



2026:DHC:2840



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Judgment reserved on: 25.03.2026**  
**Judgment pronounced on: 06.04.2026**

+ O.M.P. (T) (COMM.) 121/2025, I.A. 30696/2025 & I.A. 279/2026

HIMANSHU SHEKHAR .....Petitioner

Through: Mr. Manish Vashisht, Sr. Adv  
with Mr. Rajeev Ahuja, Mr.  
Harshit Ahuja and Mr. Shikhar  
Bansal, Advs.

versus

PRABHAT SHEKHAR .....Respondent

Through: Mr. Sandeep Sethi, Sr. Adv.  
with Mr. Ravi Prakash, Ms.  
Nupur Singh, Ms. Riya Kumar,  
Ms. Shreya Sethi & Mr. Krishna  
Gembheer, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE AVNEESH JHINGAN**

### **J U D G M E N T**

1. The petition is filed under Section 14 read with Section 12(5) of the Arbitration and Conciliation Act, 1996 (for short 'the Act') for termination of the mandate and substitution of the arbitrator.
2. The relevant facts are that the petitioner and the respondent entered into an understanding on 04.10.2021 for resolving disputes pertaining to reconciliation, scrutiny and settlement of accounts of the parties by arbitration. The name of the sole arbitrator was mutually agreed by the parties. The parties to the *lis* are brothers engaged in a family jewellery business carried under the name of 'Manohar Lal



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Sarraaf and Sons Jewellers Private Limited' (for short 'MLSSJPL'). There are three directors in MLSSJPL each holding an equal share of 33.3% each. Two of the directors are party to the *lis* while third is their brother Sh. Sudhir Singhal. The arbitrator upon entering in reference passed orders dated 04.10.2021 and 08.10.2021 under Section 17 of the Act directing the parties to maintain status quo in respect of all properties pertaining to the arbitral dispute. The petitioner, Sh. Sudhir Singhal and MLSSJPL filed appeals under Section 37 of the Act. The impugned orders dated 08.10.2021 and 14.10.2021 were set aside by this Court with the consent of the parties and respondent in the present appeal sought liberty to file an application for impleadment of the affected parties.

2.1 The petitioner earlier filed a petition under Section 14(2) read with Section 15 of the Act before this Court for termination of the mandate of the sole arbitrator for violation of entry no.9 of Seventh Schedule of the Act. The contention was rejected holding that arbitrator cannot be described as having a close family relation being the co-father-in-law (*samdhi*) of Sh. Vivek Shekhar, brother of the parties in dispute. The court took note of the statement made by the counsel for Sh. Sudhir Singhal that he would like to join the arbitral proceedings and agree to be signatory to the arbitration agreement provided the arbitrator is substituted. It was observed by the court that Sh. Sudhir Singhal holds 33.3% share in MLSSJPL and that a complete and effective resolution may not be possible without his joining the arbitral proceedings. The SLP against the decision of this







act as an arbitrator and in such a case an application under Section 14(2) of the Act can be filed for termination of the mandate. The relevant para is quoted below :

“12. After the 2016 Amendment Act, a dichotomy is made by the Act between persons who become “ineligible” to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes “ineligible” to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(a), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as “ineligible”. In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the Arbitral Tribunal under Section 13. Since such a person would lack inherent jurisdiction to proceed any further, an application may be filed under Section 14(2) to the Court to decide on the termination of his/her mandate on this ground. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator’s independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under Section 13(4) and make an award. It is only after such award is made, that the party challenging the arbitrator’s appointment on grounds contained in the Fifth





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08.10.2021 and 14.10.2021 may be set aside with liberty to the respondent to file applications in accordance with law to implead such affected parties and seek relief against them.

6. Consequently, since the Appellants were not heard before passing the impugned Orders dated 08.10.2021 and 14.10.2021, the same are set aside.

7. As and when the applications are filed by the respondent, subject to the Appellants opposing the same in accordance with law, the learned Arbitral Tribunal shall decide the same in accordance with law.”

7. Upon filing of the application for impleadment the petitioner insisted that arbitrator should file a fresh declaration under Section 12 of the Act. On 24.11.2025 the petitioner supplied a copy of the cheque of rupees one crore issued by the arbitrator in favour of Sh. Sudhir Singhal along with bank documents showing return of the cheque. The arbitrator adopted a novel method of not filing a declaration under Section 12 of the Act and waited for the outcome of the impleadment application to be decided by him only. The arbitrator violating the statutory provisions of the Act decided an application for impleadment by proceeding under Section 16 of the Act thereby deciding jurisdiction of arbitral tribunal with regard to non-signatories to the agreement. The Supreme Court in *Adavya Projects Private Limited v. Vishal Structurals Private Limited & Ors.*, 2025 SCC OnLine SC 806 held as under:

“24. As briefly stated above, the determination of who is a party to the arbitration agreement falls within the domain of the arbitral tribunal as per Section 16 ACA.



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Section 16 embodies the doctrine of *kompetenz-kompetenz* i.e., that the Arbitral Tribunal can determine its own jurisdiction. The provision is inclusive and covers all jurisdictional questions, including the existence and validity of the arbitration agreement, who is a party to the arbitration agreement, and the scope of disputes referable to arbitration under the agreement. Considering that the Arbitral Tribunal's power to make an award that binds the parties is derived from the arbitration agreement, these jurisdictional issues must necessarily be decided through an interpretation of the arbitration agreement itself. Therefore, the arbitral tribunal's jurisdiction must be determined against the touchstone of the arbitration agreement.”

*(emphasis supplied)*

8. The arbitrator chose to decide his competence with regard to Sh. Sudhir Singhal and MLSSJPL in spite of documents on record indicating financial interest or business relationship between the arbitrator and the proposed party. The petitioner insisted for declaration to be filed under Section 12 of the Act but arbitrator avoided and ultimately refused to do so after dismissing its application for impleadment.

9. The contention of the respondent that remedy against dismissal of impleadment application is under Section 34 of the Act after the award is passed, is of no avail. The issue involved is of termination of mandate and substitution of the arbitrator. The Supreme Court in HRD Corporation v. GAIL (supra) held that ineligibility of arbitrator under Section 12(5) read with Seventh Schedule of the Act can be decided by the court in application filed under Section 14 of the Act.





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virtue of *Cox and Kings (1)*, the Referral Court should only refrain but rather loathe the exercise of such discretion. Any discretion which is conferred upon any authority, be it Referral Courts must be exercised reasonably and in a fair manner. Fairness in this context does not just extend to a non-signatory's rights and its apprehension of prejudice, fairness also demands that the arbitration proceedings is given due time to gestate so that the entire dispute is holistically decided. Any determination even if prima-facie by a Referral Court on such aspects would entail an inherent risk of frustrating the very purpose of resolution of dispute, if the Referral Courts opine that a non-signatory in question is not a veritable party. On the other hand, the apprehensions of prejudice can be properly mitigated by leaving such question for the Arbitral Tribunal to decide, as such party can always take recourse to Section 16 of the 1996 Act and thereafter in appeal under Section 37, and where it is found that such party was put through the rigmarole of arbitration proceedings vexatiously, both the Tribunal and the courts, as the case may be, should not only require that all costs of arbitration insofar as such non-signatory is concerned be borne by the party who vexatiously impleaded it, but the Arbitral Tribunal would be well within its powers to also impose costs.

116. Similarly, in *Ajay Madhusudan* (supra) it was held that since a detailed examination of numerous disputed questions of fact was required for determining whether the non-signatory is a veritable party to the arbitration agreement, the same cannot be examined in the limited jurisdiction under Section 11 of the 1996 Act as it would tantamount to a mini trial. Accordingly, the Arbitral Tribunal was found to be the appropriate forum for deciding the said issue on the basis of the evidence that may be adduced by the parties.”

12. The argument if taken to its logical end would mean that the



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compliance of Section 12 read with Seventh Schedule vis-a-vis a non-signatory is not applicable even in case it is claimed that the party is bound by the agreement and is a necessary party to the proceedings. An arbitrator otherwise ineligible to continue shall decide its jurisdiction qua a non-signatory to agreement and if rejects the prayer would continue. The arbitrator shall decide its competence for a party proposed to be impleaded even if there are documents on record indicating violation of Section 12(5) of the Act read with seventh schedule. In other words arbitrator shall decide the issue relating to a party with whom financial interest or business relation arbitrator does not want to disclose despite the statutory mandate.

13. The Supreme Court in HRD Corporation v. GAIL (supra) held that person falling in any category specified in Seventh Schedule becomes *de jure* ineligible and cannot perform functions of an arbitrator. The documents attached by the petitioner before the arbitrator indicated financial interest and business relationship between the arbitrator and Sh. Sudhir Singhal yet the arbitrator chose not to deny business relation by filing a declaration but proceeded to decide the jurisdiction of the arbitral tribunal vis-a-vis Sh. Sudhir Singhal and MLSSJPL in which Sh. Sudhir Singhal is one of the directors.

14. The Supreme Court in CORE (supra) held that the disclosure under Section 12 of the Act is a continuing requirement and information can be required in the circumstances arising later in the proceedings. The relevant para of CORE (supra) is quoted below:





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invoked on an apprehension of bias. The case of the petitioner is that of the arbitrator having financial interest or business relationship with proposed parties to be impleaded was ineligible to continue and is not a case of apprehension of bias.

18. In view of the discussion above, the arbitrator is *de jure* ineligible under Section 12(5) read with Seventh Schedule of the Act and cannot continue.

19. Ms. Justice (Retd.) Mukta Gupta (Mobile No.: 9650788600) is appointed as the sole arbitrator and shall substitute the earlier arbitrator.

20. The fees of the learned Arbitrator will be governed by Schedule IV of the Act. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

21. It is made clear that since this Court has not expressed any opinion on the merits of the rival claims of the parties, it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

22. A copy of this order be forwarded to the learned Arbitrator for information.

23. The petition is allowed. All pending applications are also disposed of.

**AVNEESH JHINGAN, J.**

**APRIL 06, 2026**

**'JK'**

Reportable:- **Yes**