

Items 1. 05-12-2024

sg Ct. 37

**In The High Court at Calcutta  
Civil Appellate Jurisdiction  
Appellate Side  
Commercial Division**

**FMAT (ARBAWARD) 30 of 2024  
CAN 1 of 2024  
CAN 2 of 2024**

Union of India (CPWD)  
Versus  
M/s. Remco

Mr. Ranjan Kumar Sinha  
Ms. Sanjukta Gupta  
...for the appellant  
Mr. Satyam Mukherjee  
...for the respondent

**In Re: CAN 1 of 2024**

1. Affidavit of service filed in Court is taken on record.
2. Deficit court fees have been put in as reported by the Stamp Reporter.
3. There is a delay of 53 days in filing this appeal. The delay in filing the present appeal is sufficiently explained.
4. Hence, we condone the delay of 53 days in preferring the present appeal. The application for condonation of delay is thus disposed of.

**In Re: FMAT (ARBAWARD) 30 of 2024 with CAN 2 of 2024**

5. By consent of the parties, the appeal and the application are treated as day's list and disposed of by this

common order.

6. The appellant has filed an application for setting aside of an award under Section 12(1) read with Fifth Schedule of the Arbitration and Conciliation Act. There is a clear mandate that the person nominated or appointed as an Arbitrator, shall make a declaration in the form specified in the Sixth Schedule. Section 12(1)(b) read with Fifth Schedule enumerates grounds giving rise to justifiable doubts as to the independence or impartiality of the Arbitrators. Admittedly, the Arbitrator was a past employee of the appellant. In view of the failure to make a declaration read with the Fifth Schedule, Clause (i) there is a justifiable doubt as to the independence or impartiality of the Arbitrator. Moreover, there is no express agreement in writing by which it can be concluded that the respondent had agreed to proceed with the arbitration notwithstanding the fact that the Arbitrator appointed would be otherwise disqualified and ineligible in view of Fifth Schedule read with Seventh Schedule.

7. On such consideration, we are not inclined to interfere with the order passed by the learned Single Judge.

8. The parties are directed to take steps for appointment of an Arbitrator in accordance with law.

9. The learned Counsel for the parties jointly pray for appointment of Mr. Samit Talukdar, learned Senior Counsel, member of Bar Library Club as an arbitrator.

10. We accordingly appoint Mr. Samit Talukdar, learned Senior Counsel, member of Bar Library Club as an Arbitrator.

11. Mr. Talukdar shall fix his remuneration

commensurate with his position in consultation with the parties at the first sitting. It is needless to mention that all costs, charges and expenses in connection with arbitration proceeding shall be borne by the parties in equal measure. The learned Arbitrator shall be entitled to appoint a personal staff and a stenographer, whose expenses are also to be borne by the parties in equal measure.

12. The learned Arbitrator shall make a declaration in terms of Section 12(5) read with VII Schedule of the Arbitration and Conciliation Act, 1996 before commencement of the arbitration proceeding.

13. Accordingly, the appeal and the connected application being CAN 2 of 2024 are disposed of.

14. However, there shall be no order as to costs.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

**(Soumen Sen, J.)**

**(Biswaroop Chowdhury, J.)**