

The challenge under Section 14 of the Arbitration Act is only applicable in cases where there exists either any statutory inability under Section 12(5) or a de facto incapacity to perform a function

The Calcutta High Court in the case of **SREI Equipment Finance Limited vs SEIRRA Infraventure Private Limited [AP-COM 712 of 2025] dated November 28, 2025**, has held that the challenge under Section 14 is only applicable in cases where there exists either any statutory inability under Section 12(5)/The Seventh Schedule or a de facto incapacity to perform a function. The Court noted that the 2016 Amendment laid down a clear bifurcation in the Arbitration Act, drawing a bright blue line between mandatory, non-waivable statutory ineligibilities that automatically terminate an arbitrator's mandate under Section 12(5) read with the Seventh Schedule, and those circumstances that merely raise justifiable doubts about impartiality, which remain subject to assessment, waiver and statutory challenge under Sections 12(1), (4) read with the Fifth Schedule.

The Court has drawn a clear distinction between challenges to an arbitrator under Section 12(1) and Section 13 read with the Fifth Schedule, and those arising under Section 12(5) and Section 14 read with the Seventh Schedule of the Act. The Court thus rejected a petition under Section 14 read with Section 15 of the Arbitration and Conciliation Act, 1996, seeking termination of the mandate of a Sole Arbitrator.

The petition arose out of an arbitral proceeding, wherein the arbitrator furnished a disclosure under Section 12(1) of the Act, stating that he had previously appeared against the petitioner in a few matters. Initially, at this disclosure, the petitioner did not object to the appointment and agreed to proceed with the arbitral proceedings. However, further inquiry revealed that the arbitrator had also appeared as counsel against the petitioner during the pendency of the present arbitral proceedings. Taking cognisance of said fact, the petitioner challenged the appointment primarily under Sections 12 and 13 of the Act, alleging the aforementioned circumstance to give rise to justifiable grounds under the Fifth Schedule. The Arbitrator, however, rejected the said application and declined to recuse himself.

The High Court outrightly discarded the petitioner's reliance on the Supreme Court decision in *HRD Corporation v. GAIL (India) Ltd.* (2018) 12 SCC 471 to assert that the ongoing relationship of the arbitrator during the pendency of the arbitration proceedings would fall within the Seventh Schedule. The court observed that in the *HRD Corporation* case, the court held that all conflicts not enumerated in the Seventh Schedule are matters of assessable bias under the Fifth Schedule, thus, liable to be raised under Section 13 before the Arbitral Tribunal. Thus, the petitioner's allegations against the arbitrator do not qualify under any of the specific categories mentioned in the Seventh Schedule. Accordingly, the Court directed the petitioner to adopt the correct recourse as provided under Section 13 of the Act, i.e., the challenge procedure before the tribunal and, if necessary, a post-award challenge under Section 34 of the Act.

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