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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 25.04.2026**

+ O.M.P. (COMM) 129/2019 & I.A. 4353/2021

PTC TECHNO PVT. LTD.Petitioner

Through: Mr. Tarun Diwan & Ms. Pyari,
Adv.

versus

SAMSUNG INDIA ELECTRONICS
PVT. LTD.RespondentThrough: Mr. Sudhir Nandrajog, Sr.
Adv. with Mr. Niraj Singh, Ms.
Ankita Singh & Mr. Karteek,
Adv.**CORAM:****HON'BLE MR. JUSTICE AVNEESH JHINGAN****AVNEESH JHINGAN, J. (ORAL)**

1. This matter is taken up today as 03.03.2026 was declared holiday vide Notification No. 64/G-4/Gen1.-I/DHC dated 27.02.2026.
2. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') challenging the arbitral award dated 17.11.2018.
3. The short controversy involved is whether the appointment of the arbitrator by the Vice President of the respondent company is in violation of the amended Section 12(5) of the Act.
4. The brief facts are that the parties to the *lis* entered into a Mould Agreement dated 01.06.2009 (hereinafter referred to as 'MA') and two Purchase and Sale Agreements dated 26.11.2009 and 20.06.2013. As



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per the MA, the respondent was to supply moulds for the manufacturing of parts to be carried out by the petitioner. The agreements were terminated and disputes arose between the parties with regard to the return of the moulds. Clause 18 of the MA reproduced below provided for dispute resolution through arbitration. On 25.04.2017, a sole arbitrator was appointed by the Vice President of the respondent company.

“18. Any dispute or differences whatsoever arising between the Parties out of relating to the construction, meaning or operation or effect of this Agreement shall, unless resolved amicably, be settled referring the matter to Arbitration of a Sole Arbitrator to be appointed by the Vice President of Samsung under the Arbitration and Conciliation Act 1996. The venue of Arbitration shall be at New Delhi and the Courts of Delhi shall have the exclusive jurisdiction under this Agreement.”

4.1 An application under Section 9 of the Act was filed by the respondent and the parties were directed to maintain status quo. During the pendency of the application, the respondent appointed the arbitrator. The application was disposed of by order dated 20.07.2017, which is reproduced below:

“The learned counsel for the petitioner states that Mr. Justice Sunil Ambwani (Retd.) has been appointed as a sole arbitrator to adjudicate the disputes between the parties.

The learned counsel for the parties agree that without prejudice to their rights and contentions and objections, the present issue may be heard by the learned sole arbitrator by exercising powers under Section 17 of the Act.



Parties may accordingly file appropriate pleadings before the learned arbitrator who may deal with the same as per law. Interim order passed by this court on 03.05.2017 shall continue to operate till disposal of the application that will be filed by the petitioner under Section 17 of the Act.

The learned arbitrator is free to modify or vacate the order as per law.

The petition stands disposed of.”

5. Learned counsel for the petitioner contends that the appointment of the arbitrator is in violation of Section 12(5) read with Seventh Schedule of the Act and relies upon the decision of the Supreme Court in **Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India**, 2026 INSC 6.

6. Learned senior counsel for the respondent contends that the appointment of arbitrator was never objected to by the petitioner. Contention is that from the perusal of the order dated 20.07.2017 of this Court, it is evident that the petitioner had in writing given consent for waiver of Section 12(5) of the Act. The submission is that the petitioner filed three applications under Sections 12, 14 & 15 and 16 of the Act but the objection of violation of Section 12(5) of the Act was never raised.

6.1 Reliance is on the decision of the Supreme Court in **Quippo Construction Equipment Ltd. v. Janardan Nirman Pvt. Ltd.**, (2020) 18 SCC 277 to argue that the non-raising of an objection to the appointment tantamounts to consent. A decision of this Court in **D.K. Gupta & Anr. v. Renu Munjal**, 2017 SCC OnLine Del 12385 is



pressed into service to buttress the contention that the objection of unilateral appointment cannot be raised for the first time in a petition under Section 34 of the Act that to after having participated in the arbitration proceedings.

7. Before proceeding further, it would be apposite to quote the following decisions:

7.1 The Supreme Court in **Bhadra International** (supra) dealt with the following three issues:

- “29...i. Whether the sole arbitrator could be said to have become “*ineligible to be appointed as an arbitrator*” by virtue of sub-section (5) of Section 12 of the Act, 1996?
- ii. Whether the parties could be said to have waived the applicability of sub-section (5) of Section 12 of the Act, 1996, by way of their conduct, either expressed or implied?
- iii. Whether the appellants could have raised an objection to the appointment of the sole arbitrator for the first time in an application under Section 34 of the Act, 1996?”

Held:

- “123...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.”

7.2 The Division Bench of this Court in **Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi**, 2025 SCC OnLine Del 4241 dealt with the following issues:

“74...a) When a party itself has unilaterally appointed the arbitrator, whether that party can object to the unilateral appointment of the arbitrator at any stage during or after the arbitration proceedings?”



- b) If a party has unilaterally appointed an arbitrator, can that party be deemed to have given express waiver in writing under Section 12(5) of the Act while making the appointment itself?”

The Court concluded:

- “84....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.
- 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.”

8. After amendment of Section 12(5) of the Act an employee of a party in dispute can neither be appointed arbitrator nor can nominate or appoint any other person as an arbitrator. The unilateral appointment in absence of an express agreement in writing by the parties to waive applicability of Section 12(5) of the Act is void *ab initio*. The filing of the statement of claim or participation in the arbitral proceedings cannot be construed to be waiver under the proviso to Section 12(5) of the Act. The unilateral appointment of the arbitrator can be objected to for the first time under Section 34 of the Act.

9. Clause 18 of the MA provides for resolution of disputes through arbitration and the arbitrator was to be appointed by the Vice President of the respondent company.

10. The law is well settled that an official of a party to the dispute can neither be appointed as an arbitrator nor can appoint an arbitrator but in the case in hand the arbitrator was appointed by the Vice



President of the respondent company.

11. The contention that the appointment of the arbitrator was never objected to and that this issue was never raised before the arbitrator during the arbitration proceedings is of no avail. The Supreme Court in **Bhadra International** (supra) held that there should be express written consent by the parties for waiver of the applicability of Section 12(5) of the Act. It is also held that the objection to unilateral appointment can be raised for the first time in a petition under Section 34 of the Act. The relevant paragraphs are reproduced below:

“97. 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.

109. When an award has been passed, the proceedings before the arbitral tribunal conclude, leaving no possibility of substituting the arbitrator at this stage. In other words, once an award is passed, the mandate of the arbitral tribunal also arrives at a conclusion. In such circumstances, a party aggrieved by the arbitrator's ineligibility may challenge the award by filing an application under Section 34 of the 1996 Act, as an award passed by an ineligible arbitrator is nullity, non-est, or void ab initio, and against the public policy of India.”

12. The Supreme Court in **Bhadra International** (supra) held that waiver under the proviso to Section 12(5) of the Act involves a



conscious decision to waive rigour of statutory provisions and the person waiving such right should be aware of the right. A legal right cannot be taken away by implication and the waiver has to be an unequivocal expression.

13. There is no prescribed format under the proviso to Section 12(5) of the Act for an express agreement in writing but it shall not mean that the waiver can be inferred by implication or through conduct. It would be relevant to quote the following paragraph from **Bhadra International** (supra):

“84. Undoubtedly, the statute does not prescribe a format for the agreement. However, the absence of a prescribed format cannot be construed to mean that the waiver may be inferred impliedly or through conduct. We say so because the legislature has consciously prefaced the term “agreement” with the word “express” and followed it with the phrase “in writing”. This semantics denote the intention of the legislature that the waiver under the proviso to Section 12(5) must be made only through an express and written manifestation of intention.”

14. Decisions of **Quippo Construction Equipment** (supra) and **D.K. Gupta** (supra) relied by respondent are not applicable in the facts of the present case in view of the law laid down by the Supreme Court in **Bhadra International** (supra).

15. Reliance of the learned senior counsel for the respondent on the order of this Court dated 20.07.2017 to contend that there was a written consent by the petitioner for waiver of Section 12(5) of the Act lacks merit. The issue of the appointment of the arbitrator was not before this Court. In view of the appointment of the arbitrator during pendency of the application, the parties agreed that the relief claimed



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under Section 9 of the Act shall be pressed under Section 17 of the Act.

16. The matter needs to be considered from another angle. The express consent in writing under proviso to Section 12(5) of the Act has to be of both the parties. It is not the case set up before this Court that the respondent had given written consent under proviso to Section 12(5) of the Act.

17. The non-compliance of proviso to Section 12(5) of the Act by the parties brings the appointment of the arbitrator in teeth of Section 12(5) read with Seventh Schedule of the Act. The appointment of the arbitrator is void *ab-initio* and renders the impugned award nullity.

18. The petition is allowed and the impugned award is set aside. Pending application is also disposed of.

AVNEESH JHINGAN, J

APRIL 25, 2026

Ch/kp

Reportable:- Yes