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

\+ O.M.P. (COMM) 353/2016

UNIWORTH LIMITED

.....Petitioner

Through: Mr. Narendra M Sharma, Ms. Shubhangi Tiwari and Mr. Aryan Sharma Advocates

versus

HINDUSTAN PETROLEUM CORPORATOPN LIMITED

.....Respondent

Through: Mr. Divye Chugh and Ms. Priya Wadhwa, Advs.

16

\+ O.M.P. (COMM) 442/2016

HINDUSTAN PETROLEUM CORPORATION LIMITED

.....Petitioner

Through: Mr. Divye Chugh and Ms. Priya Wadhwa, Advs.

versus

UNIWORTH LTD

.....Respondent

Through: Mr. Narendra M Sharma, Ms. Shubhangi Tiwari and Mr. Aryan Sharma Advocates

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**O R D E R**

**%** **23.07.2025**

1. These are cross petitions filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter, "***the Act***") challenging the arbitral award dated 29.03.2016 passed by the learned Sole Arbitrator, Mr. A.V. Sarma, who was then serving as the General Manager ("***GM***") of the respondent, Hindustan Petroleum Corporation Ltd. ("***HPCL***"), in

the arbitration proceedings arising out of disputes between HPCL and Uniworth Ltd.

2. The brief facts leading to the arbitration are that the petitioner, Uniworth Ltd., had proposed to establish a 100% Export Oriented Unit (***"EOU"***) for manufacturing and export activities. Pursuant to its application dated 19.10.1988, the Government of India granted an industrial license under the Industries (Development and Regulation) Act, 1951. By a notification dated 23.07.1993, the Government directed all oil marketing companies, including HPCL, to supply Furnace Oil (***"FO"***) to 100% EOUs at international prices. In case there was no exportable surplus, the oil companies were to import FO and supply the same to EOUs.

3. Uniworth Ltd. entered into a Memorandum of Understanding with HPCL dated 09.03.1994 for the supply of FO, HSD, and lubricants to its manufacturing unit located at Nagpur. That although, the above stated scheme for providing FO at International Price to 100% EOUs was discontinued in the year 1995, the Government of India realized the importance of making available FO at international price in order to enable the 100% EOUs to compete in the international market and reintroduced the above stated scheme vide notification dated 01.07.1997.

4. It is the case of Uniworth Ltd. that despite the continuation of the notification, it was not provided the benefit of international pricing beyond the period from 01.07.1997 to 30.06.1998.

5. The disputes were referred to arbitration pursuant to orders dated 11.08.2011 and 30.09.2011 passed in LPA No. 420/2011. Mr. A.V. Sarma, GM of HPCL, was appointed as the sole arbitrator.

6. Mr. Sharma, learned counsel for the petitioner i.e. Uniworth Ltd. states that the reference of disputes to the arbitrator who was a serving officer of the respondent is itself violative of the judgment laid down by the Hon'ble Supreme Court in "***Ellora Paper Mills Ltd. v. State of M.P., (2022) 3 SCC 1***" and hence, the award is void and deserves to set aside.

7. Mr. Chugh, learned counsel for HPCL, submits that the appointment was in accordance with the arbitration clause in the contract and was made pursuant to court directions. It is further argued that there is no evidence of actual bias or misconduct during the proceedings.

8. However, HPCL itself has also filed O.M.P. (COMM) 442/2016 challenging the rejection of its counter-claims by the same award, seeking its setting aside.

9. Since both the parties are seeking to set aside the arbitral award in terms of the judgment of the Supreme Court ***"Mutha Construction v. Strategic Brand Solutions (I) Pvt. Ltd."*** *in SLP(Civil)No.1105/2022*, this Court is within its right to set aside the award dated 29.03.2016 and appoint another arbitrator. The operative portion reads as under:

> *"2. The dispute arose between the parties. Both the parties were in arbitration before the learned Sole Arbitrator, a retired Judge of the Bombay High Court. The learned Arbitrator passed an award dated 17.01.2018. Being aggrieved by the award, the petitioner preferred the Commercial Arbitration Petition No.511 of 2018 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'). By Order dated 30.04.2019, the learned Single Judge by consent set aside the award and remanded the matter to the learned Sole Arbitrator to pass a fresh reasoned award. The petition under Section 34 of the Act therefore was*

*disposed of accordingly.*

*......*

*8. Therefore, once it is held that the order dated 30.04.2019 was a consent order and the parties agreed to set aside the award and remand the matter to the Sole Arbitrator for a fresh reasoned award, the decisions relied upon by the learned counsel on behalf of the petitioner referred to hereinabove shall not be applicable and/or be of any assistance to the petitioner. The principle of law laid down by this Court in the aforesaid decisions would be applicable where the Appellate Court decides the application under Section 34 of the Act on merits. It is to be noted that even in a case where the award is set aside under Section 34 of the Act on whatever the grounds which may be available under Section 34 of the Act, in that case the parties can still agree for the fresh arbitration may be by the same arbitrator. In the present case both the parties agreed to set aside the award and to remit the matter to the learned Sole Arbitrator for fresh reasoned Award. Therefore, once the order was passed by the learned Single Judge on consent, thereafter it was not open for the petitioner to contend that the matter may not be and/or ought not to have been remanded to the same sole arbitrator."*

10. A perusal of the above shows that the Hon'ble Supreme Court was of the view that when both parties to the arbitration mutually consent to set aside the arbitral award such a course of action is legally permissible.

11. I would also like to rely upon the judgment of "***Ellora Paper Mills***" ***(supra)***, wherein it has been held as under:-

"…..

*9. In Voestalpine Schienen GmbH [Voestalpine Schienen GmbH v. Delhi Metro Rail Corpn. Ltd., (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607] it is observed and held by* *this Court that the main purpose for amending the provision was to provide for "neutrality of arbitrators". It is further observed that in order to achieve this, sub-section (5) of Section 12 lays down that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject-matter of the dispute falls under any of the categories specified in the Seventh Schedule, he shall be ineligible to be appointed as an arbitrator. It is further observed that in such an eventuality i.e. when the arbitration clause finds foul with the amended provisions [sub-section (5) of Section 12 read with Seventh Schedule] the appointment of an arbitrator would be beyond pale of the arbitration agreement, empowering the court to appoint such arbitrator as may be permissible. It is further observed that, that would be the effect of non obstante clause contained in sub-section (5) of Section 12 and the other party cannot insist on appointment of the arbitrator in terms of the arbitration agreement.*

*10. It is further observed and held by this Court in Voestalpine Schienen GmbH [Voestalpine Schienen GmbH v. Delhi Metro Rail Corpn. Ltd., (2017) 4 SCC 665: (2017) 2 SCC (Civ) 607] that independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which apply to all judicial and quasi-judicial proceedings. It is further observed that it is for this reason that notwithstanding the fact that relationship between the parties, to the arbitration and the arbitrators themselves are contractual in nature and the source of an arbitrator's appointment is deduced from the agreement entered into between the parties, notwithstanding the same non-independence and non-impartiality of such arbitrator would render him ineligible to conduct the arbitration. It is further observed that the genesis behind this rationale is that even when an arbitrator is appointed in terms of contract and by the parties to the contract, he is independent of the parties.*

*……*

*12. In Bharat Broadband Network [Bharat Broadband Network Ltd. v. United Telecoms Ltd., (2019) 5 SCC 755 : (2019) 3 SCC (Civ) 1] , it is observed that sub-section (5) of Section 12 read with Seventh Schedule made it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as an arbitrator. It is further observed that once he becomes "ineligible", it is clear that he then become de jure unable to perform his functions inasmuch as in law, he is regarded as "ineligible". It further is observed in the said decision that where a person becomes ineligible to be appointed as an arbitrator there is no question of challenge to such arbitrator before such arbitrator in such a case i.e. a case which falls under Section 14(1)(a) of the Act gets attracted inasmuch as the arbitrator becomes, as a matter of law (i.e. de jure), unable to perform his functions under Section 12(5), being ineligible to be appointed as an arbitrator and this being so, his mandate automatically terminates, and he shall then be substituted by another arbitrator."*

12. Similarly, in ***"Om 360 Degrees Advertising and Entertainment Pvt. Ltd. v. Delhi Metro Rail Corporation Limited (DMRC) (2023) SCC OnLine Del 6006***", this court relied upon ***Ellora paper mills (supra)*** and observed as under:

"***8.*** *Indisputably, the AT was unilaterally nominated by the Director of the Respondent in terms of Clause 29.1 of the License Agreement.*

***9.*** *The issue raised here is no longer res integra. Independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which apply to all judicial and quasi-judicial proceedings. The Supreme Court in Ellora Paper Mills*

*Limited v. State of Madhya Pradesh, reported as (2022) 3 SCC 1, while emphasizing on the "neutrality of arbitrator", noted that Sub-section (5) of Section 12 lays down that notwithstanding any prior agreement to the contrary, any person whose relationship with the parties or counsel or the subject matter of the dispute falls under any of the categories specified in the Seventh Schedule, he shall be ineligible to be appointed as an arbitrator. It further held that Section 12(5) of the A&C Act, as amended by the 2015 Amendment Act, would be equally applicable to arbitral proceedings initiated prior to the coming into force of Amendment Act, 2015 as well."*

13. Thus, it is clear that Courts have held that under Section 12(5) read with the Seventh Schedule of the Act, any arbitrator with a disqualifying relationship is ineligible, regardless of prior agreements.

14. For the said reasons, the petitions are allowed and the award dated 29.03.2016 is hereby set aside and the following directions are issued: -

i) Ms. Justice Rekha Palli (Former Judge, Delhi High Court) (Mobile No 9810012120), 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 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.

15. Since the parties have been litigating for the last more than 20 years, the learned arbitrator is requested to expedite the proceedings and adjudicate the disputes within the timeframe under the Act.

16. The present petitions are disposed of in the aforesaid terms.

**JASMEET SINGH, J**

**JULY 23, 2025 / (MS)**