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

+ **O.M.P. (T) (COMM.) 4/2025**

DELHI JAL BOARD

.....Petitioner

Through: Ms. Sangeeta Bharti, SC for DJB,
along with Mr. Ashish Kumar, Mr.
Mukund Gupta and Ms. Manya
Sharma, Advocates.

versus

M/S SPML INFRA LTD.

.....Respondent

Through: Mr. Aayush Agarwala and Mr.
Sourav Dutta, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **17.01.2025**

I.A. 1143/2025 (Exemption)

Allowed, subject to all just exceptions.

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1. The present Petition under Section 14(2) of the Arbitration Act has been filed by the Petitioner seeking termination of the mandate of Mr. R. D. Gupta, learned Co-Arbitrator of the Arbitral Tribunal.
2. Material on record discloses that a work order was awarded to the Respondent by the Petitioner for Construction of 90 MGD (408.6 MLD-PEAK) effluent pumping station i/c conveyance system for disposal of effluent in the River Yamuna downstream of Wazirabad barrage and other related associated/ allied appurtenant works on Design, Build and Operate Basis at Yamuna Vihar. It is stated that disputes arose between the parties and an Arbitral Tribunal was constituted with both the sides nominating one

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Arbitrator and Justice (Retd.) R.C. Chopra, a former Judge of this Court, was appointed as the Presiding Arbitrator of the Arbitral Tribunal. It is stated that during the COVID-19 pandemic the nominee Arbitrator of the Respondent herein passed away and Mr. R. D. Gupta was appointed by the Respondent as its nominee Arbitrator.

3. It is the case of the Petitioner that in the disclosure statement given by Mr. R. D. Gupta on 18.04.2023, he has not disclosed about any past or present relationship with any of the parties. Learned Counsel for the Petitioner draws the attention of this Court to S.No.4 of the disclosure which reads as under:

“4. I further declare and state that I am under no bar or incapacity and no obligation is cast upon me, by virtue of the said Act and more specifically the covenants contained in the Fifth and Seventh Schedule therein, thereby rendering me intangible for appointment as the Nominee Arbitrator. In view of what is stated herein above, I hereby give my consent to be appointed as the nominee Arbitrator.”

4. It is stated by the learned Counsel for the Petitioner that in the second disclosure statement dated 04.08.2023, given by the Nominee Arbitrator of the Respondent, disclosed that he has been appointed as a Nominee Arbitrator in three other Arbitrations and two of them involve the Respondent herein as one of the party. The said disclosure reads as under:

“Subject: Disclosure Statement under 6th Schedule in Arbitration between SPML Infra and DJB in my Disclosure statement dated 18.04.23.

I have disclosed that I have three on going Arbitrations. I give below the details of these arbitration as below.



Two arbitrations are between SPML and NHPC

In both these arbitrations I am Nominee Arbitrator of NHPC

Justice Iqbal Ahmed Ansari Former CJ Patna H.C. is Nominee Arbitrator of SMPL

Presiding Arbitrator Justice Arijit Pasayat Former Judge SC

Third Arbitration is between Jaiprakash Associates and UP PWD

In this arbitration I am Nominee Arbitrator of Jaiprakash Associates

Sh. A.K. Srivastava Nominee Arbitrator of UP PWD Justice Arijit Pasayat is Presiding Arbitrator.”

5. A reading of the abovementioned disclosure statement shows that in two Arbitration matters between SPML and NHPC, Mr. R. D. Gupta was appointed as a Nominee Arbitrator by the NHPC and not by the SPML.

6. Material on record shows that an application under Section 12 of the Arbitration Act was filed by the Petitioner herein before the Arbitral Tribunal stating that Mr. R. D. Gupta ought to recuse himself from the Arbitration on the ground that he has given a false disclosure. The said application was rejected by the Arbitral Tribunal on 21.10.2023 holding that Mr. R. D. Gupta was not appointed by SPML as its Nominee Arbitrator in the other two Arbitration matters and, therefore, his appointment as a Nominee Arbitrator is not in violation of 5th and 7th Schedule of the Arbitration Act. The said Order is under challenge in the present Petition.

7. Learned Counsel for the Petitioner very vehemently contends that Mr.



R. D. Gupta has not come clean in the first disclosure statement and, therefore, his appointment is hit by Section 14(1) & (2) of the Arbitration Act and, therefore, Mr. R. D. Gupta should *de jure* be not permitted to continue as the Nominee Arbitrator of the Respondent herein on the ground of impartiality.

8. Learned Counsel for the Respondent contends that the present Petition is not maintainable. He draws the attention of this Court to Sections 13(4) and 13(5) of the Arbitration and Conciliation Act, 1996 stating that once the application filed by the Petitioner challenging the appointment of Mr. R. D. Gupta has been rejected by the Arbitral Tribunal, it is not open for the Petitioner to approach this Court challenging the appointment and the Petitioner can only challenge the award under Section 34 of the Arbitration Act after the award is passed by the Arbitral Tribunal.

9. Clause 22 of the 5th Schedule of the Arbitration Act reads as under:

“Previous services for one of the parties or other involvement in the case

22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.”

10. A perusal of Clause 22 of the 5th Schedule of the Arbitration Act shows that the Arbitrator is not precluded from being appointed as an Arbitrator as he has not been appointed as an arbitrator on two or more occasions by the parties or an affiliate of the parties. In the present case, Mr. R. D. Gupta was not appointed by the Respondent herein as its Nominee Arbitrator in other two matters. In fact he was appointed by NHPC, who was the rival party in those Arbitrations against the Respondent herein.



11. Learned Counsel for the Respondent is correct in contending that the order under challenge has been made by the Tribunal under Section 12 of the Arbitration & Conciliation Act. Section 13(3) of the Arbitration & Conciliation Act provides that unless the arbitrator challenged under Section 13(2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide upon the challenge and since the said challenge has failed, the only recourse available to the Petitioner is to raise this objection after the award is rendered under Section 34 of the Arbitration & Conciliation Act.

12. In view of the above, this Court is not inclined to terminate the mandate of Mr. R. D. Gupta.

13. Accordingly, the Petition is dismissed along with the pending applications, if any.

14. However, it is made clear that the argument regarding impartiality can be raised by the Petitioner in Petition under Section 34 of the Arbitration Act in case the award goes against the Petitioner. The observation made by this Court is in the context of the present application. If contentions regarding impartiality of the Arbitrator are raised in a petition under Section 34 by the Petitioner, the same shall be dealt with on its own merits without being prejudiced by any of the observations made in this order.

SUBRAMONIUM PRASAD, J

JANUARY 17, 2025

Rahul