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

+ **ARB.P. 694/2025**

M/S V. INSPIRER FACILITY MANAGEMENT PVT. LTD

.....Petitioner

Through: Ms. Samya Gairola, Advocate
(Through VC)

versus

GENERAL MANAGER NORTHERN RAILWAY AND ANR.

.....Respondent

Through: Ms. Arunima Dwivedi, CGSC with
Ms. Pinky Pawar and Mr. Aakash
Pathak, Advocates

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% 05.05.2025

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 ('A&C Act') seeking appointment of Sole Arbitrator to adjudicate the disputes that have arisen between the parties.
2. It is stated in the petition that the disputes between the parties emanate from a Contract dated 07.06.2024.
3. The arbitration clause is contained in Clause 22 of the aforementioned Contract read with clause 64(1) of the General Conditions of Contract (Indian Railways) ('GCC').
4. It is stated that notice invoking arbitration was sent on 13.09.2024 to the Respondent followed by a supplementary notice dated 13.12.2024.
5. In light of the foregoing facts, the Petitioner has approached this



Court for the appointment of a Sole Arbitrator under Section 11 of the Act.

6. Learned Counsel for the Petitioner states that approximate value of the claim is Rs. 10 crores.

7. Issue notice. Learned standing counsel appearing on behalf of the Respondent on advance service accepts notice.

8. She states that parties may be given two (2) weeks' time to consider an amicable resolution of the disputes raised by the Petitioner's in the grievance letters, failing which, the issue of appointment of Arbitrator is considered.

9. She further states that, without prejudice to the aforesaid submissions, as per clause 64(3)(a)(ii) of GCC, the Arbitrator has to be appointed from the names suggested by the Railways.

10. This Court has considered the submissions and perused the record.

11. In the considered opinion of this Court, the submission of the Respondent that the appointment of the Arbitral Tribunal must be from the panel proposed by the Railways under Clause 64(3)(a)(ii) of the GCC cannot be accepted. The Supreme Court in **Central Organisation for Railway Electrification v. M/s ECI-SPIC-SMO-MCML (JV)**¹, has observed that the procedure which permits only one party, such as the Railways, to curate a panel of arbitrators and then require the other party to choose its nominee from such a pre-selected list, is impermissible in law. The Supreme Court has held that such a process violates the principle of equal treatment of parties under Section 18 of the A&C Act and fails the test of independence and impartiality under Section 12(5) read with the Seventh Schedule. The Supreme Court further clarified that where the appointing authority has an



interest in the dispute, it cannot be allowed to control the appointment process, either directly or indirectly. The relevant paragraphs of the judgment read as under:

“68. The first part of Section 18 provides that “parties shall be treated with equality.” The broad nature of the prescription has to be complied with not only by arbitral tribunals, but also by parties while giving expression to party autonomy. The principle has to be followed in all procedural contexts of arbitral proceedings, including the stage of appointment of arbitrators. According to Peter Binder, the principle of equal treatment of parties “means that no party may be given preference in the arbitrator-selection process regardless of how strong its bargaining power may be.

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132. In Voestalpine (supra) and CORE (supra), one of the parties curated a panel of arbitrators and mandated the other party to select their arbitrator from the panel. Since the curation of the list is exclusively undertaken by one party, the other party is effectively excluded from the process of curating the panel from which exclusively, the appointment of an arbitrator is to be made. The other party has to mandatorily select its arbitrator from a curated panel, restricting their freedom to appoint an arbitrator of their choice. This is against the principle of equal treatment contained under Section 18. In this situation, there is no effective counter-balance because both parties do not participate equally in the process of appointing arbitrators. The party curating the panel can restrict the choice of the party only to a person who is on the panel selected by the other party and to no other person.

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135. Such an arbitrator-appointment clause is likely to give rise to justifiable doubts as to the independence and impartiality of arbitrators for two reasons : (i) the contractor is restricted to choosing its arbitrator from the panel of four arbitrators nominated by the party who is a disputant; and (ii) the contractor's choice is further constrained because it is made subject to the decision of the General Manager who will choose one among the two persons suggested by the party. Since the contractor has to select its arbitrator from a curated panel, the arbitration clause does not allow the contractor equal participation in the appointment of their arbitrator. Moreover, the clause allows the General Manager to appoint the balance arbitrators from either the panel or outside the panel.

¹ 2020 SCC OnLine SC 3219



Thus, the process of appointing the arbitrators is unequal because the General Manager can go beyond the panel of four potential arbitrators, while the contractor is bound by the names enlisted in the panel.”

(Emphasis Supplied)

12. Accordingly, this Court finds no merit in the Respondent’s submission that the arbitrator must be appointed from the names suggested by the Railways.

13. This Court is, therefore, of the view that the Petitioner has made out a case for appointment of an arbitrator, and all rights and contentions of the parties on merits may be left open for adjudication by the learned Arbitrator.

14. At this stage, the parties (including the Respondent) jointly state that the matter may be referred to a Tribunal consisting of a Sole Arbitrator and they state that the Arbitrator may be a former Judge of this Court.

15. Accordingly, **Justice Rekha Palli**, Former Judge, High Court of Delhi [Mob. No. 9810380823 of Mr. Shiblal Khandal, the clerk of the Arbitrator] is appointed as an Arbitrator.

(i) The learned Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act of 1996 before entering into the reference.

(ii) The parties jointly consent that the arbitration be held under the aegis of Delhi International Arbitration Centre (DIAC) and as per the Rules of DIAC. It is ordered accordingly.

(iii) The remuneration of the learned Sole Arbitrator shall be in terms of Schedule IV of the Act of 1996 as amended by the Rules of DIAC.

16. It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator



17. However, to enable the parties to consider a meaningful mediation settlement, the Ld. Arbitrator is requested to enter reference after four (4) weeks.

18. The parties undertake report to the Ld. Arbitrator, whether they have arrived at an amicable settlement or not within four (4) weeks; and for this purpose, a preliminary hearing through video conferencing will be held before the Ld. Arbitrator on 03.06.2025.

19. With the aforesaid directions, the application stands disposed of.

20. Copy of this order be sent to the Secretary DIAC and the learned Sole Arbitrator for information and compliance.

21. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MAY 5, 2025/rhc/akp

MANMEET PRITAM SINGH ARORA, J
[Click here to check corrigendum, if any](#)