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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 18/2025 and I.A. 158/2025**

VARRSANA ISPAT LIMITED

.....Petitioner

Through: Mr. Anirudh Wadhwa, Mr. Shashwat
Awasthi and Mr. Kartik Gupta,
Advocates.

versus

**TELECOMMUNICATIONS CONSULTANTS
INDIA LTD.**

.....Respondent

Through: Mr. Chandan Kumar and Mr. Vikram
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

22.01.2025

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1. By way of present petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter referred, the 'A&C Act'), the petitioner seeks constitution of an independent and impartial Arbitrator to adjudicate the disputes that have been arisen between the parties in the context of Purchase Order and Work Order dated 11.11.2008 and Memorandum of Agreement dated 26.11.2008.

2. Mr. Wadhwa, Ld. Counsel for the petitioner submits that despite the petitioner requesting for redressal of disputes, the same remained unanswered and respondent failed to clear petitioner's legitimate dues and rather, in the year 2014 unilaterally appointed one Ms. Shivalini Sinha, a serving employee of respondent, as the Sole Arbitrator. The Sole Arbitrator entered into the reference and conducted the proceedings till 2016



whereafter, on 16.11.2017, CIRP was initiated against the petitioner company before the NCLT, Kolkata Bench. In the said proceedings, vide order dated 06.08.2019, the petitioner company was directed to be liquidated and one Mr. Anil Goel was appointed as Liquidator. The Liquidator thereafter pursued the arbitration proceedings and by way of an application sought termination of the Arbitrator's mandate by contending that the Arbitrator was *de jure* and *de facto* ineligible. The said application was however, dismissed. As the petitioner refused to take part in the proceedings, the Sole Arbitrator vide order dated 03.11.2023 directed termination of the proceedings in terms of Section 38(2) of the A&C Act. The said order records that the order was passed qua the claims of the claimant and further that no counter claim was filed by the respondent before it. In this backdrop, the entire arbitration proceedings were directed to be terminated.

3. Learned counsel further submits that the petitioner refused to take part in the arbitral proceedings as though the arbitral proceedings were initiated prior to the Amendment Act of 2015, Section 12(5) of the A&C Act, as amended in Amendment Act, 2015, became applicable to the said proceedings. In this regard, Id. Counsel has referred to the decisions in Perkins Eastman Architects DPC and Ors. vs. HSCC (India) Ltd. reported as **2020 (20) SSC 760**, Ellora Paper Mills Limited v. State of Madhya Pradesh reported as **2022 (3) SCC 1** as well as Om 360 Degrees Advertising & Entertainment v. Delhi Metro Rail Corporation Limited (DMRC) reported as **2023 SCC OnLine Del 6006**.

4. Ld. Counsel for the respondent, on the other hand, contended that the Sole Arbitrator has terminated the proceedings under Section 38(2) of the



A&C Act as the petitioner had failed to pay the arbitral fee. It is submitted that and the petitioner ought to take corrective steps by depositing the arbitral fee and seek recall of the said order in light of the decisions in SREI Infrastructure Finance Ltd. v. Tuff Drilling Private Ltd. reported as **(2018) 11 SCC 470** and Oil and Natural Gas Corporation Limited v. AFCONS Gunanusa JV reported as **(2024) 4 SCC 481**. Ld. Counsel however, concedes the fact that the Sole Arbitrator, at the relevant time, was a serving employee of the respondent, being a Director.

5. I have heard the learned counsels for the parties and gone through the records.

6. The arbitral proceedings were initiated in the year 2012 i.e., prior to the Amendment Act, 2015. Concededly, no arbitral proceedings took place before the Ld. Sole Arbitrator from 18.03.2016 to 21.02.2022. In the proceedings pending before it, the NCLT Kolkata Bench vide order dated 06.08.2019 passed in CP (IB) No. 543/KB/2017 appointed a Liquidator who, preferred an application under Section 12 read with Sections 13/14/15 of the A&C Act thereby seeking substitution of the Sole Arbitrator. The said application came to be dismissed by the learned Arbitrator vide order dated 03.01.2023. Notably, vide order dated 03.11.2023, Ld. Arbitrator on its own terminated the proceedings under Section 38(2) of the A&C Act while noting the aforesaid facts as well as non-payment of arbitral fee by the petitioner. The issue whether the Section 12(5) of the A&C Act would be applicable to the proceedings initiated prior to the Amendment Act, 2015 is no longer *res integra* in the view of the decisions cited by the petitioner as well as recent decision of the Supreme Court in Glock Asia Pacific Limited v. Union of India reported as **2023 SSC OnLine 664** which reads as under: -



“21. In contrast, the arbitration clause in the present case enables a serving employee of the Union of India, a party to the contract, to nominate a serving employee of the Union of India as the Sole Arbitrator. Such an authorisation is clearly distinct from the arbitration Clause in Voestalpine Schienen GmbH (supra) and Central Organisation of Railway Electrifications (supra), and is in conflict with Section 12(5) of the Act..”

7. Moreover, a Coordinate Bench of this Court in Govind Singh vs. M/s Satya Group Pvt. Ltd. & Anr. reported as **2023 SCC OnLine 37** has opined that if a contractor had participated in the arbitral proceedings and there is no objection to the appointment of the Arbitrator, it would neither amount to waiver of his right under Section 12(5) of the A&C Act nor make the Award valid. The respondent having admitted that the Sole Arbitrator was a serving employee on the date of the constitution of the Arbitral Tribunal, her appointment suffers from the vice of her being *de jure* ineligible. The contention raised by the respondent that the petitioner ought to appear before the same Arbitrator and seek recall of the order is meritless and rejected.

8. In view of the aforesaid discussions, petition is allowed with the following directions :-

- i) The disputes between the parties under the said agreement are referred to the arbitral tribunal.
- ii) Mr. Siddhant Nath, Advocate (Mob: 9910870397) is appointed as the sole Arbitrator to adjudicate the disputes between the parties.
- iii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi hereinafter, referred to as the ‘DIAC’). The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators’



Fees) Rules, 2018 or as the parties may agree.

iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.

v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, 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.

vi) The parties shall approach the learned arbitrator within two weeks from today.

9. Petition alongwith pending application is disposed of.

MANOJ KUMAR OHRI, J

JANUARY 22, 2025/ga