



\$~67

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

+ **ARB.P. 2064/2025**

MEGHALAYA HOTELS PRIVATE LIMITEDPetitioner

Through: Dr. Swaroop George, Mr.
Abhinandan Jain, Mr. Shivam Prajapati, Mr.
Abhigyan Dwivedi, Mr. Kartikey, Advs.
versus

INDIAN RAILWAY CATERING AND TOURISM

CORPORATION LIMITEDRespondent

Through: Mr Lalit Chauhan, Ms. Laxmi
Chauhan, Mr. Manish Yadav, Mr. Anith Johnson,
Mr. Rustam Singh Chauhan, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **11.12.2025**

I.A. 31026/2025

Allowed subject to all just exceptions.

The application stands disposed of.

ARB.P. 2064/2025

1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking appointment of the Arbitral Tribunal for adjudication of disputes between the parties.
2. The brief facts are that the respondent invited bids for execution of the work of "Construction Operation and maintenance of IRCTC Budget Hotel at Lucknow" at Sector-7, Gomati Nagar Extension, (Land Section 7/2), Lucknow ("**project**"). The petitioner submitted its bid and the same was accepted *vide* Letter of Award dated 05.02.2018



3. Consequently, a Contract Agreement dated 26.02.2018 was executed between the parties for execution of the project. A Supplementary Agreement dated 21.10.2019 was also entered into between the parties, which only varied the payment schedule.
4. The said Contract Agreement contains an arbitration clause, which reads as under:-

“Demand for Arbitration.

i. In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract or the respective rights and liabilities of the parties on any matters in question, dispute or difference on any account or as to the withholding by IRCTC of any certificate to which the service provider/contractor/licensee may claim to be entitled to, or if IRCTC fails to make a decision within 120 days, then and in any such case, but except in any of the “excepted matters”, the contractor/licensee/service provider, within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration

ii. In the event of any dispute or difference between the parties hereto as to the construction or operation of this contract, or the respective rights and liabilities of the parties on any matter in question, dispute or difference on any account or as to the withholding by IRCTC of any certificate to which the contractor may claim to be entitled to, or if IRCTC fails to make a decision within 120 days, then and in any such case,



but except in any of the "excepted matters", the contractor, after 120 days but within 180 days of his presenting his final claim on disputed matters shall demand in writing that the dispute or difference be referred to arbitration.

iii. The demand for arbitration shall specify the matters which are in question, or subject of the dispute or difference as also the amount of claim item-wise Only such dispute(s) or difference(s) in respect of which the demand has been made, together with counter claims or set off, given by the IRCTC, shall be referred to arbitration and other matters shall not be included in the reference.

a) The Arbitration proceedings shall be assumed to have commenced from the day a written and valid demand for arbitration is received by the IRCTC.

b) The claimant shall submit his claim stating the facts supporting the claims alongwith all the relevant documents and the relief or remedy sought against each claim within a period of 30 days from the date of appointment of the Arbitral Tribunal.

c) IRCTC shall submit its defence statement and counter claim(s), if any, within a period of 60 days of receipt of copy of claims from Tribunal thereafter, unless otherwise extension has been granted by Tribunal.

d) Place of Arbitration: IRCTC, Corporate Office, New Delhi,
iv. No new claim shall be added during proceedings by either party However, a party may amend or supplement the original



claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

v. If the contractor(s) does/do not prefer his/their specific and final claims in writing within a period of 90 days of receiving the intimation from the IRCTC that the final bill is ready for payment, he/they will be deemed to have waived his/their claim(s) and IRCTC shall be discharged and released of all liabilities under the contract in respect of these claims.

XXXXXXXX

Appointment of Arbitrator:

i. In cases where the total value of all claims in question added together does not exceed Rs 25,00,000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be nominated by the CMD/IRCTC. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by CMD.

ii. In cases not covered by the Clause above, the Arbitral Tribunal shall consist of a Panel of three arbitrators. For this purpose, IRCTC will send a panel of more than 3 names of Officers which may also include the name(s) of retired Railway Officer(s) empanelled to work as Arbitrator to the contractor/licensee/service provider within 60 days from the day when a written and valid demand for arbitration is received by the CMD/IRCTC.



iii. Contractor/licensee/service provider will be asked to suggest to CMD at least 2 names out of the panel for appointment as contractor's nominee within 30 days from the date of dispatch of the request by IRCTC CMD/IRCTC shall appoint at least one out of them as the contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. CMD/IRCTC shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of contractor's nominees.

XXXXXXXX

xii. Subject to the provisions of the aforesaid Arbitration and Conciliation Act 1996 and the rules thereunder and any statutory modifications thereof shall apply to the arbitration proceedings under this Clause”

5. Since there were disputes between the parties, the petitioner invoked arbitration *vide* legal notice dated 06.09.2025, which was duly replied by the respondent *vide* letter dated 01.10.2025, wherein the respondent forwarded a panel of three retired Indian Railway Accounts Services (IRAS) officer and asked the petitioner to select two Arbitrators from the said panel.
6. Hence, the petitioner has filed the present petition.
7. For the said reasons, issue notice to the respondent.
8. Mr. Chauhan, learned counsel accepts notice on behalf of the respondent.



9. The conduct of the respondent, as mentioned above, is in contravention of the law as laid by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)***, (2025) 4 SCC 641, wherein it was categorically held that Public Sector Undertakings (PSUs) cannot require the other party to appoint its nominee Arbitrator from the panel curated by PSUs, as the same leads to apprehension of impartiality and is against the principles of equal participation as inscribed in the 1996 Act. The relevant paragraphs from the said judgement are extracted below:-

“130. In comparison, a three-member Arbitral Tribunal usually allows each party to nominate one arbitrator of their choice, with the third arbitrator being appointed either by the two party-appointed arbitrators or by agreement of parties. [Id, p. 211.] The fact that both parties nominate their respective arbitrators gives them “a sense of investment in the Arbitral Tribunal” [Id, p. 211.] . A three-member Arbitral Tribunal also enhances the quality of the adjudicative deliberations and ensures compliance with due process.

131. In a three-member tribunal, each of the parties seeks to appoint a co-arbitrator. However, the third arbitrator is usually appointed by a process which allows equal participation of both parties in the appointment process. The equal participation of parties enables the appointment of an independent and impartial third arbitrator. Hence, any perceived tilt of an arbitrator in favour of the party which nominated that the arbitrator is offset by the appointment of the third arbitrator in



the course of a deliberative process involving both the arbitrators or as envisaged in the agreement between the parties. Perkins [Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760] rightly observed that whatever advantage a party may derive by nominating an arbitrator of its choice would get counterbalanced by equal power with the other party. [Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760, para 16] This counterbalancing will ideally apply only in situations where the arbitrators are appointed by the parties in the exercise of their genuine party autonomy. TRF [TRF Ltd. v. Energo Engg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] and Perkins [Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760] have been relied upon by this Court on numerous occasions, including in Glock Asia-Pacific Ltd. v. Union of India [Glock Asia-Pacific Ltd. v. Union of India, (2023) 8 SCC 226, para 20 : (2023) 4 SCC (Civ) 36] and Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd. [Lombardi Engg. Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd., (2024) 4 SCC 341, para 85 : (2024) 2 SCC (Civ) 763]

132. In Voestalpine [Voestalpine Schienen GmbH v. DMRC Ltd., (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607] and CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] , 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 counterbalance 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.

***133.** Many PSUs are regularly involved in arbitration disputes and constantly need the services of arbitrators. Such institutions often maintain a pool of potential arbitrators with the sole object of having a ready pool of qualified professionals who have committed their time and consented to act as arbitrators for fixed fees. The Arbitration Act does not prohibit parties to an arbitration agreement from maintaining a curated panel of potential arbitrators. However, the problem arises when the PSUs make it mandatory for other parties to select their nominees from the curated panel of arbitrators. When a PSU exercises its discretion to curate a panel, the very factor that the PSU is choosing only a certain number of persons as potential arbitrators and not others will raise a reasonable doubt in the*



mind of a fair-minded person. The PSUs may conceivably have nominated a person on the panel of potential arbitrators because they have a certain predisposition in favour of the former. This doubt is reinforced when the other party is given no choice but to select its arbitrator from the curated panel.

134. *In CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] , the three-member tribunal was sought to be constituted in the following manner : (i) the Railways would suggest at least four names of retired railway officers; (ii) the contractor would select two names out of the panel for appointment as their arbitrator; (iii) The General Manager (of the Railways) would thereafter choose at least one person out of the two to be appointed as the contractor's arbitrator; and (iv) The General Manager would proceed to appoint the balance arbitrators from the panel or outside the panel and also indicate the presiding arbitrator.*

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. 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.

136. In a three-member tribunal, the independence and impartiality of a third or presiding arbitrator are prerequisites to the integrity of the arbitral proceedings. In CORE [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] , the arbitration clause allowed the General Manager to unilaterally nominate the Presiding Officer out of the panel of three arbitrators. The clause does not countenance any participation from the contractor in the process of appointing or nominating the Presiding Officer. Thus, the process of appointing and nominating the Presiding Officer is unequal and prejudiced in favour of the Railways. The fact that the General Manager is nominating the Presiding Officer gives rise to a reasonable doubt about the independence and impartiality of the entire arbitration proceedings.

137. Given the above discussion, it needs reiteration that the Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot



mandate the other party to select its arbitrator from the panel curated by PSUs. The PSUs can give a choice to the other party to select its arbitrators from the curated list provided the other party expressly waives the applicability of the nemo judex rule.”

(Emphasis added)

10. In view of the law as laid down in **Central Organisation for Railway Electrification (supra)**, the respondent could not have insisted that the petitioner appoint its choose Arbitrator from the panel of Arbitrators provided by the respondent.
11. This Court while dealing with petitions under Section 11 of the 1996 Act is regularly coming across letters written by the respondent departments, wherein the respondent department is requiring that the petitioner appoint its nominee Arbitrator from the panel of Arbitrators provided by the respondent department. The present case is one such example.
12. In the present case, the petitioner in the legal notice invoking arbitration categorically stated that the process of appointment of Arbitral Tribunal as per the arbitration clause is in violation of the judgement of **Central Organisation for Railway Electrification (supra)**. For the sake of brevity, only the operative portion of the said notice i.e., paragraphs No. 13 are extracted below:-

*“13. That it is pertinent to note that following the decision of the Hon'ble High Court of Delhi in **Margo Networks Pvt. Ltd and Another v Railtel Corporation of India Ltd [(2023) SCC OnLine Del 3906]**, the procedure enumerated in Clause ii*



*['Appointment of Arbitrator'] of the Contract for the appointment of a three-member arbitral tribunal [for claims amounts exceeding Rs 25 Lakhs] is untenable for two reasons. First, the said clause does not provide for a broad-based panel of arbitrators for the Licensee to choose from. Second, there is no effective counterbalancing of the rights of the Licensee, as the clause gives IRCTC the right to nominate 2/3rd of the strength of the arbitral tribunal. In any event, the law has been conclusively settled by the Constitution Bench of the Hon'ble Supreme Court in **Central Organization for Railway Electrification v M/s ECI SPIC SMO MCML (JV)** [(2025) 4 SCC 641], wherein the Supreme Court held that a party cannot be forced to choose the arbitral tribunal from a list maintained by the counterparty, as such clauses hinder equal participation of both the parties in the appointment process of the arbitrators. Consequently, the Licensee appoints Mr. Arjun Raghavendra M., Advocate and former Deputy Director (Intelligence & Investigations), Directorate of Revenue Intelligence, as its nominee arbitrator and similarly requests the IRCTC to also appoint its nominee arbitrator.*

14. Please take note that should there be no positive action in terms of the Licensee's instant invocation of arbitration within 30 days from the date of the receipt of this communication, the Licensee shall be constrained to approach the Hon'ble Court for the appointment of an arbitral tribunal without any further notice to you.”



13. The response to the said notice invoking arbitration, the respondent replied *vide* letter dated 01.10.2025 which reads as under:-

No. 2025/IRCTC/Infra/BH/Lucknow/ Arbitration

Date: 01.10.2025

M/s Meghalaya Hotel Pvt. Ltd.
10-4-15, Ramnagar, Asilmetta Junction,
Vishakapattanam-530003

Sub: Selection of Arbitrator for adjudication of Dispute referred to IRCTC for Invocation of Arbitration in connection with contract "Construction, Operation and Maintenance of IRCTC Budget Hotel at Lucknow".

Ref: (i) Your Letter dated 06.09.2025 for Invocation of Arbitration.
(ii) IRCTC Contract Agreement No. 2015/IRCTC/Infra/Budget Hotel-LKO (Part-II) dated 26.02.2018.

The project of Budget Hotel at Lucknow (Public Private Partnership) was awarded to you vide contract agreement referred at (ii) above. As per Clause 4.1, IRCTC agreed to provide financial assistance of Rs.20Cr towards Construction, Operation and Maintenance.

In terms of clause 4.1.5 (Project details - Introduction) of the contract, only absolute value i.e. Rs.20Cr. is stipulated, and no specific enumeration w.r.t inclusion or exclusion of GST was mentioned. However, you submitted your claim towards GST over and above financial assistance of Rs.20Cr. Since, IRCTC did not consider your request for the said payment towards GST, accordingly, you invoked Arbitration in terms of clause 38 of the Contract.

In view of the above, the Competent Authority, in terms of Clause 38 (1) Appointment of Arbitrator (ii) of the contract agreement, has proposed the names of below mentioned Retired railway officers to act as an Arbitrator for adjudication of dispute between the parties: -

S. No.	Name	Designation
1.	Shri Ravi Prabhat	Indian Railway Accounts Services (Retd.)
2.	Shri Anup Kumar Prasad	Indian Railway Accounts Services (Retd.)
3.	Shri Hare Krushna Sahu	Indian Railway Accounts Services (Retd.)

In view of the above, you are requested to select name of two Arbitrators from the above-mentioned panel within 30 days from date of dispatch of this letter. In case of failure, the Corporation shall exercise its rights stipulated under the Contract executed between the parties.


(Vinay Kumar I),
GGM/Infrastructure



14. Despite the petitioner having informed the respondent that the process of appointment of Arbitral Tribunal as per the arbitration clause is in violation of the judgement ***Central Organisation for Railway Electrification (supra)***, the signatory to the letter of the respondent's letter dated 01.10.2025 chose to ignore the same.
15. I am unable to understand the stand of the respondent. Firstly, the respondent should be aware of the law as laid down by the Hon'ble Supreme Court and must act in accordance with the same. Secondly, once the law was brought to the notice of the respondent, there was no reason for such high-ranking officers to ignore the mandate of law and still seek that the petitioner choose two Arbitrators from the panel of three officers provided by the respondent.
16. For the said reasons, Mr. Vinay Kumar Pathak, GGM/Infrastructure, signatory of the letter dated 01.10.2025, will file an affidavit explaining the basis for writing the said letter and asking the petitioner to select two arbitrators from the panel of the three arbitrators curated by the respondent. To my mind, the same is in direct violation of the law as laid down in ***Central Organisation for Railway Electrification (supra)*** and which has been repeated time and again by this Court.
17. It is only in view of the persuasion skills of Mr. Chauhan, learned counsel for the respondent that this Court is refraining from recommending any further action today.
18. Additionally, Mr. Chauhan, learned counsel for the respondent states that in place of an Arbitral Tribunal of three Arbitrators, a Sole Arbitrator may be appointed as the dispute is for about Rs. 3.5 crores.



19. The same is acceptable to the learned counsel for the petitioner.
20. I am satisfied that there exist a valid arbitration clause and dispute between the parties which need to be adjudicated through the arbitral mechanism.
21. For the said reasons and with consent of the parties, the petition is allowed and the following directions are issued:-
 - i) Mr. Sanjeev Jain, (Retd. Principal Judge, Family Courts (South-West)) (Mob. No. 9910384720) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
 - ii) The arbitration will be held under the aegis and rules of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC').
 - iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
 - iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the 1996 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/counter-claims and 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.



22. The present petition is disposed of in the aforesaid terms.
23. Though the present petition is disposed of, list the matter on 19.12.2025 for the affidavit of Mr. Vinay Kumar Pathak, GGM/Infrastructure.

JASMEET SINGH, J

DECEMBER 11, 2025 / (MS)