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

Judgment reserved on: 07.05.2025

Judgment pronounced on: 01.07.2025

+ **O.M.P.(T)(COMM.) 23/2025**

ROSHAN REAL ESTATES PVT LTDPetitioner

Through: Ms. Anusuya Salwan, Adv.

versus

GOVERNMENT OF NCT OF DELHIRespondent

Through: Mr. Tushar Sannu with Mr. Aman
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T

: JASMEET SINGH, J

1. This is a petition filed under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 (for brevity "*the Act*") seeking termination of the mandate of the arbitrator, Mr. B.B. Dhar (for brevity "*the appointed arbitrator*"), appointed *vide* the order dated 10.02.2025 passed by this Court and appointment of another independent arbitrator to adjudicate the disputes between the parties.

FACTUAL BACKGROUND

2. The brief facts of the case as per the petition are that Roshan Real Estates Pvt. Ltd. (for brevity "*the petitioner*") was awarded a Central Public Works



Department (for brevity “CPWD”) contract *vide* the letter of acceptance dated 05.01.2019 for an amount of Rs.71,94,05,800/- for constructing additional classrooms, laboratories, toilets and allied services at 7 government schools in South-East Delhi. The works were completed to the satisfaction of the respondent and the petitioner raised its final bill for Rs.20,73,39,891/- on 23.05.2022. When payment was released in March 2023, the respondent unilaterally reduced the amount to Rs.5,09,52,388/- giving rise to multiple monetary claims and disputes.

3. Clause 25 of the General Conditions of the Contract (for brevity “GCC”) prescribes a three-tier dispute-resolution mechanism: decision by the Superintending/Chief Engineer, reference to a Dispute Resolution Committee (for brevity “DRC”), and, if unresolved, arbitration. Since the arbitration clause is undisputed, the same is not reproduced herein.
4. Between July 2023 and February 2024, the petitioner exhausted the three-tier dispute resolution mechanism envisaged in Clause 25 of the GCC and on 16.12.2024, the petitioner issued a notice under Section 21 of the Act and when no arbitrator was appointed, filed ARB.P. 214/2025 under Section 11 of the Act in this Court. *Vide* the order dated 10.02.2025, this Court appointed Mr B. B. Dhar, a retired CPWD engineer, as the sole arbitrator to adjudicate the disputes between the parties.
5. Later, the petitioner discovered that the appointed arbitrator had been the concerned engineer in various works executed by the petitioner for the respondent. In another PWD dispute between the parties, the respondent withdrew the appointment of Mr. B.B. Dhar *vide* the letter dated 17.08.2020 on the similar objection by the petitioner.
6. Hence, the present petition under Sections 14 and 15 of the Act seeking



termination of the mandate of the appointed arbitrator and appointment of an independent arbitrator.

SUBMISSIONS ON BEHALF OF THE PETITIONER

7. Ms. Salwan, learned counsel appearing on behalf of the petitioner, submits that the appointment of the appointed arbitrator is invalid because it is violative of the independence and impartiality safeguards introduced by the Arbitration and Conciliation (Amendment) Act, 2015 (for brevity “*the 2015 Amendment*”).
8. In paragraph Nos. 18 to 22 of the petition, it is stated that the appointed arbitrator had prior professional relationship with the petitioner. The said paragraphs are reproduced as under:

“18. It is submitted that that Mr. B. B. Dhar on earlier occasions was the concerned Engineer in various works executed by the Petitioner.

19. The Petitioner was awarded work of Redevelopment of “C” block at Delhi High Court, Sher Shah Suri Marg, New Delhi (SH: C/o RCC framed structure building i/c water supply, sanitary and electrical installations). Since disputes arose between the parties, the Petitioner invoked the arbitration clause. The Chief Engineer, PWD, GNCTD vide letter dated 07.08.2020 appointed Mr. B. B. Dhar as sole arbitrator to decide the disputes between the parties. ...

20. The Petitioner vide letter dated 07.08.2020 objected to the appointment of Sh. B. B. Dhar. ...

21. In view of the objection raised by the Petitioner, the Chief



Engineer, PWD, GNCTD withdrew the appointment of Sh. B. B. Dhar and vide letter dated 17.08.2020 appointed Sh. Dinesh Kumar as sole arbitrator to adjudicate the disputes between the parties. ...

22. That since Mr. B. B. Dhar had a past association in projects executed on behalf of the petitioner and the Petitioner has already worked under Mr. B. B. Dhar and therefore the Respondent in the past also considering the circumstances have withdrawn the appointment of Mr. B.B Dhar.”

9. It is submitted that a party that has a direct stake in the dispute cannot retain the unilateral power to appoint an arbitrator; this was the very mischief the 2015 Amendment to Section 12(5) and the Seventh Schedule of the Act sought to cure, as affirmed in the Hon’ble Supreme Court rulings, such as ***TRF Limited v. Energo Engineering Projects Limited***, (2017) 8 SCC 377, ***Perkins Eastman Architects DCP & Anr. v. HSCC (India) Limited***, (2020) 20 SCC 760 and ***Voestalpine Schienen GmbH v. Delhi Metro Rail Corporation***, (2017) 4 SCC 665.
10. In addition, the judgments passed by this Court in ***Proddatur Cable TV DIGI Service v. SITI Cable Network Limited***, 2020:DHC:354 and ***Govind Singh v. M/s Satya Group Private Limited & Anr.***, 2023:DHC:81-DB, reinforce that any clause enabling a party to make a unilateral appointment is void and that Section 12(5) ineligibility cannot be waived except by a post-dispute express written agreement.
11. Further, it is submitted that the appointed arbitrator is a “regular” nominee of the respondent and has previously adjudicated several of its matters, creating a perception of bias that violates the rule against interested adjudicators and



the principles of natural justice. Hence, the appointment of the appointed arbitrator is bad in law and is hit by Entry 1 to the Seventh Schedule of the Act. Under *HRD Corporation (Marcus Oil and Chemical Division) v. GAIL (India) Limited (Formerly Gas Authority of India Limited)*, (2018) 12 SCC 471, an arbitrator who falls into the Seventh Schedule disqualification becomes de jure unable to act and the court, not the tribunal, must terminate the mandate under Sections 14 and 15 of the Act.

12. Hence, the above referred authorities establish that the impugned appointment lacks the neutrality, transparency and fairness that are the cornerstones of Indian arbitration law, rendering the mandate of the appointed arbitrator liable to termination.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

13. *Per contra*, Mr. Sannu, learned counsel appearing for the respondent, opposes the present petitioner and draws my attention to paragraph Nos. 4 to 8 of the reply to the petition, which read as under:

“Re: Lack of any ground showing justifiable ground to Ld. Arbitrator's independence & impartiality

4. It is submitted that the Petitioner in Para 18 of its Petition, has alleged that Ld. Sole arbitrator was “concerned Engineer in various works executed by the Petitioner” is factually incorrect and misleading. However, as per records available, the Petitioner herein has executed only one work/ project, that too about 17-18 years ago pertaining to the construction of Lawyers Chambers in Dwarka under one of three divisions then administratively under Mr. Dhar’s supervision.



5. It is pertinent to mention herein, at the time i.e. 17-18 years ago, Ld. Arbitrator/ Mr. Dhar held the post of Superintending Engineer (SE) CPWD, and said post does not involve any day-to-day execution or decision-making in project management since the same lies with the Junior Engineer, Assistant Engineer and Executive Engineer of said project. Therefore, the alleged allegation is baseless and lacks any merits.

6. It is submitted that the Ld. Arbitrator/ Mr. Dhar retired from Government Services in June 2015 i.e. approximately 10 years prior to his appointment as Sole Arbitrator. Further, it is correct to submit here that no work has been executed by the Petitioner herein, under his supervision except the Dwarka Chamber's work and there is no ongoing professional relationship between parties and Ld. Arbitrator, as mandatorily required under the Seventh Schedule of the Arbitration and Conciliation Act, 1996, for establishing ineligibility and seeking termination of the mandate. Hence, the present petition is not maintainable and liable to be dismissed.

7. It is submitted that as per the mandate and direction of this Hon'ble Court, the Ld. Arbitrator has entered reference on 17.03.2025 and filed his declaration under Section 12 of the Arbitration & Conciliation Act, 1996 on 25.03.2025 and shared/ disclosed all the necessary information with both the parties. The declaration clearly affirms his independence and impartiality, wherein he has disclosed everything. A copy of declaration given by Ld. Arbitrator is annexed herewith as



Annexure R-1.

8. It is most respectfully submitted that the present petition lacks any valid grounds for seeking termination of the mandate of the Ld. Sole Arbitrator under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, especially when the appointment was independently made by this Hon'ble Court. It is submitted and reiterated that no circumstances exist that give rise to justifiable doubts regarding the independence or impartiality of the Ld. Arbitrator. Furthermore, in catena of judgments by the Hon'ble Supreme Court and this Hon'ble Court, it has consistently held that there is no bar on the appointment of retired officers as arbitrators. In fact, it has been recognised that retired officers are well-equipped to appreciate and resolve technical aspects of disputes, owing to their domain expertise. Merely being a retired employee or officer of the department does not render an arbitrator ineligible or raise any presumption of bias. Furthermore, there is no disqualification attracted under either the Fifth Schedule or the Seventh Schedule of the Act. Accordingly, the mandate of the Ld. Arbitrator cannot be terminated under Section 14 nor can he be substituted under Section 15 of the Act."

- 14.** It is submitted that the petition is unfounded as the appointed arbitrator was appointed not by either party but by this Court on 10.02.2025 under Section 11(6) of the Act, therefore, a challenge under Sections 14 and 15 of the Act is impermissible unless circumstances of actual ineligibility arise, which the petitioner has not shown.



15. It is further submitted that the allegations of bias are said to be factually incorrect. The appointed arbitrator's only past contact with the petitioner was indirect supervision of a single project 17–18 years ago, when he was a Superintending Engineer with no day-to-day decision-making role. He retired from government service in June 2015, has had no professional relationship with the petitioner since, and thus does not fall within any disqualification listed in the Fifth or Seventh Schedule of the Act. Upon entering reference on 17.03.2025, he provided the declaration under Section 12 of the Act, affirming independence and impartiality.
16. In addition, reliance placed by the petitioner on the judgments of the Hon'ble Supreme Court judgments, such as, *TRF Ltd. (supra)* and *Perkins Eastman (supra)*, concern unilateral appointments by an interested party. However, in the present case, the appointed arbitrator was appointed by this Court and not by the respondent, hence, the said precedents are inapplicable.
17. The respondent places reliance on the judgment passed by the Hon'ble Supreme Court in *Government of Haryana PWD Haryana (B and R) Branch v. G.F. Toll Road Private Limited & Ors., (2019) 3 SCC 505*, to urge that retired government officers may serve as arbitrators and that their former employment, by itself, does not create a presumption of bias.
18. Consequently, the respondent submits that the petition should be dismissed *in limine*.

ANALYSIS AND FINDINGS

19. I have heard learned counsel for the parties and perused the material available on record.
20. The present petition under Sections 14 and 15 of the Act seeks termination



of the mandate of the sole arbitrator, Mr. B.B. Dhar, appointed by this Court *vide* order dated 10.02.2025 under Section 11(6) of the Act.

21. The primary ground urged is that the appointed arbitrator falls within the ineligibility criteria under Section 12(5) read with Entry 1 of the Seventh Schedule to the Act due to a past professional relationship with the petitioner and also being a regular nominee arbitrator of the respondent, thereby creating justifiable doubts as to his independence and impartiality.
22. Section 12(5) read with Seventh Schedule and Section 14(1)(a) of the Act provides that an arbitrator becomes *de jure* unable to act if any of the disqualifications listed in the Seventh Schedule are attracted. The said provisions are reproduced as under:

“12. Grounds for challenge.—

(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

14. Failure or impossibility to act.—

(1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay;



and ...”

23. Importantly, Entry 1 of the Seventh Schedule disqualifies a person who has had past business relationships with a party or served in a managerial or supervisory capacity. Entry 1 reads as under:

“1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.”

24. The said provisions were inserted vide the 2015 Amendment with the legislative intent to ensure an impartial and independent arbitral process and to safeguard the arbitral process from real or perceived bias, where arbitrators with any past or present relationship with the parties are disqualified, unless both parties waive such ineligibility by a post-dispute written agreement.

25. The Hon’ble Supreme Court in *TRF Limited (supra)* and *Perkins Eastman (supra)*, categorically held that any person having an interest in the dispute or a past relationship that may impact independence is disqualified. The relevant paragraph of *Perkins Eastman (supra)* reads as under:

“21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone



else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72].”
(Emphasis supplied)

26. In *Voestalpine Schienen GMBH (supra)*, the Hon’ble Supreme Court emphasized the importance of appointing arbitrators who inspire confidence in their neutrality, even if their domain expertise is otherwise relevant and underlined the need for arbitral panels to be broad-based and composed of persons not drawn solely from the same institutional framework as one of the parties, in order to preserve the faith of parties in the neutrality of the



proceedings. The relevant paragraphs read as under:

“29. Some comments are also needed on Clause 9.2(a) of GCC/SCC, as per which DMRC prepares the panel of “serving or retired engineers of government departments or public sector undertakings”. It is not understood as to why the panel has to be limited to the aforesaid category of persons. Keeping in view the spirit of the amended provision and in order to instil confidence in the mind of the other party, it is imperative that panel should be broadbased. Apart from serving or retired engineers of government departments and public sector undertakings, engineers of prominence and high repute from private sector should also be included. Likewise panel should comprise of persons with legal background like Judges and lawyers of repute as it is not necessary that all disputes that arise, would be of technical nature. There can be disputes involving purely or substantially legal issues, that too, complicated in nature. Likewise, some disputes may have the dimension of accountancy, etc. Therefore, it would also be appropriate to include persons from this field as well.

30. Time has come to send positive signals to the international business community, in order to create healthy arbitration environment and conducive arbitration culture in this country. Further, as highlighted by the Law Commission also in its report, duty becomes more onerous in government contracts, where one of the parties to the dispute is the Government or public sector undertaking itself and the authority to appoint the



arbitrator rests with it. In the instant case also, though choice is given by DMRC to the opposite party but it is limited to choose an arbitrator from the panel prepared by DMRC. It, therefore, becomes imperative to have a much broadbased panel, so that there is no misapprehension that principle of impartiality and independence would be discarded at any stage of the proceedings, specially at the stage of constitution of the Arbitral Tribunal. We, therefore, direct that DMRC shall prepare a broadbased panel on the aforesaid lines, within a period of two months from today.”

(Emphasis supplied)

27. The Coordinate Bench of this Court in ***Proddatur Cable TV DIGI Service (supra)*** and the Division Bench of this Court in ***Govind Singh (supra)***, held that past/present association can create a valid perception of bias and disqualify the arbitrator under Section 12(5). The relevant paragraph of ***Govind Singh (supra)*** reads as under:

“17. Following the aforesaid decision of the Supreme Court in Perkins Eastman Architects DPC & Ors. v. HSCC (India) Ltd. (supra), a learned Single Judge of this Court in Proddatur Cable TV Digi Services v. Citi Cable Network Limited: (2020) 267 DLT 51 held that it would be impermissible for a party to unilaterally appoint an arbitrator. In terms of Section 12(5) of the A&C Act read with the Seventh Schedule of the A&C Act, an employee would be ineligible to act as an arbitrator by virtue of the law as explained by the Supreme Court in TRF Ltd. v. Energo Engineering Projects Ltd. (supra) and Perkins



Eastman Architects DPC & Ors. v. HSCC (India) Ltd. (supra).

Such ineligibility would also extend to a person appointed by such officials who are otherwise ineligible to act as arbitrators.”

(Emphasis supplied)

28. In the present case, it is not in dispute that the petitioner and the appointed arbitrator have had a past professional association, where the petitioner executed projects in the capacity of a contractor while the appointed arbitrator held the position of Superintending Engineer in CPWD, i.e. the client.
29. Although the respondent argues that the only work executed under the general supervision of the appointed arbitrator was over 17 years ago and that he was not involved in day-to-day decision-making, the fact remains that a business, professional and supervisory relationship existed between the petitioner and the appointed arbitrator.
30. It is well settled that independence and impartiality of the arbitrator are the bedrock of any arbitration proceeding and the rule against bias constitutes a fundamental principle of natural justice. In this context, the objective of the Fifth and Seventh Schedules of the Act is to codify circumstances which may give rise to justifiable doubts about the neutrality of the arbitrator. Entry 1 of the Seventh Schedule, in particular, is designed to insulate the arbitral process from both actual and perceived bias by disqualifying individuals who have had a past or present business relationship with a party to the dispute.
31. The legislative intent underlying Entry 1 is clear - it does not hinge upon the nature or the duration of such business relationship, but rather focuses on



whether the existence of such association may reasonably create a perception of partiality. In the present case, it is not disputed that the appointed arbitrator served as the supervising authority in respect of works executed by the petitioner under a prior contract with the respondent. This prior professional association, in my considered view, gives rise to a reasonable apprehension of bias in the mind of the petitioner and undermines the appearance of neutrality that arbitration law seeks to ensure.

32. Accordingly, the invocation of Entry 1 of the Seventh Schedule by the petitioner cannot be characterized as whimsical, fanciful, or misconceived; rather, it raises a legitimate and legally sustainable objection to the continuation of the mandate of the appointed arbitrator.
33. In addition, in another dispute containing an arbitration clause involving the same parties, the appointed arbitrator was initially appointed as sole arbitrator by the respondent, but the respondent itself withdrew the said appointment *vide* the letter dated 17.08.2020 on the objection raised by the petitioner *vide* the letter dated 07.08.2020. This prior conduct demonstrates the respondent's own recognition that the appointment of Mr. B.B. Dhar could give rise to an apprehension of bias. The said letters are reproduced as under:



8
Roshan Real Estates Pvt. Ltd.
(A Construction Company)

Class-1 (Civil & Electrical) Contractor CPWD

CIN :- U70101DL1997PTC089296

Ph.: 26688459
26684959
26683415
Mob.: 9810115205
9810124672

Document B

269-C, Hauz Rani, Opp. Press Enclave, New Delhi-110017
E-mail : roshan78612@gmail.com

RREPL/CW/2020-21/8054

Dated: 07-08-2020

Chief Engineer (OP),
PWD (GNCTD), 13th Floor,
MSO building, I P Estate,
New Delhi-110002.

Subject:- Redevelopment of "C" block at Delhi High Court, Sher Shah Suri marg, New Delhi.
(SH: C/o RCC framed structure building i/c water supply, sanitary & electrical
Installations).

Agreement No. : 25/EE/CBMD/M-431/2013-14

Dear Sir,

Please refer to your letter dated 07.08.2020 through which you have appointed Shri B. B. Dhar as arbitrator to adjudicate the dispute in the above mentioned work.

In this regard we have to submit that Shri B B Dhar was superintending on our work and that we have professional relation with him, therefore we object to the appointment of the arbitrator. In view of the above we request you to please appoint some other person to maintain the neutrality and in conformity of the ACT.

Thanking you,

Yours Sincerely,
For Roshan Real Estates Pvt. Ltd.

Director.

Copy To:- 1. Sh. B. B. Dhar, Retired Chief Engineer, CPWD, B-203 Medinova Apartment,
Sector-56, Gurugram, Haryana-122011.



9 Document-C



मुख्य अभियंता (अन्य परियोजनाएं)
लोनिवि0, (रा0रा0क्ष0दि0स0),
13वां तल, एम0एस0ओ0 भवन,
आई0पी0 एस्टेट, नई दिल्ली-02

फोन: 23490426, 23490427, 23490428

फैक्स :- 23490429 ई-मेल: cepwdelhiop@gmail.com



सं0: 55(8)(आरवि) / मु0अभि(ओ0पी0) / लो0नि0वि0 / 2020 / 1304-1E दिनांक: 17.08.2020

विषय: In the matter of arbitration between M/s Roshan Real Estates Pvt. Ltd. and Union of India (through EE, Delhi High Court Civil Division, PWD, Delhi) - **Appointment of Arbitrator.**

कार्य का नाम:- Redevelopment of "C" block at Delhi High Court, Sher Shah Suri Marg, New Delhi (SH: C/o RCC framed structure building i/c water supply, sanitary & electrical installations)- Agreement no. 25/EE/CBMD/M-431/2013-14

Whereas M/s Roshan Real Estates Pvt. Ltd. wrote vide their letter no RREPL/CW/2020-21/8037 dated 29.07.2020 that certain disputes have arisen between the above noted parties in respect of the above noted work. Sh. B. B. Dhar, Retired Chief Engineer, CPWD was appointed as arbitrator but M/s Roshan Real Estates Pvt. Ltd. made certain objections vide their letter dt 07.08.2020 and appointment was withdrawn on 11.08.2020. They were given name of 5 empanelled arbitrators vide this office even letter no. 1286 dt. 13.08.2020 for choosing name of three arbitrators. They have given their choice of 3 arbitrators vide their letter dt. 13.08.2020

I, Sanjeev Rastogi, Chief Engineer(Other Projects), PWD, GNCTD by powers conferred on me under Clause 25 of the said agreement hereby appoint Shri Dinesh Kumar, Retired Engineer-in-Chief, PWD as sole Arbitrator to decide and make his award regarding the claims/disputes given by the claimant, as shown in the statements enclosed subject always, however, to their admissibility under clause 25 of the aforesaid agreement.

However, this reference is further without prejudice to the defense that may be raised by the Department regarding the tenability of the claim on all necessary and available grounds including those in limitation.

The amount of the claims in dispute being more than Rs.1,00,000/- the Arbitrator, shall give reasoned award according to clause 25 of the agreement. The arbitration fee will be paid as per the provisions mentioned at S. No-4 of Assitt. Housing Commissioner (PWD) order dt. 01.10.2018 (Copy enclosed).

संलग्न: 1. दावों/विवादों की सूची
2. पत्र दिनांक 01.10.2018

(संज्ञक रस्तोगी)
मुख्य अभियंता (अन्य परि)

सेवा में

1. श्री दिनेश कुमार, सेवामुक्त प्रमुख अभियंता (लोनिवि)
बी-533, पॉकेट-ई, मयूर विहार फेस-3
दिल्ली-110091. ई मेल dineshkumar.cpwd@gmail.com

(स्पीड पोस्ट द्वारा)

2. मैसर्स रोशन रियल एस्टेट प्रा0 लि0
289-सी, हौज रानी प्रैस एन्कैलव के पीछे, नई दिल्ली-110017
ई मेल roshan78612@gmail.com

(स्पीड पोस्ट द्वारा)



34. While it is true that the appointment of the appointed arbitrator was made by this Court under Section 11(6) of the Act, it is pertinent to note that this Court was not aware of the letters dated 07.08.2020 and 17.08.2020, wherein the respondent had earlier withdrawn the appointment of the appointed arbitrator on the similar objections by the petitioner. Hence, this Court had no knowledge of the fact that there existed a prior business relationship between the petitioner and the appointed arbitrator that can cause prejudice to the arbitral proceeding and/or cause reasonable apprehension of bias in the mind of the petitioner. These facts have now been brought to light and, in my view, are sufficient to trigger disqualification under Entry 1 of the Seventh Schedule.
35. In addition, the Hon'ble Supreme Court in *HRD Corporation (supra)* clarified that the mandate of an arbitrator can be terminated under Section 14 of the Act, if facts indicating ineligibility or bias come to light subsequently. The Court further emphasized that such ineligibility under the Seventh Schedule is de jure and renders the arbitrator legally incapable of continuing. Hence, the court appointment under Section 11 of the Act does not override the statutory safeguards of independence or disqualify a party from seeking redress under Section 14 of the Act. The relevant paragraph reads as under:
- “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. ...”

(Emphasis supplied)

36. The respondent has relied upon the decision of the Hon’ble Supreme Court in ***Government of Haryana PWD (B&R) Branch (supra)***, to urge that the word “*other*” in Entry 1 of the Seventh Schedule of the Act cannot be used to widen the scope of the entry to include past/former employees. The relevant paragraphs read as under:

“22. The present case is governed by the pre-amended 1996 Act. Even as per the 2015 Amendment Act which has inserted the Fifth Schedule to the 1996 Act which contains grounds to determine whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator. The first entry to the Fifth Schedule reads as under:

“Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business



relationship with a party.”

Entry 1 of the Fifth Schedule and the Seventh Schedule are identical. The entry indicates that a person, who is related to a party as an employee, consultant, or an advisor, is disqualified to act as an arbitrator. The words “is an” indicate that the person so nominated is only disqualified if he/she is a present/current employee, consultant, or advisor of one of the parties.

23. An arbitrator who has “any other” past or present “business relationship” with the party is also disqualified. The word “other” used in Entry 1, would indicate a relationship other than an employee, consultant or an advisor. The word “other” cannot be used to widen the scope of the entry to include past/former employees.

24. ICA made only a bald assertion that the nominee arbitrator Mr M.K. Aggarwal would not be independent and impartial. The objection of reasonable apprehension of bias raised was wholly unjustified and unsubstantiated, particularly since the nominee arbitrator was a former employee of the State over 10 years ago. This would not disqualify him from acting as an arbitrator. Mere allegations of bias are not a ground for removal of an arbitrator. It is also relevant to state that the appointment had been made prior to the 2015 Amendment Act when the Fifth Schedule was not inserted. Hence, the objection raised by ICA was untenable on that ground also.”

37. The reliance by the respondent on the judgment in ***Government of Haryana***



PWD (B&R) Branch (supra) is distinguishable, as the said judgment was rendered in the context of the pre-amendment regime and concerned a former employee without any business/professional relationship, unlike the present case.

38. The fact that weighs with me is that the appointed arbitrator is not a mere past/former employee, rather, he had a prior supervisory and business/professional relationship with the petitioner and his prior appointment as arbitrator has been withdrawn by the respondent itself on the similar objection by the petitioner.
39. In addition, the fact that the appointed arbitrator submitted a declaration under Section 12(1) of the Act is not determinative. Where statutory ineligibility is attracted under Section 12(5) of the Act, a declaration does not cure the disqualification.
40. It is also undisputed that no express post-dispute written waiver has been executed by the petitioner, as required by the proviso to Section 12(5) of the Act. Therefore, the ineligibility under the Seventh Schedule cannot be cured by acquiescence or mere silence and hence, the mandate of the appointed arbitrator is legally untenable.
41. Further, the Order dated 10.02.2025 passed by this Court appointing Mr. B.B. Dhar does not reflect any of the aforesaid facts and thus, was passed in the absence of the aforesaid facts being brought to the notice of the Court.
42. Hence, I am of the considered opinion that the appointment of Mr. B.B. Dhar as the sole arbitrator falls squarely within the scope of statutory ineligibility contemplated under Section 12(5) read with Seventh Schedule of the Act.



CONCLUSION

- 43.** In view of the foregoing analysis, the petition is allowed and the mandate of Mr. B.B. Dhar hereby stands terminated under Section 14(1)(a) of the Act.
- 44.** This Court hereby appoints Ms. Justice Rekha Palli (Retired Judge Delhi High Court) (Mobile No. 9810012120) as the Sole Arbitrator to adjudicate the disputes between the parties, with the following directions:
- A.** The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the “DIAC”).
 - B.** The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’ Fees) Rules, 2018.
 - C.** The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
 - D.** It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - E.** The parties shall approach the learned Arbitrator within two weeks from today.
- 45.** The petition is disposed of accordingly.

JASMEET SINGH, J

JULY 01, 2025 / shanvi

Click here to check corrigendum, if any