



2025:DHC:2676



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Judgment pronounced on: 17.04.2025*+ **O.M.P.(MISC.)(COMM.) 564/2023**

POWER GRID CORPORATION OF INDIA LTD Petitioner
Through: Mr. S. B. Upadhyay, Sr. Advocate
alongwith Mr. P.K. Mishra and Mr.
Anant Dev, Advocates.
versus

SPML INFRA LIMITED Respondent
Through: Mr. Raman Kapur, Sr. Advocate
along with Mr. Parag Chaturvedi and
Mr. Rahul Kumar Yadav, Advocates.

+ **O.M.P. (T) (COMM.) 136/2024**

SPML INFRA LIMITED Petitioner
Through: Mr. Raman Kapur, Sr. Advocate
along with Mr. Parag Chaturvedi and
Mr. Rahul Kumar Yadav, Advocates.
versus

POWER GRID CORPORATION OF INDIA LIMITED...Respondent
Through: Mr. S. B. Upadhyay, Sr. Advocate
alongwith Mr. P.K. Mishra and Mr.
Anant Dev, Advocates.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA
JUDGMENT

1. The present petitions have been filed in connection with an ongoing arbitration for adjudication of disputes between the parties arising out of Letters of Award(s) dated 02.08.2005 bearing LOI no. C-46605-L995-3/LOA-I/1751 and LOA no. C-46605-L995-3/LOA-II/1752 against



specification no. C-46605-L995-3 for Rural Electrification Works (RE) in Rohtas District of Bihar under Government of India Scheme of Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY) “Package D1”.

2. O.M.P.(MISC.)(COMM.) 564/2023 [under Section 29A(4) and (5) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘A&C Act’)] has been filed by Power Grid Corporation of India Limited (hereinafter referred to as ‘Power Grid’) seeking extension of time for completion of arbitral proceedings and making of the arbitral award.

3. O.M.P. (T) (COMM.) 136/2024 [under Section 14(1)(a) read with Section 15 of the A&C Act] has been filed by SPML Infra Limited (hereinafter referred to as ‘SPML’) seeking that the Presiding Arbitrator, be substituted and thereby the Arbitral Tribunal, adjudicating the disputes between the parties, be reconstituted.

4. For the purpose of seeking extension of time under Section 29A of the A&C Act as prayed for in O.M.P.(MISC.)(COMM.) 564/2023, learned senior counsel for Power Grid has drawn the attention of this Court to the sequence of events to urge that the arbitral proceedings have been conducted by the Arbitral Tribunal in right earnest; the Arbitral Tribunal was constituted on 19.06.2018 and the arbitral proceedings have spanned during the Covid-19 Pandemic.

5. It is thus contended by the learned senior counsel for Power Grid that the Arbitral Tribunal has not been remiss in the conduct of the arbitral proceedings. Further, the arbitral proceedings have been stalled only on account of the stand taken by SPML, which has prevented continuation of the arbitral proceedings.

6. Reliance is placed on *Rohan Builders (India) Private Limited v.*



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Berger Paints India Limited, 2024 SCC Online SC 2494 and ***Ajay Protech Pvt. Ltd. v. General Manager and Another***, 2024 SCC Online SC 3381, to contend that this Court is empowered to extend the mandate of the arbitral tribunal even where an application under Section 29A of the A&C Act is filed after the expiry of the period specified under Section 29A(1) and / or the extended period under Section 29A(3). Relying on ***Ajay Protech Pvt. Ltd.***(supra), it is urged that there is sufficient cause for extension of the arbitral proceedings.

7. While opposing the application under Section 29A A&C Act, it is contended on behalf of SPML that the present petition has been filed belatedly inasmuch as the mandate of the arbitral tribunal expired as far back as on 28.11.2022 and the last hearing before the Arbitral Tribunal was held on 27.01.2023, whereas the present petition has been filed only on 03.11.2023.

8. Further, it is submitted that the arbitral tribunal has failed to act with expedition inasmuch as the arbitral proceedings have not been concluded even after a considerable passage of time.

9. Moreover, it is submitted that SPML has been constrained to seek substitution of the presiding arbitrator under Section 14(1)(a) read with Section 15 of the A&C Act by way of O.M.P. (T) (COMM) 136/2024. The said petition is predicated on an order dated 01.06.2023 passed by another Arbitral Tribunal (with the same presiding arbitrator), in connection with arbitration proceedings relating to Rural Electrification Works carried out in the Kaimur District of Bihar under the Rajiv Gandhi Grameen Vidyutikaran Yojana (RGGVY)] (hereinafter '*the Kaimur Arbitration*').

10. In O.M.P. (T) (COMM) 136/2024 (which is also being decided by



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way of this common order), SPML has urged as follows:

- i. In the '*Kaimur Arbitration*', it had been initially decided by the Arbitral tribunal in a preliminary hearing held on 02.08.2018, that the fees of the Arbitral Tribunal would be payable in terms of the Fourth Schedule of the A&C Act along with an additional 10% fees payable to the Presiding Arbitrator as administrative expenses and other charges including those relating to counter claim/s and reading fees was agreed upon to be fixed at a later stage. However, on 28.10.2022, the Arbitral Tribunal unilaterally enhanced the fees in the middle of the arbitration proceedings, giving rise to a real apprehension that the SPML's refusal to agree upon the enhanced fee may result in unfavourable consequences.
- ii. Being aggrieved by the unilateral enhancement of fees by the Arbitral Tribunal in the Kaimur Arbitration, SPML filed an application on 14.04.2023 before the Arbitral Tribunal seeking that the order dated 28.10.2022 by which the fees of the Arbitral Tribunal had been unilaterally enhanced by the Arbitral Tribunal be withdrawn, and that the fees charged by the arbitral tribunal for conducting the arbitral proceedings be in terms of the Fourth Schedule, as agreed upon originally vide order dated 02.08.2018.
- iii. The Arbitral Tribunal *vide* order dated 01.06.2023 dismissed the aforesaid application dated 14.04.2023 filed by SPML and further directed that all the costs for the hearings held for deciding the said application is to be paid by SPML to Power Grid. It is submitted that in the said order dated 01.06.2023, it was observed that SPML had filed the application dated 14.04.2023 (seeking to raise a controversy



about fees) on account of the fact that the Presiding Arbitrator had previously adjudicated two disputes between the same parties in which the final order was only partially in favour of SPML. Relevant portion of the order dated 01.06.2023 reads as under –

“At this juncture, it may be pertinent to note that it appears that the Claimant has various arbitrations vis-a-vis the Respondent. In some of the said arbitrations, Justice Deepak Verma (Retd.) has been the Presiding Arbitrator, with different co-arbitrators, and in two matters specifically thereof, Arbitral Awards have been passed, which are partially in favour of the Claimant. It appears that the Claimant, on account of not being satisfied with the earlier Awards passed by the Tribunal, in which Justice Deepak Verma (Retd.) was the Presiding Arbitrator, has sought the relief (a) in the Application. The conduct of the Claimant speaks volumes and the present Application filed by it cannot be said to be bona fide as the word "withdraw" in prayer (a) reveals that the intention of the Claimant appears to be to ensure that the present matter and the other connected matter should now not be heard by this Tribunal of which Justice Deepak Verma (Retd.) is the Presiding Arbitrator. But this cannot be countenanced as the other matters in which Justice Deepak Verma (Retd.) acted as the Presiding Arbitrator were decided on the basis of their own facts and legal points involved therein. Further, it cannot be a valid ground for the Presiding Arbitrator Justice Deepak Verma (Retd.) to withdraw the portion of the Order dated 28.10.2022, whereby the additional fees was directed to be paid.”

It is submitted that in view of such attribution by the presiding arbitrator, a genuine apprehension of bias is made out.

- iv. It is pointed out that subsequently, two applications came to be filed by SPML before this Court in the context of the *Kaimur arbitration*. The same are as follows –

- (i) OMP (MISC.) (COMM.) No. 286/2023 under Section 29A (6) of the Act seeking substitution of the Arbitral Tribunal on the ground of the unilateral enhancement of fees; and
- (ii) OMP(T)(COMM.) No. 79/2023 under Section 14 & 15 of the



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Act seeking substitution of the Arbitral Tribunal on a twofold ground i.e. the reasonable apprehension of bias in view of order dated 01.06.2023 and bias due to the unilateral enhancement of fees.

It is submitted that the aforesaid applications came to be disposed of by a Co-ordinate Bench of this Court *vide* judgment dated 27.11.2024, whereby the order dated 28.10.2022 passed by the Arbitral Tribunal has been set aside and it has been held that the proceedings in the *Kaimur Arbitration* shall be continued by the Arbitral Tribunal by charging the fees which had already been decided in the preliminary hearing on 02.08.2018 i.e., the fees in terms of the Fourth Schedule of the A&C Act.

- v. It is submitted that the said judgments dated 27.11.2024 of the Co-ordinate Bench only dealt with the aspect of bias owing to unilateral enhancement of fees. However, this Court did not consider the apprehension of bias, based on the observations made in the aforesaid order dated 01.06.2023.

11. It is submitted that the observations made by the Presiding Arbitrator in the order dated 01.06.2023 passed in the *Kaimur Arbitration*, serves as a valid ground for substitution of the said Presiding Arbitrator.

12. The above submissions made by the learned counsel for SPML, seeking substitution of the Presiding Arbitrator / reconstitution of the Arbitral Tribunal, have been stoutly opposed by the learned senior counsel appearing for Power Grid, who submits that the contentions of SPML seeking substitution of the Presiding Arbitrator are foreclosed by the judgment / order dated 27.11.2024 passed by the Coordinate Benchin



O.M.P. (MISC.)(COMM.) 286/2023.

13. Relying upon *Chennai Metro Rail Limited Administrative Building v. Transtonnelstory Afcons (JV) and Another*, (2024) 6 SCC 211, learned senior counsel for Power Grid submits that even in a situation where an Arbitral Tribunal seeks to unjustifiably enhance its fees in contravention of the judgment of the Supreme Court in *ONGC v. AfconsGunanusa JV* passed in Arbitration Petition (Civil) No.5 of 2022, the same by itself would not attract the concept of *de jure* ineligibility.

14. Further, relying upon *HRD Corporation v. Gail (India) Limited* (2018) 12 SCC 471, it is contended that if at all SPML has any apprehension of bias, its remedy lies in moving an appropriate application under Section 12/13 of the A&C Act before the Arbitral Tribunal itself; the same cannot be afford any justification for invoking Section 14 of the A&C Act. As such, it is contended that the petition under Section 14 deserves to be dismissed and the petition seeking extension of time, under Section 29A of the A&C Act, be allowed.

REASONING AND FINDINGS

15. At the outset, it is noticed that the mere fact that the petition under Section 29A of the A&C Act has been filed after expiry of the period contemplated under Section 29A(1) and 29A(3) is not by itself an impediment in considering the application for requisite extension of time. This position has been amply clarified by the Supreme Court in *Rohan Builders* (supra). The relevant portions of the said judgment are extracted hereunder:-



“2. This common judgment decides whether an application for extension of time under Section 29A of the Arbitration and Conciliation Act, 1996 can be filed after the expiry of the period for making of the arbitral award. The High Court at Calcutta in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Limited* has held that the application for extension of time under Sections 29A(4) and 29A(5) of the A & C Act can only be entertained if filed before the expiry of the mandate of the arbitral tribunal. The High Court at Calcutta held that once the mandate of the arbitral tribunal is terminated by efflux of time of twelve months, or when so consented to by the parties after a further six-month extension, the power of the court to extend time under Section 29A(4) cannot be invoked. A similar view has been taken by a Division Bench of the High Court of Judicature at Patna in *South Bihar Power Distribution Company Limited v. Bhagalpur Electricity Distribution Company Private Limited*. However, a catena of judgments from other High Courts have taken an opposite view. The High Court of Delhi in *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd., Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project*, and some other cases; the High Court of Judicature at Bombay in *Nikhil H. Malkan v. Standard Chartered Investment and Loans (India) Limited*; the High Court of Kerala in *Hiran Valiyyakkil Lal v. Vineeth M.V.*; the High Court of Madras in *G.N. Pandian v. S. Vasudevan*; and the High Court of Jammu and Kashmir and Ladakh in *H.P. Singh v. G.M. Northern Railways*, have held that an application for extension of time limit for arbitral award can be filed by a party even after the expiry of the term of twelve months or the extended period of six months. Recently, the High Court at Calcutta in a subsequent decision of the single Judge in *Ashok Kumar Gupta v. M.D. Creations*, on elaborated examination, has concurred with this view.

3. For the reasons recorded below, we accept the view taken by the High Courts of Delhi, Jammu and Kashmir and Ladakh, Bombay, Kerala, Madras, and the subsequent view expressed by the High Court at Calcutta in *Ashok Kumar Gupta (supra)*. However, before we elucidate our reasons, it would be appropriate to first quote Section 29A of the A & C Act as it stands today:

“29-A. Time limit for arbitral award.—(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve



months from the date of completion of pleadings under sub-section (4) of Section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in subsection (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay:

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the court.

(6) While extending the period referred to in sub-section (4), it shall be open to the court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.



(7) *In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.*

(8) *It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.*

(9) *An application filed under sub-section (5) shall be disposed of by the court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”*

6. *Section 29A(4) is the provision which requires interpretation. It states that where the award is not made within the specified period of twelve or eighteen months, the mandate of the arbitral tribunal will terminate. However, this provision does not apply if the court has extended the period, either before or after the expiry of the initial or the extended term. In other words, Section 29A(4) empowers the court to extend the period for making of the arbitral award beyond a period of twelve months or eighteen months, as the case may be. The expression “either prior to or after the expiry of the period so specified” is unambiguous. It can be deduced by the language that the court can extend the time where an application is filed after the expiry of the period under subsection (1) or the extended period in terms of sub-section (3). The court has the power to extend the period for making an award at any time before or after the mandated period.*

19. *In view of the above discussion, we hold that an application for extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be. The court while adjudicating such extension applications will be guided by the principle of sufficient cause and our observations in paragraph 15 of the judgment.”*

16. The aforesaid position has been further fortified by a decision of the Supreme Court in ***Ajay Protech Pvt. Ltd.*** (supra). The relevant portion of the said decision reads as under :-

“9. This Court in Rohan Builders (supra) has held that the application for extension of time can be filed even after the expiry of the period in sub-sections (1) and (3). Even if sub-section (4) provides for the



termination of the Tribunal's mandate on the expiry of the period, it recognises party autonomy to move an application before the Court for further extension. Thus, the termination of mandate under the provision is only conditional on the non-filing of an extension application, and cannot be taken to mean that the mandate cannot be extended once it expires. The relevant portion of the judgment is extracted:

“6. Section 29A(4) is the provision which requires interpretation. It states that where the award is not made within the specified period of twelve or eighteen months, the mandate of the arbitral tribunal will terminate. However, this provision does not apply if the court has extended the period, either before or after the expiry of the initial or the extended term. In other words, Section 29A(4) empowers the court to extend the period for making of the arbitral award beyond a period of twelve months or eighteen months, as the case may be. The expression “either prior to or after the expiry of the period so specified” is unambiguous. It can be deduced by the language that the court can extend the time where an application is filed after the expiry of the period under subsection (1) or the extended period in terms of sub-section (3). The court has the power to extend the period for making an award at any time before or after the mandated period.”

(emphasis supplied)

10. The wording of Section 29A(4) and the decision in Rohan Builders (supra) clearly answer the first issue in favour of the appellant, i.e., an application for extension can be filed either before or after the termination of the Tribunal's mandate upon expiry of the statutory and extendable period.

11. Whether extension must be granted. The next question is whether an extension of time should be granted in the present case. As per Section 29A(5), the decision to extend the time is an exercise of discretion by the court and must be done on sufficient cause being shown, and on such terms and conditions that the court deems fit. This Court, in Rohan Builders (supra), has held:

“14. In our opinion, a restrictive interpretation would lead to rigour, impediments and complexities. A party would have to rush to the court even when the period of arbitral mandate of twelve months has not expired, notwithstanding the possibility of a consent-based extension of six months under Section 29A(3). Narrow interpretation presents an additional challenge by relegating a faultless party to a fresh reference or appointment of



an arbitrator under the A&C Act, 2015, thereby impeding arbitration rather than facilitating it. The legislature vide the 2015 Amendment envisions arbitration as a litigant-centric process by expediting disposal of cases and reducing the cost of litigation. A narrow interpretation will be counterproductive....

15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigants and render the timeline for making the award inconsequential. However, it is apposite to note that under Section 29A(5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application. The judicial discretion of the court in terms of the enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. Further, the court can impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not countenanced. The first proviso to Section 29A(4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal.”

12. The issue before us is not whether the application under Section 29A(4) is filed within the permissible time for seeking extension, i.e., 12 months, followed by another 6 months at the consent of the parties. The real issue is whether there is a sufficient cause for the Court to extend the period for making of the award. For considering whether there is a sufficient cause or not, it is necessary to take into account the following events. As indicated earlier, even before expiry of the period of 12 months under Section 29A(1), commencing from 09.10.2019 (date of completion of pleadings), the COVID pandemic had started. The period between 15.03.2020 and 28.02.2022 is anyways mandated to be excluded from periods of limitation. Therefore, from the date of completion of pleadings till 15.03.2020, only a period of 5 months is taken. If the remainder of the 18 months period is reckoned from 28.02.2022, the said period would expire on 31.03.2023. In other words, the appellant would have been within the period specified under Section 29A(1) read with Section 29A(3) had it filed the application by such date. However, the problem arose because the application was filed on 01.08.2023. Really speaking, it is the period commencing from 31.03.2023 to 01.08.2023 that the Court is to take into account for considering whether there is sufficient cause to exercise the power under Section 29A(5) to extend the period.



16. The meaning of 'sufficient cause' for extending the time to make an award must take colour from the underlying purpose of the arbitration process. The primary objective in rendering an arbitral award is to resolve disputes through the agreed dispute resolution mechanism as contracted by the parties. Therefore, 'sufficient cause' should be interpreted in the context of facilitating effective dispute resolution."

17. Thus, in view of the legal position enunciated in **Rohan Builders** (supra) and **Ajay Protech Pvt. Ltd.** (supra), the fact that the application seeking extension of time / mandate of the arbitral tribunal has been filed after the expiry of the period of time contemplated in Section 29A(1) and 29A(3) of the A&C Act, shall not be an impediment to this Court granting suitable extension of time to the Arbitral Tribunal for the purpose of completion of arbitral proceedings.

18. As regards the controversy in connection with the unilateral enhancement of fees in the *Kaimur Arbitration*, the same has been foreclosed by the judgment dated 27.11.2024 passed by the Coordinate Bench of this Court in O.M.P. (MISC.)(COMM.) 286/2023. It has been held therein that it was impermissible for the Arbitral Tribunal to unilaterally enhance the fees and accordingly, the Arbitral Tribunal was directed to continue with the proceedings by charging the fees which had been initially fixed on 02.08.2018 in terms of the Fourth Schedule of the A&C Act.

19. It is relevant to note that despite the observation made in the aforesaid judgment as regards the unilateral enhancement of fees by the Arbitral Tribunal being impermissible, the mandate of the Arbitral Tribunal has been extended *albeit* subject to the arbitral tribunal being agreeable to continuing with the proceedings while charging the fees as initially agreed upon on 02.08.2018. The issue of fees to be charged by the Arbitral Tribunal, and the embargo on any unilateral enhancement of fees, also stands decided in terms



of the said judgement.

20. While deciding the matter, the Coordinate Bench also took note of the judgment of the Supreme Court in **Chennai Metro Rail Limited** (supra) and **HRD Corporation** (supra) to hold that the allegations as regards bias (if any) are required to be agitated in the first instance before the Arbitral Tribunal in terms of Section 12 read with Section 13 of the A&C Act. In that context, the aforesaid judgment clearly applies to the facts of the present case as well.

21. However, learned senior counsel for SPML seeks to contend that the exacerbating factor that is required to be considered in the present case (which was allegedly not considered by the Co-ordinate bench in the judgement dated 27.11.2024) is that the Presiding Arbitrator in his order dated 01.06.2023 passed in the context of Kaimur Arbitration, has himself insinuated that SPML's application seeking withdrawal / recall of the order dated 28.10.2022 in that case (by which, the fees of the arbitral tribunal was sought to be enhanced), is motivated by the fact that the said Presiding Arbitrator has taken a view adverse to SPML in two earlier arbitration matters involving the same parties. It is submitted that in view of such aspersions cast by the learned Presiding Arbitrator, an apprehension of bias arises, justifying invocation of Section 14(1)(a) of the A&C Act.

22. I find no merit in the above submission.

23. It has been held in a catena of judgments passed by this Court¹ as well

¹*Neeru Walia v. Inderbir Singh Uppal* (2009) 160 DLT 55, *Progressive Career Academy Pvt. Ltd. v. FIIT Jee Ltd.* 2011 SCC OnLine Del 2271, *Delhi Tourism and Transportation Development Corporation Swadeshi Civil Infrastructure Pvt. Ltd.* 2021 SCC OnLine Del 3876, *Union of India v. Reliance Industries Limited and Ors.* 2022 SCC Online Del 4310



as the Supreme Court² that any apprehension of bias must be agitated by way of an application under Section 12 and 13 of the A&C Act and not by way of an application under Section 14 of the A&C Act. An apprehension of bias against an arbitrator cannot lead to an inference of *de jure* inability justifying invocation of Section 14 of the A&C Act.

24. In **HRD Corporation** (supra), it has been 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

²**HRD Corporation** (supra) and **Bharat Broadband Network Limited v. United Telecoms Limited** (2019) 5 SCC 755.



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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.”

25. SPML has been unable to establish that the Presiding Arbitrator suffers from any inherent or apparent legal disability which prevents him from acting as an Arbitrator in the present arbitration. At best, it can be said that SPML harbours an apprehension of bias. The apprehension of bias cannot serve as a ground to assert *de jure* inability of the Presiding Arbitrator and thereby invoke Section 14 of the A&C Act seeking substitution of the Presiding Arbitrator / reconstitution of the arbitral tribunal. The avenue for SPML to agitate the aspect of alleged bias, is by moving an appropriate application in terms of Section 13 read with Section 12 of the A&C Act before the Arbitral Tribunal. The same shall be dealt with in the manner prescribed in the A&C Act and in the event of the same being rejected, it shall be open to SPML to agitate this aspect in proceedings under Section 34 of the A&C Act, after the award has been made.

26. In the circumstances, this Court finds no merit in the petition [OMP (T)(COMM) 136/2024] filed under Section 14(1)(a) read with Section 15 of the A&C Act seeking substitution of the Presiding Arbitrator; the same is, accordingly, dismissed.

27. Further, considering that arbitral proceedings in the present case commenced as far back as 2018, it would be apposite if the same are taken to their logical conclusion. This Court finds no impediment in granting a suitable extension of time for completion of the arbitral proceedings and making of the arbitral award, as prayed for in OMP (MISC)(COMM) 564/2023. Consequently, the time period for completion of the arbitral proceedings and making of the arbitral award, is extended till 31.12.2025.



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28. These petitions are disposed of in the above terms.

APRIL 17, 2025/r, dn

SACHIN DATTA, J