

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION NO. 163 OF 2024**

Chaitanya Lokendra Sheth

....Petitioner

: Versus :

Digikredit Finance Limited

....Respondent

Mr. Anand Pai with Mr. Sahil Sayyed and Ms. Megha Keluskar,
for the Petitioner.

CORAM : SANDEEP V. MARNE, J.

DATED : 16 DECEMBER 2025.

P.C :

1) By this petition filed under Section 34 of the Arbitration and Conciliation Act 1996, the Petitioner challenges the Award of the Arbitral Tribunal dated 14 December 2022. By the impugned Award, the Arbitral Tribunal has directed the Petitioner to pay to the Respondent, amount of Rs.17,33,774/- alongwith interest @ 12% p.a. from 3 June 2022.

2) I have heard Mr.Pai, the learned counsel appearing for the Petitioner. Respondent was initially sought to be served through private service. However, the packet addressed at the known address of the Respondent was returned unserved. By order dated 24 November 2025, this Court issued court notice and granted hamdast. The court notice was attempted to be served on the Respondent by way of RPAD. However, once again, the packet containing the notice is returned with the remark 'left'. It appears that hamdast notice was also attempted to be

served in person. However, the watchman of the building informed that the Respondent had left the premises without any intimation. Mr. Pai would submit that the only available address of the Respondent is the one which is disclosed in the alleged Loan Agreement. Since the Respondent is untraceable due to non-availability of any other alternate address, the Court is left with no other alternative but to proceed ahead in absence of any appearance by the Respondent.

3) The sole objection raised before me in the present petition is that there is unilateral appointment of the Arbitrator. The arbitration clause was apparently added to the Loan Agreement by way of First Addendum. The arbitration clause reads thus :

The parties hereto expressly agree that all disputes arising out of and/or relating to this loan agreement shall be referred to arbitration in accordance with provision of Arbitration and Conciliation Act 1996 as may be amended or its re-enactment by sole arbitration appointed by Company. The costs of such arbitration shall be borne by the losing party or otherwise as determined in arbitration award. If the party is required to enforce Arbitral award by legal action of any kind, the party against whom such legal action is taken shall pay all reasonable cost and expenses and attorneys' fees including any costs of additional litigation or arbitration taken by party seeking to enforce the Award. The arbitration proceeding shall be conducted in English language and the place of arbitration shall be in Mumbai.

4) Thus, under Clause-31, the appointment of the sole arbitrator was to be done unilaterally by the Respondent-Company. This is clearly against the provisions of sub-section (5) of Section 12 of the Arbitration Act. The law is now well settled by judgments of the Apex Court in TRF Ltd. Versus. Energo Engineering Projects Ltd.¹, Bharat Broadband Network Ltd. Versus. United
1 (2017) 3 SCC 377

Telecoms Ltd². and Central Organisation for Railway Electrification Versus. ECI SMO MCML (JV)³ that unilateral appointment of the arbitrator renders him ineligible under Section 12(5) of the Arbitration Act. This Court in judgment in Lite Bite Foods Pvt. Ltd. Versus. Airports Authority of India⁴ has extended the said principle even when the agreement between the parties permits one of the parties to the Agreement to choose the Arbitrator. It is also well settled position that the objection of ineligibility of Arbitrator cannot be waived by conduct of parties and needs to be waived by way of an express agreement in writing. In the present case, far from acquiescing in the appointment of the learned Arbitrator, the Petitioner objected to the same by filing application under Section 13 of the Act. The said application came to be rejected by order dated 28 September 2022 observing that the learned Arbitrator was appointed by Presolv360, an institute providing arbitration services. In my view, this would make no difference in view of the position that ultimately the Respondent alone was given the choice of making appointment of the Arbitrator.

5) The impugned award thus suffers from patent illegality and the same is liable to be set aside. Accordingly, the impugned Award is set aside. The petition is **allowed** in above terms. There shall be no order as to costs.

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[SANDEEP V. MARNE, J.]

2 (2019) 5 SCC 755

3 (2025) 4 SCC 641

4 CARBP-495-2019 decided on 4 December 2019