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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (T) (COMM.) 76/2025&I.A. 19775/2025, I.A. 19776/2025**

SATBIR SINGH

.....Petitioner

Through: Mr Sourabh Gupta, Mr Vasu Dev, Mr.
Akshansh Gupta, Ms. Priya Mittal,
Advs.

versus

M/S VERSATILE COMMOTRADE PRIVATE LIMITED

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
13.08.2025

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1. This is a petition filed under Section 14 read with section 15 of the Arbitration and Conciliation Act, 1996 seeking termination of the mandate of the learned Sole Arbitrator and appoint a substitute Sole Arbitrator.
2. It is stated that the petitioner in his list of witnesses has named 8 witnesses who are not in his power and custody and requested the learned Sole Arbitrator for permission for taking steps to summon those witnesses. Subsequently, the Certified Copies were filed leading to dropping of the 4 out of the 8 witnesses. The learned Sole Arbitrator vide order dated 05.11.2024 did not grant permission to summon those witnesses which was the first day of evidence.



3. An application for recalling of the order dated 05.11.2024 was also dismissed by the learned Sole Arbitrator *vide* impugned Order of 29.06.2025.
4. Thereafter, the petitioner filed an application under section 12 of the Arbitration and Conciliation Act, 1996, which was dismissed on 05.08.2025.
5. Mr. Gupta, learned counsel for the petitioner states that the learned Sole Arbitrator is holding hearing with a pre-conceived bias and is not permitting the petitioner to lead evidence in the best way and manner the petitioner deems fit and proper and in terms of the Section 18 of the Arbitration and Conciliation Act, 1996.
6. A co-ordinate bench of this Court in ***Thiess Iviinecs India v. NTPC Limited, 2016 SCC OnLine Del 1819*** has observed as under:-

“25. Section 5 specifically prohibits any judicial authority to intervene in the arbitration proceedings notwithstanding anything contained in any other law, for the time being in force in matters governed by part I of the Act, except to the extent, provided for in the Act. On perusal of Section 19(1), it is noted that the Tribunal shall not be bound by the Code of Civil Procedure, 1908 or Indian Evidence Act, 1872. Section 19(2) contemplates, the parties are free to agree on the procedure to be followed by the Tribunal. Section 19(3) stipulates, failing any agreement, the Tribunal may conduct the proceedings, in the manner it considers appropriate. Section 19(4) contemplates, the Tribunal to govern the admissibility, relevancy, materiality and weight of any



evidence. Unlike 19(4), a perusal of Section 27 would reveal, it is enacted for the Court's assistance in taking evidence. There is nothing in Section 27, where the Court can determine the admissibility, relevancy, materiality and weight of any evidence. The only requirement for the Court is to ensure that it is within its competence and according to its Rules on taking evidence. The nature of power exercised is to execute the request as the Tribunal on its own cannot do it, in view of the inapplicability of the provisions of the Code of Civil Procedure, 1908. Such a request presupposes a direction of the Tribunal to produce the documents, which has not been complied with.

26. Further, the competence of a Court is not the same as determining the admissibility, relevancy, materiality and weight of any evidence, otherwise Section 27 would have said so. The words 'according to its Rules' have been held to mean issuance of process to witness in the same manner as the Court issues in suits, tried before it.

27. The submission of Mr. Singh that the judgment of this Court in Silor (supra), BHEL (supra) and National Insurance Corporation (supra), would not be applicable as they do not relate to documents having statutory protection is not appealing. The judgments primarily relate to the scope of Section 27 of the Act, with which, we are concerned here. I have already held, in exercise of power under Section 27, this Court cannot determine the admissibility, relevancy,



materiality and weight of any evidence. There is another reasoning to it, that if the argument of Mr. Singh is to be accepted the Court is primarily interfering with the proceedings of the Tribunal, which is impermissible, except in certain circumstances laid down in the Act.

28. I reproduce hereunder, the following paragraphs of the judgment of the Bombay High Court in National Insurance Company Limited (supra), for benefit.

“40. In my view, the arbitral tribunal cannot issue a witness summons itself or cannot enforce its own order of producing certain documents or cannot force a party or a third party to lead evidence or to produce documents. The arbitral tribunal or a party to the proceedings with the approval of the arbitral tribunal may apply to the Court for assistance in taking evidence. In my view, at this stage, this Court cannot go into the validity and correctness of the order passed by the learned arbitrator granting permission to the respondent herein for seeking assistance of this Court in taking evidence under Section 27 of the Arbitration Act. It is for the arbitrator to decide as to whether particular documents or presence of a particular witness would be necessary for the proper adjudication of the dispute between the parties or not, if any such application is made by the parties to the arbitral



proceedings. In these proceedings under Section 27 of the Arbitration Act, this Court cannot decide whether production of such documents or presence of such witness was warranted or not.

41. The purpose of Section 27 of the Arbitration Act, in my view, is to provide assistance to the arbitral tribunal or to a party in taking evidence with a view to expedite the arbitral proceedings. Merely because the arbitral tribunal has no power to issue a witness summons or to compel the attendance of the witnesses, the parties should not suffer. The legislature has inserted the Section 27 of the Arbitration Act to avoid this inconvenience to the parties to the arbitral proceedings and has thus empowered the arbitral tribunal as well as the parties to take assistance of the Court. The Court is empowered to issue direction to a party or even third party to produce documents or witnesses by summoning the party or even third party if the arbitral tribunal has granted permission and is of the opinion that production of such documents or evidence of such party including third party would be necessary for proper and effective adjudication of the dispute before it.”

(Emphasis added)

7. The aforesaid judgment was also followed by this Court in **SAIL v.**



Uniper Global Commodities, 2023 SCC OnLine Del 7586. What emerges is that it is for the Arbitrator to consider the relevancy and materiality of any evidence sought to be produced during the arbitral proceedings.

8. It is also relevant to refer to the judgment of ***Progressive Career Academy (P) Ltd. v. FIIT Jee Ltd., 2011 SCC OnLine Del 2271*** wherein it was observed as under:-

“16. On a reading of Section 13(5), the legislative intent becomes amply clear that Parliament did not want to clothe the Courts with the power to annul an Arbitral Tribunal on the ground of bias at an intermediate stage. The Act enjoins the immediate articulation of a challenge to the authority of an arbitrator on the ground of bias before the Tribunal itself, and thereafter ordains that the adjudication of this challenge must be raised as an objection under Section 34 of the Act. Courts have to give full expression and efficacy to the words of the Parliament especially where they are unambiguous and unequivocal. The golden rule of interpretation requires Courts to impart a literal interpretation and not to deviate therefrom unless such exercise would result in absurdity...”

(Emphasis added)

9. Further, the Hon’ble Supreme Court in ***HRD Corporation (MarcusOil and Chemical Division) v. GAIL, (2018) 12 SCC 471*** and more particularly in paragraph 12 observed as under:-

“12. After the 2016 Amendment Act, a dichotomy is made by the Act between persons who become “ineligible” to be



appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes “ineligible” to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(a), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as “ineligible”. In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the Arbitral Tribunal under Section 13. Since such a person would lack inherent jurisdiction to proceed any further, an application may be filed under Section 14(2) to the Court to decide on the termination of his/her mandate on this ground. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under Section 13(4) and make an award. It is only after such



award is made, that the party challenging the arbitrator's appointment on grounds contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with Section 34 on the aforesaid grounds. It is clear, therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on items contained in the Fifth Schedule under which the appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal.”

(Emphasis added)

10. From the aforesaid judgments, it is clear that the grounds mentioned in the fifth schedule can only be taken before the learned Sole Arbitrator by way of filing an application, and if the learned Sole Arbitrator rejects the said application, then the only recourse available to the petitioner is post Award when an application under section 34 is filed. In the present case, the allegation levelled by the petitioner *qua* the learned Sole Arbitrator is of independence or impartiality contained in fifth schedule and not ineligibility contained in seventh schedule. Further, the petitioner has exercised its remedy before the learned Sole Arbitrator by filing an application which is dismissed *vide* order dated 05.08.2025.
11. For the said reasons, the present petition is disposed of granting liberty to the petitioner to raise all the contentions raised in the present



petitionat the stage under Section 34 of the Arbitration and Conciliation Act, 1996, if required.

JASMEET SINGH, J

AUGUST 13, 2025/sp