

OCD 9

ORDER SHEET
AP-COM/20/2026
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

TECHMA ENGINEERING ENTERPRISE PRIVATE LIMITED
VS
UNION OF INDIA

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 29th January, 2026.

Appearance:
Mr. Suddhasatva Banerjee, Adv.
Mr. Sourojit Dasgupta, Adv.
Mr. Aasish Choudhury, Adv.
Mrs. Uma Bagree, Adv.
...for the petitioner

Mr. Suman Chattopadhyay, Adv.
Ms. Tapasi Sinha Palit, Adv.
...for the respondent

The Court:

1. This application has been filed for appointment of an arbitrator for dissolution of the dispute which arose out of a purchase order dated March 28, 2025. The respondent floated a tender for the manufacture and supply of elastic rail clips, in accordance with the RDSO specification. The petitioner participated in the tender. The petitioner duly produced the approval issued by the RDSO. The respondent accepted the bid submitted by the petitioner. On or about March 28, 2025, respondent issued a purchase order to the petitioner. The last

date of delivery of the entire quantity of products covered under the Purchase Order was July 29, 2025. The petitioner prayed for extension of time. The petitioner wanted to complete the supply and procure raw materials. Sometime in May 2025, a meeting was held when the petitioner was allegedly assured by the respondent that the delivery period would be modified. As such communication from the respondent had an element of trust, the petitioner manufactured and partly delivered the goods. Ultimately, sometime in May 2025, the respondent revised the delivery period and re-fixed the period into two diverse dates. Again, the delivery period was altered. By another modification, the respondent went back to its original delivery period. It is alleged that the respondent acted in breach of the terms of the purchase order by issuing modification advices contrary to clause 16 of the purchase order.

2. The petitioner filed a writ petition being WPO 16985 of 2025 and prayed for setting aside of the modification advices and fixation of the delivery period.
3. Prayers were also made for injunction upon the respondent from giving effect to the modification advices.
4. On August 4, 2025, the petitioner received a cancellation advice from the respondent. Penalty was also imposed by way of general damages to the tune of Rs.34,70,144/-.
5. The respondent continued to recover general damages from the bills of the petitioner and the disputes continued.

6. The writ petition was dismissed, granting liberty to the petitioner to approach the competent forum, in view of the existence of an arbitration clause. Hence, this application has been filed by the petitioner upon issuing the notice invoking arbitration on November 17, 2025.
7. Upon receipt of the notice invoking arbitration, the railway authorities asked the petitioner to sign an agreement by waiving the applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996. The demand for arbitration was received by the authority and the authority had asked the petitioner to sign the waiver agreement, which the petitioner denied.
8. Learned advocate for the railway authorities objects to this application being allowed on the ground that the petitioner was afforded various opportunities to deliver the goods by multiple extensions. The petitioner failed to adhere to the delivery period. Thus, the respondent authorities were compelled to recover general damages from the bills of the petitioner. Secondly, the arbitration clause provides for constitution of an arbitral tribunal by the railway authorities themselves. The petitioner ought to have followed such procedure instead of approaching this Court. The learned advocate prays that the application be dismissed. He also submits that the petitioner did not follow the pre arbitration procedure of conciliation.
9. Having heard the learned advocates for the respective parties, this Court holds that the petitioner cannot be faulted for not signing the waiver agreement. It was entirely the discretion of the petitioner. Whether the

petitioner would like to waive the applicability of Section 12(5) of the Arbitration and Conciliation Act, 1996, or not, could not be dictated by the railway authorities. Secondly, the objections to the claim and admissibility thereof are arbitrable issues, which shall be decided by the learned arbitrator. Thirdly, the correspondence between the parties and the fact that the petitioner was already agitating the issue before the Writ Court without any approach or offer from the railways for amicable settlement of the dispute, indicate that the railway authorities were not interested to resolve the dispute by a conciliation process. The petitioner raised the dispute before the appropriate authority as per the Indian Railways Standard Conditions of Contract [for short, 'IRS Conditions of Contract']. Only exchange of letters and communications took place. Parties levelled allegations, claims and counter-claims, but there was no attempt to resolve the dispute. Under such circumstances, any further direction to the parties to resolve the dispute amicably will be an empty formality.

10. Reference is made to the decision of ***Visa International Limited vs. Continental Resources (USA) Limited*** reported in **(2009) 2 SCC 55** and ***Demerara Distilleries Private Limited and Anr. vs. Demerara Distillers Limited*** reported in **(2015) 13 SCC 610**. In the decision of ***Visa International (supra)*** the Hon'ble Apex Court held as follows:-

“38. It was contended that the pre-condition for amicable settlement of the dispute between the parties has not been exhausted and therefore the application seeking appointment of arbitrator is premature. From the correspondence exchanged between the parties at pp. 54-77 of the paper book, it is clear that there was no scope for amicable settlement, for

both the parties have taken rigid stand making allegations against each other. In this regard a reference may be made to the letter dated 15-9-2006 from the respondent herein in which it is inter alia stated “... since February 2005 after the execution of the agreements, various meetings/discussions have taken place between both the parties for furtherance of the objective and purpose with which the agreement and the MoU were signed between the parties. Several correspondences have been made by CRL to VISA to help and support its endeavour for achieving the goal for which the abovementioned agreements were executed”. In the same letter it is alleged that in spite of repeated requests the petitioner has not provided any funding schedules for their portion of equity along with supporting documents to help in convincing OMC of financial capabilities of the parties and ultimately to obtain financial closure of the project. The exchange of letters between the parties undoubtedly discloses that attempts were made for an amicable settlement but without any result leaving no option but to invoke the arbitration clause.”

11. In the decision of ***Demerara Distilleries Private Limited and Another v. Demerar Distillers Limited*** reported in ***(2015)13 SCC 610***, the Hon’ble Apex Court held as follows:-

“5. Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not maintainable at the instance of the

petitioners which alone would require an in-depth consideration.”

12. This Court further holds that the petitioner can demand reference to arbitration even without waiting for a decision by the conciliator as per the relevant clause of the IRS Conditions of Contract. The relevant clause is quoted below:-

*“1) 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** if the Railway fails to make a decision within 120 days (as referred in 2902), then and in any such case, but except in any of the “excepted matters” referred to in Clause 2902 of these Conditions, parties to the contract, after 120 days but within 180 days of their presenting their final claim on disputed matters, shall demand in writing that the dispute or difference be referred to arbitrator. Provided that where the claim is raised by Railways para 2903(1) shall not apply.”*

13. The expression ‘or’ in the fourth line should be read as disjunctive and as such, there was no bar on the petitioner to approach the authority demanding reference to arbitration even without waiting for a decision from the conciliator or approaching the conciliator.
14. Lastly, the submission of the learned advocate for the railway authorities that the railway authorities shall constitute the arbitral tribunal from the panel maintained by them, cannot be accepted. The authority mentioned in the IRS Conditions of Contract cannot act as an arbitrator and hence cannot appoint an arbitrator. Unilateral

appointment of an arbitrator is contrary to the very concept of party autonomy.

15. Reference is made in this regard to ***Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd.*** ; 2019 SCC OnLine SC 1517; and ***Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV) A joint Venture Company*** reported in 2024 SCC OnLine SC 3219. Unilateral appointment of an arbitrator by one of the parties from its own panel of arbitrators or from its own employees is contrary to law.
16. The Hon'ble Apex Court in ***Central Organization for Railway Electrification (supra)***, held thus:-

“73. The 2015 amendment has introduced concrete standards of impartiality and independence of arbitrators. One of the facets of impartiality is procedural impartiality. Procedural impartiality implies that the rules constitutive of the decision-making process must favour neither party to the dispute or favour or inhibit both parties equally.¹³⁷ Further, a procedurally impartial adjudication entails equal participation of parties in all aspects of adjudication for the process to approach legitimacy.¹³⁸ Participation in the adjudicatory process is meaningless for a party against whom the arbitrator is already prejudiced.¹³⁹ Equal participation of parties in the process of appointment of arbitrators ensures that both sides have an equal say in the establishment of a genuinely independent and impartial arbitral process.

74. Under Sections 12(1) and 12(5), the Arbitration Act recognises certain mandatory standards of independent and impartial tribunals. The parties have to challenge the independence or impartiality of the arbitrator or arbitrators in terms of Section 12(3) before the same arbitral tribunal under Section 13.¹⁴⁰ If the tribunal rejects the challenge, it has to continue with the arbitral proceedings and make an award. Such an award can always be challenged under Section 34. However, considerable time and expenses are incurred by the parties by the time the award is set aside by the courts. Equal participation of parties at the stage of the appointment of arbitrators can thus obviate later challenges to arbitrators.

75. Independence and impartiality of arbitral proceedings and equality of parties are concomitant principles. The independence and impartiality of arbitral proceedings can be effectively enforced only if the parties can participate equally at all stages of an arbitral process. Therefore, the principle of equal treatment of parties applies at all stages of arbitral proceedings, including the stage of the appointment of arbitrators.

* * *

124. The doctrine of bias as evolved in English and Indian law emphasizes independence and impartiality in the process of adjudication to inspire the confidence of the public in the adjudicatory processes. Although Section 12 deals with the quality of independence and impartiality inherent in the arbitrators, the provision's emphasis is to ensure an independent and impartial arbitral process.”

In ***Perkins Eastman (supra)***, the Hon’ble Apex Court held thus :-

...“**20.** We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. [TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Ltd. [TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.

21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] Para 50 of the decision shows that this Court was concerned with the issue, “whether the Managing Director, after

becoming ineligible by operation of law, is he still eligible to nominate an arbitrator” The ineligibility referred to therein, was as a result of operation of law, in that a person having an interest in the dispute or in the outcome or decision thereof, must not only be ineligible to act as an arbitrator but must also not be eligible to appoint anyone else as an arbitrator and that such person cannot and should not have any role in charting out any course to the dispute resolution by having the power to appoint an arbitrator. The next sentences in the paragraph, further show that cases where both the parties could nominate respective arbitrators of their choice were found to be completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. That has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision of this Court in TRF Ltd. [TRF Ltd. v. EnergoEngg. Projects Ltd., (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72]

...

24. In Voestalpine [VoestalpineSchienen GmbH v. DMRC, (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607] , this Court dealt with independence and impartiality of the arbitrator as under : (SCC pp. 687-88 & 690-91, paras 20 to 22 & 30)

“20. 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 applied to all judicial and quasi-judicial proceedings. 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 (though contractually agreed upon) would render him ineligible to conduct the arbitration. The genesis behind this rational 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. Functions and duties require him to rise above the partisan interest of the parties and not to act in, or so as to further, the particular interest of either parties. After all, the arbitrator has adjudicatory role to perform and, therefore, he must be independent of parties as well as impartial. The United Kingdom Supreme Court has beautifully highlighted this aspect in Hashwani v. Jivraj [Hashwani v. Jivraj,

(2011) 1 WLR 1872 : 2011 UKSC 40] in the following words : (WLR p. 1889, para 45)

‘45. ... the dominant purpose of appointing an arbitrator or arbitrators is the impartial resolution of the dispute between the parties in accordance with the terms of the agreement and, although the contract between the parties and the arbitrators would be a contract for the provision of personal services, they were not personal services under the direction of the parties.’

21. Similarly, Cour de Cassation, France, in a judgment delivered in 1972 in *Consorts Ury* [Fouchard, Gaillard, Goldman on International Commercial Arbitration, 562 [Emmanuel Gaillard & John Savage (Eds.) 1999] {quoting Cour de cassation [Cass.] [Supreme Court for judicial matters] *Consorts Ury v. S.A. des Galeries Lafayette*, Cass.2e civ., 13-4-1972, JCP, Pt. II, No. 17189 (1972) (France)}.], underlined that:

‘an independent mind is indispensable in the exercise of judicial power, whatever the source of that power may be, and it is one of the essential qualities of an arbitrator’.

22. Independence and impartiality are two different concepts. An arbitrator may be independent and yet, lack impartiality, or vice versa. Impartiality, as is well accepted, is a more subjective concept as compared to independence. Independence, which is more an objective concept, may, thus, be more straightforwardly ascertained by the parties at the outset of the arbitration proceedings in light of the circumstances disclosed by the arbitrator, while partiality will more likely surface during the arbitration proceedings.

30. Time has come to send positive signals to the international business community, in order to create healthy arbitration environment and conducive arbitration culture in this country. Further, as highlighted by the Law Commission also in its report, duty becomes more onerous in government contracts, where one of the parties to the dispute is the Government or public sector undertaking itself and the authority to appoint the arbitrator rests with it. In the instant case also, though choice is given by DMRC to the opposite party but it is limited to choose an arbitrator from the panel prepared by DMRC. It, therefore, becomes imperative to have a much broadbased panel, so that there is no misapprehension that principle of impartiality and independence would be discarded at any stage of the proceedings, specially at the stage of constitution of the Arbitral Tribunal. We, therefore, direct that DMRC shall prepare a broadbased panel on the aforesaid lines, within a period of two months from today...”

17. This application is allowed, by appointing Mr. Mr. Shatadru Chakraborty, Senior Advocate [9810209315] as the learned arbitrator to resolve the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator shall fix his remuneration, in terms of the Schedule of the Act. All questions with regard to arbitrability of the dispute, admissibility of the claim, limitation etc. are kept open, to be decided by the learned arbitrator, if raised.

(SHAMPA SARKAR, J.)