



2026:DHC:665



\$~2 to 5 (Original Side)

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

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Date of decision: 19.01.2026

+ **O.M.P. (COMM) 352/2021, I.A. 15669/2021, I.A. 1235/2026**

UNION OF INDIA THROUGH

THE EXECUTIVE ENGINEER, F-51, PWD, GNCTDPetitioner

Through: Mr. Tushar Sannu, Ms. Ankita and
Mr. Umesh Kumar, Advocates for
GNCTD.

versus

SWADESHI CIVIL INFRASTRUCTURE PVT. LTD.Respondent

Through: Mr. Dinkar Singh and Mr. Rohit
Singh, Advocates.

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+ **OMP (ENF.) (COMM.) 175/2021, EX.APPL.(OS) 3640/2022,
EX.APPL.(OS) 1481/2023**

SWADESHI CIVIL INFRASTRUCTURE PRIVATE LIMITED

.....Decree Holder

Through: Mr. Dinkar Singh and Mr.
Rohit Singh, Advs.

versus

THE EXECUTIVE ENGINEER FLYOVER PROJECT DIVISION F
51 PUBLIC WORKS DEPARTMENT GOVERNMENT OF NCT OF
DELHI

.....Judgement Debtor

Through: Mr. Tushar Sannu, Ms. Ankita and
Mr. Umesh Kumar, Advocates for
GNCTD.

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+ **O.M.P. (COMM) 180/2024, I.A. 9040/2024, I.A. 4314/2025**

PUBLIC WORKS DEPARTMENT EDUCATION

WEST DIVISION N THROUGH EXECUTIVE ENGINEER

.....Petitioner

Through: Mr. Laltaksh Joshi and Mr. Sameer



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Gupta, Advocates.

versus

M/S SVK INFRASTRUCTURES FORMERLY

M/S SATYA NARAIN THROUGH ITS DIRECTORRespondent

Through: Mr. Avinash Kumar Trivedi, Mr. Anurag Kaushik, Mr. Rahul Aggarwal and Mr. Jatin Arora, Advocates.

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O.M.P. (COMM) 183/2024, I.A. 9055/2024, I.A. 9058/2024, I.A. 4671/2025, I.A. 5361/2025

PUBLIC WORKS DEPARTMENT, EDUCATION

WEST DIVISION N THROUGH EXECUTIVE ENGINEER

.....Petitioner

Through: Mr. Laltaksh Joshi and Mr. Sameer Gupta, Advocates.

versus

M/S SVK INFRASTRUCTURES FORMERLY

M/S SATYA NARAIN THROUGH ITS DIRECTORRespondent

Through: Mr. Avinash Kumar Trivedi, Mr. Anurag Kaushik, Mr. Rahul Aggarwal and Mr. Jatin Arora, Advocates.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (ORAL)

O.M.P. (COMM) 352/2021

OMP (ENF.) (COMM.) 175/2021

O.M.P. (COMM) 180/2024

O.M.P. (COMM) 183/2024

1. These matters are disposed of by way of a common order since the issues that fall for consideration are common.



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2. Judgments in these matters were reserved quite some time ago, however, the pronouncement thereof was deferred inasmuch as I.A. No. 4671/2025 and I.A. 4314/2025 came to be subsequently filed in OMP (COMM) 183/2024 and OMP (COMM) 180/2024 respectively. By way of the said applications, the respondent sought to place on record certain judgments. In OMP (COMM) 183/2024, the petitioner also filed I.A. No.5361/2025 seeking to place on record certain relevant documents and judgments in order to distinguish the judgments cited by the respondent in I.A. No. 4671/2025 in OMP (COMM) 183/2024.
3. Further, in all the present matters, a request was made to this Court to await the outcome of the pending proceedings before the Supreme Court in ***Bhadra International (India) Pvt. Ltd. And Others vs. Airports Authority of India***, 2026 SCC OnLine SC 7, pronounced on 05.01.2026.
4. O.M.P. (COMM) 352/2021 has been filed under Section 34 of the A&C Act, assailing an arbitral award dated 15.07.2021.
5. OMP (ENF.) (COMM.) 175/2021 is an enforcement petition filed under Section 36(1) of the A&C Act seeking enforcement of the aforesaid arbitral award.
6. Arbitral award dated 14.12.2023 (corrected on 16.01.2024 and 23.01.2024) is under challenge in O.M.P. (COMM) 180/2024, filed under Section 34 of the A&C Act.
7. Arbitral award dated 14.12.2023 (corrected on 16.01.2024) is under challenge in O.M.P. (COMM) 183/2024, filed under Section 34 of the A&C Act.
8. The impugned arbitral awards in the present cases are assailed on the



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ground that the respective Arbitrators were appointed unilaterally by one of the parties to the arbitration agreement.

9. As such, it is contended that the constitution of the arbitral tribunals is improper and inconsistent with the settled legal position. Resultantly, it is contended that the arbitral proceedings, as also the resultant arbitral awards, are liable to be set aside on this ground alone.

10. The issue as to whether an arbitration agreement which contemplates unilateral appointment of an Arbitrator (by only one of the parties to the arbitration agreement) is permissible under the framework of the Arbitration and Conciliation Act, 1996, is no longer *res integra*.

11. The same has now been comprehensively settled by the Supreme Court in the case of ***Bhadra International (India) Pvt. Ltd.*** (supra). In the said case, the Supreme Court has copiously considered the interplay between “equal treatment of parties” as contemplated under Section 18 of the A&C Act and “party autonomy”, and has also examined the scope and application of Section 12(5) of the A&C Act. Taking note of the legal position set out in ***TRF Ltd. v. Energo Engineering Projects Ltd.***, (2017) 8 SCC 377, ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (2020) 20 SCC 760, ***Central Organization for Railway Electrification v. ECI SPIR SMO MCML (JV) A Joint Venture Company***, (2025) 4 SCC 641 it has been held as under:

“123. A conspectus of the aforesaid detailed discussion on the position of law as regards Section 12 of the Act, 1996, is as follows:-

I. The principle of equal treatment of parties provided in Section 18 of the Act, 1996, applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators. Equal treatment of the parties entails that the parties must have an equal say in the constitution of the



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arbitral tribunal.

II. Sub-section (5) of Section 12 provides that any person whose relationship with the parties or counsel, or the dispute, whether direct or indirect, falls within any of the categories specified in the Seventh Schedule would be ineligible to be appointed as an arbitrator. Since, the ineligibility stems from the operation of law, not only is a person having an interest in the dispute or its outcome ineligible to act as an arbitrator, but appointment by such a person would be ex facie invalid.

III. The words "an express agreement in writing" in the proviso to Section 12(5) means that the right to object to the appointment of an ineligible arbitrator cannot be taken away by mere implication. The agreement referred to in the proviso must be a clear, unequivocal written agreement.

IV. When an arbitrator is found to be ineligible by virtue of Section 12(5) read with the Seventh Schedule, his mandate is automatically terminated. In such circumstance, an aggrieved party may approach the court under Section 14 read with Section 15 for appointment of a substitute arbitrator. Whereas, when an award has been passed by such an arbitrator, an aggrieved party may approach the court under Section 34 for setting aside the award.

V. In arbitration, the parties vest jurisdiction in the tribunal by exercising their consent in furtherance of a valid arbitration agreement. An arbitrator who lacks jurisdiction cannot make an award on the merits. Hence, an objection to the inherent lack of Jurisdiction can be taken at any stage of the proceedings."

12. The above findings have been rendered in the factual conspectus of an Arbitrator therein being appointed by one of the contracting parties, viz. the Airports Authority of India, under a procedure in which the other party had no say in the constitution of the arbitral tribunal.

13. The irresistible implication flowing from the above judgment is that in a situation where an arbitral tribunal has been unilaterally appointed by one of the parties, the resultant arbitral proceedings fall foul of the requirement under Section 18 of the A&C Act read with Section 12(5) and the Seventh



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Schedule thereof, and the resultant award is liable to be set aside.

14. It is noticed that in *M/s Mahavir Prasad Gupta and Sons vs. Govt. of NCD of Delhi*, 2025:DHC:4781-DB, a Division Bench of this Court has also categorically held that the “unilateral appointment” is strictly prohibited and is considered null and void at its very inception. Resultantly, any proceedings conducted before such a unilaterally appointed arbitral tribunal are also a nullity and cannot result in an enforceable award. The relevant observations in the said judgment are as under:

“37. Hence, a unilateral appointment of the sole arbitrator or the presiding arbitrator by a party to the arbitrations seated in India is strictly prohibited and considered as null and void since its very inception. Resultantly, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are also nullity and cannot result into an enforceable award. Any award passed by the unilaterally appointed Arbitral Tribunal is against public policy of India and can be set aside under Section 34 of the Act and/or refused to be enforced under Section 36 of the Act.”

15. In *M/s Mahavir Prasad Gupta* (supra), the Court categorically rejected the contention that participation in the arbitral proceedings (short of an express agreement in writing), can cure the inherent defect arising on account of unilateral appointment.

16. The same position has been reiterated by a Division Bench of this Court in *M/s Satya Parkash and Brothers (P.) Ltd vs. Union of India*, 2025:DHC:6615-DB.

17. A feeble attempt has been made by the respondents to contend that the constitution of the arbitral tribunal was not unilateral, however, the said contention is belied by a perusal of the arbitral awards.

18. The Arbitral Award dated 15.07.2021, which is the subject matter of O.M.P. (COMM) 352/2021, records at the very outset that the appointment



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of the arbitral tribunal was made by the Chief Engineer (Flyover), PWD. The relevant observations are as under:

“In the subject matter of arbitration, I, Dinesh Kumar, Retd. E-in-C, (PWD), Delhi/Spl. D.G CPWD appointed as sole arbitrator by the Chief Engineer (Flyover), P.W.D vide his letter no. 23(81)/CE (Flyover)/2019-20/128(H) Dated 20-02-2020 to decide and make award regarding the claims /disputes of the claimant contractor and counter claim as shown in the statement enclosed there with which was received by me on 25.02.2020”

19. Similarly in O.M.P. (COMM) 180/2024, the learned Sole Arbitrator has recorded the following in the impugned arbitral award -

“Therefore, for adjudication of disputes/claims, I was appointed as the sole arbitrator by the Chief Engineer (Projects) PWD, Delhi vide No. Letter no. 55(43)/CE(Proj.)/PWD/Arb'/FO'/499-E dated 13.06.2022 to decide and make award if any,....”

20. In O.M.P. (COMM) 183/2024 as well, the following has been recorded in the impugned arbitral award –

“Therefore, for adjudication of disputes/claims, I was appointed as the sole arbitrator by the Chief Engineer (Projects) PWD, Delhi vide No. Letter no. 55(44)/CE(Proj.)/PWD/Arb.IFO'/498-E dated 13.06.2022 to decide and make award if any,....”

21. Having considered the same, there is no manner of doubt that the respective Sole Arbitrators were unilaterally appointed by one of the contracting parties.

22. In O.M.P. (COMM) 180/2024 and O.M.P. (COMM) 183/2024, it has also been contended by the respondent that the appointment of the arbitrators in the said cases cannot be considered as unilateral as a communication was addressed to the petitioner suggesting the names of certain arbitrators, and that one such person came to be appointed as the



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Sole Arbitrator by the petitioner.

23. However, the said contention is untenable, inasmuch as it is apparent from a perusal of the relevant arbitration clause and the narration in the Award itself that the respondent had no say in the constitution of the arbitral tribunal.

24. In these circumstances, and in light of the dicta laid down by the Supreme Court in the aforesaid judgments, the impugned awards, which are the subject matter of O.M.P. (COMM) 352/2021, O.M.P. (COMM) 180/2024 and O.M.P. (COMM) 183/2024, are untenable and are accordingly set aside.

25. OMP (ENF.) (COMM.) 175/2021, O.M.P. (COMM) 352/2021, O.M.P. (COMM) 180/2024 and O.M.P. (COMM) 183/2024 are consequently dismissed.

26. At this stage, learned counsel for the respondents submits that notwithstanding the setting aside of the impugned arbitral awards, the claims of the respondents are required to be adjudicated by way of arbitration, to be held in accordance with the A&C Act.

27. Learned counsel for the respondents, as also learned counsel for the petitioner, on instructions, jointly request that appropriate orders be passed in these matters for the constitution of independent arbitral tribunals to adjudicate the claims/counter-claims, which are subject matter of O.M.P. (COMM) 352/2021, O.M.P. (COMM) 180/2024 and O.M.P. (COMM) 183/2024, respectively.

28. In these circumstances, at the joint request of the respective parties in O.M.P. (COMM) 352/2021, O.M.P. (COMM) 180/2024 and O.M.P.



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(COMM) 183/2024 it is directed that the respective claims and counter-claims of the parties shall be adjudicated by way of arbitration, to be held under the aegis of, and as per the rules of Delhi International Arbitration Centre (DIAC).

29. It is agreed that arbitral tribunals in each of the above matters shall be duly constituted in accordance with the Rules of DIAC. Needless to say, the DIAC shall consider the nature of the claims and appoint suitable arbitral tribunals to adjudicate the disputes between the respective parties.

30. The present petitions stand disposed of in the above terms. Pending application/s also stand disposed of.

JANUARY 19, 2026/at/sv

SACHIN DATTA, J