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

ARBITRATION PETITION NO. 324 OF 2019

Satnam Singh Ahuja And Ors. ...Petitioners

Versus

Karvy Financial Services Ltd. ...Respondents

WITH
ARBITRATION PETITION NO. 337 OF 2019
WITH
ARBITRATION PETITION NO. 335 OF 2019
WITH
ARBITRATION PETITION NO. 336 OF 2019
WITH
ARBITRATION PETITION NO. 338 OF 2019

Mr. Rohan Savant, *a/w Prabhakar M. Jadhav, Advocates for the Petitioners in ARBP/324 & 335/2019.*

Ms. Vilasini Balsubramaniyam, *a/w Prabhakar M. Jadhav, Advocates for the Petitioners in ARBP/336 & 338/2019.*

Mr. Prabhakar M. Jadhav, *Advocate for the Petitioners in ARBP/337/2019.*

Mr. Aseem Naphade, *a/w Deepanjali Mishra, Sahil Salvi, Omar Khaiyam Shaikh, i/b Vikas Salvi & Associates, Advocates for Respondent in all Petitions.*

CORAM: **SOMASEKHAR SUNDARESAN, J.**

DATE: **MARCH 5, 2026**

JUDGEMENT:

Context and Factual Background:

1. The captioned proceedings are all under Section 34 of the Arbitration and Conciliation Act, 1996 ***("the Act")***, with the Arbitral Awards having been passed by an Arbitrator, unilaterally appointed by the Respondent, Karvy Financial Services Ltd. ***("Karvy")***. Although the Learned Arbitral Tribunal was admittedly unilaterally appointed, the Petitioners had not protested against such unilateral appointment throughout the proceedings, and raised the contention only at the stage of these proceedings under Section 34 of the Act.

2. The implications of such conduct of the Petitioners, and whether the Petitioners are deemed to have waived their entitlement to object to the unilateral appointment, is what falls for consideration in these Petitions.

3. The Learned Advocates for the parties submit that adjudication of Arbitration Petition No. 324 of 2019 would be dispositive of all the captioned Petitions. Therefore, the facts are taken from Arbitration Petition No. 324 of 2019. In that Petition, the underlying transactions involved a loan amount of Rs.~1.22 crore, computed as of December 26, 2015, being the debt due along with

further interest thereon at 14.25%, pursuant to the Loan Agreement dated March 31, 2011. Arbitration was invoked by Karvy, by notice dated November 30, 2016 (this date applies to all Petitions). All the Impugned Awards were passed on February 6, 2018.

4. The short issue that arises for consideration is whether the unilateral appointment of an arbitrator would render all the Impugned Awards liable to be quashed and set aside, or whether the uncontested participation in the arbitration proceedings by the Petitioners would denude them of the right to challenge the awards on the ground of the arbitral tribunal having been unilaterally appointed, without their autonomous consent.

5. The law on unilateral appointment has been declared emphatically by a five-judge bench of the Supreme Court in the case of ***Central Organisation***[1]. This ruling would come much later – the Arbitral Awards are all dated February 06, 2018. Therefore, whether the law declared in ***Perkins Eastman***[2] and ***Bharat Broadband***[3], in terms of Section 12(5) of the Act, would lead to the Impugned Awards

1 *Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) – (2020) 14 SCC 712*
2 *Perkins Eastman Architects DPC v. HSCC (India) Ltd. – (2020) 20 SCC 760*
3 *Bharat Broadband Network Limited v. United Telecoms Limited – 2019 (5) SCC 755*

being a nullity is what was under consideration when this matter was heard.

Contentions of the Parties:

6. Mr. Rohan Sawant, Learned Advocate on behalf of the Petitioners, would submit that in view of the law declared in the aforesaid three judgements, unilateral appointment has been equated with ineligibility under the Seventh Schedule of the Act. An express consent in writing from the counterparty, that is, not the party making the unilateral appointment, is required to waive the objection to such unilateral appointment. He would submit that the counterparty to the unilaterally-appointing party ought to have positively reposed faith and confidence in such an Arbitrator despite the appointment being unilateral.

7. Therefore, Mr. Sawant would submit, in all these cases, the Arbitrator was *de jure* incapable of acting as such. Therefore, an objection need not have been raised before the Arbitrator, and an application under Section 14 need not be filed in every case of unilateral appointment of an arbitrator for a challenge under Section 34 on this ground to be tenable. Mr. Sawant would submit that unilateral appointment will automatically lead to ineligibility of the Arbitrator, and

even active participation by a counterparty in the arbitration proceedings would not lead to cleansing of the absence of independence and impartiality arising out of such a unilateral appointment. Mr. Sawant would submit that this being purely a question of law, any party is entitled to raise this element as a ground for quashing and setting aside the Arbitral Award at the Section 34 stage.

8. In contrast, Mr. Aseem Naphade, Learned Advocate for Karvy would submit that in the peculiar facts of this case, the consent of the Petitioners to the conduct of the arbitration by the Arbitrator can be discerned. He would submit that it would be incumbent on the party objecting to the unilateral appointment to have raised an objection. On the contrary, if the party chooses to engage in the arbitration and hopes to ambush the final award if found to be adverse, the eligibility of the Arbitral Tribunal or the Arbitral Award ought not to be brought under a cloud.

Analysis and Findings:

9. While the parties had been heard at some length in November 2025, it is noteworthy that by way of a judgement rendered by the Supreme Court in ***Bhadra International***[4] in January 2026,

4 *Bhadra International (India) Pvt. Ltd. And Ors. Vs. Airports Authority of India – 2026 SCC OnLine SC 7*

the Supreme Court has emphatically dealt with the issue of *de jure* inability and the right to challenge an arbitral award, *despite participation in the arbitral proceedings*.

10. In ***Bhadra International***, the Supreme Court was considering concurrent decisions of a Learned Single Judge and a Learned Division Bench of this Court, holding that participation in arbitral proceedings, without any objection being raised in the course of the arbitration proceedings, would indeed constitute a waiver of the applicability of Section 12(5) of the Act. It had been held by the Learned Division Bench that in the facts of that case, after the insertion of Section 12(5), the arbitral proceedings had continued for two more years without any objections and, therefore they are deemed to have waived their rights. This is precisely the fact pattern involved in the captioned Petitions.

11. Dealing with such concurrent findings, the Supreme Court framed the following issues in ***Bhadra International***:

> *"29. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:-*

i. *Whether the sole arbitrator could be said to have become "ineligible to be appointed as an arbitrator" by virtue of sub-section (5) of Section 12 of the Act, 1996?*

ii. ***Whether the parties could be said to have waived the applicability of sub-section (5) of Section 12 of the Act, 1996, by way of their conduct, either expressed or implied*** *?*

iii. ***Whether the appellants could have raised an objection to the appointment of the sole arbitrator for the first time in an application under Section 34 of the Act, 1996****?"*

[Emphasis Supplied]

12. Dealing with the aforesaid issues, the Supreme Court went on to consider the provisions of Section 12(5), and the march of the law as declared in this regard, leading to a *de jure* ineligibility of a unilaterally appointed arbitrator to validly conduct arbitration proceedings, to answer the first issue.

No Deemed Waiver:.

13. Thereafter, the Supreme Court went on to consider whether a party, by conduct, could be deemed to have waived expressly or by necessary implication, any objection to the arbitral award passed by such an arbitral tribunal. Towards this end, the Supreme Court held the following :

"79. The expression "express agreement in writing" demonstrates a deliberate and informed act that although a party is fully aware of the arbitrator's ineligibility, yet it chooses to forego the right to object against the appointment of such an arbitrator. The requirement of an express agreement in writing has been introduced as it reflects awareness and a conscious intention to waive the right to object under sub-section (5) of Section 12. A clear manifestation of the expression of waiver assumes greater importance in light of the fact that the parties are overcoming a restriction imposed by law.

80. It is in the same breath we say that appointment of an arbitrator with the consent of both parties is the general rule, while unilateral appointment is an exception. When one party appoints an arbitrator unilaterally, even if its own consent is implicit, the consent of the opposite party stands compromised, and the choice of the former is effectively imposed upon the letter.

85. The conscious use of the prefatory expression also serves to differentiate such waiver from 'deemed waiver' as stipulated under Section 4 of the Act, 1996. We must be mindful of the fact that if the legislature intended that waiver under Section 12(5) could similarly arise by implication or conduct as mentioned under Section 4, it would have refrained from introducing a heightened and mandatory requirement, more particularly, in light of the rigours of the Seventh Schedule. The statutory design therefore makes it evident that the bar under Section 12(5) can be removed only by a clear, unequivocal ,and written agreement executed after the dispute has arisen, and not by any form of tacit acceptance or procedural participation.

86. The mandate of an express agreement in writing in the present case may looked at from one another angle. The unilateral appointment of an arbitrator is assessed from the viewpoint of the parties. However, when the parties later execute an express written agreement waiving the ineligibility

of the proposed arbitrator, the position gets altered. Such written waiver supplies the very consent that was previously missing, thereby placing the appointment on the same footing as a mutually agreed appointment and addresses concerns regarding neutrality and fairness."

[Emphasis Supplied]

Participation Without Challenge in the Arbitration:

14. It is noteworthy that in ***Bhadra International***, the Supreme Court also dealt with the facet of a challenge being raised before the Arbitrator when the proceedings are underway. The Supreme Court has emphatically declared that when an Arbitrator is totally ineligible to act as such, the ineligibility is a matter of law and would go to the root of the appointment. Thus, the termination of mandate under Section 14 would be automatic, regardless of whether a challenge was raised in the course of the arbitration proceedings.

15. Therefore, it has been held that there is no need for a party challenging an arbitral award under Section 34 of the Act to have challenged the independence and impartiality of the arbitrator in the course of the arbitration proceedings. Specifically, in dealing with the facet of continued participation in the arbitration proceedings without protest as a parameter of waiver, the Supreme Court held the following :

"95. In Govind Singh v. Satya Group Pvt. Ltd., 2023 SCC OnLine Del 37, the contention before the Delhi High Court was that the appellant therein by its conduct had waived its right to object to the unilateral appointment of the sole arbitrator. The Court categorically held that it is not necessary to even examine whether the appellant had raised an objection. Even if the appellant had participated in the proceedings without raising any objection, it cannot be said that he had waived his right under Section 12(5) of the Act, 1996. The relevant observations read thus:—

> *"19. The contention that the appellant by its conduct has waived its right to object to the appointment of the learned Arbitrator is also without merit. The question whether a party can, by its conduct, waive its right under Section 12(5) of the A&C Act is no longer res integra. The Supreme Court in the case of Bharat Broadband Network Limited v. United Telecoms Limited : (2019) 5 SCC 755 had explained that any waiver under Section 12(5) of the A&C Act would be valid only if it is by an express agreement in writing. There is no scope for imputing any implied waiver of the rights under Section 12(5) of the A&C Act by conduct or otherwise.*
>
> *20. Thus, it is not necessary to examine the question whether the appellant had raised an objection to the appointment of the learned Arbitrator. Even if it is assumed that the appellant had participated in the arbitral proceedings without raising any objection to the appointment of the learned Arbitrator, it is not open to hold that he had waived his right under Section 12(5) of the A&C Act. Although it is not material, the record does indicate that the appellant had objected to the appointment of respondent no. 2 as an arbitrator."*

(Emphasis supplied)

96. The net effect of the aforesaid is that a notice invoking the arbitration clause under Section 21 of the Act, 1996, a procedural order, submission of

statement of claim by the appellants, the filing an application seeking interim relief, or a reply to an application under Section 33 of the Act, 1996, cannot be countenanced to mean "an express agreement in writing" within the meaning of the proviso to sub-section (5) of Section 12 of the Act, 1996.

97. One could argue that a miscreant party may participate in the arbitral proceedings up to the passing of the award, despite having full knowledge of the arbitrator's ineligibility. While after an adverse award is rendered, such a party may then seek to challenge it with a view to having it set aside. Such an apprehension is reasonable, however, to obviate the possibility of such misuse, the party making unilateral appointment must endeavour to enter into an express written agreement as stipulated in the proviso to Section 12(5), so as to safeguard the proceedings from being rendered futile.

98. Thus, all the High Court decisions taking a contrary view to the present judgment would stand overruled.

[Emphasis Supplied]

Conclusions:

16. The declaration of law in ***Bhadra International*** is emphatic and crystal clear. There is no longer any further room to examine whether any participation in the arbitration proceedings, even in the form of written pleadings would constitute consent to proceed by necessary implication. Endorsing the Delhi High Court's view in ***Govind Singh***[5] emphatically, the law declared now leaves no room for

5 *Govind Singh v. Satya Group Pvt. Ltd. – 2023 SCC OnLine Del 37*

inference and ability to distinguish the judgements in ***Perkins Eastman*** or ***Bharat Broadband***, or even ***Central Organisation***.

17. Undoubtedly, the sole issue on which the parties agitated their respective submissions before this Court was on the premise of whether the Petitioners could be regarded as miscreants who consciously participated in the arbitration proceedings up to the passing of the Arbitral Award with full knowledge of the unilateral appointment, and then taking up the challenge only when an adverse award is rendered, in reliance upon ***Central Organisation***.

18. This has been explicitly referred to by the Supreme Court in ***Bhadra International*** to hold that, to avoid such a situation, it would be mandatory for the unilaterally appointing party to enter into an express written agreement of consent, which would be responsive to a conscious and autonomous choice by such party, failing which the proceedings would be rendered futile. In a nutshell, the conclusions drawn by the Supreme Court can be profitably noticed from the following extracts :

> *"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 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."

[Emphasis Supplied]

19. Therefore, in view of the foregoing unequivocal and express declaration of the law, also declaring that all High Court decisions that have held a view contrary to ***Bhadra International*** would stand overruled, it is clear that all the captioned Petitions would need to be allowed. There is no basis left to consider any defence of the Arbitral Awards impugned in the caption proceedings.

20. Evidently, the vice of unilateral appointment of an Arbitrator is not curable by uncontested participation in the arbitration proceedings. Evidently, equity would not supplant the law, and there is no scope for supplementing the law declared on the anvil of uncontested participation before the unilaterally appointed arbitrator.

21. Therefore, all the Petitions are hereby ***allowed*** and the Impugned Awards are set aside.

22. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]