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ARBITRATION AND CONCILIATION

Unilateral Appointments on Trial: The Supreme Court’s Reaffirmation of Arbitrator Neutrality

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Introduction

The judgment of the Supreme Court of India in *Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India*[1], marks a significant reaffirmation of the post-2015 arbitration jurisprudence in India. The decision reiterates the mandatory nature of Section 12(5) of the Arbitration and Conciliation Act, 1996 and highlights the impermissibility of unilateral arbitrator appointment by one party having a controlling interest in the dispute. The judgment harmonises party autonomy with the foundational principles of neutrality, independence, and equality in arbitral proceedings. For arbitral institutions, government authorities, and commercial entities alike, the ruling is a critical reminder that procedural convenience cannot override statutory safeguards introduced to preserve the integrity of arbitration.

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Factual Background

The dispute arose out of licence agreements executed in 2010 between the Airports Authority of India (AAI) and a consortium comprising Bhadra International (India) Pvt. Ltd. and Novia International Consulting APS, for providing ground handling services at designated airports. The licence agreements contained an arbitration clause empowering the Chairman of AAI to appoint a sole arbitrator in the event of disputes. In 2015, disputes arose between the parties. The appellants invoked arbitration by issuing a notice under Section 21 of the Act, following which AAI appointed a sole arbitrator in accordance with the contractual clause. At the preliminary procedural hearing held in March 2016, it was recorded that neither party objected to the appointment of the arbitrator.

The arbitral proceedings continued over the next two years, including extensions of time under Section 29A granted by the High Court. The arbitrator passed a *‘nil award’* rejecting the claims and counter-claims of both parties. Aggrieved, the appellants filed applications under Section 34 of the Act. At a later stage, they sought to amend their petitions to challenge the very appointment of the sole arbitrator on the ground that it was unilateral and hit by Section 12(5), which had come into force prior to commencement of arbitration. The Single Judge rejected this objection, and the Division Bench of the Delhi High Court affirmed the decision. This led to the present appeals before the Supreme Court.

Issues for Consideration

The Supreme Court examined three interconnected legal issues. First, whether the sole arbitrator appointed by AAI was rendered ineligible by virtue of Section 12(5) read with the Seventh Schedule. Secondly, whether the appellants had waived the applicability of Section 12(5) by their conduct or by the recording of ‘no objection’ in the procedural order. Thirdly, whether such a challenge could be raised for the first time at the stage of Section 34 proceedings.

Interpretation of Section 12(5) and the Principle of Neutrality

The Court undertook an extensive analysis of Section 12(5), emphasising that the provision begins with a non obstante clause which overrides any prior agreement to the contrary. The legislative intent behind the 2015 Amendment, the Court noted, was to eliminate justifiable doubts regarding the independence and impartiality of arbitrators, particularly in situations where one party enjoys a dominant position in appointing the arbitral tribunal. Relying on earlier decisions such as *TRF Ltd. v. Energo Engineering Projects Ltd.*[2], *Bharat Broadband Network Ltd. v. United Telecoms Ltd.*[3], and *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*[4], the Court reiterated that a person who is himself ineligible to act as an arbitrator under the Seventh Schedule

cannot appoint or nominate another arbitrator.

The Chairman of AAI, being part of the management of one of the disputing parties, squarely fell within the categories enumerated in the Seventh Schedule. Consequently, the appointment made by him was void ab initio. The Court clarified that the vice lies in the identity of the arbitrator and in the one-sided nature of the appointment process itself. Arbitration, as an alternative dispute resolution mechanism, is founded on mutual confidence, and unilateral appointments undermine the perception of fairness that is essential to its legitimacy.

Waiver and the Meaning of "Express Agreement in Writing"

A central argument advanced by AAI was that the appellants had waived their right to object under Section 12(5) by participating in the proceedings, filing claims, seeking extensions, and by not objecting at the preliminary hearing. The Supreme Court decisively rejected this contention. The Court held that the proviso to Section 12(5) permits waiver only through an "express agreement in writing" entered into after disputes have arisen. Such waiver must reflect a conscious, informed, and unequivocal decision by both parties to overlook the statutory ineligibility. Mere silence, acquiescence, participation, or procedural compliance cannot substitute for a written agreement expressly waiving the bar.

Importantly, the Court ruled that the recording of "no objection" in a procedural order of the arbitrator does not meet the statutory threshold. An arbitrator's procedural note cannot be raised to the status of a bilateral agreement waiving a mandatory statutory protection. This interpretation reinforces the strict nature of Section 12(5) and prevents dilution of its safeguards through implied or inferred consent.

Challenge at the Stage of Section 34 Proceedings

On the issue of maintainability, the Court held that ineligibility under Section 12(5) results in de jure inability of the arbitrator to perform his functions within the meaning of Section 14(1)(a). Such ineligibility strikes at the root of the arbitrator's mandate and renders the proceedings a nullity in law. Accordingly, the Court held that a challenge to such appointment can be raised at any stage, including for the first time in proceedings under Section 34. The doctrine of waiver or estoppel cannot be invoked to validate an appointment that is statutorily void. This finding aligns with the Court's consistent view that jurisdictional defects cannot be cured by consent or acquiescence.

Judgment and Ratio Decidendi

Allowing the appeals, the Supreme Court set aside the judgments of the Single Judge and the Division Bench of the Delhi High Court. It held that the unilateral arbitrator appointment by AAI was invalid, that there was no express waiver in writing as required under the proviso to Section 12(5), and that the arbitral award could not be sustained in law. The Court conclusively reaffirmed that a notice invoking arbitration under Section 21 does not amount to consent to a unilateral arbitrator appointment and that party autonomy must yield to mandatory statutory provisions ensuring fairness and neutrality.

Conclusion

The decision in *Bhadra International v. Airports Authority of India* is a strong reaffirmation of the post-amendment arbitration framework in India. It reinforces the judiciary's unwavering commitment to eliminating unilateralism and perceived bias in arbitral appointments, particularly in contracts involving public authorities and standard-form agreements. By insisting on strict compliance with Section 12(5) and narrowly construing the concept of waiver, the Supreme Court has fortified the credibility of arbitration as a fair and neutral dispute resolution mechanism. For practitioners and contracting parties, the judgment is both a caution and a guide: arbitration clauses and appointment mechanisms must be carefully structured to withstand statutory scrutiny, failing which the entire arbitral process may be rendered vulnerable.

For more details, write to us at: contact@indialaw.in

1. 2026 INSC 6 (CIVIL APPEAL NOS. 37-38 of 2026 [Arising out of Special Leave Petition (C) Nos. 16107-16108 of 2025]) ??
2. (2017) 8 SCC 377 ??
3. (2019) 5 SCC 755 ??
4. (2020) 20 SCC 760. ??

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