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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 282/2024, I.A. 33259/2024 & I.A. 33261/2024
BHALANI BOOK CORPORATION & ORS.Petitioners
Through: Mr. Akhilesh K Srivastava, Mr. Rishabh Kumar, Ms. Archana Joshi, Ms. Ritu Kumari and Mr. Rahul Dhankad, Advs.

versus

INDIABULL HOUSING FINANCE LIMITED COMPANY & ORS.Respondents
Through: Mr. Rishabh Gupta, Mr. Ayush Garg and Ms. Priyanka Pavak, Advs. for R-1
Mr. Harsh Jain, Ms. Sanya Kumar and Mr. Chiranjeev S. Marwaha, Advs. for R-2 and 3.

CORAM:
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

ORDER (ORAL)

% **22.07.2026**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996¹ challenging the Arbitral Award dated 10.10.2023 passed by the learned Sole Arbitrator, whereby the claims of the Respondents were allowed and the Petitioners were held liable to pay the outstanding loan amount together with interest.

2. Learned Counsel for the Petitioners submit that impugned

¹ "the Act" hereinafter



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award is liable to be set aside at the threshold, since the very appointment of the learned Sole Arbitrator is unilateral and contrary to the law.

3. It is submitted that Article 12 of the loan agreement confers upon the Respondent-lender, the exclusive and unilateral authority to appoint the Sole Arbitrator. The same reads thus:

“ARTICLE 12: ARBITRATION

12.1 This Loan Documents is/shall be governed by Indian laws and the courts at New Delhi shall have exclusive jurisdiction relating to any matter/issue under or pursuant to the Loan Documents. Notwithsatnding anything to the contrary, if any dispute/disagreement/differences (‘Dispute’) arise between the Parties (Including any Borrower(s)) during the subsistence of the Loan Documents and/or thereafter, in connection with, inter alia, the validity, interpretation, implementation and/or alleged breach of any provision of the Loan Documents, jurisdiction or existence/appointment of the arbitrator or of any nature whatsoever, then, the Dispute shall be referred to a sole arbitrator who shall be appointed by IHFL only. In any circumstance, the appointment of the sole arbitrator by IHFL shall be and shall always deemed to be the sole means for securing the appointment/nomination of the sole arbitrator, without recourse to any other alternative mode of appointment of the sole arbitrator. The place of the arbitration shall be New Delhi or such other place as may be notified by IHFL and the arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 (or any statutory re-enactment thereof, for the time being in force) and shall be in the English language. The award shall be binding on the Parties subject to the applicable laws in force and the award shall be enforceable in any competent court of law.”

4. Pursuant thereto, the Respondent by its reference letter dated 10.02.2023 appointed the learned Sole Arbitrator who thereafter entered reference and proceeded to adjudicate the disputes.

5. Learned Counsel further submits that the unilateral appointment of the Sole Arbitrator is *ex-facie* contrary to the Section 12(5) of the



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Act. It is also submitted that there is admittedly no express agreement in writing executed after the dispute had arisen, whereby the Petitioner waived the applicability of Section 12(5).

6. Learned Counsel for the Respondents has objected but could not dispute the submissions made by the learned Counsel for the Petitioners in regard to the nature of the appointment.

7. I have considered the submissions advanced by the parties and pursued the material on record.

8. A perusal of Article 12 of the loan agreement provides, *inter alia*, that all disputes shall be referred to a Sole Arbitrator who shall be appointed by Indiabull Housing Finance Limited only and further stipulates that such appointment shall be sole means for securing the appointment of the Arbitrator without recourse to any other mode of appointment.

9. Pursuant to said Clause, the Respondent unilaterally appointed the learned Sole Arbitrator by communication dated 10.02.2023.

10. The legal position governing unilateral appointment of arbitrator is no longer *res integra*. In **TRF Ltd. v. Energo Engg. Projects Ltd.**², the Supreme Court held that a person who is himself ineligible to act as an arbitrator cannot nominate another arbitrator. The principle was further expanded in **Perkins Eastman Architects**

² (2017) 8 SCC 377



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DPC v. HSCC (India) Ltd.,³ wherein it was categorically held that where one party enjoys the exclusive right to appoint the Sole Arbitrator then such appointment is legally impermissible, as it is against the requirement of neutrality and independence of the Arbitral Tribunal.

11. The Court observes that a party interested in the outcome of the dispute cannot have the exclusive authority to constitute an Arbitral Tribunal.

12. Also, in ***Bhadra International (India) (P) Ltd. v. Airports Authority of India***⁴, Supreme Court has recently once again held that unilateral appointment of arbitrators is illegal and statutory ineligibility of an arbitrator cannot be waived simply because the other party participated in hearing or remained silent; but what requires is valid waiver where both parties have an express agreement in writing as to waiver of Section 12(5) of the Act.

13. Applying the aforesaid settled principles to the facts of the present case, this Court finds that the arbitration clause vested the Respondent with the exclusive authority to appoint the Sole Arbitrator. The appointment of the Sole Arbitrator was made solely by the Respondent in its exercise of the contractual power. The record does not disclose any express written agreement executed between the parties after the dispute has arisen in regard to the waiver of the applicability of Section 12(5) of the Act.

³ (2020) 20 SCC 760

⁴ 2026 SCC OnLine SC 7



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14. Once the appointment itself is contrary to the statutory mandate and the law declared by the Supreme Court, the learned Sole Arbitrator lacked rights to even enter upon reference. This defect goes to the very root of the Constitution of the Arbitral Tribunal itself.

15. Consequently, the award rendered by an Arbitrator whose appointment is legally unsustainable cannot be permitted to stand.

16. Accordingly, the impugned arbitral award dated 10.10.2023 passed by the learned Sole Arbitrator is set aside.

17. At this stage, both the parties are *ad idem* with respect to the reference of the disputes to arbitration. In the aforesaid circumstances, this Court finds no impediment in appointing a Sole Arbitrator.

18. Accordingly, **Ms. Anjana Gosain**, Advocate (Mob. No.-9810100647) is appointed as a learned Sole Arbitrator to adjudicate the disputes arisen between the parties. The learned Sole Arbitrator shall enter upon the reference within two weeks from today.

19. Subject to disclosure under Section 12 of the Arbitration and Conciliation Act, 1996, the learned Sole Arbitrator shall proceed with the arbitral proceedings under the aegis of the Delhi International Arbitration Centre (DIAC) and in accordance with its Rules.

20. The learned Sole Arbitrator shall be entitled to fees in accordance with the Delhi International Arbitration Centre



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(Administrative Costs and Arbitrators' Fees) Rules, 2018.

21. Learned Counsel appearing on behalf of Respondent Nos. 2 and 3 submits that they have been wrongly arrayed as parties, as they were neither parties to the arbitration agreement nor to the arbitral proceedings.

22. It is clarified that all rights are open to all parties to raise all pleas, before the learned Sole Arbitrator who shall decide the same in accordance with law.

23. It is clarified that the observations made herein are only for the purpose of appointment of the Arbitrator. The learned Sole Arbitrator shall adjudicate the disputes independently and on their own merits, uninfluenced by any observations contained in the present order.

24. The Registry is directed to send a receipt of this order to **Ms. Anjana Gosain**, learned Arbitrator through all permissible modes including email.

25. Accordingly, the present petition is disposed of in the above terms.

OM PRAKASH SHUKLA, J.

JULY 22, 2026/ss