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Unilateral Institutional Invocation: A Façade That Cannot Cure the Vice of Interested Party Appointment in Arbitration

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The Calcutta High Court, in a significant pronouncement by Justice Gaurang Kanth in L&T Finance Ltd. v. Jai Paras Material Store and Ors. (EC-COM 218 of 2026, decided on 14 May 2026), has reinforced the inviolable statutory safeguards governing the appointment of arbitrators under the Arbitration and Conciliation Act, 1996. The judgment examines whether an interested party's unilateral invocation of an institutional mechanism can validly circumvent the prohibition against unilateral appointments, and clarifies the jurisdiction of executing courts under Section 36 to refuse enforcement of awards that are non-est in law.

The petitioner, L&T Finance Ltd., a non-banking financial company, had extended financial assistance to the respondents, Jai Paras Material Store and others, under a Loan Agreement dated 24.09.2022. Upon the respondents defaulting on repayment, the petitioner invoked the arbitration clause by a notice dated 29.03.2025, proposing Presolv360, an Online Dispute Resolution forum, as the appointing authority. The respondents neither responded nor participated at any stage. The petitioner thereupon unilaterally referred the matter to Presolv360, which appointed Sh. Subramani Venkatarman as the Sole Arbitrator. Despite service of repeated notices through email, WhatsApp, and SMS, the respondents remained completely absent. The Sole Arbitrator proceeded ex parte and rendered an ex parte Arbitral Award dated 25.07.2025 in favour of L&T Finance Ltd. No application to set aside the award under Section 34 was filed by the respondents. The petitioner thereafter filed the present Execution Petition under Section 36 seeking enforcement of the award as a decree.

The Court identified several interlinked issues for determination. First, whether the arbitration clause, which vested the appointment power in the Award Holder (an interested party), was legally sustainable under Section 12(5) read with the Seventh Schedule. Second, whether the unilateral invocation of Presolv360, without the Award Debtor's consent, constituted a valid institutional appointment or amounted in substance to a prohibited unilateral appointment. Third, whether the Sole Arbitrator was de jure ineligible, rendering the tribunal devoid of inherent jurisdiction. Fourth, whether the executing court, in proceedings under Section 36, could examine this fundamental jurisdictional defect despite the award having attained finality. Fifth, whether the Award Debtor's non-participation constituted waiver or acquiescence.

The Court's analysis rests upon a robust statutory foundation and a series of authoritative Supreme Court pronouncements. Section 12(5) of the Act, introduced by the 2015 Amendment with a non-obstante clause, renders persons with specified relationships ineligible to be arbitrators, notwithstanding any prior agreement to the contrary. Section 14(1)(a) provides that an arbitrator's mandate terminates upon becoming de jure unable to perform functions. Section 18 mandates equal treatment of parties throughout the arbitral process, including the appointment stage. The Supreme Court in Bhadra International (India) Pvt. Ltd. v. Airports Authority of India (2026 SCC OnLine SC 7) held that ineligibility under Section 12(5) constitutes de jure inability under Section 14(1)(a), and that the mandate terminates automatically by operation of law.

The principle that an interested party cannot control the appointment process was settled in TRF Ltd. v. Energo Engineering Projects Ltd. ((2017) 8 SCC 377), where the Court applied the doctrine of qui facit per alium facit per se to hold that an ineligible appointing authority cannot confer upon another what it does not itself possess. This was reinforced in Perkins Eastman Architects DPC v. HSCC (India) Ltd. ((2020) 20 SCC 760), which held that a party interested in the outcome cannot unilaterally appoint a sole arbitrator without creating justifiable doubts as to independence and impartiality. The Five-Judge Constitution Bench in Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV) ((2025) 4 SCC 641) affirmed arbitration as a quasi-judicial function, holding that Section 18 and Article 14 of the Constitution mandate equal treatment at all stages, including appointment, and that party autonomy is not absolute where mandatory provisions such as Sections 12(5) and 18 are engaged.

The Court held that the Award Holder's unilateral referral to Presolv360 was impermissible. An ADR institution, however reputed, cannot be approached unilaterally by one party for the appointment of an arbitrator in the absence of the other party's consent. The legitimacy of institutional arbitration derives from mutual consent, either in the original agreement or subsequently. Where no such consent exists, the institution cannot acquire valid appointment capacity merely by being invoked by the interested party. The Court emphasized that the legislature, through Section 11, has provided a specific and exclusive remedy for non-participatory situations: the invoking party must approach the court for appointment by a neutral judicial authority. To permit unilateral institutional invocation would sanction the very mischief that Sections 12(5) and 18 were designed to prevent.

The Court further held that the prohibition is directed not merely at the formal act of appointment, but at the substance of the process the unilateral control by an interested party over the tribunal that is to adjudicate its own claims. Whether exercised directly or indirectly through an institutional mechanism, the vices of partiality, inequality, and conflict of interest are identical. The

form cannot save what the substance condemns.

Regarding the executing court's jurisdiction, the Court held that while Section 36 ordinarily does not permit challenges to the merits of the award, a well-recognized exception applies where the defect goes to the very jurisdiction of the tribunal. An award that is void ab initio is not an "award" at all within the meaning of the Act; it is non-est and cannot acquire enforceability by the efflux of limitation for filing a Section 34 petition, because no limitation can cure a fundamental defect of jurisdiction. The Court relied upon Cholamandalam Investment and Finance Co. Ltd. v. Amrapali Enterprises & Anr. (EC 122/2022) and the Delhi High Court Division Bench judgment in Mahaveer Prasad Gupta v. Government of NCT of Delhi (2025 SCC OnLine Del 4241), affirmed by the Supreme Court's dismissal of the Special Leave Petition on 02.02.2026, to hold that executing courts must refuse enforcement of awards rendered by unilaterally appointed arbitrators.

The Court also rejected any inference of waiver. The Award Debtor never appeared at any stage neither at invocation, nor at constitution of the Tribunal, nor at any hearing. Waiver could only be established by an express agreement in writing subsequent to the arising of the dispute, which was entirely absent.

In its final decision, the Court held that the arbitration clause was legally unsustainable and contrary to Section 12(5). The unilateral referral to Presolv360 and the appointment thereunder were void ab initio for want of consent, authority, and jurisdiction. The Sole Arbitrator was de jure ineligible by operation of law, and his mandate never legally commenced. The ex parte Award dated 25.07.2025, rendered by a tribunal lacking inherent jurisdiction, was non-est in the eyes of law and carried no enforceability under Section 36. The Execution Petition was accordingly dismissed, with liberty to the Award Holder to initiate fresh arbitral proceedings before a validly constituted tribunal appointed in accordance with the Act.

This judgment is a critical reaffirmation that the integrity of the arbitral process cannot be compromised by procedural stratagems masking substantive violations of mandatory statutory safeguards. It clarifies that executing courts possess both the power and the obligation to decline enforcement of awards that are jurisdictional nullities, irrespective of whether a Section 34 challenge was previously filed. For financial institutions and commercial parties, the decision provides unequivocal guidance: when confronted with non-participatory respondents, the proper remedy lies exclusively in a Section 11 court application, not in the unilateral invocation of institutional mechanisms that lack the essential foundation of mutual consent.

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