

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL ARBITRATION PETITION NO.431 OF 2024**

Mohammed Israili & Ors.

....Petitioners

V/S

Reliance Commercial Finance Limited

....Respondent

\_\_\_\_\_

**Mr. Dipesh Siroya** i/b M/s. LIM Legit *for the Petitioner.*

**Mr. Nilkanth D. Gadge** i/b Mr. Narayan R. Awte *for Respondent.*

\_\_\_\_\_

**CORAM : SANDEEP V. MARNE, J.**

**DATE : 24 DECEMBER 2025.**

**P.C.:**

1. This Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) challenging the Award dated 30 March 2024 passed by the learned sole Arbitrator.

2. The only ground on which the Award is challenged is the vice of unilateral appointment of the Arbitrator. Perusal of clause 18 of the Agreement would indicate that the lender/Respondent alone has the authority to appoint the Arbitrator. Since the Authority was granted to a party to dispute to choose the Arbitrator, there is a patent illegality in the Arbitral Award on account of violation of provisions of Section 12(5) of the Arbitration Act.

3. I have considered the entire development of law on the issue of unilateral appointment of Arbitrator in *Manmohan Bhimsen Goyal vs. Madhuban Motors Pvt. Ltd.*<sup>1</sup> and have summarized the principles as under:

- (I) Every arbitration agreement providing for unilateral appointment of the sole or the presiding arbitrator is invalid. Consequently, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are nullity and cannot result into an enforceable award, being against Public Policy of India, warranting its invalidation under Section 34 of the Arbitration Act.
- (II) Unilateral appointment also includes the vice of authorizing only one of the parties to appoint the arbitrator, though that person himself may not act as arbitrator. Appointment made by one party to the dispute by calling upon the opposite party to choose only one of the named persons as arbitrator also constitutes unilateral appointment.
- (III) The waiver of applicability of Section 12(5) of the Arbitration Act requires an express agreement in writing under the Proviso. The conduct of the parties, such as participation in arbitral proceedings, filing of statement of claim/defence, filing of counterclaim, etc, is inconsequential and cannot constitute a valid waiver under the Proviso to Section 12(5) of the Act.
- (IV) Since the arbitral award made by unilaterally appointed arbitrator is a nullity, even a party appointing arbitrator is not precluded from raising objection to unilateral appointment and seeking annulment of the award. Principle of estoppel does not apply.
- (V) The objection of unilateral appointment of arbitrator can be raised at any stage of the proceedings and even while challenging the award under Section 34 or opposing enforcement under Section 36 of the Act.
- (VI) Section 12(5) of the Arbitration Act is an exception to Sections 4, 7, 12(4), 13(2) and 16(2) of the Act. Thus, there is no deemed waiver of right to object (i) by proceeding with arbitration without objection under Section 4, (ii) by exchange of statement of claim/defence under Section 7, (iii) by failure to challenge arbitration under Section 13(2) or (iv) by failure to raise objection of jurisdiction under Section 16(2) of the Arbitration Act. Therefore, the principle propounded in

---

1 Commercial Arbitration Petition No.320 OF 2024 decided on 23 December 2025

***Gayatri Projects Limited V/s. Madhya Pradesh Road Development Corporation Ltd.***<sup>2</sup> about waiver of objection of non-existence of arbitration agreement does not apply to Section 12(5) of the Act.

- (VII) As the ineligibility goes to the root of the jurisdiction, it is not necessary for a party to raise that objection before arbitrator or even in the Petition filed under Section 34 of the Act. Sub-Sections (2)(b) and (2A) use the expression 'if court finds that..' enabling the Court to invalidate the award even in absence of objection in the Petition.

4. In my view therefore, the impugned Award is unsustainable and liable to be set aside. Petition accordingly succeeds. Arbitral Award dated 30 March 2024 is set aside. The Commercial Arbitration Petition is allowed. There shall be no order as to costs.

**(SANDEEP V. MARNE, J.)**

Digitally  
signed by  
SUDARSHAN  
RAJALINGAM  
KATKAM  
Date:  
2025.12.24  
21:26:29  
+0530