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

+ **ARB.P. 1198/2025**

M/S PRAKASH METALLIC PVT LTDPetitioner

Through: **Mr. Manish Raghav and Mr. Prakash
Srivastava, Advocates**

versus

UNION OF INDIA AND ANRRespondents

Through: **Mr. Ruchir Mishra, Mr. Sanjiv Kr.
Saxena, Mr. Mukesh Kr. Tiwari,
Ms. Poonam Shukla and Ms. Reba
Jena Mishra, Advocates**

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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18.09.2025

1. This petition is being filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter, 'the Act') seeking appointment of an independent Sole Arbitrator.
2. It is the case of the petitioner that the respondent no.2 has unilaterally appointed an Arbitrator despite the reservation expressed by the petitioner vide its communication dated 16th September, 2024.
3. Respondents seek time to file reply.
4. In view of the limited issue involved, need is not felt to grant the time to file reply.
5. Counsel for the parties have been heard.
6. Mr. Ruchir Mishra, SPC, appearing on behalf of the respondents



submits that in terms of the arbitration clause 2900 of the agreement, the Arbitrator has to be appointed by the respondents. The relevant extract of the said arbitration clause is set out below:

“2900. Arbitration

(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.

(b) In the event of the arbitrator dying, neglecting or refusing to act or resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for the authority appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

(c) It is further a term of this contract that no person other than the person appointed by the authority as aforesaid should



act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitration at all.

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xxx

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(f) Subject as aforesaid, the Arbitration Act, 1940 and the rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

(g) The venue of arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

(h) In this clause the authority, to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.”

7. In the notice invoking arbitration sent by the petitioner on 29th May, 2024, the petitioner has itself called upon the respondents to appoint an Arbitrator.
8. Pursuant to the aforesaid notice, a communication was sent by the respondent to the petitioner on 27th August, 2024. The respondents provided a panel of four Railway Officers for appointment as an Arbitrator and sought suggestions of the petitioner.
9. The petitioner *vide* letter dated 16th September, 2024, objected to appointment of the names of persons from the panel of arbitrators suggested by the respondents, and called upon the respondents for appointment of an independent Arbitrator who is not related to Indian Railways.
10. The respondents provided a panel of four Railway Officers for appointment as an Arbitrator and sought suggestions of the petitioner.
11. Ultimately, the respondents appointed a sole Arbitrator, who is the



retired employee of the respondents, on 1st November, 2024.

12. The said Arbitrator entered reference on 21st November, 2024.

13. The petitioner objected to the appointment of the Sole Arbitrator under Section 12 of the Act.

14. I have heard the counsel for the parties.

15. It is no more *res integra* that a party cannot appoint an Arbitrator unilaterally even if the arbitration agreement permits the party to appoint an Arbitrator. Reference in this regard may be made to the judgment of Division Bench in ***Mahavir Prasad Gupta v. Govt. of NCT of Delhi, 2025 SCC OnLine Del 4241.***

16. In view of the above, this Court is inclined to appoint an independent Arbitrator in exercise of jurisdiction under Section 11(6) of the Arbitration and Conciliation Act.

17. Accordingly, the parties under the Agreement are referred to the Arbitral Tribunal comprising of a Sole Arbitrator. The following directions are issued in this regard:

- a. Ms. Mrinmoi Chatterjee (Mobile No.: 9871043892) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- b. The Arbitrator shall be entitled to remuneration as per Schedule IV of the Act.
- c. The Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference. In the event there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.



d. The parties shall approach the Arbitrator within two (2) weeks from today.

18. It is made clear that all the rights and contentions of the parties, including preliminary objections with regard to limitation and/ or arbitrability of any of the claims as well as claims/ counter-claims of either of the parties on the merits of the dispute including the defence of the respondent that no amount is due and payable to the petitioner, are left open for adjudication by the Arbitrator.

19. The petition is disposed of in the above terms.

20. Needless to state, nothing in this order shall be construed as an expression of this Court on the merits of the case

AMIT BANSAL, J

SEPTEMBER 18, 2025
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