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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision: 06.08.2026

CNR No. DLHC010017892026

+ O.M.P. (T) (COMM.) 8/2026 and IA Nos.1594/2026, 13025/2026, 13106/2026

SHOBHA ANO PRINTS PVT LTD THROUGH

MANAGING DIRECTOR MR ARUN KUMARPetitioner

Through: Mr. Angad Mehta, Mr. Arsh and
Mr. S. Ram Babu, Advocates.

versus

UNION OF INDIA MINISTRY OF DEFENCE

THROUGH ITS SECRETARY & ORS.Respondents

Through: Mr. Raktim Gogoi, CGSC alongwith
Mr. Vikrant Malwal, GP and Ms.
Akshita Nigam, Advocates.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (ORAL)**

1. The present petition has been filed by the petitioner under Section 15 of the Arbitration and Conciliation Act, 1996 (hereinafter "*the A&C Act*") seeking termination of the mandate of the learned Sole Arbitrator, Mr. B.L. Choudhary, and appointment of a substitute arbitrator to adjudicate the disputes between the parties, *inter alia*, on the ground that the learned Sole Arbitrator was unilaterally appointed by the respondents.

2. The petitioner, Shobha Ano Prints Pvt. Ltd., is a private limited company incorporated under the Companies Act, 2013, engaged in the manufacture of optical instruments for the infantry and artillery divisions of the Indian Armed Forces, and is a registered manufacturer with the Ministry



of Defence.

3. The respondents are the Union of India, Ministry of Defence, through its Secretary (Respondent No. 1); the Director General of Ordnance Services, MGS Branch, Integrated HQ of Ministry of Defence (Army) (Respondent No. 2); and the Director General Quality Assurance, Department of Defence Production (Respondent No. 3). The Supply Order giving rise to the present dispute was issued to the petitioner by Respondent No. 2.

4. The disputes between the parties arise out of Supply Order No. A/18951/TS/Proc/Sight Dial/264/OS-16B dated 26.02.2019 (“the Supply Order”), issued by the respondents to the petitioner for supply of 264 Nos. of Sight Dial & Mount Cased items, for a total value of INR 5,15,80,547/- (including GST). It is the petitioner’s case that the Supply Order was wrongly and illegally terminated by the respondents vide letter dated 29.07.2024.

5. Clause 3 of the Standard Conditions of Supply Order is the arbitration clause. It provides that disputes are to be settled by bilateral discussions in the first instance, failing which they may be resolved through arbitration “as per Form DPM-7”, and further stipulates that the “Arbitrator will be appointed by DGOS/ADOS (TS)” that is, by the respondent no. 2 themselves. Clause 3 of the Standard Conditions of Supply Order reads as follows:

*“3. **Arbitration-** All disputes or differences arising out of or in connection with the Supply Order shall be settled by bilateral discussions. Any dispute, disagreement or question arising out of or relating to the SO to construction or performance, which cannot be settled amicably, may be resolved through arbitration. The standard*



clause of Arbitration is as per Form DPM-7 (Available on MoD website and can be provided on request). Arbitrator will be appointed by DGOS/ADOS (TS)."

6. Form DPM-7, titled "Format of Arbitration Clause - Indigenous Private Bidders", reads as under:-

"Arbitration Clause- Indigenous Private bidders (Form DPM-7)

(i) All disputes or differences arising out of or in connection with the present contract, including the one connected with the validity of the present contract or any part thereof, should be settled by bilateral discussions.

(ii) Any dispute, disagreement or question arising out of or relating to this contract or relating to construction or performance (except as to any matter the decision or determination whereof is provided for by these conditions), which cannot be settled amicably, shall within sixty (60) days or such longer period as may be mutually agreed upon, from the date on which either party informs the other in writing by a notice that such dispute, disagreement or question exists, be referred to a sole Arbitrator.

(iii) Within sixty (60) days of the receipt of the said notice, an arbitrator shall be nominated in writing by the authority agreed upon by the parties. (iv) The sole Arbitrator shall have its seat in New Delhi or such other place in India as may be mutually agreed to between the parties.

(v) The arbitration proceedings shall be conducted under the Arbitration and Conciliation Act, 1996 and the award of such Arbitration Tribunal shall be enforceable in Indian Courts only.

(vi) Each party shall bear its own cost of preparing and presenting its case. The cost of arbitration, including the fees and expenses, shall be shared equally by the parties, unless otherwise awarded by the sole arbitrator.

(vii) The parties shall continue to perform their respective obligations under this contract during the pendency of the arbitration proceedings, except in so far as such obligations are the subject matter of the said arbitration proceedings.

(Note – In the event of the parties deciding to refer the dispute(s) for adjudication to an Arbitral Tribunal, one arbitrator each will be appointed by each party and the case will be referred to the Indian Council of Arbitration (ICADR) for nomination of the third arbitrator. The fees of the arbitrator appointed by the parties shall be borne by each party, and the fees of the third arbitrator, if appointed, shall be equally shared by the buyer and seller.)"

7. Petitioner submits that in exercise of the aforesaid clause, the



Petitioner invoked arbitration vide letter dated 03.09.2024, and the respondents unilaterally appointed Mr. B.L. Choudhary as the learned Sole Arbitrator which is evidenced through letters dated 11.04.2025, 4.07.2025 and 21.08.2025. The petitioner filed its Statement of Claim on 25.10.2025 claiming INR 4,86,74,264/-, and the respondents filed their Statement of Defence along with a counterclaim of INR 646.11 crores on 14.11.2025.

8. During the pendency of the arbitral proceedings, disputes arose between the parties as regards the learned Sole Arbitrator's mandatory disclosure under Section 12 of the A&C Act, which was furnished only after repeated applications by the petitioner.

9. Pursuant to an application filed by the petitioner on 24.11.2025 under Section 12 of the A&C Act, the learned Sole Arbitrator furnished his declaration on 07.12.2025, in which he *inter alia* disclosed that he had 9 ongoing arbitrations, including this one.

10. The petitioner thereupon filed a further application on 09.12.2025 seeking specific particulars of the said 9 ongoing arbitrations. In response, the learned Sole Arbitrator disclosed on 17.12.2025 that of the 9 ongoing arbitrations, he had been appointed by the respondents/their affiliates in 4. Contending that this gave rise to justifiable doubts as to his independence and impartiality within the meaning of, *inter alia*, Entries 7, 13 and 22 of the Fifth Schedule to the A&C Act, the petitioner filed an application dated 19.12.2025 under Sections 12(3), 12(4) and 13 of the A&C Act seeking recusal of the learned Sole Arbitrator, as also an application under Section 17 of the A&C Act for change of venue of the proceedings.

11. In these circumstances, the petitioner filed the present petition under



Section 15 of the A&C Act on 08.01.2026, along with IA No. 1594/2026 seeking stay of the arbitral proceedings pending adjudication of the petition.

12. *Vide* order dated 09.02.2026, the learned sole arbitrator dismissed the recusal application filed under section 12(3), 12(4) and 13 of the A&C Act, and held as follows:-

“The mandatory shows that only in 1 (one) case I was appointed as Sole Arbitrator by the Respondent of the case under reference, whereas the other three cases were pertaining to other respondent so it is wrong to say by the claimant that the information submitted by the Sole Arbitrator is in contravention of entries 7.12.2022 of the 5th Schedule and entry of 1 of the 7th schedule of the Act.”

13. The Arbitrator held the recusal application to be “false, baseless and devoid of merits”, and directed that the arbitral proceedings would continue until and unless there is a stay on the proceedings by the superior Court of competent jurisdiction. The learned arbitrator also dismissed the application for change of venue.

14. It is the petitioner’s case that the learned Sole Arbitrator, in his order dated 09.02.2026 without explanation, departed from his own disclosure dated 07.12.2025, wherein he had stated that 4 of his 9 ongoing arbitrations involved the respondents and their affiliates. The petitioner pleads that this unexplained change of position is itself corroborative of the learned Sole Arbitrator’s partiality towards the respondents.

15. Before advertng to the contention of the parties, it is pertinent to refer to the law laid down in respect of unilateral appointment of Arbitrators by one of the parties to the Arbitration proceedings. The Supreme Court in the case of ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.***, (2020) 20 SCC 760 has observed as follows:-



“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 Energo Enggith 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 the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd.”

16. In **Bhadra International (India) Pvt. Ltd. v. Airports Authority of India**, 2026 SCC OnLine SC 7, the Apex Court has observed that:

“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.”

17. Reference in this regard may also be made to the judgment of this in **Engineering Projects India Limited v. Allied Construction**, 2026 SCC OnLine Del 4000:

“6. The legal position is that under Section 12(5) read with Seventh Schedule of the Act an employee of the party in dispute is ineligible to be appointed as an arbitrator and cannot nominate or appoint any other person as an arbitrator. The unilateral appointment in absence of express agreement in writing between the parties to waive the applicability of Section 12(5) of the Act is void ab initio. The participation in the arbitration proceedings cannot be construed to be waiver under the proviso to Section 12(5) of the Act.”

18. It is therefore well settled that a party to an arbitration agreement cannot unilaterally appoint a sole arbitrator, and that in such circumstances the appropriate remedy is to approach this Court under Section 14 read with Section 15 of the A&C Act for appointment of a substitute arbitrator.

19. As noted above, Clause 3 of the Standard Conditions of Supply order, read with Form DPM-7, vests the power to appoint the Sole Arbitrator exclusively in respondent no. 2, who is a party to the proceeding and has



significant interest in the outcome of the case. It is relevant to note that no express agreement in writing, waiving the applicability of Section 12(5) of the A&C Act, has been placed on record by either party.

20. Applying the aforesaid principles to the facts of the present case, the appointment of the learned Sole Arbitrator, Mr. B.L. Choudhary, is ex facie unilateral. It is settled in light of the aforesaid judgments that a unilateral appointment by any party in the arbitration is null, void and *non-est*. This Court is accordingly of the view that the mandate of the learned Sole Arbitrator is liable to be terminated under Section 14 read with Section 15 of the A&C Act, and that a substitute Sole Arbitrator needs to be appointed to adjudicate the disputes between the parties.

21. In the above background, with the consent of the parties, Ms. Justice (Retd.) Deepa Sharma (Mob No. +91 9910384631), former judge, High Court of Delhi, is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

22. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the requisite disclosures are required under Section 12 of the A&C Act.

23. The learned Sole Arbitrator shall be entitled to fee in accordance with IVth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Sole Arbitrator.

24. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.

25. Needless to say, the learned Sole Arbitrator would consider the same



in accordance with law and take an appropriate decision.

26. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/ arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

27. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the case.

28. The petition, along with the pending applications, stands disposed of in the above terms.

SACHIN DATTA, J

AUGUST 6, 2026/at,nb