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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Decided on 4th December, 2020

+ O.M.P. (T) (COMM.) 71/2020

**M/S IWORLD BUSINESS SOLUTIONS
PRIVATE LIMITED**

..... Petitioner

Through: Ms. Aditi Tomar and Ms. Ritika
Gambhir Kohli, Advs.

Versus

**M/S DELHI METRO RAIL
CORPORATION LIMITED**

..... Respondent

Through: Mr. Arjun Natarajan, Mr.
Sasank Iyer and Mr. Mayank
Sapra, Advs.

**CORAM:
HON'BLE MR. JUSTICE C .HARI SHANKAR**

ORDER (ORAL)

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04.12.2020

(Video-Conferencing)

1. On 7th June, 2016, a License Agreement was executed between the petitioner and the respondent. The Petitioner was the Licensee. Article 8 of the Agreement provided for resolution of disputes by arbitration, and read thus:

“ARTICLE 8: DISPUTE RESOLUTION

8.1. Arbitration: All disputes relating to this agreement or

claims arising out of or relating to this agreement or breach, termination or the invalidity thereof or on any issue whether arising during the progress of the services or after the completion or abandonment thereof or any matter directly or indirectly connected with this agreement shall be referred to Arbitrator(s) appointed by Director, DMRC on receipt of such request from either party, after signing of the Agreement. Matters to be arbitrated upon shall be referred to a sole arbitrator if the total value of the claim is up to Rs. 50 lakhs and a panel of three arbitrators, if total value of claims is more than Rs. 50 lakhs. DMRC shall provide a panel of three Arbitrators which may also include DMRC officers for the claims up to Rs. 50 lakhs and a panel of five Arbitrators which may also include DMRC officers for claims of more than Rs. 50 lakhs Licensee shall have to choose the sole Arbitrator from the panel of three and/ or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. DMRC shall also choose one Arbitrator from this panel of five and the two so chosen will choose the third arbitrator from the panel only. The Arbitrators shall be appointed within a period of 30 days from date of receipt of written notice/ demand of appointment of Arbitrator from either party.

8.2 The venue of such arbitration shall be Delhi/ New Delhi ...

8.3. Rules governing Arbitration proceedings: The Arbitration proceedings shall be governed by Indian Arbitration and Conciliation Act, 1996, as amended from time to time including provisions in force at the time the reference is made ...”

2. The License Agreement assigned licensing right in respect of a commercial property situated at Janpath Metro Station, bearing space ID- Janpath_2 (hereinafter referred to as “the property”) to the petitioner. The license was to take effect on 7th June, 2016.

3. Admittedly, on 29th March, 2019, the License Agreement was terminated by the parties.

4. Thereafter on 10th April, 2020, the petitioner wrote to the respondent, seeking refund of the security deposit of ₹ 25,24,838/-, paid by the petitioner at the time of execution of the License Agreement. The inaction of the respondent in complying with this request, according to the petition, has resulted in an arbitrable dispute between the petitioner and the respondent.

5. In view thereof, on 25th August, 2020, the petitioner addressed a notice to the respondent, invoking the arbitration clause (Article 8) in the License Agreement. The petitioner nominated an advocate, as the arbitrator to adjudicate the dispute. The stipulation in Article 8.1, whereby the DMRC was permitted to nominate the sole arbitrator was, it was contended, illegal and unenforceable in view of the law laid down by the Supreme Court in *Bharat Broadband Network Ltd. v. United Telecoms Ltd*¹ and *Perkins Eastman Architects DPC v. HSCC (India) Limited*² as well as of this Court in *Proddatur Cable TV Digi Services v. SITI Cable Network Ltd*³.

6. The respondent, *vide* its reply, dated 23rd October, 2020, provided a panel of three arbitrators to the petitioner, allowing the petitioner to nominate one out of the said panel. Ms. Aditi Tomar, learned counsel for the petitioner, acknowledges that this panel consists of three persons, all of whom are retired Additional District & Sessions Judges. Significantly, therefore, the respondent has not

¹ (2019) 5 SCC 755

² 2019 SCC Online SC 1517

³ 2020 SCC Online Del 350

requested the petitioner to choose any of its serving or even retired employees as the arbitrator to arbitrate on the dispute.

7. Ms. Aditi Tomar, learned counsel for the petitioner submits that the DMRC could not be allowed to nominate arbitrators to arbitrate on the dispute between the petitioner and the respondent, in view of the law laid down in *Perkins Eastman*², as well as in *TRF Limited v. Energo Engg. Projects Ltd*⁴.

8. Mr. Arjun Natarajan, learned counsel for the respondent, submits, *per contra*, that the issue raised by the petitioner is no longer *res integra* and as it stands concluded by the judgment of three Hon'ble Judges of the Supreme Court in *Central Organization for Railway Electrification v. ECI- SPIC-SMO-MCML (JV)*⁵ read with Section 12(5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act").

9. The arbitration clause, in the agreement between the parties in *Central Organization for Railway Electrification*⁵, contained various sub clauses. Clause 64.3(a)(ii) of the Agreement waived off the applicability of Section 12(5) of the 1996 Act and applied to cases where the value of the claim exceeded ₹ 1 crore. In such cases, Clause 64.3(a)(ii) provided for arbitration of the dispute by a three member Arbitral Tribunal, consisting of three gazetted railway officers. Where the applicability of Section 12(5) of the 1996 Act had not been waived off, Clause 64.3(b) of the Agreement provided for an Arbitral

⁴ (2017) 8 SCC 377

⁵ 2019 SCC Online SC 1635

Tribunal, consisting of three retired railway officers, not below the rank of Senior Administrative Officer, to arbitrate on the dispute.

10. The contract was terminated by the Central Organization for Railway Electrification (hereinafter referred to as “CORE”) on 1st November, 2017. The Joint Venture (JV) challenged the termination before the High Court of Allahabad. The High Court, *vide* order dated 20th November, 2017, dismissed the petition, relegating the JV to the remedy of arbitration provided in the Agreement.

11. The JV wrote, on 27th July, 2018, to CORE, requesting that an Arbitral Tribunal be constituted to resolve the dispute, the amount claimed being ₹ 73.35 crores. CORE, *vide* its response dated 24th September, 2018, forwarded a panel of four serving railway electrification officers of the JA grade, to act as arbitrators, calling upon the JV to select any two out of the said panel. A second panel of retired railway officers was also sent by CORE to the JV on 25th October, 2018, calling on the JV to select two arbitrators from the list, under Clause 63.3(b) of the Agreement.

12. Without acceding to the request, the JV approached the High Court under Section 11(6) of the 1996 Act, praying that a sole arbitrator be appointed by the High Court to arbitrate on the dispute.

13. CORE contended, before the High Court, that the petition of the JV was not maintainable, as the arbitration clause required the arbitrator to be appointed out of the panel provided by CORE.

Observing that the power of the High Court to appoint an arbitrator was independent of the contract between the parties, the High Court appointed a retired Judge as the sole arbitrator, under Section 11(8) of the 1996 Act.

14. CORE appealed to the Supreme Court. The Supreme Court adumbrated the issue arising for consideration, as “whether the High Court was right in appointing an independent arbitrator in contravention of the Clauses 64.3(a)(ii) and 64.3(b) of the General Conditions of Contract”.

16. The JV contended, before the Supreme Court, that it could not be asked to choose the arbitrator(s) to arbitrate on the dispute, from the panel maintained by CORE, irrespective of whether the panel consisting of serving or retired employees. Reliance was placed, for the said contention, on Section 12(5) read with the 7th Schedule of the 1996 Act, along with the judgments of the Supreme Court in *Voestalpine Schienen GMBH v. DMRC*⁶ and *Bharat Broadband Network Ltd.*¹. CORE, *per contra*, relied on *UOI v. Parmar Construction Co.*⁷ and *UOI v. Pradeep Vinod Construction Company*⁸, to contend that where the agreement required the arbitrator to be selected from a panel, the appointment of the arbitrator had necessarily to abide by the said dispensation and the Court could not appoint any independent arbitrator to arbitrate on the dispute.

⁶ (2017) 4 SCC 665

⁷ (2019) 15 SCC 682

⁸ (2020) 2 SCC 464

17. The Supreme Court observed, at the outset, that in its earlier decisions in *Parmar Construction Co.*⁷ and *Pradeep Vinod Construction Co.*⁸, the appointment of an independent arbitrator by the High Court, contrary to the provision for appointment of the arbitrator as contained in the arbitration agreement, was found not to be sustainable. Apropos the contention advanced by the JV, the Supreme Court held, in paras 24 to 27 of its judgment, thus:

“24. The contention of the learned counsel for the respondent is that the panel of arbitrators proposed by the appellant vide letter dated 25.10.2018 comprising of retired employees of the appellant are not eligible to be appointed as arbitrators under Section 12(5) read with Schedule VII of the Act. Further contention of the learned counsel for the respondent is that the panel of arbitrators drawn by the appellant consist of those persons who were railway employees or Ex-railway employees and therefore, they are statutorily made ineligible to be appointed as arbitrators.

25. Contending that the appointment of retired employees as arbitrators cannot be assailed merely because an arbitrator is a retired employee of one of the parties, learned ASG has placed reliance upon *Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Limited*⁶. After referring to various judgments and also the scope of amended provision of Section 12 of the Amendment Act, 2015 and the entries in the Seventh Schedule, the Supreme Court observed that merely because the panel of arbitrators drawn by the respondent-Delhi Metro Rail Corporation are the Government employees or Ex-Government employees, that by itself may not make such persons ineligible to act as arbitrators of the respondent-DMRC. It was observed that the persons who have worked in the Railways under the Central Government or the Central Public Works Department or Public Sector Undertakings cannot be treated as employee or consultant or advisor of the respondent-DMRC. In para (26) of *Voestalpine Schienen GMBH*⁶, the Supreme Court held as under:-

“26. It cannot be said that simply because the

person is a retired officer who retired from the government or other statutory corporation or public sector undertaking and had no connection with DMRC (the party in dispute), he would be treated as ineligible to act as an arbitrator. Had this been the intention of the legislature, the Seventh Schedule would have covered such persons as well. Bias or even real likelihood of bias cannot be attributed to such highly qualified and experienced persons, simply on the ground that they served the Central Government or PSUs, even when they had no connection with DMRC. The very reason for empanelling these persons is to ensure that technical aspects of the dispute are suitably resolved by utilising their expertise when they act as arbitrators. It may also be mentioned herein that the Law Commission had proposed the incorporation of the Schedule which was drawn from the red and orange list of IBA guidelines on conflict of interest in international arbitration with the observation that the same would be treated as the guide “to determine whether circumstances exist which give rise to such justifiable doubts”. Such persons do not get covered by red or orange list of IBA guidelines either.”

[Underlining added]

26. The same view was reiterated in ***Government of Haryana PWD Haryana (B and R) Branch v. G.F. Toll Road Private Limited and Others***⁹ wherein, the Supreme Court held that the appointment of a retired employee of a party to the agreement cannot be assailed on the ground that he is a retired/former employee of one of the parties to the agreement. Absolutely, there is no bar under Section 12(5) of the Arbitration and Conciliation (Amendment) Act, 2015 for appointment of a retired employee to act as an arbitrator.

27. By the letter dated 25.10.2018, the appellant has forwarded a list of four retired railway officers on its panel thereby giving a wide choice to the respondent to suggest any two names to be nominated as arbitrators out of which, one will be nominated as the arbitrator representing the respondent-Contractor. As held in ***Voestalpine Schienen***

⁹ (2019) 3 SCC 505

*Gmbh*⁶, the very reason for empanelling the retired railway officers is to ensure that the technical aspects of the dispute are suitably resolved by utilising their expertise when they act as arbitrators. Merely because the panel of the arbitrators are the retired employees who have worked in the Railways, it does not make them ineligible to act as the arbitrators.”

18. Additionally, paras 37 and 38 of the judgment held thus:

“37. In the present matter, after the respondent had sent the letter dated 27.07.2018 calling upon the appellant to constitute Arbitral Tribunal, the appellant sent the communication dated 24.09.2018 nominating the panel of serving officers of Junior Administrative Grade to act as arbitrators and asked the respondent to select any two from the list and communicate to the office of the General Manager. By the letter dated 26.09.2018, the respondent conveyed their disagreement in waiving the applicability of Section 12(5) of the Amendment Act, 2015. In response to the respondent’s letter dated 26.09.2018, the appellant has sent a panel of four retired Railway Officers to act as arbitrators giving the details of those retired officers and requesting the respondent to select any two from the list and communicate to the office of the General Manager. Since the respondent has been given the power to select two names from out of the four names of the panel, the power of the appellant nominating its arbitrator gets counter-balanced by the power of choice given to the respondent. Thus, the power of the General Manager to nominate the arbitrator is counter-balanced by the power of the respondent to select any of the two nominees from out of the four names suggested from the panel of the retired officers. In view of the modified Clauses 64(3)(a)(ii) and 64(3)(b) of GCC, it cannot therefore be said that the General Manager has become ineligible to act as the arbitrator. We do not find any merit in the contrary contention of the respondent. The decision in TRF Limited is not applicable to the present case.

38. There is an express provision in the modified clauses of General Conditions of Contract, as per Clauses 64(3)(a)(ii) and 64(3)(b), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers [Clause 64(3)(a)(ii)] and

three retired Railway Officers retired not below the rank of Senior Administrative Grade Officers [Clause 64(3)(b)]. When the agreement specifically provides for appointment of Arbitral Tribunal consisting of three arbitrators from out of the panel serving or retired Railway Officers, the appointment of the arbitrators should be in terms of the agreement as agreed by the parties. That being the conditions in the agreement between the parties and the General Conditions of the Contract, the High Court was not justified in appointing an independent sole arbitrator ignoring Clauses 64(3)(a)(ii) and 64(3)(b) of the General Conditions of Contract and the impugned orders cannot be sustained.”

19. As a result, the Supreme Court set aside the judgment of the High Court and directed CORE to send a fresh panel of four retired officers, as per Clause 63(4)(b) of the contract, to the JV, permitting the JV to select two out of the said four officers to arbitrate on the dispute.

20. Faced with this decision, Ms. Tomar seeks to place reliance on *Voestalpine Schienen GMBH*⁶. In the first place, *Voestalpine Schienen GMBH*⁶ was a judgment of two Hon’ble Judges of the Supreme Court, which was considered and appreciated in *Central Organization for Railway Electrification*⁵, which was rendered by three Hon’ble Judges. As such, on the face of it, no reliance could be placed on *Voestalpine Schienen*⁶, which would derogate from the law laid down in *Central Organization for Railway Electrification*⁵.

21. Ms. Tomar relies on para 27 of *Voestalpine Schienen*⁶, which reads thus:

“27. As already noted above, DMRC has now forwarded the

list of all 31 persons on its panel thereby giving a very wide choice to the petitioner to nominate its arbitrator. They are not the employees or ex-employees or in any way related to DMRC. In any case, the persons who are ultimately picked up as arbitrators will have to disclose their interest in terms of amended provisions of Section 12 of the Act. We, therefore, do not find it to be a fit case for exercising our jurisdiction to appoint and constitute the Arbitral Tribunal.”

22. The reliance, by Ms. Tomar, on para 27 of the decision in *Voestalpine Schienen*⁶, torn out of the context of the rest of the judgment would not, in my considered opinion be appropriate. Clause 9.2 of the Special Conditions of Contract in *Voestalpine Schienen*⁶, which provided for arbitration, read thus:

“9.2. The rules of procedure for arbitration proceedings pursuant to GCC Clause 9.2 shall be as follows:

Arbitration & Resolution of Disputes.—The Arbitration and Conciliation Act, 1996 of India shall be applicable. Purchaser and the supplier shall make every necessary effort to resolve amicably by direct and informal negotiation any disagreement or dispute arising between them under or in connection with contract.

Arbitration.—If the efforts to resolve all or any of the disputes through conciliation fail, then such, disputes or differences, whatsoever arising between the parties, arising out of touching or relating to supply/manufacture, measuring operation or effect of the contract or the breach thereof shall be referred to arbitration, in accordance with the following provisions:

(a) Matters to be arbitrated upon shall be referred to a sole arbitrator where the total value of claims does not exceed Rs 1.5 million. Beyond the claim limit of Rs 1.5 million, there

shall be three arbitrators. *For this purpose, the purchaser will make out a panel of engineers with the requisite qualifications and professional experience. This panel will be of serving or retired engineers “government departments or of public sector undertakings;*

(b) For the disputes to be decided by a sole arbitrator, a list of three engineers taken in the aforesaid panel will be sent to the supplier by the purchaser from which the supplier will choose one;

(c) *For the disputes to be decided by three arbitrators, the purchaser will make out a list of five engineers from the aforesaid panel. The supplier and purchaser shall choose one arbitrator each, and the two so chosen shall choose the third arbitrator from the said list, who shall act as the presiding arbitrator;*

(d) Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or the arguments put before the conciliator;

(e) The conciliation and arbitration hearings shall be held in Delhi only. The language of the proceedings that of the documents and communications shall be English and the awards shall be made in writing. The arbitrators shall always give item-wise and reasoned awards in all cases where the total claim exceeds Rs one million; and

(f) The award of the sole arbitrator or the award by majority of three arbitrators, as the case may be, shall be binding on all parties.”

(emphasis supplied)

23. As in the present case and in CORE, Voestalpine Schienen

GMBH, (the appellant before the Supreme Court and referred to hereinafter as “Voestalpine”) relied on Section 12(5) of the 1996 Act. The Supreme Court delineated the precise issue, arising before it for consideration, as “whether panel of arbitrators prepared by the respondent, violates the amended provision of Section 12 of the Act”. After a detailed analysis of the law, as well as the evolution of Section 12(5) itself, the Supreme Court held, in paras 23 to 26 of its decision, thus:

“23. It also cannot be denied that the Seventh Schedule is based on IBA guidelines which are clearly regarded as a representation of international based practices and are based on statutes, case law and juristic opinion from a cross-section on jurisdiction. It is so mentioned in the guidelines itself.

24. Keeping in view the aforesaid parameters, we advert to the facts of this case. Various contingencies mentioned in the Seventh Schedule render a person ineligible to act as an arbitrator. Entry 1 is highlighted by the learned counsel for the petitioner which provides that where the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with the party, would not act as an arbitrator. What was argued by the learned Senior Counsel for the petitioner was that the panel of arbitrators drawn by the respondent consists of those persons who are government employees or ex-government employees. However, that by itself may not make such persons ineligible as the panel indicates that these are the persons who have worked in the Railways under the Central Government or the Central Public Works Department or public sector undertakings. They cannot be treated as employee or consultant or advisor of the respondent DMRC. If this contention of the petitioner is accepted, then no person who had earlier worked in any capacity with the Central Government or other autonomous or public sector undertakings, would be eligible to act as an arbitrator even when he is not even remotely connected with the party in question, like DMRC in this case. The amended provision puts an embargo on a person to act as an arbitrator, who is the employee of the party to the dispute. It also

deprives a person to act as an arbitrator if he had been the consultant or the advisor or had any past or present business relationship with DMRC. No such case is made out by the petitioner.

25. Section 12 has been amended with the objective to induce neutrality of arbitrators viz. their independence and impartiality. The amended provision is enacted to identify the “circumstances” which give rise to “justifiable doubts” about the independence or impartiality of the arbitrator. If any of those circumstances as mentioned therein exists, it will give rise to justifiable apprehension of bias. The Fifth Schedule to the Act enumerates the grounds which may give rise to justifiable doubts of this nature. Likewise, the Seventh Schedule mentions those circumstances which would attract the provisions of sub-section (5) of Section 12 and nullify any prior agreement to the contrary. In the context of this case, it is relevant to mention that only if an arbitrator is an employee, a consultant, an advisor or has any past or present business relationship with a party, he is rendered ineligible to act as an arbitrator. Likewise, that person is treated as incompetent to perform the role of arbitrator, who is a manager, director or part of the management or has a single controlling influence in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration. Likewise, persons who regularly advised the appointing party or affiliate of the appointing party are incapacitated. A comprehensive list is enumerated in Schedule 5 and Schedule 7 and admittedly the persons empanelled by the respondent are not covered by any of the items in the said list.

26. It cannot be said that simply because the person is a retired officer who retired from the government or other statutory corporation or public sector undertaking and had no connection with DMRC (the party in dispute), he would be treated as ineligible to act as an arbitrator. Had this been the intention of the legislature, the Seventh Schedule would have covered such persons as well. Bias or even real likelihood of bias cannot be attributed to such highly qualified and experienced persons, simply on the ground that they served the Central Government or PSUs, even when they had no connection with DMRC. The very reason for empanelling these persons is to ensure that technical aspects of the dispute are suitably resolved by utilising their expertise when they act

as arbitrators. It may also be mentioned herein that the Law Commission had proposed the incorporation of the Schedule which was drawn from the red and orange list of IBA guidelines on conflict of interest in international arbitration with the observation that the same would be treated as the guide “to determine whether circumstances exist which give rise to such justifiable doubts”. Such persons do not get covered by red or orange list of IBA guidelines either.”

24. Para 27 of the judgment, on which Ms. Tomar relied, follows after the above enunciation of the law by the Supreme Court. It is clear, from a plain reading of para 27, that it does not constitute part of the *ratio decidendi* in *Voestalpine Schienen*⁶ but is in the nature of observations made by the Supreme Court. Having said that, all observations of the Supreme Court are entitled, in the hierarchical court system in this country, to high precedential value and cannot be ignored. In para 27, the Supreme Court has observed that, even where a number of persons were empanelled, the DMRC was conferred the discretion to pick any five persons out of the panel and forward their names to the other side, who had to select one as its nominee. Even while so observing, the Supreme Court noted that this practice had been done away with, in the case before it. The DMRC was also required to nominate its arbitrator from the same list, and the two arbitrators so nominated had to pick the third arbitrator also from the same list, i.e. from the remaining three persons. Where there was an exhaustive panel with the DMRC, the Supreme Court observed that it may not have been justified to limit the choice, to the opposite party, to choose one out of five names handpicked by the DMRC from its panel. Where such handpicking took place, the Supreme Court observed that a suspicion could arise, regarding the impartiality of the

person picked by the DMRC out of its panel. As such, it was opined, *by way of a suggestion*, that the clauses 9.2(b)(c) in the Special Conditions of Contract, which permitted for such an arrangement, needed to be deleted, and the opposite party *ought to* have been extended the choice to select the arbitrator out of the entire panel maintained by the DMRC. Similarly, it was opined that the two arbitrators, so appointed, *ought also to* have been permitted the liberty to appoint the third arbitrator from the entire panel of arbitrators maintained by the DMRC.

25. Significantly, in the succeeding paragraph (para 28), the Supreme Court observed that, in order to instil confidence in the mind of the opposite party, the panel maintained by the DMRC ought not to have been limited to its own serving or retired officers but ought to have been broad based, including engineers of prominence and high repute from the private sector, as well as “persons with legal background like judges and lawyers of repute”. As such, it was observed that it would be appropriate to include, in the panel maintained by the DMRC, such persons as well.

26. I do not see how the petitioner can seek to obtain any advantage from paras 27 and 28 of the judgment of the Supreme Court in ***Voestalpine Schienen GMBH vs. Delhi Metro Rail Corporation Limited⁶***, or the observations and suggestions contained therein. In any event, on facts, those observations and suggestions have no application to the present case, as the persons included in the panel forwarded by the respondent to the petitioner, are, admittedly, retired

Additional District Judges. In fact, therefore, the panel forwarded by the respondent to the petitioner is eminently in accord with the suggestions contained in para 28 of the judgment in *Voestalpine*⁶. Para 28 of the judgment in *Voestalpine*⁶, therefore, would seem to militate *against*, rather than support, the stand adopted by the petitioner.

27. As the issue stands squarely covered by the judgment in *Central Organisation for Railway Electrification*⁵, it is not necessary for me to burden this judgment with any further observations or findings. The panel of arbitrators, forwarded by the respondent to the petitioner, consisted of three Retired Additional District Judges. The impartiality of such a panel cannot, by the farthest stretch of imagination, be doubted or questioned. Indeed, to be fair to Ms. Tomar as well as to the averments in the petition, there is no suggestion that the impartiality of the Judges included in the panel forwarded by the respondent is open to any kind of question or any kind of doubt. The petitioner, moreover, had the option of choosing any one arbitrator from the said panel.

28. In view thereof, I am of the opinion that the objection, of Mr. Natrajan, counsel for the respondent, is justified and that his reliance on the judgment of the Supreme Court in *Central Organisation for Railway Electrification*⁵ is also well taken.

29. The present petition is, therefore, disposed of with liberty to the petitioner to select, from the panel of three retired Additional District

Judges, forwarded by the respondent to the petitioner, a sole arbitrator, to arbitrate on the disputes between the parties. This decision would be taken by the petitioner and communicated to the respondent within a period of two weeks from today, whereafter the arbitral proceedings shall take off.

30. There shall be no orders as to costs.

DECEMBER 4, 2020
r.bararia/kr

C.HARI SHANKAR, J



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