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* **IN THE HIGH COURT OF DELHI AT NEW DELHI****Date of Decision : 20.03.2026**+ **O.M.P.(I) (COMM.) 107/2026 & I.A. 7091/2026 (for exemption)****RAILTEL CORPORATION OF INDIA LIMITED**

.....Petitioner

Through: **Mr. Alok Singh, Mr. Jaivardhan Jeph, Mr. Kishore Bhandari, Ms. Nitika Jangir and Ms. Shivani Devadiya, Advocates**

versus

CENTRE FOR RAILWAY INFORMATION SYSTEMS

.....Respondent

Through: **Mr Himanshu Upadhyaya and Ms. Ruby Sharma, Advs. Mr. Santosh Kumar, Standing Counsel with Mr. Adithya Ramani and Mr. Ritik Dwivedi, Advs. for R-1.****CORAM:****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

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JUDGEMENT (ORAL)**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present Petition has been filed under Section 9 of the **Arbitration and Conciliation Act, 1996¹** seeking the following reliefs:

¹ Act



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- “a) Grant ad-interim and interim injunction restraining the Respondent, its officers, agents or representatives from acting upon, forfeiting, encashing or appropriating the Performance Bank Guarantee No. 1352NDLG00115525 dated 29.01.2025 and from giving any effect whatsoever to the cancellation letter dated 27.02.2026;
- b) Direct the issuing bank not to honour any demand for forfeiture/encashment of the said Bank Guarantee pending final adjudication by the arbitral tribunal;
- c) Stay the operation of the cancellation of Purchase Order No. 01245132100042 dated 12.02.2025;
- d) Pass any other order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. Learned counsel appearing on behalf of Respondent, at the outset, submits that prayers (a) and (b) as sought for in the present Section 9 Petition have become infructuous, since the bank guarantees have already been encashed on 18.03.2026.

3. At this stage, learned counsel appearing on behalf of the Petitioner, on instructions, submits that the matter be referred to Arbitration in terms of Clause 29.3 and 29.4 of the **Centre for Railway Information Systems² E-General Conditions of the Contract³**, in terms of which the arbitration is to be conducted by a Sole Arbitrator. The same is reproduced herein under:

“**29.3 Demand for arbitration:** In the event of any dispute or difference or differences 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 differences on any account, or as to the withholding by the purchaser of any certificate to which the contractor may claim to be entitled to, or if the purchaser fails in make a decision within a reasonable time, then and in any such case, the contractor, till 90 days of presenting his final claim on disputed matters may demand in writing that the dispute or difference be referred to arbitration. Such demand for arbitration shall specify the matters, which are in

² CRIS

³ E-GCC



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question, dispute or the difference, and only such dispute, or difference of which the demand has been made and no other shall be referred to arbitration.

29.4 In the event of any question, dispute or difference arising under these Conditions or any Special Conditions of Contract or 'Instructions to Tenderers' or in connection with this contract (except as to any matters the decision of which is specifically provided by these Conditions or 'Instructions to Tenderers' or the Special Conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer/ Retired Railway Officer appointed to be the Sole Arbitrator, by MD/CRIS. The Gazetted Railway Officer/ Retired Railway Officer to be appointed as Sole Arbitrator, however, will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servants had expressed views on all or any of the matters under dispute or difference. The award of the Sole Arbitrator shall be final and binding on the parties to this contract.”

4. As is evident, Clause 29.4 of CRIS E-GCC, provides for a unilateral appointment of an Arbitrator and such unilateral appointments have been held to be against the law by the Hon’ble Supreme Court succinctly in various judgements *inter alia* **Central Organisation for Railway Electrification (CORE) v. ECI SPIC SMO MCML (JV) A Joint Venture Co.**⁴, wherein it was conclusively held that a clause permitting unilateral appointment of an arbitrator raises justifiable doubts regarding the independence and impartiality of the sole arbitrator. Furthermore, the Apex Court held that such unilateral appointment clauses, particularly in public-private contracts, are violative of Article 14 of the Constitution of India. The relevant paragraph, being Paragraph No. 129 is extracted herein under:

“**129.** Equal treatment of parties at the stage of appointment of an arbitrator ensures impartiality during the arbitral proceedings. A clause that allows one party to unilaterally appoint a sole arbitrator

⁴ 2024 SCC OnLine SC 3219



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is exclusive and hinders equal participation of the other party in the appointment process of arbitrators. Further, arbitration is a quasi judicial and adjudicative process where both parties ought to be treated equally and given an equal opportunity to persuade the decision-maker of the merits of the case. An arbitral process where one party or its proxy has the power to unilaterally decide who will adjudicate on a dispute is fundamentally contrary to the adjudicatory function of arbitral tribunals.”

5. Further, Hon’ble Division Bench of this Court in ***Mahavir Prasad Gupta and Sons v. Government of NCT Delhi***⁵, has conclusively held that unilateral appointment of an arbitrator is *void ab initio*. The relevant paragraphs of the said judgement is reproduced herein under for ready reference:

“36. The decision of the Constitution Bench of the Supreme Court in CORE (supra), while upholding the judgments of TRF (supra) and Perkins (supra) has conclusively held that clause allowing unilateral appointment of an arbitrator gives justifiable doubts as to the independence and impartiality of the sole arbitrator. The Supreme Court further held that unilateral appointment clauses in public private contracts are violative of Article 14 of the Constitution of India:

xxx xxx xxx

“J. Conclusion

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

⁵ 2025 SCC OnLine Del 4241



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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 judex* 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.”

37. Hence, a unilateral appointment of the sole arbitrator or the presiding arbitrator by a party to the arbitrations seated in India is strictly prohibited and considered as null and void since its very inception. Resultantly, any proceedings conducted before such unilaterally appointed Arbitral Tribunal are also nullity and cannot result into an enforceable award. Any award passed by the unilaterally appointed Arbitral Tribunal is against public policy of India and can be set aside under Section 34 of the Act and/or refused to be enforced under Section 36 of the Act.”

(Emphasis supplied)

6. Since the parties have mutually consented to adjudication of their disputes by way of Arbitration and to the appointment of a Sole Arbitrator, this Court is of the view that the commencement of arbitral proceedings should not be unduly delayed.

7. Therefore, the statutory requirements of filing an Application under Section 11 of the Act and a Legal Notice under Section 21 of the Act for invocation of the Arbitration clause is dispensed with.

8. The material on record reflects that the approximate claimed value of the dispute involved in the present matter is approximately



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Rs. 4,00,00,000/-

9. In view thereof, this Court is of the view that the matter may be referred to arbitration by a Sole Arbitrator for the purpose of the resolution of disputes between the parties.

10. Accordingly, this Court hereby requests **Hon'ble Mr. Justice Jayant Nath (Former Judge, Delhi High Court)** to enter upon the reference and adjudicate the disputes *inter se* the parties.

11. The arbitration would take place under the *aegis* of the Delhi International Arbitration Centre ["DIAC"] and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.

12. The learned Sole Arbitrator may proceed with the arbitration proceedings, subject to furnishing to the parties the requisite disclosures as required under Section 12(2) of the Act within a week of entering the reference.

13. All rights and contentions of the parties are kept open, to be decided by the learned Sole Arbitrator on their merits, in accordance with law.

14. Needless to state, nothing in this order shall be construed as an expression of opinion of this Court on the merits of the controversy.

15. Accordingly, the present Petition under Section 9 of the Act shall be treated as an Application under Section 17 of the Act, and appropriate directions may be passed by the learned Arbitrator after entering upon the reference.

16. The parties are at liberty to raise all objections, including with respect to the jurisdiction of the learned Arbitrator, before the learned



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Arbitral Tribunal.

17. The Registry is directed to send a receipt of this order to the learned Arbitrator through all permissible modes, including through e-mail.

18. The present Petition, along with pending Application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
MARCH 20, 2026/JYH/DJ

Signature Not Verified

Signed By: HARVINDRA
KAUR BHATTIA
Signing Date: 25.03.2026
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