



2026:DHC:3883-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 23rd April, 2026

Pronounced on: 7th May, 2026

+ **FAO(OS) (COMM) 114/2026 & CM APPL. 25929/2026, CM APPL. 25930/2026, CM APPL. 25932/2026, CM APPL. 25933/2026**

ALLIED CONSTRUCTION

B.R. TOWER, 21,
JANPATH LANE, ULUBARI,
GUWAHATI- 781007 (ASSAM)

....APPELLANT

Through: Mr. Rajat Joneja, Mr. Anmol
Kumar and Ms. Cheshta Dalal,
Advs.

versus

ENGINEERING PROJECTS INDIA LIMITED

CORE-3, SCOPE COMPLEX,
7- INSTITUTIONAL AREA, LODHI ROAD,
CGO COMPLEX,
NEW DELHI-110003

.....RESPONDENT

Through: Mr. Sonal Kumar Singh, Mr. Ratik
Sharma and Mr. Yashvardhan
Singh Gohil, Advs.

CORAM:

HON'BLE MR. JUSTICE NITIN WASUDEO SAMBRE

HON'BLE MR. JUSTICE AJAY DIGPAUL

Signature Not Verified

Signed By: SHI/PI
Signing Date: 07.05.2026
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JUDGMENT

AJAY DIGPAUL, J.

1. The present appeal is filed under Section 37 (1) (c) of the Arbitration and Conciliation Act, 1996¹, assails Order dated 25.03.2026 passed by a learned Single Judge of this Court whereby a petition filed by the respondent filed under Section 34 of the Act was allowed, and Award dated 06.07.2018² was set aside in its entirety.
2. In consideration of the limited ambit of this Court while adjudicating an appeal under Section 37 of the Act, along with the fact that the unilateral appointment of the arbitrator is the sole ground upon which the award was set aside in the impugned order, only a brief recitation of facts and events is necessary.
3. The respondent/EPIL entered into a Memorandum of Understanding with the Department of Agriculture, Government of Tripura, to construct a college of agriculture at Agartala. The Appellant was awarded work vide Letter of Intent dated 10.03.2008, after which an agreement was entered into between the parties on 23.04.2008³.
4. Clause 76 of the GCC provided for dispute resolution through arbitration, whereby all disputes shall be referred to a sole arbitrator who shall be the Chairman and Managing Director of the respondent (CMD), or any person discharging such functions if the need arises, failing which they would be referred to a person appointed by the CMD. The clause

¹ The Act

² The Award

³ General Conditions of Contract, GCC hereinafter



also stipulated that no objection would lie if the arbitrator appointed is an employee of the respondent.

5. The appellant issued a notice dated 14.03.2016 under Section 21 of the Act to the respondent, which was alleged to have received no response. Thereafter, the appellant filed a petition under Section 11 of the Act before the High Court of Tripura, seeking appointment of a sole arbitrator.

6. In the interregnum, the respondent *vide* letter dated 10.01.2017 appointed a sole arbitrator, owing to which the appellant withdrew its petition under Section 11 on 30.01.2017.

7. On 06.07.2018, an award came to be passed by the learned Sole Arbitrator whereby a sum of ₹ 3,70,74,265/- was directed as payable to the appellant by the respondent, along with post award interest of 10% per annum.

8. Aggrieved, the respondent instituted a petition under Section 34 on 06.10.2018 in challenge against the award dated 06.07.2018. The appellant preferred a petition under Section 36 seeking enforcement of the award during the year 2021. Order dated 08.12.2021 came to be passed in the execution proceedings, directing the respondent to deposit the awarded amount along with interest within two weeks of the order. These directions were complied with by the respondent.

9. Thereafter, Order dated 08.04.2022 permitted the appellant to withdraw the amount so deposited by the respondent upon furnishing an unconditional bank guarantee of an equivalent amount.



10. It was only later on 26.09.2023 that the respondent filed an application seeking leave to amend its petition under Section 34 to include additional grounds to assail the arbitral award *qua* Section 12 (5) of the Act.

11. The learned single judge in the order impugned noted that Section 12(5) of the Act read with its Seventh Schedule conceives the legal position that an employee of a party in dispute is ineligible to be appointed as an arbitrator, and furthermore such party cannot nominate or appoint any other person as an arbitrator in the absence of an *express agreement in writing to waive the applicability of Section 12(5) of the Act*. In the absence of explicit waiver through an agreement in writing, such appointment would then be *void ab initio*, and any alleged acquiescence by a party through participation in proceedings or otherwise, could not be interpreted as satisfying the threshold of the *proviso* to Section 12(5) of the Act.

12. Aggrieved by the setting aside of the award, the appellant is now before us in appeal under Section 37 of the Act.

13. Mr. Rajat Joneja, learned counsel appearing on behalf of the appellant, submits that the facts at hand are distinct from those that lay before the Hon'ble Supreme Court in its decision in ***Bhadra International (India) Pvt Ltd v Airports Authority of India***⁴. He emphasises that the decision in ***Bhadra*** specifically deals with an instance where the award was challenged on the ground of unilateral

⁴ 2026 SCC OnLine SC 7



appointment of the arbitrator *sans* an explicit waiver under Section 12 (5) of the Act, where such challenge was instituted by a party that did not make such unilateral appointment.

14. He urges that for the respondent/appointing party to contend that an express waiver as contemplated under the *proviso* to Section 12(5) was not made is inappropriate and indicative of *mala fides*, and that the decision in ***Bhadra*** deals not with bias itself but the reasonable apprehension of bias. In this light, he argues, that no reasonable apprehension of bias may be claimed by a party that itself appoints an arbitrator unilaterally. For this, he places reliance on paragraphs 57 to 59 of the decision.

15. Concluding his arguments, he submits that for this Court to permit an interpretation of the decision in ***Bhadra*** in favour of that which is proposed by the respondent would run contrary to Indian public policy. Highlighting the conduct of the respondents, he points out that the respondent, who appointed the learned sole arbitrator unilaterally only to suffer an award entirely in favour of the appellant, then instituted a petition under Section 34 of the Act to set aside the award, and belatedly amended such petition five years hence to include a challenge under Section 12(5) of the Act, cannot be allowed to escape the consequences of the award.

16. Adding to the feto of *mala fide* alleged, he points out that it was only after the appellant had filed an application under Section 11 of the Act seeking appointment of an arbitrator that the respondent chose to



issue letter dated 10.01.2017 through which unilateral appointment of the learned sole arbitrator was effected.

17. Mr. Joneja also draws our attention to paragraph 80 of the decision in **Bhadra** to state that the consent of the appointing party is implicit, and relies on the preceding text in paragraphs 76-79 to highlight the test to determine whether a waiver exists in the meaning of the *proviso* to Section 12(5), and that the respondent has, in its act of unilateral appointment, categorically waived its right to object to the appointment of the learned Sole Arbitrator.

18. Mr. Sonal Kumar Singh, learned counsel appearing on behalf of the respondent, refutes the case of the appellant on three fronts. First, he argues that a waiver in accordance with the *proviso* to section 12 (5) of the act ought to constitute the character of an *express agreement in writing*. Secondly, he submits that a party appointing an arbitrator may also challenge such appointment of being in violation of Section 12 (5) of the Act. Thirdly, he argues that it is trite that challenges to jurisdiction may be raised at any stage.

19. He places reliance upon the decision in **Bhadra** to the extent of his first and third arguments, while relying on a decision of a coordinate bench of this Court in **Mahavir Prasad Gupta & Sons v GNCTD**⁵, and paragraphs 5, 17, and 18 from the decision of the Hon'ble Supreme Court in **Bharat Broadband Network Ltd v united Telecoms Ltd**⁶ to buttress his second argument.

⁵ 2025 SCC OnLine Del 4241

⁶ (2019) 5 SCC 755



20. Heard and perused.

21. Learned counsel for the appellant argues that the facts in the decision in **Bhadra** did not consider the challenge to an award by the appointing party on the ground of Section 12(5) of the Act. However, it cannot be disputed that the decision of a coordinate bench in **Mahavir Prasad Gupta** squarely covers the same.

22. At the outset, a diligent reading of both, the decision in **Mahavir Prasad Gupta**, as well as that in **Bhadra**, precipitates an unequivocal conclusion; that the unilateral appointment of an arbitrator is *void ab initio*, saved only by satisfaction of the *proviso* to Section 12(5) though an explicit waiver by parties in writing.

23. While it may be correct to infer, from paragraph 80 of the decision in **Bhadra**, that the consent of the appointing party is implicit, learned counsel for the appellant fails to persuade this Court that the *proviso* to Section 12(5) of the Act stands satisfied *de hors* an express waiver in writing. Without such satisfaction, all argumentation to the extent of implicit consent to unilateral appointment is rendered immaterial.

24. We deem it appropriate to refer to paragraphs 82 and 83 of the decision in **Mahavir Prasad Gupta**, which address an appointing party's challenge to an award on the ground of unilateral appointment:

“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.”

25. Resting on this very principle, that the award passed by a unilaterally appointed sole arbitrator, who is *de jure* ineligible to be appointed by virtue of the Seventh Schedule to the Act, is *void ab initio*, we are unimpressed by the submissions put forth by Mr. Joneja to the extent of the applicability of the test of reasonable apprehension of bias upon the appointing party.

26. The judgment of the learned single judge which has been impugned before us through the present appeal has effectively isolated crux of the dispute as whether the award dated 06.07.2018 ought to be set aside on account of it being passed in violation of Section 12(5) of the Act, and has correctly applied the decisions in ***Bhadra*** and ***Mahavir Prasad Gupta*** to arrive at the conclusion that the absence of an express waiver in writing between the parties fails to satisfy the *proviso* to Section 12(5) of the Act, *de hors* which the award cannot be sustained.





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27. The present appeal stands dismissed for the aforesaid reasons, along with pending applications, if any.
28. Judgment be uploaded on the website forthwith.

**AJAY DIGPAUL
(JUDGE)**

**NITIN WASUDEO SAMBRE
(JUDGE)**

MAY 7, 2026/gs/av

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Signing Date: 07.05.2026
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