



2025 INSC 1073

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No(s)..... OF 2025
(Arising out of SLP (C) No(s).7161-7162/2018)

**BHAYANA BUILDERS PVT.
LTD.**

APPELLANT(S)

VERSUS

**ORIENTAL STRUCTURAL ENGINEERS
PVT. LTD. & ETC.**

RESPONDENT(S)

JUDGMENT

MANOJ MISRA, J.

- 1.** Leave granted.
- 2.** These appeals arise from an order dated 21.02.2018 passed by the High Court of Delhi at New Delhi¹ whereby the petition(s) (i.e., O.M.P. (T) (COMM) No.101 of 2017 and O.M.P. (T) (COMM) No.105 of 2017) filed by the appellant, under Section 14(2) of the

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Nirmala Negi
Date: 2024.09.04
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Reason: High Court

Arbitration and Conciliation Act, 1996², for termination of the mandate of the sole arbitrator appointed by the Managing Director of the respondents was rejected.

3. Arbitration agreement under which the sole arbitrator was nominated by the Managing Director of the respondents reads thus:

“9.03 – Settlement of Disputes- Any dispute arising of this sub-contract work shall be settled in terms of this work order. In case of failure to settle amicably, the dispute shall be finally resolved in accordance with the Arbitration and Conciliation Act, 1996 by Sole Arbitrator to be nominated (including nomination of replacement of Arbitrator, if necessitated by vacancy of the post caused by any reason whatsoever) by the Managing Director of the First Party, New Delhi. The venue shall be New Delhi. This Work Order is governed as per the Law of India and the jurisdiction of New Delhi Courts shall apply.”

4. By relying upon the judgment of this Court in ***TRF Ltd. vs. Energo Engg. Projects Ltd.***³, petitions were filed before the High Court to terminate the mandate of the sole arbitrator nominated by the Managing Director in terms of the aforesaid arbitration clause and for appointment of an arbitrator by the Court.

² 1996 Act

³ (2017) 8 SCC 377

5. The High Court rejected the petitions against which these appeals have been filed.

6. The learned counsel for the appellant submits that now there is a Constitution Bench decision of this Court in ***Central Organization for Railway Electrification (for short 'CORE') vs. ECI SPIC SMO MCML (JV) A Joint Venture Company***⁴, which has affirmed the law laid down in ***TRF (supra)*** and ***Perkins Eastman Architects DPC vs. HSCC (India) Ltd.***⁵, declaring that a clause which allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in appointment process of arbitrators.

7. Accordingly, it has been prayed that the appeals be allowed, the mandate of the sole arbitrator nominated by the Managing Director in terms of Clause 9.03 be terminated and an arbitrator be appointed.

⁴ (2025) 4 SCC 641

⁵ (2020) 20 SCC 760

8. The learned counsel for the respondents could not dispute that the instant case is squarely covered by Constitution Bench decision of this Court in ‘**CORE (supra)**’.

9. We have considered the submissions.

10. In **TRF (supra)**, this Court had held that if a person cannot be appointed an arbitrator being ineligible by operation of law, he cannot nominate another as a sole arbitrator. The Constitution Bench has upheld the view taken in **TRF (supra)**. In such circumstances, since managing director of a company would be ineligible for being appointed as an arbitrator in view of Section 12 (5) read with paragraph 5 in the Fifth Schedule to the 1996 Act, he would be ineligible to nominate a sole arbitrator. Accordingly, we allow the appeals and terminate the mandate of the sole arbitrator nominated by the Managing Director of the respondents. In consequence, we refer the matter to the Delhi International Arbitration Centre for nominating a suitable Arbitrator for resolution of the dispute *inter se* the parties.

11. Pending applications, if any, stand disposed of.

.....**J.**
(Manoj Misra)

.....**J.**
(Ujjal Bhuyan)

New Delhi:
August 18, 2025