



2026:DHC:8751-DB



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

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Judgment reserved on: 01.10.2026**Judgment pronounced on: 06.10.2026****Judgment uploaded on: 06.10.2026**# **CNR No. DLHC010463982026**+ **FAO(OS) (COMM) 261/2026****LIFE INSURANCE CORPORATION OF INDIAAppellant****Through: Mr. Lakshay Sawhney Adv.****versus****N.S. ASSOCIATES PVT. LTD****.....Respondent****Through: Mr. M. Tarique Siddiqui, Mr.
Sunil Verma, Ms. Rakhshan
Ahmed, Ms. Lakshmi & Ms.
Rohinni Pathania Advs.****CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE BHARAT PARASHAR****J U D G M E N T****ANIL KSHETARPAL, J.:****CM APPL. 66849/2026***[Condonation of delay in filing the present Appeal]*

1. The present application has been filed by the Appellant seeking condonation of delay of 692 days in filing the present Appeal.
2. A perusal of the record shows that *vide* judgment dated 29.10.2024 [hereinafter referred to as the 'Impugned Judgment'], the learned Single Judge came to the conclusion that the Executive Director (Engineering) [hereinafter referred to as 'ED'] of the Appellant-Corporation was *de jure* ineligible to nominate/appoint the Sole Arbitrator on 14.11.2019. However, while allowing the petition

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filed by the Respondent under Section 34 [hereinafter referred to as the 'Section 34 Petition'] of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the 'A&C Act'], the learned Single Judge set aside the Arbitral Award only in terms of prayer (a) of the Section 34 Petition. Consequently, only a part of the Arbitral Award came to be set aside.

3. The Impugned Judgment was pronounced on 29.10.2024. The Appellant-Corporation, thereafter, on 21.05.2025, filed an application under Sections 152 and 151 of the Code of Civil Procedure, 1908 [hereinafter referred to as the 'CPC'], being I.A. No.13737/2025 [hereinafter referred to as the 'Section 152 Application'] seeking correction/modification of the operative portion of the Impugned Judgment. The said application was dismissed on 21.08.2026 [hereinafter referred to as the 'Order dated 21.08.2026'].

4. The present Appeal was thereafter filed on 21.09.2026, i.e. within a period of 30 days from the date of dismissal of the Section 152 Application.

5. Learned counsel representing the Respondent submits that there was a delay of nearly seven months in filing the Section 152 Application. Learned counsel further submits that certain payments under the Arbitral Award have already been made and therefore, the delay ought not to be condoned.

6. On the other hand, learned counsel representing the Appellant submits that after receipt of the Impugned Judgment, the Appellant-Corporation undertook the necessary internal examination of the Impugned Judgment and the legal implications arising therefrom. It is

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submitted that after obtaining the requisite internal approvals and legal opinion regarding the appropriate course of action, the Section 152 Application was filed seeking correction of the inconsistency in the operative portion of the Impugned Judgment.

7. This Court has considered the submissions advanced by learned counsel representing the parties.

8. The Appellant-Corporation does not challenge the correctness of the finding recorded by the learned Single Judge regarding the *de jure* ineligibility of the ED to nominate/appoint the Arbitrator after the amendment to the A&C Act in October, 2015. The grievance of the Appellant is confined to the consequence flowing from the said finding. If the operative portion of the Impugned Judgment is allowed to stand, the finding regarding the *de jure* inability of the appointing authority would operate only in respect of the claims covered by prayer (a) of the Section 34 Petition, while the remaining claims under the same Arbitral Award would continue to operate and remain enforceable.

9. The question raised by the Appellant, therefore, concerns the legal consequence of the finding already recorded in the Impugned Judgment regarding the *de jure* ineligibility of the appointing authority to unilaterally appoint the Arbitrator.

10. Keeping in view the aforesaid circumstances, explanation for condoning the delay in filing the present Appeal is considered sufficient and resultantly the delay in filing the present Appeal is condoned. The application is accordingly allowed.



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11. The present application stands disposed of.

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12. Through the present Appeal, the Appellant seeks setting aside of the Impugned Judgment dated 29.10.2024 and the Order dated 21.08.2026 passed by the learned Single Judge.

13. The controversy in the present Appeal is narrow. The only question which arises for consideration is whether, having held that the unilateral appointment of the Sole Arbitrator was impermissible and that the resulting arbitral proceedings were *non-est*, the learned Single Judge was justified in confining the setting aside of the Arbitral Award to the relief sought in prayer (a) of the Section 34 Petition.

14. In the present case, at the request of the Respondent, the ED of the Appellant-Corporation appointed the Sole Arbitrator on 14.11.2019. The learned Arbitrator thereafter proceeded with the arbitration and, on 10.01.2022, passed the Arbitral Award, the relevant portion whereof reads as under:

“Para 30

Summary of Award

Claim No.	Brief description	Decision/Award (Rs.)
1.	Final Bill against work done (Rs. 1,28,15,705)	35,90,263
2.	Claim for overheads in extended period of contract (Rs.1,97,81,515)	11,85,600
3.	Claim for Loss of Overheads in the original period of contract (Rs. 66,97,783)	NIL
4.	Claim for loss of profit in the original period of contract (Rs. 1,05,38,559)	NIL
5.	Claim for additional BG charges due to extension of BGs for 6 months	NIL

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	(Rs.12,91,821)	
6.	Claim for extending BGs in the extended period of contract (Rs. 20,77,755)	10,13,237
7.	Claim for insurance covers in the extended period of contract (Rs. 8,86,698)	4,45,187
8.	Claim for pending litigation interest and future interest till date of actual payment	Pendent lite interest from 14.11.2019 till realization @ 8% p.a.
9.	Claim for Issuance of updated completion certificate	Directions issued for issuing the same within 20 days from date of publishing the award
10.	Cost of arbitration and litigation	7,00,000/-

15. The Respondent thereafter filed the Section 34 Petition seeking, *inter alia*, the following relief:

“(a) Allow the petition and set-aside arbitral award dated 10.01.2022 passed by Shri Bharat Bhushan Gupta, Ld. Sole Arbitrator in arbitration proceeding titled as ‘N.S. Associates Pvt. Ltd. vs. Life Insurance Corporation of India’ against Claim No.1(ii), Claim No.1(iii), Nongrant of GST @ 18% on awarded amount in Claim No.1, Claim No.2, Claim No.3, Claim No.4, and Claim No.8 (except to the extent of award already granted in favour of petitioner and against respondent).

(b) Call for the record of arbitration proceeding between N.S. Associates Vs. Life Insurance Corporation of India.

(c) Pass such other or further order as this Hon’ble Court deems fit and proper on the facts and circumstances of the case.”

(Emphasis supplied.)

16. The learned Single Judge, after considering the challenge to the constitution of the Arbitral Tribunal, recorded a finding that the unilateral appointment of the Arbitrator by ED of the Appellant-Corporation was impermissible. The operative portion of the Impugned Judgment reads as under:

“21. For the aforesaid reason, the impugned award is clearly unsustainable. Consequently, the prayer (a) of the petitioner is

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allowed; the impugned award is set aside in terms of the said prayer."

17. The Appellant thereafter filed the Section 152 Application seeking correction/modification of the operative portion of the Impugned Judgment. The said application was dismissed vide Order dated 21.08.2026. The learned Single Judge observed as under:

"IA No.13737/2025 (filed on behalf of the respondent to correct the operative portion in paragraph-21 of the impugned judgment / order dated 29.10.2024)

1. This is an application seeking modification as correction of the operative portion viz. paragraph-21 of the impugned judgment dated 29.10.2024. The said operative portion reads as under:

"21. For the aforesaid reason, the impugned award is clearly unsustainable. Consequently, the prayer (a) of the petitioner is allowed; the impugned award is set aside in terms of the said prayer."

2. The applicant takes exception to this Court allowing prayer (a) of OMP (COMM.) 208/2022 instead of setting aside the entire award.

3. It is noticed that the main prayer as canvassed in the OMP (COMM.) 208/2022 is as under:

"(a) Allow the petition and set-aside arbitral award dated 10.01.2022 passed by Shri Bharat Bhushan Gupta, Ld. Sole Arbitrator in arbitration proceeding titled as 'N.S. Associates Pvt. Ltd. vs. Life Insurance Corporation of India' against Claim No.1(ii), Claim No.1(iii), Nongrant of GST@ 18% on awarded amount in Claim No.1, Claim No.2, Claim No.3, Claim No.4, and Claim No.8 (except to the extent of award already granted in favour of petitioner and against respondent)."

4. The matter was decided in the conspectus of the aforesaid prayer. Consequently, the relief was couched in terms of the prayer as sought in the OMP.

5. Consequently, no merit is found in the present application. The same is, accordingly, dismissed."

18. The principal contention advanced by learned counsel representing the Appellant is that once the learned Single Judge had held that the unilateral appointment of the Arbitrator was impermissible and that the arbitral proceedings were rendered *non-est*, the consequence of such finding could not have been confined to the



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particular claims assailed by the Respondent in the Section 34 Petition.

19. Learned counsel representing the Respondent, on the other hand, submits that the Appellant had not filed any petition under Section 34 challenging the Arbitral Award and that certain payments under the Arbitral Award have already been made. It is submitted that the Appellant cannot, therefore, seek setting aside of the Arbitral Award in the present Appeal. Reliance has been placed upon Paragraph No.109 of the judgment of the Supreme Court in ***Bhadra International (India) Pvt. Ltd. v. Airports Authority of India***¹. The same is reproduced hereunder for ready reference:

“109. When an award has been passed, the proceedings before the arbitral tribunal conclude, leaving no possibility of substituting the arbitrator at this stage. In other words, once an award is passed, the mandate of the arbitral tribunal also arrives at a conclusion. In such circumstances, a party aggrieved by the arbitrator’s ineligibility may challenge the award by filing an application under Section 34 of the 1996 Act, as an award passed by an ineligible arbitrator is nullity, non-est, or void ab initio, and against the public policy of India.”

20. This Court has considered the submissions advanced by learned counsel representing the parties. In the present case, there is no challenge to the correctness of finding recorded by the learned Single Judge regarding the *de jure* inability of the ED to unilaterally appoint the Sole Arbitrator. Indeed, the Respondent, on a specific query from the Court, admits that the appointment of the Arbitrator was in violation of Section 12(5) read with the Seventh Schedule to the A&C Act.

21. The consequence of such a finding cannot, however, be

¹ 2026 SCC OnLine SC 7



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confined to only those claims which happened to be assailed by the Respondent in the Section 34 Petition. Once the constitution of the Arbitral Tribunal itself was found to be contrary to Section 12(5) read with the Seventh Schedule to the A&C Act, the arbitral proceedings conducted by such Tribunal could not sustain in law. The defect goes to the root of the constitution of the Arbitral Tribunal and, consequently, to the validity of the Arbitral Award itself.

22. In ***Bhadra International*** (*supra*), the Supreme Court has answered the following questions:

“i. Whether the sole arbitrator could be said to have become “ineligible to be appointed as an arbitrator” by virtue of sub-section (5) of Section 12 of the Act, 1996?

a. Interplay between Equal Treatment of Parties and Party Autonomy

b. Scope and Application of sub-section (5) of Section of the Act, 1996

c. Appoint of the sole arbitrator in light of sub-section (5) of Section 12 of the Act, 1996

d. De Jure inability of the arbitrator to perform his functions

ii. Whether the parties could be said to have waived the applicability of sub-section (5) of Section 12 of the Act, 1996, by way of their conduct, either expresses or implied?

a. Meaning and Import of the expression “express agreement in writing” used in proviso to sub-section (5) of Section 12 of the Act, 1996

b. “Statement of Claim” as a parameter of waiver

c. “Extension of Time” under Section 29A of the Act, 1996 as a parameter of waiver

d. “Continued Participation” as a parameter of waiver

iii. Whether the appellants could have raised an objection to the appointment of the sole arbitrator for the first time in an application under Section 34 of the Act, 1996

a. Challenge to the ineligibility of the arbitrator during the proceedings



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b. Challenge to the ineligibility of the arbitrator after arbitral award has been passed

c. Challenge to the ineligibility of the arbitrator at any stage of the proceedings”

23. As noticed hereinabove, the judgment of the Supreme Court in ***Bhadra International*** (*supra*) considers the issue of the ineligibility of an Arbitrator under Section 12(5) of the A&C Act, including the question as to the stage at which such objection may be raised. Paragraph No.109, upon which reliance has been placed by learned counsel representing the Respondent, is concerned with the procedure for raising a challenge to the ineligibility of an Arbitrator after the Arbitral Award has been rendered. It does not alter the substantive consequence flowing from a finding that the appointment itself was impermissible under Section 12(5) read with the Seventh Schedule.

24. The objection raised by the Respondent that the Appellant did not itself institute proceedings under Section 34 also does not advance the case of the Respondent in the facts of the present case. The Section 34 Petition was in fact instituted by the Respondent while contending that the award was *non-est* as ED of the Appellant-Corporation was not entitled to appoint the Arbitrator and the same was adjudicated by the learned Single Judge. In the course of adjudication of the said petition, the learned Single Judge considered the constitution of the Arbitral Tribunal and returned a finding that the unilateral appointment of the Arbitrator was impermissible. The Appellant seeks, in the present Appeal, only the consequential effect of the said finding on the Arbitral Award.

25. Once the appointment of the Arbitrator by the ED of the

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Appellant-Corporation was found to suffer from *de jure* ineligibility, the Arbitral Tribunal lacked the legal competence to adjudicate the disputes between the parties. The resultant proceedings and the Arbitral Award cannot, therefore, be sustained in part merely because the challenge under Section 34 had been framed by the Respondent with reference to specified claims.

26. In terms of prayer (a) of the Section 34 Petition, the Arbitral Award in respect of Claim Nos.1(ii), 1(iii), non-grant of GST @ 18% on the awarded amount in Claim Nos.1 to 4, and Claim No.8 came to be set aside. However, in view of the finding regarding the invalid constitution of the Arbitral Tribunal, the remaining portions of the same Arbitral Award, including Claim Nos.2 and 6 to 10, cannot survive independently.

27. The operative portion of the Impugned Judgment, therefore, does not give full effect to the finding recorded therein regarding the invalidity of the constitution of the Arbitral Tribunal. The learned Single Judge, having held that the Arbitral Award was clearly unsustainable on account of the invalid appointment of the Arbitrator, should have set aside the Arbitral Award in its entirety.

28. Moreover, the Respondent cannot be permitted to approbate and reprobate with regard to the validity of the Arbitral Award. The Section 34 Petition itself proceeded on the basis that the constitution of the Arbitral Tribunal was *void ab initio*, which position continues to be maintained by the Respondent insofar as the relief sought under prayer (a) is concerned. Having adopted such a position, the Respondent cannot, at the same time, seek to sustain the remaining



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portion of the very same Arbitral Award arising from the same arbitral proceedings. Likewise, the fact that certain payments may have been released under the Arbitral Award cannot confer validity upon an award which has been held to be *non-est* on account of the invalid constitution of the Arbitral Tribunal.

29. Consequently, the present Appeal is allowed. The Impugned Judgment dated 29.10.2024 is modified to the extent that the entire Arbitral Award dated 10.01.2022 passed by the Sole Arbitrator is set aside.

30. In view of the aforesaid modification, the Order dated 21.08.2026 dismissing I.A. No.13737/2025 also cannot be sustained and is, accordingly, set aside.

31. Insofar as the amount already paid to the Respondent pursuant to the Arbitral Award dated 10.01.2022 is concerned, the Respondent, if so advised, may seek recovery of the said amount in accordance with law. This Court has not expressed any opinion on the Respondent's entitlement to recover such amount.

32. The present Appeal stands disposed of in the aforesaid terms.

ANIL KSHETARPAL, J.

BHARAT PARASHAR, J.

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