**

**RESERVED ON: 09.12.2025  
DELIVERED ON: 19.12.2025**

**PRESENT:  
HON'BLE JUSTICE GAURANG KANTH**

**AP-COM 908 OF 2025**

**MAHUA BHAUMIK AND ANR**

**VERSUS**

**URGO CAPITAL LIMITED**

***Appearance:***

***Mr. Kumarjit Banerjee, Adv.***

***..... for the petitioner***

***Mr. K.K. Pandey, Adv.***

***..... for the respondent***

**JUDGMENT**

**Gaurang Kanth, J.:-**

- 1.** The Petitioner has preferred the present petition under Section 14 of the Arbitration and Conciliation Act, 1996, seeking termination of the mandate of the Sole Arbitrator appointed by Ordways Solutions Pvt. Ltd., also known as "SAMA". The challenge is primarily directed against the alleged unilateral appointment of the Arbitrator pursuant to Clause 18 of the loan agreement dated 30.09.2024.
- 2.** The facts leading to the present Petition are as follows:
- 3.** Petitioner No. 1 is the sole proprietor of *M/s Reliance Roadlines*, a proprietorship concern registered as a Micro, Small and Medium Enterprise (MSME). The said firm is engaged in providing transportation services for carriage of textile and fabric consignments from India to Bangladesh.

4. On 30.09.2024, a loan agreement was executed between the Petitioners (Petitioner No. 1 as borrower and Petitioner No. 2 as co-borrower) and the Respondent. Pursuant thereto, the Petitioners availed a loan facility of Rs. 20,36,500/- from the Respondent.
5. The Petitioners submit that, owing to the prevailing political instability in Bangladesh, including frequent strikes, transport blockades, and severe slowdowns at land ports, there were substantial operational disruptions in cross-border transport. These circumstances allegedly led to prolonged transit times, scarcity of essential workforce, and a significant decline in the turnover of *M/s Reliance Roadlines*, resulting in acute financial distress and temporary irregularities in repayment of monthly instalments from April 2025 onwards.
6. It is further stated that the default in payment of certain instalments was not deliberate. The Petitioners assert that they have never intended to evade repayment and that the last instalment of Rs. 74,650/- was duly paid on 24.04.2025.
7. The Reserve Bank of India, acting as the principal banking regulator, issued a notification dated 17.03.2016 introducing the Framework for Revival and Rehabilitation of Micro, Small and Medium Enterprises, aimed at providing timely support to fundamentally viable MSMEs facing temporary financial stress. The Framework obligates lenders to identify stressed accounts at an early stage and to formulate a Corrective Action Plan (CAP) to revive them, prior to the account being classified as a Non-Performing Asset.
8. On 08.10.2025, the Petitioner addressed a representation to the Respondent requesting initiation of the revival and rehabilitation process

under the aforesaid RBI Framework. According to the Petitioners, instead of considering such request, the Respondent issued a loan recall notice dated 10.10.2025.

- 9.** The loan agreement contains an arbitration clause (Clause 18) providing that disputes shall be referred to an institution recognized by the Government of India for dispute resolution. Vide notice dated 11.11.2025, the Respondent invoked the arbitration clause and initiated arbitral proceedings under Section 21 of the Arbitration and Conciliation Act, 1996. By the said notice, the Respondent proposed SAMA (Ordways Solutions Pvt. Ltd.), a private online dispute resolution platform, as the appointing authority and sought the Petitioners' consent within seven days.
- 10.** The Petitioners, vide communication dated 18.11.2025, objected to the Respondent's proposal for reference to SAMA and also addressed a separate letter to SAMA recording their objection to its involvement in the appointment process.
- 11.** Notwithstanding the Petitioners' objections, SAMA, on 19.11.2025, appointed a Sole Arbitrator. The Respondent thereafter filed its Statement of Claim and an application under Section 17 of the Act on 24.11.2025. The learned Sole Arbitrator has also furnished the disclosure required under Section 12 of the Arbitration and Conciliation Act, 1996.
- 12.** Aggrieved by the appointment of the Arbitrator through SAMA, the Petitioners have filed the present petition under Section 14 of the Act seeking termination of the mandate of the learned Sole Arbitrator.

**Submissions on behalf of the Petitioners**

- 13.** Learned Counsel for the Petitioners, Mr. Kumarjit Banerjee, submits that Clause 18 of the agreement contemplates reference of disputes only to an

institution recognized by the Government of India. It is argued that the Petitioners never consented to the appointment of an arbitrator through a private online dispute resolution platform such as SAMA (Ordways Solutions Pvt. Ltd.), and that recourse to such a forum is contrary to the agreed contractual mechanism.

14. It is contended that, in the absence of consensus between the parties regarding the appointment procedure, the Respondent ought to have invoked Section 11(3A) of the Arbitration and Conciliation Act, 1996, for appointment of an arbitrator in accordance with law, rather than unilaterally initiating the process through a private platform.
15. Learned Counsel further submits that the appointment of the Sole Arbitrator is vitiated by unilateralism. Reliance is placed upon the judgments of this Court and the Delhi High Court, **Ballarpur Industries Ltd. v. S.G. Enterprises, OMP(T) (Comm) 40/2024; Proddatur Cable TV Digi Services v. Siti Cable Network Ltd.**, reported as **2020 SCC OnLine Del 350**; and this Court's decision in **Bhubaneshwari Seafood Pvt. Ltd. & Anr. v. Ugro Capital Ltd., APOT/296/2024**, to contend that a unilateral appointment of an arbitrator is impermissible in law and stands condemned by consistent judicial authority.
16. It is further argued that, in view of the aforesaid precedents, any appointment made unilaterally or through a procedure not mutually agreed to by the parties renders the arbitrator *de jure* ineligible under the scheme of the Act. The Petitioners thus submit that the present case falls within the ambit of Section 14, and the mandate of the arbitrator is liable to be terminated on account of the inherent illegality in the appointment process.

17. In view of these circumstances, it is prayed that the mandate of the Arbitral Tribunal be terminated.

**Submissions on behalf of the Respondent**

18. Mr. K.K. Pandey, Learned Counsel for the Respondent, submits that SAMA is an independent private dispute resolution platform operating through its own institutional framework, and that the appointment of the Sole Arbitrator has been carried out strictly in accordance with such independent mechanism. It is urged that the Respondent had no role or influence in the selection or appointment of the Arbitrator, and therefore the allegation of unilateral appointment is misconceived.
19. It is further contended that the Arbitrator has been appointed pursuant to the institutional procedure contemplated under the agreement, and that the learned Sole Arbitrator is a neutral third party having no connection with any of the litigating parties. The Arbitrator has already furnished the requisite declaration of independence and impartiality under Section 12 of the Act. Reliance is placed on **Chennai Metro Rail Limited Administrative Building v. Transtonnelstory Afcons (JV)**, reported as **2024 (6) SCC 211**, to contend that where an arbitrator has been appointed through a neutral and independent institutional mechanism, courts ought not to interfere with such appointments at the threshold.
20. Learned Counsel further submits that the Petitioners have not made out any case of *de jure* ineligibility or *de facto* inability of the Arbitrator. It is submitted that the present case does not attract the Seventh Schedule or even the Fifth Schedule of the Act, and therefore no case for termination of mandate under Section 14 is made out. Reliance is placed on **Societe Pepper Grenoble SARL v. Union of India**, reported as **2004 (75) DRJ 74**,

and ***National Highways Authority of India v. K.K. Sarin***, reported as **2009 SCC OnLine Del 764**, to argue that mere dissatisfaction with the mode of appointment of the arbitrator, in the absence of any specific circumstances indicating bias or lack of independence or statutory ineligibility, does not warrant the invocation of jurisdiction under Section 14 of the Arbitration and Conciliation Act, 1996.

- 21.** It is further argued that the statutory framework of the act unequivocally mandates that any challenge to the Arbitrator on the ground of alleged bias or procedural infirmity must, in the first instance, be raised before the Arbitral Tribunal under Section 13 of the Act. The legal position stands reaffirmed by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)***, reported as **2024 SCC OnLine SC 3219**. The Supreme Court has clarified that the act provides a complete and self-contained mechanism, whereby objections relating to the constitution of the tribunal or the conduct of the arbitrator are to be decided by the tribunal itself, and only upon the conclusion of the arbitral proceedings may the aggrieved party invoke the remedy under Section 34 of the Act. Consequently, it is submitted that the present petition under Section 14 is not maintainable, as the grievances sought to be raised do not disclose any *de jure* or *de facto* inability of the arbitrator to perform his mandate, but rather fall squarely within the statutory ambit of Sections 12, 13 and 16 of the Act.

### **Legal Analysis**

- 22.** This Court has heard the submissions advanced by the learned counsel for both parties and has carefully examined the documents placed on record.

- 23.** The arbitration clause governing the rights and obligations of the parties reads as follows:

*“Clause 18- Arbitration and Dispute settlement*

- (a) *All claims, disputes differences, or questions of any nature arising between the parties whether during or after the termination of this agreement in relation to the construction, meaning or interpretation of any term used or clause of this agreement or as to the rights, duties, and liabilities of the parties arising out of this agreement shall be resolved through arbitration which shall be administered by an institution recognized by the Government of India for dispute resolution, such institution will appoint the arbitrator for conducting the arbitration proceedings in accordance with its rules for conduct of arbitration proceedings under the Arbitration and Conciliation Act, 1996 as may be amended from time to time. The arbitration proceedings shall be conducted preferably through online means or otherwise through conventional means in English language. The arbitral award shall be final and binding on the parties. The seat and venue of arbitration (if conducted through conventional means) shall be at Kolkata.*
- (b) *the award given by the Arbitrator shall be final and binding on the parties to this agreement. The cost of the arbitration shall be both with the parties in accordance with the award passed by the Arbitrator.”*

- 24.** A plain reading of Clause 18 unequivocally reflects the intention of the parties that the arbitration proceedings shall be conducted by an institution recognized by the Government of India. However, in deviation from the said contractual stipulation, the respondent unilaterally approached a private online dispute resolution forum. The petitioner, upon becoming aware of this deviation, promptly raised objections to this course of action and communicated the same to both the said institution and the respondent. Nevertheless, the appointment process was carried forward, resulting in the constitution of a sole arbitrator, who subsequently furnished a declaration under Section 12(5) of the Act, asserting his independence and impartiality.

- 25.** Against this factual backdrop, the primary issue that arises for consideration is whether the constitution of the Arbitral Tribunal in a manner allegedly inconsistent with the agreed procedure and without the

concurrence of both parties, *ipso facto*, constitutes a “*de jure*” inability of the arbitrator within the meaning of Section 14 of the Arbitration and Conciliation Act, 1996.

- 26.** Before examining this question, it is necessary to consider the scheme of Sections 14, 15 and 16 of the Act.
- 27.** A combined reading of Sections 14, 15 and 16 reveals a carefully calibrated legislative framework, which draws a clear distinction between (i) contingencies in which the mandate of an arbitrator stands terminated automatically, and (ii) all other jurisdictional challenges pertaining to the constitution or authority of the arbitral tribunal. Section 14 provides for termination of the mandate only in narrowly defined circumstances. Under Section 14(1)(a), termination occurs where the arbitrator becomes “*de jure*” or “*de facto*” unable to perform his functions. The expression “*de jure*” inability refers to a legal ineligibility or statutory bar, and whereas “*de facto*” inability pertains to factual incapacity or failure to act without undue delay. Section 14(1)(b) recognizes termination of mandate in cases where the arbitrator withdraws or where the parties mutually agree to terminate the mandate. Where a dispute arises as to the existence of any of the aforesaid contingencies, Section 14(2) permits the aggrieved party to approach the Court. However, the scope of judicial scrutiny under Section 14(2) remains strictly confined to examine whether the limited statutory grounds enumerated under Section 14(1) are in fact attracted.
- 28.** Once termination under Section 14(1) is established, Section 15 functions as a consequential mechanism, requiring that a substitute arbitrator be appointed strictly in accordance with the same procedure or rules that governed the original appointment.

29. In contrast, Section 16 is the statutory repository for all other challenges relating to the jurisdiction of the arbitral tribunal, including objections to the validity of the arbitration agreement, the competence of the tribunal, or alleged irregularities in the appointment process. The arbitral tribunal, by virtue of the doctrine of *kompetenz-kompetenz*, is empowered to decide such objections in the first instance. If the tribunal rejects a Section 16 challenge and upholds its jurisdiction, the aggrieved party may either raise the issue under Section 34 after the award or invoke the appellate remedy under Section 37(2). The statutory framework thus ensures that all jurisdictional objections, save those falling within the narrow confines of Section 14, must first be addressed before the tribunal.
30. The contours of Section 14 have been authoritatively clarified by the Hon'ble Supreme Court in **HRD Corporation v. GAIL (India) Ltd.**, reported as **(2018) 12 SCC 471** and **Bharat Broadband Network Ltd. v. United Telecoms Ltd.**, reported as **(2019) 5 SCC 755**. In *HRD Corporation (supra)*, the Court held that Section 14 applies only where the arbitrator suffers from a “*de jure*” or “*de facto*” inability to perform his functions. “*De jure*” incapacity predominantly covers statutory ineligibility under the Seventh Schedule, in which case termination is automatic and does not require recourse to Section 13. “*De facto*” incapacity concerns factual impossibility such as illness or non-performance. The Court emphasized that issues of bias, and independence must be addressed through the mechanism under Sections 12(3) and 13, and not under Section 14. In **Bharat Broadband (supra)**, the Supreme Court reaffirmed that statutory ineligibility under the Seventh Schedule results in automatic termination under Section 14(1)(a), and that substitution under Section 15

must follow the original contractual process. These precedents underscore that Section 14 is confined to clear cases of ineligibility or incapacity and cannot be invoked for broader appointment or jurisdiction related objections, which fall within the domain of Section 16.

- 31.** Returning to the present case, the respondent, contrary to the arbitration clause, invoked a private dispute resolution forum for the appointment of the arbitrator. The Hon'ble Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, reported as **(2020) 20 SCC 760**, has categorically held that unilateral appointments violate the fundamental requirement of neutrality embedded in the Act. The Constitution Bench in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)***, reported as **(2025) 4 SCC 641**, has categorically held that parity and equality between the parties must be maintained at every stage of the appointment process, and that no party can claim a unilateral or dominant role. The Court further held that unilateral appointment clauses in public-private contracts violate Article 14 of the Constitution of India. The relevant portion reads as follows:

“Independence and impartiality of the arbitral proceedings and equality of parties are concomitant principles. The independence and impartiality of arbitral proceedings can be effectively be enforced only if the parties can participate equally at all stages of an arbitral process. Therefore, the principle of equal treatment of parties applies at all stages of arbitral proceedings, including the stage of the appointment of the arbitrators.”

In the said judgment, the Hon'ble Supreme court categorically held that ‘Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution.’

- 32.** Tested against these principles, the appointment undertaken through SAMA, without adherence to the agreed inter-party mechanism, is inconsistent with the statutory mandate of equal participation and with

the foundational principles of party autonomy. The challenge raised by the petitioner, therefore strikes at the very root of the appointment process. An arbitrator appointed through a procedure contrary to the contractual mechanism, and in violation of the principles laid down in **Perkins Eastman** (*supra*) and **Central Organisation for Railway Electrification** (*supra*), suffers from a *de jure* incapacity to continue, as the defect vitiates the very source of his authority.

33. The petitioner has also placed reliance upon the decisions of the Delhi High Court in **Ballarpur Industries Ltd.** (*supra*), **Proddatur Cable TV Digi Services** (*supra*), and the decision of the coordinate bench of this Court in **Bhubaneshwari Seafood Pvt. Ltd.** (*supra*), all of which reinforce the settled principle that unilateral appointment of an arbitrator is impermissible.
34. In **Proddatur Cable** (*supra*), the Delhi High Court, while dealing with a petition under Sections 14 and 15, held that a clause enabling unilateral appointment was invalid under Section 12(5) read with **Perkins Eastman** (*supra*). Consequently, the mandate of the arbitrator was terminated and a substitute arbitrator was appointed in accordance with Section 15 of the Act. Similarly, in **Ballarpur Industries** (*supra*), the appointment was quashed on the ground of unilateralism in the appointment process. The decision of the Coordinate Bench of this Court in **Bhubaneshwari Seafood Pvt. Ltd.** (*supra*) does not advance the petitioner's case, as the Court therein, while expressing a *prima facie* view on the unilateral selection of the Online Dispute Resolution Forum, interfered with the interim order of the Tribunal in the light of the specific facts and circumstances prevailing in that matter.

35. The respondent, on the other hand, had placed reliance on ***Societe Pepper Grenoble*** (supra) and ***National Highways Authority of India v. K.K. Sarin*** (supra). However, both these decisions pre-date the authoritative pronouncements of the Hon'ble Supreme Court in ***Perkins Eastman*** (supra) and the Constitution Bench judgment in ***Central Organisation for Railway Electrification*** (supra). In view of the subsequent and binding clarification of law laid down in these decisions, particularly with respect to the impermissibility of unilateral appointments and the mandatory requirement of equal participation of parties, the precedential value of ***Societe Pepper Grenoble*** (supra) and ***National Highways Authority of India v. K.K. Sarin*** (supra) stands substantially diluted, and they cannot govern the present dispute.
36. These judicial pronouncements unequivocally establish that the unilateral selection of an appointing institution, without the consent of the petitioner, deprives the petitioner of an equal and meaningful opportunity to participate in the constitution of the arbitral tribunal. Such a deviation strikes at the core principles of party autonomy and equal participation embodied in the Act. An arbitrator appointed through such a procedurally unilateral mechanism suffers from *de jure* incapacity, rendering him incompetent to continue. Accordingly, in the exercise of jurisdiction under Section 14(2) of the Act, the mandate of the arbitrator is terminated.
37. In order to do complete justice, this Court enquired from both parties as to whether they would consent to the appointment of a substitute Arbitrator by this Court for adjudication of the disputes between them. Both parties unequivocally stated that they have no objection to the appointment of an independent arbitrator by this Court. Accordingly, Mr. Sayak Ranjan

Ganguly, Advocate (Mobile No. 9831298043), having his office at 10, Old Post Office Street, Room No. 82D, Left Wing, 3rd Floor, Kolkata – 700001, is hereby appointed as the Sole Arbitrator to adjudicate the disputes between the parties. The learned Sole Arbitrator shall be at liberty to determine his fees and other terms in accordance with law.

- 38.** This Court clarifies that it has neither examined nor commented upon the internal procedures of SAMA. The Court's scrutiny is confined solely to the legal requirement that the constitution of an arbitral tribunal must conform to one of the two methods recognized under the Act, namely (i) appointment by mutual consent in accordance with the agreed procedure, or (ii) appointment pursuant to an order of the Court. Any deviation from these recognized modes of appointment cannot receive legal sanction.
- 39.** It is further clarified that this Court has not examined the merits of the dispute, and the learned Sole Arbitrator shall proceed with the arbitral proceedings uninfluenced by any observations of this Court on the merits.
- 40.** In view of the foregoing discussion, the present petition is allowed.

**(GAURANG KANTH, J.)**