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

+ O.M.P. (T) (COMM.) 90/2018 & I.A. No.11708/2018 (Stay)

THE BRAITHWAITE BURN AND JESSOP AND
CONSTRUCTION CO. LTD. Petitioner
Through Mr.Pinaki Addy, Adv.

versus

NORTHERN RAILWAY Respondent
Through Mr.Jagjit Singh and Mr.Preet Singh,
Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **31.08.2018**

This petition has been filed by the petitioner under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking termination of the mandate of the Arbitrators appointed by the respondent for adjudicating the disputes that have arisen between the parties in relation to the work of construction of 4 lane road over bridge (Span1x21600+1x25080 +1x21600) in lieu of level crossing No.7-B at K.M. 829.070 on Lucknow - Zafrabad Section near Jaunpur.

Learned counsel for the petitioner has placed reliance on the disclosure statements made by the Arbitrators under Section 12 of the Act and submits that the Arbitrators are former employees of the Railways itself and therefore ineligible for being appointed as Arbitrators under Entry 1 of the Seventh Schedule to the Act.

I have considered the submission made by the learned counsel for the petitioner however, I find no merit in the same.

A perusal of the disclosure statements filed by the Arbitrators shows that while one of the Arbitrator, namely Mr. Harsh Kumar, was an employee of the Northern Railways till 02.01.2014, the other Mr. U.C.D. Shreni, was an employee of Indian Railways till 31.10.2010 and the third Arbitrator, namely Mr. V.K. Agarwal, was the Managing Director of RITES till October, 2010. The Arbitrators in the present dispute have been appointed on 05.06.2018.

Entry 1 of the Seventh Schedule is reproduced herein under:-

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

Entry 31 of the Fifth Schedule to the Act is reproduced as under:

“31. The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.”

This Court in ***M/s. Era Infra Engineering Limited vs. Airport Authority of India***, 2018 SCC Online Del 9898 has held that as far as the former employees of a party are concerned, harmoniously reading Entry 31 of Fifth Schedule with Entry 1 of Seventh Schedule to the Act, the bar under Entry 1 of the Seventh Schedule would be confined only to the employees and not ex-employees.

In the present case, as the relationship between the Arbitrators and the respondent had terminated more than three years prior to the appointment of

the Arbitrators, the Arbitrators under Entry 1 of the Seventh Schedule of the Act do not become ineligible for being appointed as arbitrators.

Learned counsel for the petitioner has further submitted that there is grave apprehension of the Arbitrators being biased in favour of the respondent. In my view, these issues are to be raised and have been raised under Section 13(2) of the Act by the petitioner and, if the Arbitral Tribunal or one of the Arbitrators, as the case may be, do not recuse themselves from the arbitration proceedings, the petitioner can challenge the Award under Section 34 of the Act if so advised.

In view of the above, I find no merit in the present petition and the same is dismissed along with the pending application. Any observation made by the Court hereinabove shall not prejudice the claim of the petitioner in any subsequent proceeding initiated by it in accordance with the law.

NAVIN CHAWLA, J

AUGUST 31, 2018/Arya