

OCD 2

ORDER SHEET
AP-COM/977/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

STRESCON INDUSTRIES LIMITED
VS
THE UNION OF INDIA

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 3rd February, 2026.

Appearance:
Mr. Ayan Banerjee, Adv.
Mr. Arijit Bhowmick, Adv.
Ms. Pooja Agarwal, Adv.
. . .for the petitioner.

Mr. Brajes Jha, Adv.
Mr. Pradyat Saha, Adv.
. . .for the respondent.

The Court:

1. This is an application under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an Arbitrator for settlement of disputes between the licensor and licensee which arose out of an agreement for grant of license.
2. Clause 12 of the agreement dated March 29, 2007 provides that disputes and differences arising between the licensor and the licensee in connection with the demised land or in relation to the said agreement shall be referred to the arbitration of a sole Arbitrator who shall be the Railway Officer nominated in this behalf by the General Manager of

Eastern Railway. The petitioner and the respondent entered into the agreement based on a letter of acceptance dated November 11, 1986. Under the said agreement, the demised land was to be used for manufacture and supply of Mono-Block Pre-Stressed Concrete (PSC). The agreement was extended from time to time and lastly on March 29, 2007. The land measured approximately 5 acres. The license was for a period of 10 years with an option to renew the same. The license fee was to be revised annually by adding 7% over and above the last paid rent.

3. The specific contention of the petitioner is that even after expiry of the agreement, the respondent requested the petitioner to pay rent and the petitioner continued to make such payment in terms of the agreement. Reliance has been placed on 11 letters written by the respondent claiming such rent/license fee. It appears from those letters that the petitioner had paid license fee for those periods even beyond 2017. Cheques were paid under the said head, for occupation of the railway land even in 2022, 2023, 2024 and 2025. The Railway Authorities did not take any steps for renewal of the agreement, but it is the specific contention of the petitioner that the agreement stood renewed by conduct of the parties as the respondent allowed the petitioner to continue to possess the said land.
4. The petitioner was thereafter informed by a letter dated February 5, 2025, that the payment made by the petitioner since 2022 was unacceptable to the respondent as the said payment was contrary to the

guidelines of the Master Circular of the Railways. The respondent informed the petitioner that the calculation of the licensee fee was under financial vetting, based on the updated measured land area and prevailing land value. The same would be made on the updated measured land area and the prevailing land value in accordance with the Railway Board Circulars. The respondent also informed the petitioner that upon completion of the vetting and approval from the competent authority, a demand note would be issued to the petitioner to enable the petitioner to deposit the outstanding licensee fee.

5. The dispute arose when the petitioner was suddenly informed in February 20, 2025, that is, nine years after the alleged expiry of the license agreement that, the payments towards the occupation of the land were unacceptable and the calculation of the licensee fee which was demanded from the petitioner was erroneous. Moreover, by a letter dated February 10, 2025, the petitioner was informed for the first time that the license granted in favour of the petitioner to occupy the railway land had expired. The specific case of the petitioner is that the rent was being paid to the petitioner as per the demand raised, although no formal agreement for license had been executed after 2017. The parties for all intent and purpose had extended the license and fees were accordingly paid. Thus, disputes arose between the parties. It also appears that by a letter dated March 3, 2025, the petitioner was asked to pay an amount of Rs.1,08,88,090.45/- along with GST of

Rs.19,59,856.28 for the period from 2022-23 to 2024-25. The petitioner disputed the amount.

6. It appears that a formal application seeking renewal of the said license is pending with the authority and the authority had informed the petitioner that the same was waiting consideration.
7. Under such circumstances, the petitioner had various claims and had raised various disputes with the authority. A notice invoking arbitration was issued for appointment of an Arbitrator. The respondent did not reply to the notice invoking arbitration. Learned advocate for the respondent submits that the license had already expired on 2017. The payments which were demanded by the respondent had not been made. The petitioner did not exercise the right of renewal. Once the agreement expired, the petitioner could not invoke arbitration clause.
8. Clause 8 of the agreement provides that the licensor may at its option or on an application by the licensee consider the renewal of the license for any further period and on such terms and conditions as the licensor shall consider reasonable, fit and proper. Clause 12 provides that all questions, disputes, differences arising between the licensor and the licensee in connection with the said land or in connection with the agreement including the construction and interpretation thereof shall be referred to a sole Arbitrator. The clause provides that the sole Arbitrator shall be a Railway Officer to be nominated by the General Manager of Eastern Railway.

9. Unilateral appointment is no-longer permissible in law. Reference is made to the following decisions:-

- (i) ***Perkins Eastman Architects DPC and Another vs. HSCC (India) Ltd. ; 2019 SCC OnLine SC 1517;***
- (ii) ***Central Organisation for Railway Electrification vs. ECI SPIC SMO MCML (JV) A Joint Venture Company : 2024 SCC OnLine SC 3219.***

The relevant paragraphs of ***Perkins Eastman (supra)*** are quoted below:-

“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...”

In the decision of ***Central Organization for Railway Electrification (supra)*** the Hon'ble Apex Court ultimately discussed the pros and cons of unilateral appointment and held thus:-

“**169.** In view of the above discussion, we conclude that:

- a. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;
- b. 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;
- c. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;
- d. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in *CORE* (supra) is unequal and prejudiced in favour of the Railways;
- e. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;
- f. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the *nemo iudex* rule; and
- g. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.”

10. Thus the petitioner has rightly approached this Court for appointment of an Arbitrator. The other issue is as to whether the petitioner has any locus to invoke the arbitration clause in view of the expiry of the license, this Court, prima facie finds, that even after expiry of the period of license by efflux of time, the parties were engaged in continuous conversation and discussions with regard to renewal. The petitioner was asked to make payment for occupation of the land. The application for renewal is pending without any decision.
11. There are letters which would indicate that the petitioner's application is under consideration. The letter will also indicate that the Railway Authorities had raised the demand towards payment of the land rent and the petitioner had, accordingly, paid. There is also a letter which indicates that the petitioner had paid lesser amount than what was required under the Railway Master Circular and, as such, the demand was made for a higher amount. All these issues arise and emanate from the license agreement itself and, as such, even if the agreement has expired by efflux of time, the disputes which arise between the parties from the said agreement must be decided by the Arbitrator. In any event, if the respondents have objection with regard to the arbitrability of the disputes, the same touches the jurisdiction of the learned Arbitrator and as such may be raised before the learned Arbitrator at the appropriate stage.

12. It is also evident that the Railway Authorities also have a claim against the petitioner on account of land rent and all such issues indicate that there are subsisting dispute between the parties.
13. Under such circumstances, this Court allows the application by appointing Hon'ble Justice Sahidullah Munshi, former Judge of this Hon'ble Court as the learned Arbitrator, to adjudicate the disputes between the parties. This appointment is subject to compliance of Section 12 of the Arbitration and Conciliation Act, 1996.
14. The learned Arbitrator shall fix his remuneration as per the Schedule of the Act.
15. All objections with regard to jurisdiction, arbitrability, admissibility and limitation etc, are left open.
16. AP-COM 977 of 2025 is, accordingly, disposed of.

(SHAMPA SARKAR, J.)