IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 07.05.2026
DELIVERED ON: 13.05.2026

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

EC-COM 293 OF 2026

L AND T FINANCE LIMITED
VS
AMINA FUELS AND ORS.

Appearance: -

Mr. Sayak Ranjan Ganguly, Adv.
Ms. Srijani Ghosh, Adv.

..... for the award holder.

JUDGMENT

Gaurang Kanth, J. :-

1. The present Execution Petition has been preferred by the Award Holder, L&T Finance Ltd., under Section 36 of the Arbitration and Conciliation Act, 1996, seeking enforcement of an *ex parte* Arbitral Award dated 17.07.2025, rendered by the learned Sole Arbitrator, Sh. Shyam Bihari Sharma, Retired Additional District & Sessions Judge, in Arbitration Case No. L&T/ARB/LOT-5/31 (*L&T Finance Ltd. v. Amina Fuels & Ors.*), arising out of a Loan Agreement dated 30.04.2024 executed between the parties.

2. The factual matrix giving rise to the present proceedings is set out hereinbelow.

3. The Award Debtor(s) had availed of financial assistance from the Award Holder under the Loan Agreement dated 30.04.2024. Upon the Award Debtor(s) committing default in repayment of the loan dues, the Award

Holder invoked the arbitration clause contained in the said Loan Agreement.

4. Since the Award Holder, being a party interested in the outcome of the arbitral proceedings, was itself rendered ineligible to appoint the Sole Arbitrator in terms of the law declared by the Hon'ble Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.*, (2020) 20 SCC 760**, the Award Holder caused the disputes to be referred to LWTODR, an independent Arbitration Institution, for the appointment of a Sole Arbitrator in accordance with its institutional rules. Pursuant thereto, LWTODR appointed Sh. Shyam Bihari Sharma, Retired Additional District & Sessions Judge, as the Sole Arbitrator to adjudicate the disputes between the parties. The Sole Arbitrator accepted his appointment and entered upon the reference.

5. The learned Sole Arbitrator recorded that despite service of repeated notices upon the Award Debtor(s) through electronic means, including e-mail, WhatsApp, and SMS, by both LWTODR and the Arbitral Tribunal, the Award Debtor(s) neither entered appearance nor filed any statement of defence. Finding no representation on behalf of the Award Debtor(s) at any stage of the proceedings, the learned Sole Arbitrator proceeded to conduct the arbitral proceedings *ex parte* and, upon hearing the Award Holder, rendered an *ex parte* Arbitral Award dated 17.07.2025.

6. A copy of the said Award was forwarded to the Award Debtor(s) in terms of Section 31(5) of the Act. No application for setting aside the Award under Section 34 of the Act was filed by the Award Debtor(s) within the prescribed period of limitation. The Award having attained finality, the

Award Holder has preferred the present Execution Petition for enforcement of the *ex parte* Arbitral Award dated 17.07.2025.

7. Before proceeding further in the matter, this Court, in exercise of its duty to satisfy itself as to the enforceability of an arbitral award presented for execution, deems it appropriate to independently examine whether the *ex parte* Arbitral Award dated 17.07.2025 is capable of enforcement under Section 36 of the Act.

8. No argument was addressed in this matter on behalf of the Award Holder. There is no appearance on behalf of the Award Debtor. Hence this Court proceed to examine this question on the basis of various Judicial pronouncements.

Legal Analysis

9. Before examining the enforceability of the *ex parte* Arbitral Award dated 17.07.2025, it is necessary to scrutinise the manner in which the Sole Arbitrator came to be appointed in the present case.

10. As per the arbitration clause contained in the Loan Agreement dated 30.04.2024, the right to appoint the Sole Arbitrator was vested exclusively in the Award Holder, L&T Finance Ltd. It is not in dispute that the Award Holder, being a non-banking financial company and the very party which extended the financial assistance giving rise to the present dispute, is directly and materially interested in the outcome of the arbitral proceedings. The Award Holder, presumably conscious of the legal infirmity that would attend a direct appointment, caused the referral to be made through LWTODR, an Arbitration Institution. The Sole Arbitrator was thereupon appointed by the said Institution at the instance, and under the mechanism, set in motion unilaterally by the Award Holder.

11. The question that arises for consideration is whether this arrangement, where the Award Holder who is statutorily ineligible to appoint an arbitrator itself, unilaterally approaches and invokes an institutional mechanism of its own choosing to achieve the same result, constitutes a valid appointment within the meaning of the Arbitration and Conciliation Act, 1996, or whether it amounts, in substance, to a circumvention of the statutory prohibition and the foundational principles of independence, impartiality and equality of parties.

12. Section 12(5) of the Act, introduced by the Arbitration and Conciliation (Amendment) Act, 2015 with a non-obstante clause, provides that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties, counsel, or the subject matter of the dispute falls within the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. The provision operates by force of statute and is not subject to derogation by any prior contractual arrangement.

13. Section 14(1)(a) of the Act further provides that the mandate of an arbitrator shall terminate if, inter alia, he or she becomes de jure or de facto unable to perform their functions or fails to act without undue delay. The Hon'ble Supreme Court in ***Bhadra International (India) Pvt. Ltd. v. Airports Authority of India, 2026 SCC OnLine SC 7*** has authoritatively held that ineligibility under Section 12(5) constitutes de jure inability under Section 14(1)(a), that de jure ineligibility is the species and de jure inability is the genus and that where such ineligibility attaches, the mandate of the arbitrator stands automatically terminated by operation of law.

14. Section 18 of the Act, which mandates equal treatment of parties throughout the arbitral process, constitutes yet another foundational provision that bears directly upon the question of appointment.

15. The legal position on unilateral appointment of arbitrators is no longer res integra. It was authoritatively settled in the first instance by the Hon'ble Supreme Court 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,* one who acts through another acts himself, to hold that where the designated appointing authority is itself ineligible to act as an arbitrator, it cannot confer upon another what it does not itself possess; the power to appoint flows from the capacity to adjudicate, and once that capacity is extinguished, so too is the power of nomination.

16. This principle was reinforced and extended in ***Perkins Eastman Architects DPC*** *(supra)*, where the Hon'ble Supreme Court held that a party who has an interest in the outcome of the dispute cannot unilaterally appoint a sole arbitrator. The Court emphasised that such an arrangement gives rise to justifiable doubts as to the independence and impartiality of the arbitral tribunal, and that the right to appoint the adjudicator of one's own dispute is fundamentally inconsistent with the quasi-judicial character of arbitration.

17. The question of unilateral appointment was thereafter considered by a Constitution Bench of five Judges in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV),*** reported as ***(2025) 4 SCC 641***. This judgment represents the most comprehensive and authoritative pronouncement of the Supreme Court on the subject. This pronouncement of constitutional bench affirms arbitration as a quasi-judicial function and

reiterates that an arbitrator needs to exercise their powers impartially and objectively. The majority treats the principle of equality found in Section 18 of the Arbitration Act as the basis for the creation of an independent and impartial tribunal. The majority also relies on the constitutional norms of equality found in Article 14 of the Constitution. More specifically, the Constitution Bench declared in unequivocal terms that the independence and impartiality of arbitral proceedings and equality of parties are concomitant principles and equal treatment of parties applies at all stages including at the stage of appointment of arbitrators.

18. The ratio of the Constitution Bench may be distilled into the following propositions, as they govern the present case:

(i) The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of the appointment of arbitrators.

(ii) A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator, and such a unilateral clause is exclusive and hinders equal participation of parties in the appointment process.

(iii) While party autonomy allows for freedom in forming arbitration agreements, it is not absolute; mandatory provisions like Sections 12(5) and 18 impose non-derogable obligations to prevent bias and ensure fairness. Arbitration clauses must facilitate equal participation from both parties in the appointment process, thereby preventing any imbalance of power that could compromise the arbitral tribunal's integrity.

(iv) A person with an interest in the outcome of the dispute cannot participate in the appointment of an arbitrator; such involvement would compromise the neutrality and fairness of the process.

19. The Hon'ble Supreme Court in ***Bhadra International (India) Pvt. Ltd.*** *(supra)*, considered three specific questions and answered each as follows:

(i) The first question was '*Whether the Sole Arbitrator was ineligible under Section 12(5)*?' The Hon'ble Court answered it in the affirmative. The Court held that the principle of equal treatment of parties applies not only to the arbitral proceedings but also to the procedure for appointment of arbitrators, and that the parties must have the possibility of participating in the constitution of the arbitral tribunal on equal terms. The unilateral appointment of a sole arbitrator was held to be void ab initio, and the sole arbitrator so appointed de jure ineligible under Section 12(5) read with the Seventh Schedule. A notice invoking arbitration does not, by itself, operate as consent to any future appointment.

(ii) The second question considered was '*Whether the applicability of Section 12(5) was waived by conduct?'* The Hon'ble Court answered this question in the negative. The Court held that the proviso requires a clear and unequivocal written agreement, and that mere participation in proceedings, filing of a Statement of Claim, recording of "no objection" in a procedural order, or filing an application under Section 29A, do not, individually or collectively, constitute an "express agreement in writing" for the purposes of a valid waiver.

(iii) The third question considered was '*Whether the objection could be raised for the first time in Section 34 proceedings?' The Hon'ble Court answered* this question in the affirmative. The Court held that a challenge to an arbitrator's ineligibility can be raised at any stage, because an award passed by an ineligible arbitrator is non-est and carries no enforceability or recognition in law. Accordingly, the appeals were allowed and the impugned judgment of the Division Bench of the Delhi High Court was set aside.

20. The present case involves an additional and particularly significant dimension. The Award Holder, being directly interested in the outcome of the arbitral proceedings, was statutorily precluded from appointing the Sole Arbitrator under Section 12(5) of the Act read with the law declared in ***TRF*** (supra) and ***Perkins Eastman*** *(*supra*)*.

21. The legal position that emerges from the foregoing discussion leads inexorably to an examination of what recourse was lawfully available to the Award Holder in the facts of the present case.

22. The Award Debtor did not respond to the invocation of the arbitration clause. Faced with the non-participation of the other party, the Award Holder was confronted with a situation expressly contemplated and provided for by the Act itself. Section 11 of the Act constitutes the statutory mechanism specifically designed to address the appointment of an arbitrator in circumstances where a party fails or refuses to act as required under the appointment procedure, including where the respondent does not participate in the constitution of the tribunal. The remedy was, therefore, both available and unambiguous: the Award Holder

ought to have approached the Court under Section 11 for the appointment of an independent arbitrator by a neutral judicial authority.

23. Instead, the Award Holder chose to bypass the statutory remedy and unilaterally approached LWTODR, an institution of its own selection, for the appointment of the Sole Arbitrator. This course of action was impermissible in law for reasons that admit of no departure. An Alternate Dispute Resolution institution or centre, 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 foundational premise of institutional arbitration is that both parties have agreed, either in the original arbitration agreement or subsequently, to submit their disputes to the rules and the appointing authority of a specified institution. Where such an agreement exists, the institutional rules derive their binding force from the mutual consent of the parties. Where no such specific institutional agreement exists, or where the agreement vests the appointment power in one party, the institution cannot, merely by being invoked by the interested party, acquire the capacity to make a valid appointment binding upon the other side. The consent of the parties is the very source of the legitimacy of any institutional appointment; without it, the institution acts in a vacuum.

24. It is, therefore, a settled principle that Alternate Dispute Resolution mechanisms, whether institutional arbitration centres, conciliation bodies, or any other such forum, can be validly approached for appointment of an arbitrator only with the consent of both parties, either as expressed in a prior agreement naming the institution, or as obtained after the disputes have arisen. Where one party refuses to participate and no prior

institutional agreement subsists, the Act does not leave the invoking party without a remedy; it provides a specific and exclusive remedy in Section 11. The legislature has, in its wisdom, placed this power in the hands of the Court precisely to ensure that the appointment of the arbitrator, in a contested or non-participatory situation, is made by an independent judicial authority and not by the interested party through a mechanism of its own choosing. Any other construction would defeat the entire purpose of the post-2015 amendments to the Act, which were designed to insulate the constitution of the arbitral tribunal from the influence of an interested party. To permit the Award Holder to approach an institution of its choice, in the absence of any institutional agreement and without the consent of the Award Debtor, would be to sanction precisely the mischief that Sections 12(5) and 18 of the Act, read with the Constitution Bench judgment in ***Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*** (supra), were intended to prevent. In the result, the unilateral referral to LWTODR and the appointment of the Sole Arbitrator pursuant thereto are rendered void ab initio, for want of consent, authority and jurisdiction.

25. The law does not permit such a stratagem. The prohibition engrafted by Section 12(5) and the judicial decisions thereunder is directed not merely at the formal act of appointing an arbitrator, but at the substance of the process, the unilateral control by an interested party over the constitution of the tribunal that is to adjudicate its own claims. Whether that control is exercised directly through a personal appointment, or indirectly through the unilateral invocation of an institutional mechanism, the vices of

partiality, inequality and conflict of interest are identical. The form cannot save what the substance condemns.

26. In the present case, it is recorded in the award itself that the Award Debtor did not participate at any stage of the arbitral proceedings, neither at the stage of invocation of arbitration, nor at the stage of constitution of the Tribunal, nor at any stage of the hearing. A party that never appeared before the Tribunal, cannot be held to have waived any right.

27. Courts have consistently emphasised the self-contained nature of the Act, which provides a comprehensive framework for challenging arbitral awards. Section 36 deals with enforcement and does not ordinarily provide for challenges to the merits of the arbitral award. Challenges on grounds of nullity or illegality are ordinarily to be raised in proceedings under Section 34 of the Act. However, this general principle admits of a well-recognised exception: where the defect goes not to the merits of the award but to the very jurisdiction of the tribunal, where the award is not merely erroneous but void ab initio, the executing court is not only empowered but obligated to decline enforcement. An award that is *non-est* in law is not an "award" at all within the meaning of the Act; it cannot acquire enforceability by the efflux of limitation for filing a Section 34 petition, because no limitation can cure a fundamental void.

28. Learned Single Bench of this Court in ***Cholamandalam Investment and Finance Co. Ltd. v. Amrapali Enterprises & Anr.*** **(EC 122/2022)** has expressly held that an award made by an arbitrator appointed unilaterally by the petitioner is non-est and that its enforcement is to be denied under Section 36 of the Act even if the award was not set aside under Section 34. A similar view has been taken by the Division Bench of the Delhi High

Court in ***Mahaveer Prasad Gupta v. Government of NCT of Delhi***, reported as ***2025 SCC OnLine Del 4241***, wherein it was categorically held that courts seized of execution proceedings must refuse enforcement of awards rendered by unilaterally appointed arbitrators, such awards being nullities on account of inherent lack of jurisdiction. The ***Special Leave Petition (C) No. 24207/2025*** preferred against the said judgment was dismissed by the Hon'ble Supreme Court on 02.02.2026, thereby affirming the legal position. Furthermore, the **Special Leave Petition (Diary) No. 47322/2023** against the Delhi High court Division Bench's ruling in ***Kotak Mahindra Bank Ltd. v. Narendra Kumar Prajapat (EFA (Comm.) 3/2023)*** was similarly dismissed by the Supreme Court on 12.12.2023, which had held that the executing court can refuse to enforce an award passed by an arbitrator unilaterally appointed by an interested party who is ineligible under Section 12(5) of the Act.

29. Upon a holistic consideration of the statutory framework, the authoritative pronouncements of the Hon'ble Supreme Court in ***TRF Ltd.*** *(supra)*, ***Perkins Eastman Architects*** (supra)***, Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV)*** (supra) and ***Bhadra International (India) Pvt. Ltd.*** *(supra)*, and the decisions of various High Courts noticed hereinabove, this Court is of the considered opinion as follows:

(i) The arbitration clause in the Loan Agreement dated 30.04.2024 vested the right of appointment of the Sole Arbitrator in the Award Holder, who is an interested party. Such a clause is, by operation of the law declared by the Hon'ble Supreme Court, legally

unsustainable and contrary to the mandatory provisions of Section 12(5) of the Act.

(ii) The Award Holder's act of unilaterally invoking the services of LWTODR for the appointment of the Sole Arbitrator, without the consent or participation of the Award Debtor, amounts in substance to the exercise of the very power of unilateral appointment that is prohibited in law. The institutional form does not alter the substantive nature of the act.

(iii) The Sole Arbitrator so appointed was de jure ineligible by operation of law. His mandate never legally commenced. The Arbitral Tribunal was, accordingly, constituted in derogation of the mandatory provisions of the Act and was devoid of inherent jurisdiction to adjudicate the disputes between the parties.

(iv) The *ex parte* Award dated 17.07.2025, rendered by a tribunal lacking inherent jurisdiction, is void ab initio and is non-est in the eyes of law. It carries no enforceability or recognition in law and cannot be executed as a decree of this Court under Section 36 of the Act.

(v) The non-participation of the Award Debtor at all stages of the proceedings, including the stage of constitution of the Tribunal, precludes any inference of waiver, consent or acquiescence, which in any event could only be established by an express agreement in writing subsequent to the arising of the dispute.

30. In view of the foregoing, this Court declines to enforce the *ex parte* Arbitral Award dated 17.07.2025 and dismisses the present Execution Petition. If the Award Holder is aggrieved and desires to pursue its claims, it is at

liberty to initiate fresh arbitral proceedings before a validly constituted Arbitral Tribunal, appointed in accordance with the provisions of the Act and the principles of independence, impartiality and equality of parties.

31. The Execution Petition stands dismissed accordingly.

(Gaurang Kanth, J.)

SAKIL AMED (P.A)