

\$~25

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **OMP(T)(COMM) 97/2018**

M/S BGN CABLE NETWORK Petitioner
Through Mr.Amiet Andley and Mr.Arun K.
Sharma, Advs.

versus

MANIK SINGLA Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER
% **19.09.2018**

I.A. No.12784/2018 (Exemption)

Allowed, subject to all just exceptions.

O.M.P. (T) (COMM.) 97/2018 & I.A. No.12783/2018 (Stay)

1. This petition has been filed by the petitioner under Section 14 and 15 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking termination of the mandate of the Arbitrator and appointment of a substitute Arbitrator.
2. Learned counsel for the petitioner referring to the reply of the Arbitrator to petitioner's email dated 21.04.2018 submits that the Arbitrator had given a false declaration inasmuch as the Arbitrator has appeared alongwith the counsel for claimant/respondent herein on three occasions before the Supreme Court in a Special Leave Petition. He submits that on gaining knowledge of the said fact, the petitioner filed an application under Section 13 of the Act before the Arbitrator, however, the Arbitrator has dismissed the same.

3. I have considered the submission made by the learned counsel for the petitioner, however, I am unable to agree with the same. It is not the case of the petitioner that the Arbitrator is ineligible under any of the Entries mentioned in the Seventh Schedule of the Act. Sub-Section 4 and 5 of Section 13 of the Act read as under:-

“13. Challenge Procedure.-

xxxxxx

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.”

4. In ***HRD Corporation (Marcus Oil and Chemical Division) v. Gail (India) Ltd.***, (2018) 12 SCC 471, the Supreme Court has held 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. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under Section 13(4) and make an award. It is only after such award is made, that the party challenging the arbitrator's appointment on grounds contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with Section 34 on the aforesaid grounds. It is clear, therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on items contained in the Fifth Schedule under which the appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal.”

5. In view of the above, the present petition is not maintainable at this stage. The petitioner would of course have its remedy against the Arbitral Award, if passed against it, also on the ground of alleged bias.

6. The petition along with pending application is dismissed with the above observation, with no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 19, 2018/Arya