

**PETITION UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT 1996
FOR SETTING ASIDE AWARD**

IN THE HIGH COURT OF.....

In the Matter of Arbitration -and Conciliation Act, 1996

And

In the Matter of Arbitration Agreement dated.....

Between

A B (Name, description and place of residence)..... Petitioner

And

C D (Name, description and place of residence)..... Respondent

The Petitioner A B above named respectfully sheweth: -

1. That an agreement dated..... was entered between the Petitioners and the Respondents whereby (State facts)
- 2 That vide the said agreement entered into between the Petitioners and the Respondents it was agreed that in case of dispute arising between the parties the same shall be referred to arbitration under the Act.
3. That the Respondents invoked the arbitration clause and appointed "SP" as their arbitrator and also appointed "XYZ" firm as Advocates to represent them in arbitration proceedings. The petitioners appointed "JK" as their arbitrators.
4. That during pendency of arbitration proceedings the Petitioners came to know that the son of "SP" the arbitrator appointed by the Respondents was a partner in the firm of Advocates who were representing the Respondents before the arbitrator.
5. That the Petitioners filed an application under sections 12 and 13 of the Act challenging the appointment of "SP" as an arbitrator and the said application of the Petitioners was rejected.
6. That the arbitrators made the Award directing the Petitioner to pay the amount of claim made by the Respondents.
- 7 That "SP" failed to disclose that his son was a partner in the firm of Advocates representing the Respondents in arbitration proceedings.
8. That there has been breach of mandatory provision of Section 12 of the Act and the entire proceedings including award made by the arbitrator is vitiated for non compliance with the provisions of Section 12 of the Act by the arbitrator "SP".

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleaded to set aside the award dated.....

This Hon'ble Court may be pleaded to pass such further order(s) as may do complete-justice on the facts and circumstances of the case.

Petitioner
Through
Advocate

Place:.....

Dated:.....

IN THE HIGH COURT OF.....

Petition No..... /200

In the Matter of

AB..... Petitioner

versus

CD..... Respondent

AFFIDAVIT

I..... resident of.....
..... do hereby solemnly affirm and declare as under-

1 That I am the..... in this case and hence competent to swear this affidavit.

2 That the contents of the accompanying application are true and correct.

DEPONENT

VERIFICATION

Verified at..... on this..... day of..... that the contents of the above affidavit are true and correct to my knowledge.

DEPONENT

CASE LAW

1 The provisions of Section 12 of the Arbitration and Conciliation Act, 1996 are mandatory in nature and in case of breach of that mandatory provision the entire proceedings including the award made by the arbitrator must be held to be vitiated for non-compliance with the provisions of Section 12 of the Act by the arbitrator.1

2 So long as composition of the Arbitral Tribunal or the arbitral procedure are in accordance with the agreement of the parties, Section 34 does not permit challenge to an award merely on the ground that the composition of the Arbitral Tribunal was in conflict with the provisions of Part I of the Act.2

3. Objections against arbitral award filed beyond prescribed period provided under Section 34 of the Arbitration and Conciliation Act, 1996 cannot be entertained as award becomes immediately enforceable.3

1. Union of India v. Tolani Bulk Carriers Ltd., 2002(2) CCC 137 (Bom.).

2. Narayan Prasad Lohia v. Nikunj Kumar Lohia. AIR 2002 SC 1139.

3. Jyoti Motors v. Industrial Credit and Development Syndicate Ltd.. 2002(3) CCC 72 (Guj.).