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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 538/2024, I.A. 48159/2024, I.A. 48160/2024 & I.A.
3861/2025

UNION OF INDIAPetitioner

Through: Mr. Vijay Joshi, CGSC

versus

M/S SNAPPERS ADVERTISING AND MARKETING LIMITED

.....Respondent

Through: Mr. Surendra Kumar, Adv.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

17.12.2025

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1. This Petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed by the Petitioner challenging the Award dated 08.02.2024, passed by the learned Arbitral Tribunal.
2. It is the case of the Petitioner that the Arbitral Tribunal was appointed by the Petitioner unilaterally and, therefore, the Award is hit by the Judgment of the Apex Court in Perkins Eastman Architects DPC & Anr. v. HSCC (India) Limited, (2020) 20 SCC 760 and Central Organisation for Railways Electrification (CORE) v. ECI SPIC SMO MCML (JV) A Joint Venture Company, 2024 SCC OnLine SC 3219.
3. While issuing notice, this Court posed a question as to whether the party who has unilaterally appointed the Arbitrator can itself challenge the Award or not. This issue is no longer *res integra* and has been decided by



the Division Bench of this Court in Mahavir Prasad Gupta & Sons v. Govt. of NCT of Delhi, **2025 SCC OnLine Del 4241**, wherein the Division Bench has held as under:

“74. This issue requires consideration of following questions:

a) When a party itself has unilaterally appointed the arbitrator, whether that party can object to the unilateral appointment of the arbitrator at any stage during or after the arbitration proceedings?

b) If a party has unilaterally appointed an arbitrator, can that party be deemed to have given express waiver in writing under Section 12(5) of the Act while making the appointment itself?

75. The analysis of the above questions would require consideration of the act of appointment of the arbitrator by a party and nature of such exercise of right. Section 12(4) of the Act provide that a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

76. Accordingly, if the party that has the power to make unilateral appointments exercises the right by making the appointment of the arbitrator, that party can challenge the appointment made by him only for reasons that he comes to know after the appointment is made. In cases of unilateral appointment, it is presumed that the party is aware of the disqualification of the arbitrator at the time of the appointment itself.

77. Further, Section 12(5) of the Act provides 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 of the Act shall be ineligible to be appointed as an arbitrator. The proviso to Section 12(5) of the Act provides that parties may, subsequent to disputes having arisen between them, waive the applicability of Section 12(5) of the Act by an express agreement in writing.

78. A conjoint reading of Sections 12(4) and 12(5) of the Act would make clear that even if there is an agreement for the appointment of unilateral appointment, such clause would be invalid except when both parties mutually agree to waive the same in writing.

79. Hence, exercise of power to unilaterally appoint the arbitrator by a party cannot be termed as express agreement to waive the invalidity of the arbitration agreement providing for unilateral appointment. For waiver under Section 12(5) of the Act after the dispute have arisen, the parties are required to consciously agree in writing to waive the ineligibility of the arbitrator. Grounds of ineligibility of the arbitrator under Seventh Schedule are derived from Red List of IBA Rules on Conflict of Interest in International Commercial Arbitration. The Act was as amended in 2015 to provide a detailed framework to address arbitrator bias. This framework includes the Fifth and Seventh Schedules, which draw from the Orange and Red Lists of the IBA Guidelines, respectively. The Fifth Schedule requires arbitrators to disclose any circumstances that might reasonably affect their impartiality, including relationships with the parties, counsel, or subject matter of the dispute. The Seventh Schedule reflecting the Red List, outlines scenarios of relationship conflict that would result in de jure ineligibility of an arbitrator.



80. The Sixth Schedule complements this by prescribing the format and content of such disclosures. In HRD Corpn. v. GAIL (India) Ltd., (2018) 12 SCC 471, the Supreme Court observed that the categories listed under the Fifth and Seventh Schedules must be construed by taking a “broad commonsensical approach”, without restricting or enlarging the words.

81. Accordingly, the party that unilaterally appointed the arbitrator cannot be deemed to have agreed in writing to waive the ineligibility of the arbitrator by act of appointment. When appointment itself is ineligible under the provisions of Section 12(5) of the Act read with Seventh Schedule of the Act, it does not take away the right of the party to challenge such an appointment merely because that party had made the appointment in absence of express agreement in writing between the parties to waive the applicability of Section 12(5) of the Act.

82. Hence, a party which unilaterally appointed the arbitrator has right to object to such appointment irrespective of fact that that party itself made the appointment of the arbitrator. Mere fact of making appointment in writing will not make the ineligible appointment a valid appointment unless there is express agreement in writing waiving such ineligibility.

83. Although it appears disingenuous, a party appointing an the sole or presiding arbitrator unilaterally can challenge the award on the ground that the award has been rendered in contravention of Section 12(5) of the Act read with Seventh Schedule of the Act notwithstanding that the said party itself made such an appointment. When the Arbitral Tribunal inherently lacked jurisdiction to act, the arbitration proceedings are void ab initio, rendering the award



unenforceable irrespective of which party made such unilateral appointment. The arbitral proceedings and an award made by an unilaterally appointed sole or presiding arbitrator, who is de jure ineligible to be appointed as an arbitrator by virtue of the Seventh Schedule of the Act are void ab initio. The waiver under the proviso to Section 12(5) of the Act must be express and subsequent to the disputes having been arisen between the parties. Hence, the party which appointed the sole or presiding arbitrator unilaterally can also challenge the award under Section 34 of the Act on the ground of such ineligibility.”

4. In view of the above, the Award is set aside.
5. The Petition is disposed of along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

DECEMBER 17, 2025

Rahul