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

Date of Decision: 14.05.2026

\+ OMP (ENF.) (COMM.) 215/2019, EX.APPL.(OS) 2965/2022 (For Dir.), EX.APPL.(OS) 3740/2022 (Dir.), EX.APPL.(OS) 3743/2022 (Objections for on behalf of the JD No.3), EX.APPL.(OS) 3744/2022 (For U/O XXI Rule 27), EX.APPL.(OS) 1955/2024 (For Delay 34 days in filing the Affidavit in compliance of order dt. 24.07.2024), EX.APPL.(OS) 732/2026 (Seeking waiver of cost imposed vide order dt. 27.02.2026 by JD-2) & EX.APPL.(OS) 737/2026 (Delay of 20 days in filing arbitral record by Decree Holder)

M/S GOWRA PETROCHEM PVT. LTD. .....Decree Holder

Through: Mr. Abhishek Singh, Mr. J. Amal Anand, Mr. Elvin Joshy, Ms. Shivani Kalra, Mr. K.V. Vibu Prasad and Mr. Akshat Mishra, Advocates.

versus

M/S ALFA CHEM & ORS. .....Judgement Debtors

Through: Ms. Shraddha Bhargava and Ms. Princy Sharma, Advocates for Judgment Debtor Nos. 1 and 2.

Mr. Uttam Dutt, Senior Advocate along with Mr. Rajiv Dalal, Mr. Shresth Kausik, Mr. Bhaskar and Ms. Dipti Singh Arya, Advocates for Judgment Debtor No. 3.

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

% **JUDGEMENT (ORAL)**

1. The present Execution Petition has been instituted under Order

XXI of the **Code of Civil Procedure, 1908**[1], read with Section 36 of the **Arbitration and Conciliation Act, 1996**[2], seeking enforcement and execution of the **Arbitral Award dated 20.05.2019**[3] passed by the learned Sole Arbitrator in the arbitral proceedings titled "*M/s Gowra Petrochem Pvt. Ltd. And M/s Alfa Chem and two others*".

2. Pursuant to the Objections raised by Judgement Debtors regarding the very maintainability and sustainability of the present execution proceedings on the ground that the Impugned Arbitral Award sought to be enforced emanates from a unilateral appointment of the learned Sole Arbitrator, learned counsel appearing on behalf of the Decree Holder fairly and candidly concedes that the learned Sole Arbitrator who rendered the Impugned Award had indeed been appointed unilaterally.

3. He further admits that there is no material available on record evidencing any express waiver in writing, as contemplated under the proviso to Section 12(5) of the A&C Act, executed between the parties subsequent to the disputes having arisen.

4. Notwithstanding the aforesaid concession, learned counsel for the Decree Holder endeavours to contend that the absence of any proceedings having been instituted under Section 34 of the A&C Act challenging the Impugned Arbitral Award within the prescribed period would, by itself, render the Award final and binding between the parties, and consequently amenable to enforcement under Section 36 of the A&C Act.

5. It is thus submitted by the learned counsel for the Decree

[1] CPC
[2] A&C Act
[3] Impugned Arbitral Award

Holder that merely because the Arbitral Award may have emanated from a unilateral appointment, the same would not *ipso facto* render the present execution proceedings non-maintainable in the absence of a substantive challenge having been laid to the Award under Section 34 of the A&C Act, at the relevant stage.

6. In support of the aforesaid proposition, learned counsel appearing on behalf of the Decree Holder places reliance upon the judgment rendered by the Madras High Court in ***Sundaram Finance Limited v. S.M. Thangara and Others***[4], as also the judgment of the said Court in ***Vr Dakshin Private Limited v. Scm Silks Private Limited and Others***[5].

7. Placing reliance upon the aforesaid judgements, it is contended by the learned counsel for the Decree Holder that where no challenge under Section 34 of the A&C Act has been preferred against an arbitral award, objections pertaining to the legality or validity of the constitution of the Arbitral Tribunal cannot subsequently be permitted to be raised at the stage of enforcement proceedings under Section 36 of the A&C Act.

8. Learned counsel appearing on behalf of the Decree Holder further submits that the scope of proceedings under Section 36 of the A&C Act is purely executory in nature and that an Executing Court cannot travel beyond the Arbitral Award so as to examine the legality or correctness thereof, particularly in circumstances where the Arbitral Award has attained finality owing to the absence of any challenge under Section 34 of the A&C Act.

9. It is accordingly urged by the learned counsel for the Decree

[4] 2025 SCC OnLine Mad 5428
[5] 2024 SCC OnLine Mad 6761

Holder that the objections now sought to be raised by the Judgment Debtors amount to an indirect and belated challenge to the Award itself, which is impermissible in law. On the strength of the aforesaid submissions, learned counsel reiterates, with considerable emphasis, that the present Execution Petition is fully maintainable and deserves to proceed for enforcement in accordance with law.

10. ***Per contra***, learned Senior Counsel appearing on behalf of Judgment Debtor No. 3 submits that the controversy sought to be raised by the Decree Holder no longer remains *res integra* and stands settled by the Judgment rendered by the Division Bench of the Delhi High Court in ***Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi***[6]**.**

11. Elaborating upon the aforesaid submission, learned senior counsel places specific reliance upon Paragraph Nos. 56 and 57, as also the concluding summary of principles contained in Paragraph No. 84 of the aforesaid judgment.

12. It is further submitted that the Division Bench in the said judgement has categorically held that an arbitral award rendered by a unilaterally appointed arbitrator suffers from an incurable jurisdictional defect which strikes at the very root of the arbitral proceedings and renders the resultant award a nullity in the eyes of law. Such an award, being *void ab initio* and inherently unenforceable, cannot be permitted to be executed merely because no proceedings under Section 34 of the A&C Act were instituted against the same.

13. Learned Senior Counsel also submits that the Executing Court, while exercising jurisdiction under Section 36 of the A&C Act read

[6] 2025 SCC OnLine Del 4241

with Order XXI of the CPC, is fully competent to refuse enforcement of an award which is *ex facie* without jurisdiction and consequently *non est* in law. The relevant observations from the aforesaid judgment have been reproduced herein below for ready reference:

> "**56.** Hence, the objection with regard to award being nullity due to unilateral appointment can be raised for the first time at the stage of Section 34 of the Act and even in absence of the objection, if the Court while deciding the application under Section 34 of the Act finds that the award is vitiated by unilateral appointment can on its own set aside the award.
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> **57.** Similarly, the Court executing the award under Section 36 of the Act read with Order XXI of the Civil Procedure Code, 1908 ('CPC') can refuse to enforce the award, which is deemed to be a decree passed by the Indian Court at the stage of enforcement proceedings. Under CPC, a decree is said to be nullity if it passed by a Court having lack of inherent jurisdiction. The decree is called nullity if it is ultra vires the powers of the Court passing the decree and not merely voidable decree. Applying the same principles to the awards that are considered as decree under Section 36 of the Act, the Court enforcing the awards must refuse to enforce the awards that are passed by unilaterally appointed arbitrator, being a nullity having lack of inherent jurisdiction to pass the award.
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> CONCLUSION:
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> **84.** In view of the above discussion, the legal position on the unilateral appointment of the Sole and Presiding Arbitrator is summarized as under:
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> a) Mandatory Requirement: Any arbitration agreement providing unilateral appointment of the sole or presiding arbitrator is invalid. A unilateral appointment by any party in 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 being 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.
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> b) Deemed Waiver: The proviso to Section 12(5) of the Act requires an express agreement in writing. The conduct of the parties, no matter how acquiescent or conducive, is inconsequential and cannot constitute a valid waiver under the proviso to Section 12(5) of the Act. The ineligibility of a unilaterally appointed arbitrator can be waived only by an express agreement in writing between the parties after the dispute has arisen between them. Section 12(5) of the Act is an exception to Section 4 of the Act as there is no deemed waiver under Section 4 of the Act for unilateral

appointment by conduct of participation in the proceedings. The proviso to Section 12(5) of the Act requires an 'express agreement in writing' and deemed waiver under Section 4 of the Act will not be applicable to the proviso to Section 12(5) of the Act.

c) Award by an Ineligible Arbitrator is a Nullity: An award passed by a unilaterally appointed arbitrator is a nullity as the ineligibility goes to the root of the jurisdiction. Hence, the award can be set aside under Section 34(2)(b) of the Act by the Court on its own if it 'finds that' an award is passed by unilaterally appointed arbitrator without even raising such objection by either party.

d) Stage of Challenge: An objection to the lack of inherent jurisdiction of an arbitrator can be taken at any stage during or after the arbitration proceedings including by a party who has appointed the sole or presiding arbitrator unilaterally as the act of appointment is not an express waiver of the ineligibility under proviso to Section 12(5) of the Act. Such objection can be taken even at stage of challenge to the award under Section 34 of the Act or during the enforcement proceedings under Section 36 of the Act."

ANALYSIS:

14. This Court has heard learned counsel appearing on behalf of the respective parties at length and has bestowed its thoughtful and anxious consideration upon the rival submissions advanced on behalf of the parties.

15. Upon a careful, and comprehensive examination of the matter, this Court finds considerable force and substantial merit in the objections and submissions canvassed on behalf of the Judgment Debtors.

16. At the outset, it may be noted that learned counsel appearing on behalf of the Decree Holder does not dispute the settled legal position that an arbitral award rendered pursuant to a unilateral appointment of an arbitrator, in the absence of an express waiver in writing in terms of the proviso to Section 12(5) of the A&C Act, would stand vitiated and be rendered a nullity in the eyes of law.

17. The only plank of the submissions advanced on behalf of the

Decree Holder is, however, confined to the contention that since no petition under Section 34 of the A&C Act had been instituted challenging the Impugned Arbitral Award at the relevant stage, the objections touching upon the jurisdictional invalidity of the Award cannot now be permitted to be raised or considered in the present execution proceedings instituted under Section 36 of the A&C Act.

18. This Court is unable to persuade itself to accept the aforesaid contention of the learned counsel for the Decree Holder. It is a settled principle of law that enforcement cannot be permitted in respect of an instrument, decree, determination, or adjudicatory outcome which is *ex facie void ab initio* or constitutes a nullity in the eyes of law. A determination suffering from an inherent lack of jurisdiction strikes at the very root of the adjudicatory process and consequently cannot be sanctified merely on account of lapse of time or failure of a party to institute an independent challenge thereto.

19. Furthermore, as already noticed hereinbefore, the Division Bench of this Court in ***Mahavir Prasad Gupta*** *(supra)*, particularly in Paragraph Nos. 56 and 57 thereof, has unequivocally expounded the legal position that while exercising jurisdiction in enforcement proceedings under Section 36 of the A&C Act read with Order XXI CPC, the Executing Court is not rendered powerless or *functus officio*. On the contrary, the Court is fully competent to decline enforcement where the Award sought to be executed is found to be a nullity on account of an inherent jurisdictional defect, including where the arbitral proceedings emanate from a unilateral appointment of the arbitrator. The Division Bench has categorically held that such an award is *non est* in law and incapable of enforcement.

20. The aforesaid position also stands authoritatively settled by the Hon'ble Supreme Court in ***Electrosteel Steel Ltd. v. Ispat Carrier (P) Ltd.***[7], while dealing with a substantially similar objection concerning the executability of an arbitral award in the absence of proceedings under Section 34 of the A&C Act. The Hon'ble Supreme Court, while examining the scope and interplay of Section 36 of the A&C Act and Section 47 CPC, categorically held that although an arbitral award becomes enforceable as a decree upon expiry of the limitation period prescribed under Section 34 of the A&C Act, the Executing Court nevertheless retains jurisdiction to examine objections pertaining to executability where the award suffers from jurisdictional infirmity or voidness.

21. The Hon'ble Supreme Court in the said judgement observed that Section 36 of the A&C Act merely assimilates an arbitral award to a decree for the purposes of enforcement and that the execution of such award is consequently governed by the principles contained in the CPC. It was further held that Section 47 of the CPC empowers the Executing Court to determine all questions relating to execution, discharge, or satisfaction of the decree and that a decree which is a nullity owing to inherent lack of jurisdiction can validly be questioned at the stage of execution. The Hon'ble Supreme Court further clarified that the maintainability of such objections under Section 47 CPC is neither dependent upon nor contingent upon the filing of proceedings under Section 34 of the A&C Act.

22. In this regard, in that judgement, the Hon'ble Supreme Court specifically held that the High Court had erred in taking the view that

[7] (2025) 7 SCC 773

failure to institute proceedings under Section 34 of the A&C Act would preclude a judgment debtor from raising objections regarding nullity or non-executability of the award at the execution stage. The Apex Court emphatically reiterated that objections founded upon inherent lack of jurisdiction or on the ground of being void, survive even at the stage of execution, *albeit* within a narrow compass confined to cases of patent nullity. The relevant observations of the Hon'ble Supreme Court in ***Electrosteel Steel*** (*supra*) read as under:

> "**1.** This appeal by special leave is directed against the judgment and order dated 17-7-2023 ***Electrosteel Steel Ltd.* v. *Ispat Carriers (P) Ltd.*** **2023 SCC OnLine Jhar 1035** passed by the High Court of Jharkhand at Ranchi in CMP No. 376 of 2023 filed by the appellant.
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> **2.** The appellant had filed CMP No. 376 of 2023 before the High Court of Jharkhand at Ranchi (briefly "the High Court" hereinafter) under Article 227 of the Constitution of India assailing the order dated 3-3-2023 passed by the learned Presiding Officer, Commercial Court/District Judge 1, Bokaro in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018). It may be mentioned that by the aforesaid order dated 3-3-2023, the learned Presiding Officer, Commercial Court/District Judge 1, Bokaro (referred to hereinafter as "the executing court") had dismissed the application dated 14-5-2019 filed by the judgment-debtor (the appellant), further directing the judgment-debtor (the appellant) to comply with the award dated 6-7-2018 passed by the West Bengal Micro, Small and Medium Facilitation Council, Kolkata within fifteen days of the order.
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> **10.** The appellant did not challenge the award dated 6-7-2018 under Section 34 of the Arbitration and Conciliation Act, 1996 (briefly "the 1996 Act" hereinafter).
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> **11.** The respondent instituted execution proceeding which was initially registered as Execution Case No. 77 of 2018 and thereafter as Commercial Execution Case No. 21 of 2022 before the executing court. At the stage of execution of the award, the appellant filed a petition dated 14-5-2019 contending that the arbitral award was a nullity and hence not executable as the claim of the respondent was already settled at nil as per the resolution plan and, therefore, nothing was payable to the respondent.

12. The executing court by the order dated 3-3-2023 dismissed the petition of the appellant and directed it to comply with the award dated 6-7-2018 within fifteen days.

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14. Insofar as the first question is concerned, the High Court opined that the plea of nullity qua an arbitral award can be raised in an execution proceeding under Section 47CPC. However, the scope of interference would be very narrow. As regards the second question, the High Court rejected the contention of the appellant that since the award suffered from patent or inherent lack of jurisdiction and therefore was a nullity, it can be questioned at the stage of execution without challenging the award under Section 34 of the 1996 Act. The High Court answered the third question by holding that the Facilitation Council did not lose its jurisdiction to proceed and pronounce the arbitral award notwithstanding approval of the resolution plan by NCLT under Section 31 IBC. Reasoning given by the High Court is that the arbitral proceedings were initiated prior to the insolvency resolution date, kept suspended during the moratorium period and resumed after lifting of the moratorium; the approved resolution plan simply determined the claim of the respondent as nil. Accordingly, vide the impugned judgment [***Electrosteel Steel Ltd.* v. *Ispat Carriers (P) Ltd.*, 2023 SCC OnLine Jhar 1035**] and order the High Court dismissed the petition filed by the appellant under Article 227 of the Constitution of India.

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15. Hence, the present appeal.

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64. This order came to be challenged by the appellant before the High Court in a proceeding under Article 227 of the Constitution of India. We have already noted the three issues framed by the High Court for consideration. Insofar as the first issue is concerned, the High Court is of the view that an award can be challenged in a proceeding under Section 47CPC on the very limited ground of the award being a nullity or void ab initio or suffering from inherent lack of jurisdiction. However, the High Court opined that if an aggrieved party does not challenge an award under Section 34 of the 1996 Act, it cannot be permitted to object to its execution by alleging it to be a nullity though such a plea of nullity can be entertained if it is of such a grave nature that it is not even capable of being waived by one or the other party. Therefore, the High Court concluded that the plea of nullity qua an arbitral award can be raised in a proceeding under Section 47CPC but such a challenge would lie within a very narrow compass.

65. Insofar as the second issue is concerned, the High Court rejected the contention of the appellant that since the award suffered from patent or inherent lack of jurisdiction, objection to

the award can be taken at the stage of execution without challenging the award under Section 34 of the 1996 Act. While rejecting the said contention, the High Court held that the arbitral proceedings culminating in the award cannot be said to be suffering from inherent lack of jurisdiction.

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67. The High Court is correct in answering the first issue that a plea of nullity qua an arbitral award can be raised in a proceeding under Section 47CPC but such a challenge would lie within a very narrow compass.

68. Section 36 of the 1996 Act deals with enforcement of arbitral awards. Sub-section (1) says that where the time for making any application to set aside an arbitral award under Section 34 has expired, then subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of the court. As per sub-section (2), where an application to set aside an arbitral award has been filed under Section 34, the filing of such an application shall not by itself render an award unenforceable unless an order of stay is granted by the court. Therefore, in terms of Section 36 of the 1996 Act, an award can be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of a civil court.

69. Section 47CPC deals with questions to be determined by the court executing decree. As per sub-section (1), all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Execution of decrees and orders is provided for in Order 21CPC. The law is well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court in ***Vasudev Dhanjibhai Modi* v. *Rajabhai Abdul Rehman*, (1970) 1 SCC 670** is that only a decree which is a nullity can be the subject-matter of objection under Section 47CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field.

70. Objection to execution of an award under Section 47CPC is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. The High Court was not justified in taking the view that since the appellant did not file a petition under Section 34 of the 1996 Act, therefore, it was precluded from filing an application before the executing court to declare the award as void and hence non-executable."

(emphasis supplied)

23. In the present case, the position regarding unilateral appointment of the learned Sole Arbitrator is not even disputed by the Decree Holder. Equally undisputed is the absence of any express waiver in writing, as contemplated under the proviso to Section 12(5) of the A&C Act. Once the very constitution of the Arbitral Tribunal stands vitiated by reason of such unilateral appointment, the resultant Arbitral Award cannot be regarded as a legally enforceable adjudication in the eyes of law. The defect goes to the very root of jurisdiction and consequently renders the Impugned Arbitral Award *non est* and incapable of enforcement.

DECISION:

24. In view of the aforesaid discussion, and having regard to the settled legal position in this regard, this Court finds itself unable to lend its imprimatur to the enforcement of the Impugned Arbitral Award. The present execution proceedings, being founded upon an Award which is rendered void and unenforceable in law, cannot be permitted to continue.

25. Consequently, the present Execution Petition is dismissed as being incapable of enforcement.

26. The Present Petition, along with pending application(s), if any, stands disposed of accordingly.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 14, 2026/nd/va