IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION (L) NO. 12097 OF 2026

D S Textiles ...Petitioner

Versus

IIFL Finance Limited ...Respondent

WITH

ARBITRATION PETITION (L) NO. 12128 OF 2026

Madhuram Fabrics Pvt Ltd ...Petitioner

Versus

IIFL Finance Limited *...Respondent*

WITH

ARBITRATION PETITION (L) NO. 12154 OF 2026

P R Packing Service ...Petitioner

Versus

IIFL Finance Limited ...Respondent

Mr. Pratik Barot *a/w Adv Angel Pandey i/b Adv. Kruti Bhavsar, for the Petitioner in ARBP(L)/12097/2026, ARBP(L)/12128/2026 & ARBP(L)/12154/2026.*

Ms. Mitali More, *Officer of IIFL, is present.*

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : APRIL 30, 2026

Oral Judgement:

1. Each of the captioned Petitions is yet another case of a non-banking finance company unilaterally appointing an arbitrator who has proceeded to pass urgent interlocutory orders without any description as to how the arbitral tribunal came to be constituted.

2. Learned Advocate for the Respondent submits that she has no instructions in the matter other than to state that arbitration proceedings are being withdrawn and the Petition may be disposed of as infructuous.

3. An increasing trend is being seen in a number of matters, in particular by non-banking financial companies and even scheduled commercial banks that are themselves listed companies, requiring them to be mindful of having greater intensity of promise to be compliant with the law, where a unilateral arbitrator is appointed but purporting to appoint the arbitrator through an "institution" or an algorithm-based selection of arbitrator, it is hoped that the inherent illegality in unilateral-appointment is magically cleansed.

4. I have to take judicial notice from the trend of these cases. What is evident is that the *modus operandi* is to conduct arbitration in this process and hope that in most cases the affected party may not challenge the arbitration and may instead come up with settlement terms, with the strategy resulting in recoveries. However, whenever a counterparty challenges the

unilateral appointment, the unilaterally-appointing party simply comes to Court and volunteers to have the arbitration proceedings withdrawn. In this manner, it is apparent that such parties are hoping to circumvent the law declared by the Supreme Court with impunity.

5. It is made clear that such an attempt merely presents a veneer or a fig-leaf to contend that the arbitrator is "*independent*" but such an arbitrator would still be a unilaterally-appointed arbitrator. As is typical in such cases, an order under Section 17 of the Act, attaching various bank accounts gets passed rapidly by such arbitrators. In these orders, there is invariably no mention at all about the process of appointment of the arbitrator. In most cases, such orders are also devoid of material particulars of compliant invocation of arbitration. While this itself would be a giveaway about the quality of the independence and impartiality brought to bear, even the citation of particulars of invocation can never cure what is fundamentally and substantially a unilateral appointment.

6. There are only two known methods in law to appoint an arbitrator – (i) the consent of the parties; and (ii) appointment by a Section 11 Court having jurisdiction in the matter. Any third appointment cannot be whitewashed as being a compliant appointment.

7. The law on unilateral appointment has been explicitly declared by the Supreme Court in ***Central Railway***[1] making it abundantly clear that the manner of appointment is an integral and foundational facet of independence and impartiality of the arbitrator. However, it must be remembered that this is a reiteration of what was first declared by the Supreme Court in ***Perkins Eastman***[2].

8. More recently, in the case of ***Bhadra International***[3], the Supreme Court has provided a seminal explanation of the principles involved and traced the history of the declared law on the subject. The Supreme Court noted that even before the amendments effected in 2015, the Supreme Court had always considered the facet of appointment of arbitrator as a foundational element. The Supreme Court held that facet of unilateral appointment, even if contained in the agreement, is foundationally in conflict with the core requirements of the Act. The following extracts are noteworthy:

> ***36.*** *The principle of equal treatment of parties is not new to the arbitration regime in India.* ***It has long been recognised that equal participation in the constitution of the arbitral tribunal is integral in ensuring impartiality and preserving fairness of the arbitral process****. Even* ***prior to the Amendment Act, 2015, this Court in Dharma Prathishthanam v. Madhok Construction (P) Ltd., (2005) 9 SCC 686, held that a***

1 *Central Organization for Railway Electrification v. ECI SPIR SMO MCML (JV) A Joint Venture Company,* ***(2025) 4 SCC 641***
2 *Perkins Eastman Architects DPC v. HSCC (India) Ltd.,* ***(2020) 20 SCC 760****.*
3 *Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India,* ***2026 INSC 6***

unilateral appointment, without the consent of the other party is illegal and alien to law. The relevant observations read thus:—

> *"12. On a plain reading of the several provisions referred to hereinabove, we are clearly of the opinion that the procedure followed and the methodology adopted by the respondent is wholly unknown to law and the appointment of the sole arbitrator Shri Swami Dayal, the reference of disputes to such arbitrator and the ex parte proceedings and award given by the arbitrator are all void ab initio and hence nullity, liable to be ignored. In case of arbitration without the intervention of the court, the parties must rigorously stick to the agreement entered into between the two. If the arbitration clause names an arbitrator as the one already agreed upon, the appointment of an arbitrator poses no difficulty. If the arbitration clause does not name an arbitrator but provides for the manner in which the arbitrator is to be chosen and appointed, then the parties are bound to act accordingly. If the parties do not agree then arises the complication which has to be resolved by reference to the provisions of the Act. One party cannot usurp the jurisdiction of the court and proceed to act unilaterally. A unilateral appointment and a unilateral reference — both will be illegal. It may make a difference if in respect of a unilateral appointment and reference the other party submits to the jurisdiction of the arbitrator and waives its rights which it has under the agreement, then the arbitrator may proceed with the reference and the party submitting to his jurisdiction and participating in the proceedings before him may later on be precluded and estopped from raising any objection in that regard.[…]"*
>
> *(Emphasis supplied)*

37. What flows from the aforesaid is that the principle of equal treatment of parties which has always formed part of the Act, 1996, has been articulated with greater clarity and precision by the legislature through the Amendment Act, 2015. The Amendment Act, 2015, just crystallizes what was previously implicit. It makes the

statutory guarantee of equal treatment in the process of appointment of the arbitrator explicit.

38. One another good reason to hold the aforesaid is that, although Section 11(2) of the Act, 1996, stipulates that the parties are free to agree on a procedure for appointing the arbitrator or arbitrators, yet this freedom is not unbridled. The exercise of party autonomy must operate within the framework of the Act, 1996. In case of conflict, mandatory provisions of the Act, 1996, prevail over the arbitration agreement.

39. The principle of party autonomy does not obliterate the principle of equal treatment of the parties, either in the procedure for appointment of arbitrators or in the arbitral proceedings. The exercise of party autonomy has to be in consonance with the principles of equal treatment of parties, which impliedly include the independence and impartiality of arbitrators.

[Emphasis Supplied]

9. The law declared in ***Perkins Eastman*** too was noticed in ***Bhadra International***. The following extract from ***Perkins Eastman*** is noteworthy to point out that even a third party who is seemingly independent, being unilaterally appointed by one of the parties to the arbitration agreement, is bad in law:

21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377:(2017) 4 SCC (Civ) 72] Para 50 of the decision shows that ***this Court was concerned with the issue, "whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator"*** *The* ***ineligibility referred to therein, was as a result of***

***operation of law**, in that **a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator.** The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. **But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by theArbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. V. Energo Engg. Projects Ltd., (2017) 8 SCC 377: (2017) 4 SCC (Civ) 72]"*

[Emphasis Supplied]

10. Endorsing a view expressed by a Learned Single Judge of this Court in ***Lite Bite*** [4], and that too based on the ***Perkins Eastman***, the Supreme Court, in ***Bhadra International***, held thus:

55. The Bombay High Court, inLite Bite Foods Pvt. Ltd.v.AAI, dealt with a submission similar to the one arising from Clause 75 of the License Agreement before us. It was contended that only when an employee of the respondent is the named arbitrator does such person become ineligible to act, and equally ineligible to nominate another arbitrator.

4 *Lite Bite Foods Pvt. Ltd.v.AAI,2019 SCC OnLine Bom 5163*

The Court held that the embargo under sub-section (5) of Section 12 is against granting any single party a unilateral or one-sided authority in constituting the arbitral tribunal. We are in complete agreement with the observations of\G. S. Patel, J., that, "The guiding principle is neutrality, independence, fairness and transparency even in the arbitral-forum selection process". The relevant observations read thus:—

> *"23. The present case may not be within the confines of TRF Ltd., i.e. the tender approving authority is not both arbitrator and, if disqualified, the sole repository of arbitrator-appointing power. He is only the latter. But that now matters at all.Perkins Eastman clearly holds the field and it covers a situation precisely such as the present one where AAI — and only AAI — has the exclusive right of appointed (not merely nominating) an arbitrator. The question is not, as Ms. Munim would have it, the perceived bias or impartiality of the arbitrator. He may well be an unknown entity. The question is of one-sidedness in the arbitral tribunal appointment procedure itself. This is the destination to which Perkins Eastman takes us for it requires that there be neutrality in the dispute resolution process throughout. If I might be permitted a license, in my reading of it, what Perkins Eastman says is this : that you cannot have an impartial arbitration free from all justifiable doubt if the manner in which the arbitral tribunal is constituted itself is beset by justifiable doubt."*
>
> *xx*
>
> *25. Ms. Munim's last submission is that the only prohibition is against a named person being the arbitrator or empowered to appoint an arbitrator. This is clearly incorrect. The interdiction runs against any one party being given unilateral or one-sided power in the matter of constitution of the arbitral tribunal."*
>
> ***[Emphasis Supplied]***

11. Therefore, it is abundantly clear now that merely by contending that an institution is being appointed by one of the parties unilaterally, the party making a unilateral appointment cannot cleanse what is essentially a foundational defect in the constitution of the arbitral tribunal. This is the law declared in ***Perkins Eastman*** and thoroughly endorsed in multiple reiterations by the Supreme Court.

12. Therefore, the attempt by finance companies and banks to pretend to have cleansed the arbitrator-appointment process by getting an "institution" of *their* choice to make a purportedly "*independent*" appointment is wholly untenable and completely illegal, and indeed a colourable and manipulative device to circumvent the law declared by the Supreme Court.

13. Also making it clear that invocation is an important element of commencing the arbitration, the Supreme Court held that invocation cannot partake the character of consent, in the following words:

> ***We would like to clarify that a notice under Section 21 of the Act, 1996, is an expression to set the arbitration agreement into motion upon arising of disputes between the parties****. The section states that the date of commencement of arbitration would be the date on which the recipient receives the notice from the claimant that the dispute be referred to arbitration.* ***The notice acts as a communication that the sender is aggrieved and seeks to invoke the arbitration agreement. It does not, by itself, operate as consent to any appointment to be made in the future.***
>
> ***[Emphasis Supplied]***

14. Noting that filing of a claim in the arbitration proceedings conducted by a unilaterally appointed arbitrator; participation in extension of mandate under Section 29A of the Act; and continued participation in the arbitration proceedings would still not constitute an "express agreement in writing" for a waiver to be inferred to an ineligible arbitrator, the Supreme Court held that the objection can still be raised at the Section 34 stage, and ruled as follows:

> ***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.***
>
> *Thus,* ***all the High Court decisions taking a contrary view to the present judgment would stand overruled****.*
>
> ***[Emphasis Supplied]***

15. It would be a completely different matter if the parties had agreed that the appointment of the arbitrator would be by a named institution. If the parties have not applied their mind to consent to such an appointment being made by an agreed institution of their choice, it would only follow that one of

the parties getting an institution of its choice to make the appointment cannot bless what is essentially a tainted approach to appointment of the arbitrator.

16. Therefore, I have no doubt in my mind that the practice of attempting to transpose a semblance of impartiality and independence by contending that the appointment is being made by an institution is untenable and is worthy of deprecation.

17. The market practice that is evident to any judge with the arbitration roster, is that the manipulative device being resorted to is to simply surrender to the Court in those cases where the counterparty has the strength to approach the Court. By having the arbitration withdrawn, there would be no need to have a ruling on the resort to illegality. In all other cases where the parties do not have the wherewithal to come to Court, resort to such illegal means could still lead to recoveries of funds. This is precisely the approach that lends arbitration a bad name and inflicts long-term damage to alternate dispute resolution as a mechanism.

18. Therefore, in view of such conduct being directly contrary to the law declared by the Supreme Court, a copy of this Order shall be placed before the Board of Directors at its next meeting to alert them that, under their watch, an approach that is directly contrary to the law declared by the Supreme Court is being adopted.

19. Therefore, while the submission that the arbitration proceedings are being dropped is taken note of, to ***quash and set aside*** the Impugned Order, it is directed that this judgement be placed before the Audit Committee of the Respondent's Board of Directors by the Chief Compliance Officer, to ensure that those in the governance of the Respondent are aware of the practice adopted by them being contrary to law and to ensure that they frame appropriate policies compliant with the law declared by the Supreme Court, in their resort to arbitration.

20. The captioned proceedings are ***finally disposed of*** with the aforesaid directions.

21. 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.]