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

% ***Date of decision: 31st October, 2023***

+ **O.M.P. (T) (COMM.) 101/2023 & I.As. 21456/2023, 21457/2023**

PARK CONTROLS AND COMMUNICATIONS (P) LTD.

..... Petitioner

Through: Mr. Srihari, Mr. Rohan Dewan, Mr.
Rajesh A.K. & Mr. Balaji Srinivasan,
Advocates.

versus

NATIONAL RESEARCH DEVELOPMENT CORPORATION

..... Respondent

Through: Mr. J.M. Kalia, Mr. Dhruv Kalia &
Mr. Siddhanrtha Shukla, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The present Petition under Section 14(2) read with Sections 12, 13 and 15 of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) has been filed on behalf of the petitioner seeking termination of the mandate of the Arbitrator so appointed to resolve the disputes *inter se* the parties and to appoint a substitute Arbitrator.
2. It is submitted that the petitioner and the respondent entered into the Agreements dated 31.03.2005 and 21.09.2005 for collection of royalty between the petitioner and the respondent.
3. The disputes arose between the parties and the respondent *vide* its Letter dated 27.09.2018 and subsequent Letter dated 19.04.2022 invoked the Arbitration Clause. The petitioner *vide* Reply dated 17.05.2022 denied all the averments seeking appointment of Sole Arbitrator.



4. The respondent *vide* its Letter dated 23.05.2022 appointed the Sole Arbitrator. Learned Arbitrator accepted the appointment *vide* Order dated 01.07.2022.
5. The Statement of Claim as well as Statement of Objections had been filed by both the parties before the learned Arbitrator.
6. It is submitted that the petitioner sought disclosure under Sections 11(8) and 12 of the Act, 1996 from the learned Arbitrator. Learned Arbitrator disclosed the information *vide* Disclosure Memo dated 12.01.2023.
7. It is submitted that while going through the records, the petitioner came across an e-mail sent by the counsel for the respondent to the learned Arbitrator with the subject title “*Draft Order dated 30.09.2022*”.
8. Aggrieved by the sharing of the “*Draft Order dated 30.09.2022*” by the counsel for the respondent, the petitioner moved the Application under Sections 12 and 13 of the Act, 1996. However, the said Application was dismissed by the learned Arbitrator *vide* its Order dated 21.03.2023, though the respondent was unable to appear on the said date i.e., 21.03.2023 due to some misunderstanding in communication.
9. Thereafter, the petitioner moved the Application under Section 151 of the Code of Civil Procedure, 1908 read with Section 18 of the Act, 1996 seeking recall of the Order dated 21.03.2023. The Application was dismissed by the learned Arbitrator *vide* its Order dated 07.07.2023.
10. It is asserted that the conduct of the respondent raises justifiable doubts as to the independence and impartiality of the learned Arbitrator on account of sharing the “*Draft Order dated 30.09.2022*”. Hence, the present petition has been preferred by the petitioner with the prayer that the mandate



of the learned Arbitrator be terminated and a substitute Arbitrator be appointed.

11. Issue notice.

12. Mr. J.M. Kalia, learned counsel for the respondent, accepts notice and states that he does not wish to file a formal reply.

13. **Submissions heard from the learned counsels for the parties and the documents perused.**

14. The sole ground on which the present petition has been filed is that there is a perceived bias in the conduct of the learned Arbitrator since the “Draft Order dated 30.09.2022” was sent through e-mail by the counsel for the respondent to the Sole Arbitrator. The Application under Sections 12 and 13 of the Act, 1996 was duly filed in accordance with the Scheme of the Act, 1996 before the learned Arbitrator, which was dismissed by the learned Arbitrator *vide* its Order dated 21.03.2023.

15. The procedure for challenge has been provided under Clause (4) of Section 13 of the Act, 1996 which reads as under: -

“Section 13: Challenge Procedure —

(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral Tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral Tribunal.

(3) Unless the arbitrator challenged under sub-section (2), withdraws from his office or the party agrees to the challenge, the arbitral Tribunal shall decide on the challenge.

(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.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees."

16. Thus, Section 13 of the Act, 1996 specifically provides that if a challenge under any procedure agreed upon by the parties or under the procedure under Sub-Section (2) of Section 13 of the Act, 1996 is not successful, *the Arbitral Tribunal shall continue the arbitral proceedings and make an Arbitral Award.*

17. Clause (5) of Section 13 of the Act, 1996 further provides that when 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 of the Act, 1996.*

18. Clause (6) of Section 13 of the Act, 1996 further provides that in case *the Arbitral Award is set aside on an application made under Sub-Section 5, the Court may decide whether the Arbitrator who is challenged is entitled to any fees.*

19. It is pertinent to refer to Sub-Section 3 of Section 12 of the Act, 1996 providing for ground of challenge wherein it is stated that an Arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the independence and impartiality of the Arbitrator.

20. In the present case, the only ground raised for challenging the



impartiality of the learned Arbitrator is that the “*Draft Order dated 30.09.2022*” was sent through e-mail by the counsel for the respondent to the learned Arbitrator and the said “*Draft Order dated 30.09.2022*” forms part of the record which was perused by the petitioner.

21. Moreover, the Application under Sections 12 and 13 of the Act, 1996 filed on the same ground, has already been dismissed by the learned Arbitrator *vide* its Order dated 21.03.2023 followed by the dismissal of Application under Section 151 of the Code of Civil Procedure, 1908 seeking recall of the Order dated 21.03.2023.

22. In these circumstances, the present petition is not maintainable and any challenge on the ground stated in Section 12 of the Act, 1996 can be taken up now only after the Award is made, under Section 34 of the Act, 1996.

23. Accordingly, the present petition is not maintainable and has no merit, which is hereby dismissed along with pending applications.

(NEENA BANSAL KRISHNA)
JUDGE

OCTOBER 31, 2023
S.Sharma