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

Date of Decision : 13.03.2026

\+ FAO (COMM) 257/2025

M/S. BPTP LIMITED .....Appellant

Through: Mr. Manish Sharma, Sr. Adv. with Ms. Jigyasa Sharma, Mr. Kaushik Poddar, Advs.

versus

VIJYANT AGARWAL AND ANR .....Respondents

Through: Mr. Soibal Gupta, Mr. Himanshu Swami, Mr. Surendra Singh, Ms. Sutanuka Chatterjee, Mr. Yash Tiwari, Mr. Sadab Salmani, Mr. Suresh Kumar, Advs.
Major Kanika Sharma, (Army)

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. *(ORAL)*

CM APPL. 15455/2026 *(Exemption)*

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

FAO (COMM) 257/2025 CM APPL. 15454/2026

3. This appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996, against the Judgement, dated 03.05.2025 passed by the Learned District Judge, Commercial-03 Patiala House Courts, New

Delhi in OMP (Comm) No.78/2022 titled as Vijyant Agarwal & Ors. Vs. M/S. BPTP Ltd deciding a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, by the respondents, whereby the Learned District Judge has set aside the award of the Learned Arbitrator by stating in paragraphs 10 onwards as under:

> *"10. After hearing the arguments of the parties and perusing the records, and appropriatedly guided by judgment (supra), in the considered opinion, the Ld. Arbitrator has erred in passing the impugned award and further modifying/ replacing the words "actual amount paid" with the words "club maintenance charges" in the Clause 4 of the Settlement Deed dated 30.05.2016. The Ld. Arbitrator has erred by not interpreting the terms of the Settlement Deed but interpreting the alleged intent or expectation of the respondent from the Settlement Deed. The Ld. Arbitrator was solitarily mandated to resolve the dispute arising from the Settlement Deed as per the arbitration clause and not rewrite the Settlement Deed. It needs to be mention that the Ld. Arbitrator ought not to have considered the reasoning of the respondent that the clause 4 was defective clause which resulted in absurdity of the Settlement Deed. The Ld. Arbitrator erred in examining the commercial wisdom of the respondent and rewrote the Settlement Deed on the basis of the commercial difficulties faced by respondent in performing its obligations. In consonance with The Hon'ble Delhi High Court in the case "Union Of India, Ministry Of Railways, Railway Board.& Anr" (supra), if the terms of the Settlement Deed do not clearly express the intentions of the parties, it is open for the parties to seek recourse to various tools of interpretation. This would include interpreting the Settlement Deed in a manner that would make commercial sense as it is assumed that men of commerce would have intended it so. However, it is not open for the Ld. Arbitrator to re-work a bargain that was struck between the parties on the ground that it is commercially difficult for one party to perform the same.*
>
> *11. It is further to be noted that the respondent was well aware of the presence of the clause 4 since the inception of the Settlement Deed yet they elected to raise this issue after the expiry of the mentioned period in the clause 4 and at the time of invoking the arbitration. The respondent was a voluntary and prudent signatory to the Settlement Deed and was not coerced to sign the same, therefore the respondent is*

obligated to abide by the terms of the Settlement Deed. In case the respondent was aggrieved by the illegality of the clause 4 in the Settlement Deed, the respondent should have followed the proper procedure and offering the petitioners an amendment to the Settlement Deed as mutual agreed within a reasonable time after the inception of the Settlement Deed. These aforementioned facts establishes that the pleas of the respondent is an afterthought but not a legal ground to challenge the terms of the Settlement Deed. The impugned arbitral award deserves to be set-aside on this account.

12. Further, upon hearing the Ld. Counsels for both the sides and perusing the documents, it appears that in the present case, in terms of the provisions of Settlement Deed, the respondent had an option for appointment of Arbitrator at their discretion. In terms of the said Deed, the respondent had nominated the Ld. Sole Arbitrator and unilaterally appointed the Ld. Sole Arbitrator without the consent of the petitioner. Section 12 (5) of the Act says as follows:

> ***12. Ground for Challenge. -***
> *(1) ..... .*
> *(2) ....*
> *(3) ....*
> *(4) ....*
> *(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the seventh Schedule shall be ineligible to be appointed as an arbitrator:*
> *Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this subsection by an express agreement in writing.*

13. At this juncture, it would be appropriate to extract relevant portion of judgment rendered by Hon'ble Supreme Court in Perkins Eastman Architects DPC & .Anr Vs. HSCC (India) Ltd., Arbitration Application No. 32 of 2019, decided on 26.11.2019:-"

> *"16. However, the point that has been urged, relying upon the decision of this Court in Walter Bau AG and TRF3 Limited requires consideration. In the present case Clause 24 empowers the Chairman and Managing Director of the respondent to make the appointment of a sole arbitrator and said clause also stipulates that no person other than a person appointed by such Chairman and Managing Director of the respondent would act as*

an arbitrator. In TRF Limited4, a Bench of three Judges of this Court, was called upon to consider whether the appointment of an arbitrator made by the Managing Director of the respondent therein was a valid one and whether at that stage an application moved under Section 11(6) of the Act could be entertained by the Court. The relevant Clause, namely, Clause 33 which provided for resolution of disputes in that case was under:

*"**33. Resolution of dispute/arbitration***
(a) In case any disagreement or dispute arises between the buyer and the seller under or in connection with the PO, both shall make every effort to resolve it amicably by direct informal negotiation. (b) If, even after 30 days from the commencement of such informal negotiation, seller and the buyer have not been able to resolve the dispute amicably, either party may require that the dispute be referred for resolution to the formal mechanism of arbitration. (c) All disputes which cannot be settled by mutual negotiation shall be referred to and determined by arbitration as per the Arbitration and Conciliation Act, 1996 as amended. (d) Unless otherwise provided, any dispute or difference between the parties in connection with this agreement shall be referred to sole arbitration of the Managing Director of buyer or his nominee. Venue of arbitration shall be Delhi, and the arbitration shall be conducted in English language. (e) The award of the Tribunal shall be final and binding on both, buyer and seller."

14. In TRF Limited, the Agreement was entered into before the provisions of the Amending Act (Act No.3 of 2016) came into force. It was submitted by the appellant that by virtue of the provisions of the Amending Act and insertion of the Fifth and Seventh Schedules in the Act, the Managing Director of the respondent would be a person having direct interest in the dispute and as such could not act as an arbitrator. The extension of the submission was that a person who himself was disqualified and disentitled could also not nominate any other person to act as an arbitrator. The submission countered by the respondent therein was as under :

> *"7.1. The submission to the effect that since the Managing Director of the respondent has become ineligible to act as an arbitrator subsequent to the amendment in the Act, he could also not have nominated any other person as arbitrator is absolutely unsustainable, for the Fifth and the*

Seventh Schedules fundamentally guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence and impartiality of the arbitrator. To elaborate, if any person whose relationship with the parties or the counsel or the subject-matter of dispute falls under any of the categories specified in the Seventh Schedule, he is ineligible to be appointed as an arbitrator but not otherwise.

18. *The issue was discussed and decided by this Court as under:*

"50. First, we shall deal with clause (d). There is no quarrel that by virtue of Section 12(5) of the Act, if any person who falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as the arbitrator. There is no doubt and cannot be, for the language employed in the Seventh Schedule, the Managing Director of the Corporation has become ineligible by operation of law. It is the stand of the learned Senior Counsel for the appellant that once the Managing Director becomes ineligible, he also becomes ineligible to nominate. Refuting the said stand, it is canvassed by the learned Senior Counsel for the respondent that the ineligibility cannot extend to a nominee if he is not from the Corporation and more so when there is apposite and requisite disclosure. We think it appropriate to make it clear that in the case at hand we are neither concerned with the disclosure nor objectivity nor impartiality nor any such other circumstance. We are singularly concerned with the issue, whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator. At the cost of repetition, we may state that when there are two parties, one may nominate an arbitrator and the other may appoint another. That is altogether a different situation. If there is a clause requiring the parties to nominate their respective arbitrator, their authority to nominate cannot be questioned. What really in that circumstance can be called in question is the procedural compliance and the eligibility of their arbitrator depending upon the norms provided under the Act and the Schedules appended thereto. But, here is a case where the Managing Director is the "named sole arbitrator"

and he has also been conferred with the power to nominate one who can be the arbitrator in his place. Thus, there is subtle distinction. In this regard, our attention has been drawn to a two-Judge Bench decision in State of Orissa v. Commr. of Land Records & Settlement7. In the said case, the question arose, can the Board of Revenue revise the order passed by its delegate. Dwelling upon the said proposition, the Court held : (SCC p. 173, para 25)

> *"25. We have to note that the Commissioner when he exercises power of the Board delegated to him under Section 33 of the Settlement Act, 1958, the order passed by him is to be treated as an order of the Board of Revenue and not as that of the Commissioner in his capacity as Commissioner. This position is clear from two rulings of this Court to which we shall presently refer. The first of the said rulings is the one decided by the Constitution Bench of this Court in Roop Chand v. State of Punjab. In that case, it was held by the majority that where the State Government had, under Section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its appellate powers vested in it under Section 21(4) to an "officer", an order passed by such an officer was an order passed by the State Government itself and "not an order passed by any officer under this Act" within Section 42 and was not revisable by the State Government. It was pointed out that for the purpose of exercise of powers of revision by the State under Section 42 of that Act, the order sought to be revised must be an order passed by an officer in his own right and not as a delegate of the State. The State Government was, therefore, not entitled under Section 42 to call for the records of the case which was disposed of by an officer acting as its delegate." (emphasis in original)*

51. Be it noted in the said case, reference was made to Behari Kunj Sahkari Awas Samiti v. State of U.P., which followed the decision in Roop Chand v. State of Punjab8. It is seemly to note here that the said principle has been followed in Indore Vikas

Pradhikaran.

52. Mr Sundaram has strongly relied on Pratapchand Nopaji . In the said case, the three-Judge Bench applied the maxim "qui facit per alium facit per se". We may profitably reproduce the passage : (SCC p. 214, para 9)

> *"9. ... The principle which would apply, if the objects are struck by Section 23 of the Contract Act, is embodied in the maxim:"qui facit per alium facit per se" (what one does through another is done by oneself). To put it in another form, that which cannot be done directly may not be done indirectly by engaging another outside the prohibited area to do the illegal act within the prohibited area. It is immaterial whether, for the doing of such an illegal act, the agent employed is given the wider powers or authority of the "pucca adatia", or, as the High Court had held, he is clothed with the powers of an ordinary commission agent only.'*

53. The aforesaid authorities have been commended to us to establish the proposition that if the nomination of an arbitrator by an ineligible arbitrator is allowed, it would tantamount to carrying on the proceeding of arbitration by himself. According to the learned counsel for the appellant, ineligibility strikes at the root of his power to arbitrate or get it arbitrated upon by a nominee.

54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as

the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view expressed by the High Court is not sustainable and we say so."

19……..
20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Ltd., all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.

21. But, in our view that has to be the logical deduction from TRF Ltd. 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 the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd.

14. Therefore, appropriately guided by the judgment supra it is clear that appointment of Ld. Sole Arbitrator unilaterally by one of the parties (respondent herein) would be ineligible by operation of law. Further, the declaration of Ld. Arbitrator in terms of Section 12(1)(b) of the Six Schedule of the Act as to his impartiality is not on record.

15. In the present case, by virtue of Section 12 (5) of the Act, the Ld. Arbitrator, who was unilaterally appointed, is ineligible to an Arbitrator and the award passed by him, deserves to be set aside on this account also. More particularly, as already observed, there is no express waiver in writing as contemplated under the Proviso to Section 12 (5) of the Act.

16 In view of the foregoing discussions, taking all the above points in consideration, this Court is of considered view that the present award is liable to be set aside being against vitiated by patent illegality and being in conflict with public policy of India.

17. In view of foregoing reasons, this petition is allowed and award dated 31.03.2022 is hereby set aside. No order as to costs.

18. File be consigned to record room."

4. Suffice to state that the Learned District Judge has decided the issue both on merits as well as under Section 12(5) of the Arbitration and Conciliation Act, 1996.

5. We have been informed that the respondents have filed a petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for

appointment of an arbitrator and the same is coming up for a hearing before the concerned Court on 19.03.2026.

6. Having heard Mr. Manish Sharma, learned Senior Counsel appearing for the appellant, and Mr. Soibal Gupta, learned counsel appearing for the respondents, and taking note of the fact that the learned Arbitrator, while rendering the award, had relied upon the judgment of the Supreme Court in the case of ***Perkins Eastman Architects DPC Anr. Vs. HSCC (India) Ltd. (2020) 20 SCC 760***, this Court queried the senior counsel whether the appellant would prefer that the issue be decided afresh by a newly appointed Arbitrator, Mr. Sharma submits that as the learned District Judge has also adjudicated the issue on merits while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, the findings returned therein may not operate against the appellant even if a fresh Arbitrator is appointed for adjudication of the disputes.

7. In other words he submits that, the appellant has no objection if a new Arbitrator is appointed for deciding the disputes *de novo.*

8. Learned counsel for the appellant further submits that this Court may clarify that the adjudication by the newly appointed Arbitrator shall be undertaken independently and without being influenced by any observations made either by the learned Arbitrator in the earlier proceedings or by the learned District Judge while deciding the petition under Section 34 of the Arbitration and Conciliation Act, 1996.

9. At this stage, Mr. Gupta has also consented for the appointment of Arbitrator.

10. In view of the consent expressed by the learned counsel for the parties, this Court appoints Mr. Gautam Narayan, Sr. Advocate (M. No.

9811411735) as the sole Arbitrator to adjudicate the disputes between the parties. The arbitration proceedings shall be conducted under the aegis of the Delhi International Arbitration Centre (DIAC) in accordance with its Rules. It is clarified that the learned Arbitrator shall adjudicate the disputes *de novo* and independently, without being influenced by any observations made by the earlier Arbitrator or by the learned District Judge while exercising jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996.

11. The disputes between the parties shall be adjudicated on the basis of the claims and counterclaims, if any, that may be filed by the respective parties.

12. The learned Arbitrator shall furnish the requisite disclosure in terms of Section 12 of the Arbitration and Conciliation Act, 1996 before entering upon the reference.

13. In view of the aforesaid order, learned counsel for the parties submit that the present appeal as well as Arbitration Petition No. 1282/2025 may be disposed of.

14. In light of the disposal of the appeal and the arbitration petition on the above terms, on the request of learned counsel for the parties, the mediation proceedings (if any) between the parties stand terminated.

15. The date, i.e., 28.03.2026 in terms of Notification No. 64/G-4/Genl.-I/DHC dated 27.02.2026 stands cancelled.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MARCH 13, 2026 Tg/AM