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

Date of decision: 13th JANUARY, 2026

IN THE MATTER OF:

+ **O.M.P. (COMM) 482/2023**

AIRPORTS AUTHORITY OF INDIA

.....Petitioner

Through: Mr. Raghav Shankar, ASG , Mr. Vaibhav Kalra, Ms. Anisha Upadhyay, Ms. Neha Bhatnagar , Mr. Talha Yusufi, with Mr. Gagan Kochar, SM Law, Ms. Pragya Bansal, Manager Law on behalf of the Petitioner , AAI

versus

SIKKA ASSOCIATES ARCHITECTS

.....Respondent

Through: Mr. Vikas Goel, Mr. Harmanbir Singh Sandhu, Mr. Ritesh Sharma, Mr. Vivek Gupta, Advocates

+ **OMP (ENF.) (COMM.) 2/2024, EX.APPL.(OS) 8/2024 & EX.APPL.(OS) 1686/2024**

MR. S. R. SIKKA SOLE PROPRIETOR OF M/S SIKKA ASSOCIATES

.....Decree Holder

Through: Mr. Vikas Goel, Mr. Harmanbir Singh Sandhu, Mr. Ritesh Sharma, Mr. Vivek Gupta, Advocates

versus

AIRPORTS AUTHORITY OF INDIA

.....Judgement Debtor

Through: Mr. Vaibhav Kalra, Ms. Anisha Upadhyay, Ms. Neha Bhatnagar , Mr.



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Talha Yusufi, with Mr. Gagan
Kochar, SM Law, Ms. Pragya Bansal,
Manager Law

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. O.M.P. (COMM) 482/2023 has been filed by the Airports Authority of India (Petitioner/AAI) under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award dated 31.07.2023 (Impugned Award) passed by the learned Sole Arbitrator.
2. OMP (ENF.) (COMM.) 2/2024 has been filed by the Decree Holder seeking enforcement of the Impugned Award passed by the learned Sole Arbitrator.
3. Though the Petitioner/AAI has taken several grounds to challenge the Impugned Award, on 29.01.2025 this Court noted that the learned Sole Arbitrator was appointed by the Petitioner itself and after passing of Impugned Award, the Petitioner has challenged the Impugned Award on the ground that the appointment of Arbitrator was unilateral in nature and, therefore, the Impugned Award be set aside. The question which therefore, arose before this Court was as to whether a party which appoints the arbitrator can turn around and challenge the arbitral award on the ground of unilateral appointment or not. Relevant portions of the Order dated 29.01.2025 reads as under:

“3. Material on record indicates that the appointment is unilateral in nature and an argument is being raised that since the appointment has been



*unilaterally made, the award be set aside. What is interesting is that it is the Petitioner which had appointed the Arbitrator. The learned Counsel for the Petitioner contends that this does not take away the right of the Petitioner to file a Petition under Section 34 of the Arbitration and Conciliation Act but the right has now arisen because of the judgment passed by the Apex Court in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) a Joint Venture Company, **2024 SCC OnLine SC 3654**.*

4 *The question that arises herein is can the party which appoints the Arbitrator turn around and challenge the Award stating that since the appointment has been unilateral in nature, the Award gets vitiated by the judgment passed by the Apex Court in Central Organisation for Railway Electrification (supra).*

5. *Learned Counsel for the Petitioner draws attention of this Court to the judgment dated 28.05.2024 passed by the Co-ordinate Bench of this Court in O.M.P (COMM) 573/2020 in which an Award has been set aside on the ground where a challenge has been filed by the party who appoints the Arbitrator. The said judgment places reliance on the judgment passed by the Apex Court in Broadband Network Ltd. v. United Telecom Limited, **(2019) 5 SCC 755**.*

6. *Prima facie, in the opinion of this Court, the judgment passed by the Apex Court in Broadband Network Ltd (supra) arose in a case when the appointment is challenged under Section 14 of the Arbitration and Conciliation Act and was not a case under Section 34 of the Arbitration and Conciliation Act. This Court would also like to consider as to whether the judgment passed by the Apex Court in Broadband Network Ltd (supra) would be applicable*



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to set aside an award where the party who has itself appointed the arbitrator unilaterally seeks to set aside the award on the ground of unilateral appointment.”

4. Before adjudicating upon the above question, this Court deems it fit to appreciate the factual matrix involved in the instant Petition. The Petitioner/AAI and the Respondent entered into an Agreement dated 27.02.2008 wherein the Respondent was engaged by the Petitioner/AAI to provide Architectural /Engineering consultancy services for the proposed new ATC Tower and Technical Building at NSCBI Airport at Kolkata, West Bengal, India. It is stated that the said Agreement contained an Arbitration Clause and the same reads as under:

“11.0. DISPUTE REDRESSAL

In the event of any dispute, difference or question arising out of or concerning the agreement for the execution of work herein specified which cannot be settled mutually the same shall be referred to the sole arbitrator appointed by Chairman, AAI. The arbitration proceedings will be governed by the provision contained in the Arbitration and Conciliation Act 1996 at New Delhi. The decision of the Arbitrator shall be final and binding for both the parties. Even in case of any dispute, difference or question arising out of this contract and the same is referred to arbitration, the Consultant shall continue to perform his duties under this agreement with due diligence and Authority will make the payment to the Consultant to the extent incorporated in the Agreement.

Action to appoint an Arbitrator shall be taken within two month from the date of communication made in writing by any party to the Chairman Airports Authority of India, Authority stating that a dispute has



arisen and that the matter be referred to arbitration in accordance with this Agreement along with the list of quantified dispute to be referred for arbitration.

In all cases where the total amount of claims in dispute is Rs. 75,000/- (rupees seventy five thousand only) and above, the arbitrator shall give reasons for the award.

Subject as aforesaid the provision of the Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceeding under this clause.”

5. It is stated that since disputes arose between the parties, the Respondent invoked arbitration by sending a Notice dated 30.07.2020 to the Petitioner /AAI under Section 21 of the Arbitration and Conciliation Act, 1996 in terms of Clause 11 of the Agreement. In the said Notice invoking Arbitration, the Respondent referred to the Judgment of the Apex Court in Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Limited, (2020) 20 SCC 760. It is stated that the said Notice was replied to by the Petitioner/AAI vide letter dated 23.09.2020 wherein the Petitioner/AAI sought Respondent's consent to nominate an Arbitrator from a panel of five arbitrators. The said letter is reproduced herein in its entirety and the same reads as under:

“To,

*M/s Sikka Associates Architects
A2/1, Africa Avenue,
Safdarjung Enclave,
New Delhi – 110029
Tel: 43232535
Fax: 26194481*



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Subject: Consent regarding appointment of Arbitrator

REF: Your request letter for referring disputes to arbitrator dated 30.07.2020

Madam/Sir,

We are in receipt of your request dated 30.07.2020 for adjudication of disputes through arbitration under Clause -11 of the Agreement for “Architectural/Engineering Consultancy Services for Proposed New ATC Tower and Technical Block at NSCB Airport, Kolkata” dated 27.02.2008.

In view of the amended provisions of the Arbitration & Conciliation Act, 1996 and pursuant to the provision to Section 12(5) of the said enactment, Airports Authority of India is seeking your consent to nominate an arbitrator from the AAI/DIAC/ICA panel of arbitrators mentioned as under for adjudication of the dispute that have arisen:

*a. Sh. Pradeep Kumar Gupta,
Former Additional Director General (Special) –
CPWD*

*b. Sh. Arun Kumar Trivedi,
Former Additional Director General – CPWD*

*c. Sh. S.C. Vasudeva,
Former Additional Director General – CPWD*

*d. Sh. V.K. Maheshwari,
Former Additional District & Sessions Judge*

*e. Sh. Prem Kumar Malhotra,
Former Law Secretary, Government of India*



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If you agree to the submission of dispute to any of the aforementioned arbitrators in terms of Clause -11 of the agreement executed between AAI and M/s Sikka Associates Architects, then please communicate your consent within 07 days of the receipt of this letter by you, so that the appointment may be given effect to, in accordance with the provisions of the Arbitration & Conciliation Act, 1996 (as amended from time to time).

Thanking you,”

6. *Vide* letter dated 28.09.2020, the Respondent gave its consent to the appointment of Sh. S. C. Vasudeva, Former Additional Director General – CPWD, appointed as the Sole Arbitrator. Consequently, *vide* Letter dated 20.10.2020, the Petitioner/AAI appointed Sh. S. C. Vasudeva, Former Additional Director General – CPWD, as the Sole Arbitrator to adjudicate on the disputes between the parties. Relevant portion of the Letter dated 28.09.2020 reads as under:

*“Thanks for your above referred letter.
From the names referred to us, we confirm our acceptance for Shri S.C. Vasudeva, to be the arbitrator for the case.”*

7. Relevant portion of the Letter dated 20.10.2020 reads as under:

“WHEREAS the claimant was entrusted the work of Consultancy of Technical Block-cum-ATC Tower at NSCBI Airport, Kolkata.

AND WHEREAS certain disputes have arisen between the parties and claimant has Invoked clause 11 of the Contract Agreement, which provides for appointment of Arbitrator to adjudicate the disputes.



Now, therefore, as per the power conferred on me under Clause 11 of the Contract Agreement, I, Arvind Singh, Chairman, AAI, hereby, appoint Shri S.C. Vasudeva, Addl. DG, CPWD (Retd.) as the Sole Arbitrator to adjudicate and decide the claims of the claimant (Annexure-1) and counter claims of AAI, If any.

The arbitration proceeding shall be governed by the Arbitration and Conciliation Act, 1996, as amended by the Amendment Acts of 2015 and 2019. The Fees and TA/DA expenses of arbitration shall be borne in equal share by Claimant and Respondent. The fee shall be fixed as per the Fourth Schedule of the Arbitration and Conciliation (Amendment) Act, 2015.”

8. Resultantly, the first question which arises before this Court is as to whether the process adopted by the Petitioner/AAI amounts to unilateral appointment of Arbitrator or not. If answered in the affirmative, this Court shall then delve into whether the said act of unilateral appointment by AAI can be advanced by AAI itself as a ground for setting aside the Impugned Award.

9. In the opinion of this Court, the issue as to whether asking a party to select an arbitrator from a truncated panel of arbitrators to adjudicate on the disputes is valid or not, is no longer *res integra* as being squarely covered by the Judgment of the Apex Court in Voestalpine Schienen GmbH v. DMRC, (2017) 4 SCC 665, has held as under:

“28. Before we part with, we deem it necessary to make certain comments on the procedure contained in the arbitration agreement for constituting the Arbitral Tribunal. Even when there are a number of persons empanelled, discretion is with DMRC to pick five persons therefrom and forward their names to the



*other side which is to select one of these five persons as its nominee (though in this case, it is now done away with). Not only this, DMRC is also to nominate its arbitrator from the said list. Above all, the two arbitrators have also limited choice of picking upon the third arbitrator from the very same list i.e. from remaining three persons. This procedure has two adverse consequences. **In the first place, the choice given to the opposite party is limited as it has to choose one out of the five names that are forwarded by the other side. There is no free choice to nominate a person out of the entire panel prepared by DMRC. Secondly, with the discretion given to DMRC to choose five persons, a room for suspicion is created in the mind of the other side that DMRC may have picked up its own favourites. Such a situation has to be countenanced. We are, therefore, of the opinion that sub-clauses (b) & (c) of Clause 9.2 of SCC need to be deleted and instead choice should be given to the parties to nominate any person from the entire panel of arbitrators. Likewise, the two arbitrators nominated by the parties should be given full freedom to choose the third arbitrator from the whole panel.***

*29. Some comments are also needed on Clause 9.2(a) of GCC/SCC, as per which DMRC prepares the panel of “serving or retired engineers of government departments or public sector undertakings”. **It is not understood as to why the panel has to be limited to the aforesaid category of persons. Keeping in view the spirit of the amended provision and in order to instil confidence in the mind of the other party, it is imperative that panel should be broadbased. Apart from serving or retired engineers of government departments and public sector undertakings, engineers of prominence and high repute from private sector should also be included. Likewise panel should comprise of persons with legal background***



like Judges and lawyers of repute as it is not necessary that all disputes that arise, would be of technical nature. There can be disputes involving purely or substantially legal issues, that too, complicated in nature. Likewise, some disputes may have the dimension of accountancy, etc. Therefore, it would also be appropriate to include persons from this field as well.

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.” (emphasis supplied)

10. The above Judgment has been referred to and quoted with approval in a Judgment delivered by a five Judges Bench of the Apex Court in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV), (2025) 4 SCC 641, wherein the Apex Court held as under:

“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



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Manager can go beyond the panel of four potential arbitrators, while the contractor is bound by the names enlisted in the panel.” (emphasis supplied)

11. Thus, the procedure for appointment of an Arbitrator, as detailed in the foregoing judgments, shows that though the Respondent had referred to the Judgment of the Apex Court in Perkins (supra), the Petitioner/AAI having given a list of five arbitrators, asking the Respondent to nominate an Arbitrator from that panel of five arbitrators and the Respondent having selected Sh. S. C. Vasudev as the Sole Arbitrator, has been held to be an appointment which is bad in law, by the Apex Court in CORE (supra).

12. A Letter dated 29.03.2020 sent by the Petitioner to the Respondent indicates that the Petitioner has only given a truncated panel of arbitrators and *vide* Letter dated 28.09.2020, the Respondent has consented to one of the Arbitrator from the truncated panel of arbitrators and the Petitioner thereafter, *vide* Letter dated 20.10.2020 constituted the Tribunal. This process has been held to be bad by the Apex Court in Voestalpine Schienen (supra) and was affirmed by the Five Judge Bench in CORE (supra). The contention of the learned Counsel for the Respondent is that the process adopted by the Petitioner does not amount to unilateral appointment or a procedure which is otherwise valid and that it was the Respondent which selected the Arbitrator, cannot be accepted.

13. The next issue that arises for consideration is as to whether the Petitioner/AAI, who appointed the Arbitrator, can now turn around and challenge the Impugned Award on the ground of unilateral appointment. This issue is also no longer *res integra* has having been decided by the Division Bench of this Court in Mahavir Prasad Gupta & Sons v. Govt. of



NCT of Delhi, **2025 SCC OnLine Del 4241**, wherein the Division Bench has held as under:

“74. This issue requires consideration of following questions:

a) When a party itself has unilaterally appointed the arbitrator, whether that party can object to the unilateral appointment of the arbitrator at any stage during or after the arbitration proceedings?

b) If a party has unilaterally appointed an arbitrator, can that party be deemed to have given express waiver in writing under Section 12(5) of the Act while making the appointment itself?

75. The analysis of the above questions would require consideration of the act of appointment of the arbitrator by a party and nature of such exercise of right. Section 12(4) of the Act provide that a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

76. Accordingly, if the party that has the power to make unilateral appointments exercises the right by making the appointment of the arbitrator, that party can challenge the appointment made by him only for reasons that he comes to know after the appointment is made. In cases of unilateral appointment, it is presumed that the party is aware of the disqualification of the arbitrator at the time of the appointment itself.

77. Further, Section 12(5) of the Act provides 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 of the Act shall be ineligible to be appointed as an arbitrator. The proviso to Section 12(5) of the Act provides that parties may, subsequent to disputes having arisen between them, waive the applicability of Section 12(5) of the Act by an express agreement in writing.

78. A conjoint reading of Sections 12(4) and 12(5) of the Act would make clear that even if there is an agreement for the appointment of unilateral appointment, such clause would be invalid except when both parties mutually agree to waive the same in writing.

79. Hence, exercise of power to unilaterally appoint the arbitrator by a party cannot be termed as express agreement to waive the invalidity of the arbitration agreement providing for unilateral appointment. For waiver under Section 12(5) of the Act after the dispute have arisen, the parties are required to consciously agree in writing to waive the ineligibility of the arbitrator. Grounds of ineligibility of the arbitrator under Seventh Schedule are derived from Red List of IBA Rules on Conflict of Interest in International Commercial Arbitration. The Act was as amended in 2015 to provide a detailed framework to address arbitrator bias. This framework includes the Fifth and Seventh Schedules, which draw from the Orange and Red Lists of the IBA Guidelines, respectively. The Fifth Schedule requires arbitrators to disclose any circumstances that might reasonably affect their impartiality, including relationships with the parties, counsel, or subject matter of the dispute. The Seventh Schedule reflecting the Red List, outlines scenarios of relationship conflict that would result in de jure ineligibility of an arbitrator.



80. The Sixth Schedule complements this by prescribing the format and content of such disclosures. In HRD Corpn. v. GAIL (India) Ltd., (2018) 12 SCC 471, the Supreme Court observed that the categories listed under the Fifth and Seventh Schedules must be construed by taking a “broad commonsensical approach”, without restricting or enlarging the words.

81. Accordingly, the party that unilaterally appointed the arbitrator cannot be deemed to have agreed in writing to waive the ineligibility of the arbitrator by act of appointment. When appointment itself is ineligible under the provisions of Section 12(5) of the Act read with Seventh Schedule of the Act, it does not take away the right of the party to challenge such an appointment merely because that party had made the appointment in absence of express agreement in writing between the parties to waive the applicability of Section 12(5) of the Act.

82. Hence, a party which unilaterally appointed the arbitrator has right to object to such appointment irrespective of fact that that party itself made the appointment of the arbitrator. Mere fact of making appointment in writing will not make the ineligible appointment a valid appointment unless there is express agreement in writing waiving such ineligibility.

83. Although it appears disingenuous, a party appointing an the sole or presiding arbitrator unilaterally can challenge the award on the ground that the award has been rendered in contravention of Section 12(5) of the Act read with Seventh Schedule of the Act notwithstanding that the said party itself made such an appointment. When the Arbitral Tribunal inherently lacked jurisdiction to act, the arbitration proceedings are void ab initio, rendering the award



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unenforceable irrespective of which party made such unilateral appointment. The arbitral proceedings and an award made by an unilaterally appointed sole or presiding arbitrator, who is de jure ineligible to be appointed as an arbitrator by virtue of the Seventh Schedule of the Act are void ab initio. The waiver under the proviso to Section 12(5) of the Act must be express and subsequent to the disputes having been arisen between the parties. Hence, the party which appointed the sole or presiding arbitrator unilaterally can also challenge the award under Section 34 of the Act on the ground of such ineligibility.”

(emphasis supplied)

14. In view of the above, the Impugned Award dated 31.07.2023 passed by the learned Sole Arbitrator is set aside.

15. Since the Impugned Award has been set aside, OMP (ENF.) (COMM.) 2/2024, which has been filed by the Respondent/Decree Holder seeking enforcement of the Award dated 31.07.2023, has become infructuous.

16. Accordingly, the Petitions are disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 13, 2026

Rahul