

**IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE**

The Hon'ble Justice Sabyasachi Bhattacharyya

A.P. No. 492 of 2021

**Centex (India) Engineers (P) Limited
Vs.
Executive Engineer/BRL,
Eastern Railway, Sealdah & Anr.**

For the Petitioner	:	Mr. D. Sahu, Adv. Mr. A. Nair, Adv.
For the respondent	:	Ms. Sanjukta Gupta, Adv.
Hearing concluded on	:	23.09.2024
Judgment on	:	01.10.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner participated in a tender floated by the Eastern Railway and, being successful in the tender process, was awarded a Letter of Award (LoA) on February 20, 2017. As per the terms of the tender, as adopted in the LoA, the General Conditions of Contract (GCC) of the Railways was a part of the contract. Clause 64 of the same having contained an arbitration clause, a dispute which arose between the parties was sought to be referred to arbitration. Such invocation was

by a notice dated July 16, 2021 issued by the petitioner to the General Manager (GM), Eastern Railway.

2. The scope of the dispute was alleged non-payment of dues for work done by the petitioner to the tune of Rs.74,81,490/-. The petitioner, in its previous demand letters, had also sought for loss and damages as well as interest.
3. The petitioner, in its invocation notice, stated that Clause 64 of the GCC-2001 was no longer applicable since the Railway was not eligible to appoint a serving Railway Official as arbitrator in view of the restriction imposed by the Seventh Schedule introduced by the Arbitration (Amendment) Act, 2015 and sent names as suggestions for a three-Member arbitral panel. The Eastern Railway having not agreed, the present application has been filed.
4. Learned counsel for the petitioner argues that Clause 64(3)(a)(ii) of the GCC-2001, as modified in 2016, is in conflict with Section 12(5), read with the Seventh Schedule, Entry No.1 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the 1996 Act”). It is further submitted that the petitioner has never waived, rather has specifically refused to waive, applicability of Section 12(5) of the 1996 Act.
5. Learned counsel for the petitioner cites *Rajpath Contractors and Engineers Ltd. vs. Union of India and Anr.* [AP/637/2023], a co-ordinate Bench judgment of this Court, where the judgment of *Central Organization for Railway Electrification vs. ECI-SPIC-SMO-MCML (JV) A Joint Venture Company*, reported at (2020) 14 SCC 712 was considered

and *Glock Asia-Pacific Limited vs. Union of India*, reported at (2023) 8 SCC 226 was relied on. It is submitted that Clause 64 was considered in the said judgment and it was observed that the same is violative of Section 12(5) and, accordingly, an independent arbitrator was appointed by the Court.

6. Learned counsel for the petitioner submits that, even assuming that Clause 64 was modified by incorporating retired Railway officers instead of serving officers to be nominated as arbitrators, since the GM of the Eastern Railway is vested with the absolute power to actually appoint one of such persons, it tantamounts to unilateral appointment.
7. It is argued that the reasoning in *Central Organization (supra)* that the advantage of one party in appointing its nominee arbitrator is counter-balanced by the power of the other party to appoint its nominee arbitrator is not applicable here as effectively the GM of the Eastern Railway, under the modified Clause 64(3)(b)(ii), is bestowed with absolute power to appoint all the three arbitrators.
8. Learned counsel also relies on another co-ordinate Bench judgment in the matter of *Mehrotra Buildcon Pvt. Ltd. vs. South Eastern Railway*, reported at 2023 SCC OnLine Cal 5050, where it was held that nothing can be more one-sided than this and that the absence of consent and choice is writ large in Clause 64(3)(b)(ii) of the GCC.
9. Regarding the argument of the respondents that the concerned GCC clause was amended, as reflected in the Railway Board's letter dated November 16, 2016, the petitioner argues that a contradictory stand

has been taken by the respondents. Nothing on record shows that GCC-2001 was ever modified and the letter relied on by the respondent mentions modification of GCC-2014 and not GCC-2001. Moreover, the respondents, in their letters seeking waiver of Section 12 (5), relied on a modification of GCC-2020 which is post-termination and does not mention any modification of GCC-2001.

10. Assuming but not admitting that there was modification in the relevant clause of GCC-2001, it is argued that a party to the contract cannot unilaterally modify or vary or amend any term or condition of a contract. In support of such contention, learned counsel cites a Division Bench judgment of this Court in *Union of India vs. Inschrotech*, reported at 2017 SCC OnLine Cal 21549.
11. It is argued that circulars/notifications/letters cannot *ipso facto* change any term or condition of contract unilaterally. The said issue, it is argued, did not fall for consideration in *Central Organization (supra)*.
12. The petitioner, accordingly, prays for appointment of a sole arbitrator, which is contended to have been agreed upon by learned counsel for the respondent at the time of hearing.
13. Learned counsel for the petitioner further reiterates that the terms and conditions of a contract cannot be changed unilaterally without consent of both parties. Hence, applicability of the allegedly modified Clause 64(3)(b) cannot be considered to be a part of the arbitration agreement in terms of Section 7 of the 1996 Act. Learned counsel relies in this regard on a co-ordinate Bench judgment in *AP 297 of*

2018 [*Techma Engineering Enterprises Pvt. Ltd. vs. Union of India through General Manager (Engineering) South Eastern Railway*].

14. The modified Clause 64(3)(b), the petitioner submits, is contrary to the judgments of the Supreme Court which deprecate unilateral appointment of arbitrator. Learned counsel cites *Gangotri Enterprises Ltd. vs. General Manager Northern Railways*, reported at 2022 SCC OnLine Del 3556 in such context. It is argued that *Central Organization (supra)* did not overrule other judgments such as *Bharat Broadband Network Ltd. vs. United Telecoms Ltd.*, reported at (2019) 5 SCC 755 and *Perkins Eastman Architects DPC vs. HSCC (India) Ltd.*, reported at (2020) 20 SCC 760, which still govern the field, where unilateral appointment of arbitration has been held to be violative of the law.
15. Moreover, the Supreme Court in *Union of India vs. M/s Tantia Constructions Limited*, reported at 2021 SCC OnLine SC 271, *prima facie* expressed disagreement with *Central Organization (supra)*, which was also relied on by the Supreme Court in *JSW Steel Limited vs. South Western Railway*, reported at 2022 SCC OnLine SC 1973.
16. Learned counsel appearing for the respondents, on the other hand, submits, by handing over a list of suggested arbitrators comprised of retired Railway officers, disclosing their dates of retirement and other particulars, that the Eastern Railway does not have any objection if an arbitrator is appointed from the said list. Having said so, the respondents contend that the petitioner has prayed for appointment of a sole arbitrator by relying on Clause 64 of the GCC and, as such,

have waived the bar under Section 12 within the contemplation of sub-section (5) thereof.

17. A modification to Clause 64 of the GCC-2001 was brought about by a Notification dated November 16, 2016 whereby, in cases where applicability of Section 12 (5) has been waived, the Arbitral Tribunal shall consist of a panel of three gazetted Railway officers not below Junior Administrative Grade or two gazette officers not below GA Grade and a retired Railway Officer, not below the rank of Senior Administrative Grade officers.
18. Clause 64(3)(b) deals with situations where applicability of Section 12(5) has not been waived off, which stipulates that the arbitral panel shall be of three Railway officers, not below the rank of Senior Grade officers.
19. It is argued that the respondents have provided the petitioner with an extensive panel consisting of retired senior Railway officers, which is wide enough for the petitioner to choose from. In *Mehrotra Buildcon (supra)*, the learned Single Judge held that the panel was too narrow, being comprised of four names, which has been taken care of by furnishing a wide enough panel in the present case. Secondly, the learned Single Judge failed to provide distinct reasons as to why the particular facts and circumstances of the said case were different from *Central Organization (supra)*.
20. Learned counsel for the respondents next contends that *Central Organization (supra)* dealt with the modified clauses of the GCC, being Clause 64(3)(a)(ii) and Clause 64(3)(b) and, as such, the ratio laid

down in the said report is binding in the present case. The same has also been followed by a learned Single Judge in *ITD-ITD CEM Joint Venture vs. Kolkata Metro Rail Corporation Ltd.*, reported at 2021 SCC OnLine Cal 2337.

- 21.** It is argued that in case of conflicting judgments by Benches of equal strength of the Supreme Court, the earlier one is to be followed, as held in *National Insurance Co. Ltd. vs. Pranay Sethi*, reported at (2017) 16 SCC 680. The respondents also cite the case of *Union Territory of Ladakh & Ors. vs. Jammu and Kashmir National Conference & Anr.*, reported at 2023 SCC OnLine SC 1140, where the Supreme Court reiterated the same proposition.
- 22.** Accordingly, it is submitted that the present application under Section 11(6) of the 1996 Act be dismissed.
- 23.** Upon hearing learned counsel for the parties, the Court arrives at the following conclusions:
- 24.** Several issues have arisen in the present case which are as follows -
 - i) Whether the relevant Clauses of GCC-2001 contemplate a unilateral appointment of arbitrators; if so, what would be the effect thereof.
 - ii) Whether the appointment of retired employees of the Railways as arbitrators can be construed to be a violation of the law as embodied in Section 12(5) of the 1996 Act and the Fifth and Seventh Schedules of the 1996 Act.
 - iii) Whether the modification in Clause 64 of GCC-2001 by the Government Notification dated November 16, 2016 comprises a

unilateral alteration of the contract between the parties; if so, what would be the effect of the same.

- iv) Whether there has been a waiver under Section 12(5) of the 1996 Act in the present case.

Such issues are dealt with below.

i) Whether the relevant Clauses of GCC-2001 contemplate a unilateral appointment of arbitrators; if so, what would be the effect thereof.

- 25.** Conflicting judgments of co-ordinate Benches of this Court have been cited by both parties in this context. The petitioner cites *Rajpath Contractors (supra)* and *Mehrotra Buildcon (supra)* whereas the respondents cite *Techma Engineering Enterprises (supra)*, *M/s Tantia Constructions* and *ITD-ITD CEM (supra)*.
- 26.** In addition, the petitioners have also referred to *Glock Asia-Pacific Limited (supra)*.
- 27.** The above judgments have to be appreciated in the backdrop of *Central Organization (supra)*, which is the plinth of the respondents' case, more so, since Clause 64 of the GCC of the Railways and its sub-clauses, which fall for consideration in the instant case, were also discussed there.
- 28.** In *M/s Tantia Constructions (supra)*, a Supreme Court Bench of the same strength as *Central Organization (supra)*, comprised of three

Judges of the Supreme Court, disagreed with the ratio laid down in *Central Organization (supra)* for the basic reason that once the appointing authority itself is incapacitated for referring the matter to arbitration, it does not then follow that notwithstanding this yet appointments may be valid depending on the facts of the case.

29. Another Bench of equal strength, in the matter of *JSW (supra)*, relied on *M/s Tantia Constructions (supra)* to refer the issue to a larger Bench.
30. Thus, here we are faced with contradictory judgments of the Supreme Court on the same issue by Benches of equal strength. Although in *JSW (supra)* no specific reason was given for differing as such, in *M/s Tantia Constructions (supra)*, the court clearly differed from *Central Organization (supra)* on a specific ground.
31. In *Union Territory of Ladakh (supra)*, the Supreme Court observed that High Courts are not deciding cases on the ground that the leading judgment of Supreme Court on the subject is either referred to larger Bench or a review petition relating thereto is pending. The Supreme Court also considered cases where the High Courts refused deference to judgments on the score that a later co-ordinate Bench had doubted its correctness. While holding so, the Supreme Court held that when faced with conflicting judgments by Benches of equal strength of the said Court, it is the earlier one which is to be followed by the High Courts, as held by a Five-Judge Bench in *National Insurance Co. Ltd. (supra)*. However, in the very next sentence, the Supreme Court in *Union Territory of Ladhak (supra)* went on to hold that the High

Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

32. While considering the judgment in *Union Territory of Ladhak (supra)*, we cannot lose sight of the fact that the principle of following earlier judgments as precedent was not set down as an absolute proposition and the High Courts were cautioned to advert to the facts and circumstances of the case.
33. The law of precedence is clear on the subject.
34. In cases where there are two conflicting judgments of same-strength Benches and the later judgment does not take into consideration the earlier, there cannot be any doubt that the earlier judgment prevails and has to be followed by the High Courts.
35. However, if a later judgment of the Supreme Court of co-equal strength considers and explains or clarifies or deals with an earlier judgment, it is the later judgment which has binding effect on the High Courts.
36. There is also a third view which has been expressed often by the Supreme Court itself in a certain line of judgments, it being that, faced with two conflicting judgments of the Apex Court, the High Courts are required to follow the one which is more appropriate in the facts and circumstances of the case and/or considered to be more appropriate/better on point of law.
37. In the present case, in *M/s Tantia Constructions (supra)*, a co-equal Bench of the Supreme Court not only took notice of *Central Organization (supra)*, but clearly differed from the same upon citing a

particular ground and referred the matter to a larger Bench. Hence, this Court is faced with the unenviable but unavoidable conundrum of choosing one of the judgments from the two in the facts and circumstances of the case. Avoiding such exercise on convoluted reasoning would only postpone the issue and it would be more appropriate if this Court deals with the said issue first.

- 38.** A careful perusal of *Central Organization (supra)* shows that the premise of the reasoning therein is paragraph no. 38 of the said judgment. After detailing the facts in the said case, it was observed by the three-Judge Bench of the Supreme Court in paragraph no. 38 that since the respondent (contractor) has been given the power to select two names from out of the four names of the panel, the power of the appellant (Railways) nominating its arbitrator gets counter-balanced by the power of choice given to the respondent. Thus, it was held that the power of the GM to nominate the arbitrator is counter-balanced by the power of the respondent-contractor to select any of the two nominees from out of the four names suggested from the panel of the retired Railway officers. On such premise, the Supreme Court proceeded to observe that the GM is not ineligible to appoint, nominate or act as an arbitrator.
- 39.** With utmost respect, however, one aspect of Clause 64 of the GCC did not fall for consideration before the said court and, as such, the ratio therein cannot be considered to be a binding precedent on such omitted issue. As per the modified Clause 64, both in cases where there has been a waiver under Section 12(5) of the 1996 Act and

where there has not been such waiver, the entry point and the end point of discretion vests in the GM of the Railways. It is the GM who sends four names at the outset to the contractor for the latter to select two out of those four names, upon which selection, the same reverts back to the GM, who again selects one out of the two short-listed candidates. Thus, literally, the first and last word in appointment of arbitrators, even the contractor's nominee-member in the arbitral tribunal, lies with the GM. The role of the contractor is merely to *short-list*, and not *select*, out of the options given in the first place by the GM himself. Such sandwiched 'option' of the contractor between two choices of the Railway's GM, is, thus, a non-option or a pseudo option at best and not an option in its true sense.

40. That apart, two out of the total three arbitrators are, in any event, appointed by the GM, thereby skewing the outcome of the arbitration in favour of the Railways in a lopsided manner. Even if the petitioner was to choose one of the arbitrators independently, the majority arbitrators are chosen unilaterally by the GM, thereby rendering any counter-balance between the powers of nomination of the parties illusory.
41. The way the modified Clause 64 of the GCC has been oriented, the GM of the Railway (who himself is a serving employee of the Railway and is ineligible) gets to appoint all three arbitrators. The Railway's nominee and third arbitrator are appointed straightaway by the GM as per the said clause. Even the purported contractor's nominee is actually chosen by the GM, at the first instance by suggesting a four-member

panel of which two are merely short-listed by the contractor, and thereafter selecting one out of the said two who were also, in the first place, suggested by the GM himself.

42. Hence, in effect, a thorough perusal of the relevant provisions of Clause 64 of the GCC-2001, as modified, indicates that the appointment of the Arbitral Tribunal is completely unilateral, which is violative of Section 12(5) and the Fifth and Seventh Schedules of the 1996 Act as well as the propositions laid down in *Perkins Eastman (supra)* and *Glock Asia-Pacific Limited (supra)*. Hence, such aspect having not been considered in *Central Organization (supra)*, it cannot be held that the latter judgment is a binding precedent on the said aspect of the matter.
43. Secondly, in *M/s Tantia Constructions (supra)*, the Supreme Court disagreed with the ratio laid down in *Central Organization (supra)* on the ground that the GM himself, being ineligible under Section 12(5) read with the Fifth and Seventh Schedules, of the 1996 Act, cannot nominate arbitrators, which is the well-established position of law even otherwise. The said ground, thus, was also not considered in *Central Organization (supra)*.
44. Accordingly, in the facts of the present case, as narrated above, out of the two judgments - *Central Organization (supra)* and *M/s Tantia Constructions (supra)* - in the humble opinion of this Court, the latter is more apt on point of law vis-à-vis the issues involved herein and, accordingly, the ratio laid down in the latter is to be followed.

- 45.** The appointment of the Arbitral Tribunal being clearly unilateral at the behest of the Railways, the same is violative of the ratio of *Perkins Eastman (supra)* and *Glock Asia-Pacific Limited (supra)* as well as the provisions of Section 12(5) and the Fifth and Seventh Schedule of the 1996 Act and hence, is bad in law.

ii) Whether the appointment of retired employees of the Railways as arbitrators can be construed to be a violation of the law as embodied in Section 12(5) of the 1996 Act and the Fifth and Seventh Schedules of the 1996 Act.

- 46.** The Supreme Court, in *Central Organization (supra)*, followed *Voestalpine Schienen GMBH v. Delhi Metro Rail Corpn. Ltd.*, reported at (2017) 4 SCC 665 and *State of Haryana PWD Haryana (B and R) Branch v. G.F. Toll Road (P) Ltd. and others*, reported at (2019) 3 SCC 505, in all of which it was held that retired employees of one of the parties are excluded from the bar under Section 12(5) of the 1996 Act. Hence, it is well-settled that retired employees of the Railways fall outside the pale of the said bar and cannot be considered to be ineligible as arbitrators within the contemplation of the 1996 Act.
- 47.** There is a further logic to such proposition. Current employees have a direct conflict of interest inasmuch as they have a decision-making power on behalf of the Railways on issues which are directly the subject-matter of the arbitration. Secondly, current employees can potentially be incentivized in various manners, since they are still in

service, to elicit a biased view in favour of the employer. Hence, potentially, there is an element of control which can be exerted by the Railway, one of the parties to the dispute, on its current employee who acts as the arbitrator.

- 48.** On the contrary, in case of retired employees, their only attachment to the employer lies in pensionary and retiral benefits which are statutory and/or contractual benefits, independent and irrespective of the outcome of an arbitral proceedings. Retired employees are outside the scope of any incentivization or disincentivization by the employer. Additionally, being in the service of the Railways throughout their careers spanning over a considerable period of time, retired Railway employees should have the necessary expertise to deal with the technical aspects of the matters involved in connection with works done for the Railways, which may be essential components of the dispute.
- 49.** Even in the present case, the underlying refrain of the petitioner has been that it has no objection to a retired employee of the Railways being appointed. However, the unilateral texture of Clause 64 is the sticking point.
- 50.** Seen from such perspective, this issue is answered in the negative. Nomination of retired employees as members of the Arbitral Tribunal cannot be construed to be violative of the law, since they are otherwise eligible to be so nominated.

iii) Whether the modification in Clause 64 of GCC-2001 by the Government Notification dated November 16, 2016 comprises a unilateral alteration of the contract between the parties; if so, what would be the effect of the same.

51. The Division Bench judgment of this Court in the matter of *Inschrotech (supra)*, was in a different factual context. It was observed that it is elementary that a contract cannot be altered by one party without the consent of the other party thereto. There cannot be any quarrel with the said proposition.
52. In *Mehrotra Buildcon (supra)*, the Learned Single Judge of this Court had insinuated, although not in specific terms, that the modification in Clause 64 of the GCC-2001 comprised a unilateral alteration of the contract clause.
53. Certain documents were, however, not placed before the learned Single Judge and as such could not, in all fairness, have been considered by the said Court while coming to such finding.
54. The LoA issued to the petitioner herein accepts unequivocally that the work shall be executed in accordance with the terms and conditions laid down in the tender. Clause 2.0 of the "Instruction to Tenderers", which is a part of the tender document, provides that the GCC-969, GCC-2001 and the L&M Schedule-1987/1996/2005/Eastern Railway USSOR-2011 shall be read with all correction slips issued thereto from time to time and shall form integral part of the tender document.

- 55.** Thus, the petitioner submitted to the primacy of the provisions of GCC-2001 along with all correction slips which may be issued in respect thereof from time to time. Accordingly, the subsequent modification of 2016 to Clause 64 is not so unilateral as it has been made out by the petitioner to be, being premised on the accession of the petitioner to the provisions of the tender document which, in turn, apply GCC-2001 along with all subsequent corrections/modifications to the parties.
- 56.** Another aspect of the matter ought also to be considered. The GCC is a universal set of General Conditions applying to all contractors of the Railways throughout the territories of India and cannot be construed to be skewed against any particular contractor, including the petitioner. Thus, it cannot be said the modification is not applicable in the present case. This issue is decided accordingly.

iv) Whether there has been a waiver under Section 12(5) of the 1996 Act in the present case.

- 57.** In the present case, the petitioner, in its invocation letter dated July 16, 2021 itself, made it clear that it was not waiving the bar under Section 12(5) 1996 Act, by categorically alleging that Clause 64 is not applicable since the Railway is no longer eligible to appoint a serving Railway Officer in terms of Clause 64.
- 58.** The respondents suggest that by seeking a reference to sole Arbitrator from the panel, the said clause was accepted, thereby waiving the bar

under Section 12(5). However, the petitioner, despite refuting the applicability of the clause, independently offered appointment of a sole Arbitrator which, in any event, is beyond Clause 64, since the said clause contemplates a three-member Arbitral Tribunal, and not a sole arbitrator, being appointed.

59. In any event, the proviso to Clause 12(5) of the 1996 Act itself provides that parties may *subsequent to dispute having arisen between them*, waive the applicability of sub-section (5) of Section 12 by an express agreement in writing. Here, there is no express agreement in writing subsequent to the dispute having arisen (even before the dispute arose, for that matter).
60. Thus, there was no waiver in writing under the proviso to Section 12(5) in the instant case.
61. This issue, thus, is answered in the negative.
62. In view of the above discussions, there cannot be any doubt that Clause 64 of GCC-2001, as modified, which contemplates unilateral appointment of arbitrators by the GM of the Eastern Railway, who himself is ineligible under Section 12, read with the Fifth and Seventh Schedules as well as contrary to the *Perkins Eastman Architects DPC (supra)* judgments and the *Glock Asia-Pacific Limited (supra)* judgment, is violative of the law and not binding on the petitioner insofar as the composition of the tribunal is concerned.
63. However, fact remains that the parties have agreed to accept Clause 64 only so far as reference of the dispute between them under the contract to be made to an Arbitral Tribunal is concerned. As the

clause contemplates a three-member Tribunal, which *per se* is not illegal, there cannot be any reason why the said modality should be deviated from by the Court.

64. In such context, since the petitioner itself has all along agreed to appointment of at least one Arbitrator from the panel of the retired Officer of the Railways, it would only to be appropriate if the respondent's nominee is selected from the last panel of such retired Officers handed over in court by the respondents. Insofar as the petitioner's nominee is concerned, in the opinion of this Court, a learned Advocate of this Court may be so appointed. A retired Judge of this Court would be the appropriate choice, in such case, as the third and presiding Arbitrator to complete the constitution of the Arbitral Tribunal.
65. Accordingly, AP No. 492 of 2021 is allowed on contest, thereby appointing Ms. Deblina Lahiri (Mobile No. 9831155553), a member of the Bar Association, as the nominee arbitrator of the petitioner, Mr. Alakes Bandyopadhyay, Ex. FA & CAO, Metro Railway, Kolkata, as the nominee Arbitrator on behalf of the respondents, and Justice Md. Nizamuddin, a retired Judge of this Hon'ble Court, as the third and presiding Arbitrator, the three of whom would comprise of the arbitral panel to decide the disputes between the parties. The above appointments shall be subject to disclosures being obtained from each of the above Arbitrators under Section 12 of the 1996 Act. The Arbitral Tribunal shall, in consultation with the parties, fix their own remuneration in terms of the 1996 Act, read with its Fourth Schedule.

- 66.** There will be no order as to costs.
- 67.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

Later :-

After the above judgment is passed in open Court, learned counsels for both parties submit that they are agreeable to a sole arbitrator being appointed.

In view of such submission, the above order is modified to the limited extent that paragraph no. 65 of the same shall stand deleted. Instead, the following paragraph would go in as part of the above judgment:

“Accordingly, AP 492 of 2021 is allowed on contest, thereby appointing Ms. Deblina Lahiri (Mob No. 9831155553), a member of the Bar Association, as the sole Arbitrator to resolve the dispute between the parties, subject to disclosure being obtained from her under Section 12 of the 1996 Act. The learned Arbitrator shall, in consultation of the parties, fix her own remuneration in terms of the 1996 Act, read with its Fourth Schedule.”

(Sabyasachi Bhattacharyya, J.)