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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 5401/2026**Date of Decision: **22.04.2026****IN THE MATTER OF:****M/S. S AND P INFRASTRUCTURE DEVELOPERS PVT. LTD.
AND ORS.Petitioners**Through: **Mr. Kunal Malik, Mr. Lokendra
Singh, Mr. Subhash Chandra Pandey,
Mr. C. S. Panda, Mr. Mudit Sharma,
Adv.**

versus

UNION OF INDIA AND ORS.RespondentsThrough: **Ms. Iram Majid, Adv.
Mr. Santosh Kumar, Standing
Counsel and Mr. Adithya Ramani
Advocate for NHAI.****CORAM:****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****J U D G E M E N T**

1. The present petition has been filed seeking to quash the arbitration clause in the tender documents issued by the respondents. The arbitration clause in question requires all disputes between the parties to be settled through the Rules of the Society for Affordable Redressal of Disputes (*Hereinafter referred to as 'SAROD rules'*). Under the SAROD framework, for the appointment of arbitrators, the parties must choose only from the empanelled list of arbitrators maintained by SAROD.

2. The petitioners are stated to be infrastructure development companies

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that regularly bid on tenders issued by the respondent no.2 (Ministry of Road Transport & Highways), respondent no.3/National Highway Authority of India (NHAI) and other similar entities. These companies generally undertake projects for upgrading, rehabilitation and widening of National Highways.

3. The grievance of the petitioners is with regard to the neutrality and impartiality of the arbitration process under the SAROD rules. It is contended that mandating arbitration exclusively under the SAROD framework, and requiring the parties to choose arbitrators only from the panel maintained by SAROD, curtail party autonomy.

4. Learned counsel appearing on behalf of the petitioners have placed reliance on the decision of the Supreme Court in *Central Organisation for Railway Electrification v ECI-SPIC-SMO-MCML¹ [CORE]*, submitting that party autonomy is an essential feature of arbitration, and that, one party cannot compel the other to appoint its nominee arbitrator from a panel controlled by the opposite party.

5. The Court has perused the material placed on record, and the submissions advanced on behalf of the petitioners. It is, however, noted that the mechanism under the aegis of SAROD had already been looked into by the Coordinate Bench in *Kamlesh Kumar v Society for Affordable Redressal of Disputes and Others²*.

6. The primary challenge to the dispute resolution clause is that the mechanism that the respondents seek to follow, under the aegis of SAROD is primarily under State control. This Court in *Kamlesh (Supra)*, concluded

¹ 2024 SCC OnLine SC 3219

² 2024 SCC OnLine Del 4856



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that the SAROD neither discharges any governmental function, nor is its decision making structure is decided by the State. It was observed that SAROD has its own set of arbitration rules, general body and a governing body. The members forming the governing body is counter balanced, due to an equal amount of private participation from the National Highways Builders federation (NHBF), apart from the members nominated by respondent no.3/NHAI. The relevant paragraphs from the judgement are reproduced for better clarity:-

“ 14. Applying the tests to the facts of the present case, it is seen that Respondent No. 1 primarily functions as an Arbitral Institution and is not performing any governmental functions. Respondent No. 1 primarily provides for panel of Arbitrators for conducting arbitration. Respondent No. 1 has got its arbitration rules. The arbitration rules provides the procedure as to how arbitration has to be conducted. The arbitration which is conducted by Respondent No. 1 is ultimately governed by the provisions of the Arbitration and Conciliation Act, 1996. Material on record indicates that the purpose of the society is to provide only a forum to ensure cost effective and time bound resolution of disputes between Respondent No. 2 and other entities. Respondent No. 1 also selects and maintains the list of experts who can provide their assistance in the working of the society. Respondent No. 1 provides for panel of Arbitrators and also provides for moral conduct of the Arbitrators. A perusal of aims and objects of Respondent No. 1 does not show that it performs any kind of governmental function. The Respondent No. 1 has got its own General Body and Governing Body. The Governing Body consists of eight (8) members. The appointment of the President of Governing Body is nominated by Respondent No. 2, however, it does mean that only an officer of Respondent No. 2 has to be nominated. Any person can be nominated by Respondent No. 2 and it could be a Retired Judge or an expert in the relevant field. The Vice President is nominated by the National Highways Builders Federation (NHBF) which is completely a private entity of contractors and builders. Three members are nominated by Respondent No. 2 and three members are nominated by National Highways Builders Federation (NHBF). There is equal amount of private participation in the Governing Body. Rules and regulations also do not in any manner suggest any kind of deep and pervasive control by Respondent No. 2 over Respondent No. 1.

15. Applying the tests laid down in Pradeep Kumar Biswas (supra), this

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Court is of the opinion that Respondent No. 1 is not an instrumentality of State amenable to writ jurisdiction. However, the instant dispute is only of cessation of term of the Petitioner who was appointed as an arbitrator. This Court is, therefore, is not inclined to entertain the writ petition only on the ground that Respondent No. 1, against whom the reliefs have been sought by the Petitioner, is not amenable to writ jurisdiction.

16. Resultantly, the writ petition is dismissed, along with pending application(s), if any”

7. While exercising writ jurisdiction under Article 226 of the Constitution, the arbitral clause(s), and the mechanism put in place by the parties for the resolution of their dispute by way of the arbitrator cannot be gone into, unless it is prima facie found to be perverse and unreasonable.

8. Even on merits, the grievance raised by the petitioners with respect to SAROD and its panel does not seem to be *res integra*. This Court in ***Villupuram Highways Construction PVT Ltd v NHAI***³ examined Rules 11.2 and 11.4, to answer the more direct question pertaining to the appointment of arbitrators from the SAROD panel, and the applicability of the judgement laid down by the Supreme Court in CORE. The Court found that the mischief addressed in CORE is confined to cases where the arbitration panel is restricted and is essentially under the control of one of the contracting parties. The relevant extracts are as follows:-

“ 29. Having so held, I may now turn to the concern of Petitioners that appointment of their nominee Arbitrators from the curated SAROD panel will compromise and destroy the ethos and hallmarks of arbitration i.e. ‘party autonomy’ and ‘impartiality and independence of Arbitrators’ highlighted and emphasised upon by the Supreme Court in Perkins (supra) and CORE (supra). In my view, this apprehension is taken care of by SAROD, by ensuring that the panel is broad-based as also making the procedure for appointment of Arbitrators to constitute the panel transparent through a Committee appointed by the Governing Body of SAROD which has equal participation from NHAI and NHBF. NHAI has placed on record

³ ARB P.1829/2024 dated 29.07.2025



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the list of Arbitrators maintained by SAROD as on 16.01.2025 valid for a period of two years, which shows that as many as 92 Arbitrators are empanelled and belong to diverse fields. As rightly flagged by counsel for NHAI, the list of Arbitrators includes former Judges of the Supreme Court and High Courts of different States; retired Bureaucrats such as Secretaries to Government of India having served in different Ministries/CVC/CIC/Parliamentary Affairs; Chairman, Railway Board; Chief Advisor, Bihar State Planning Board; Member, NHRC; Special Director General, CPWD; Engineer-in-Chief/Chief Engineer, PWD; DG, CPWD etc. as also former officers of NHAI. The panel is broad-based with people of considerable standing, experience and repute in diverse fields and offers a free and wide choice to the Petitioners to choose from

30. The apprehension of any bias or impartiality is further allayed by the fact that the panel is not curated by NHAI and as explained by counsel for NHAI, is prepared and maintained by SAROD, which is an independent arbitral institution run by the society formed by NHAI and NHBFI, where NHBFI is an organisation of all contractors/builders of National Highways, State Highways and Bridges in organised sectors across the country in a representative capacity, with approximately 108 members. Management of affairs of SAROD is entrusted to a Governing Body which comprises of office bearers and members with the President being nominated by NHAI, Vice President by NHBFI from its members and amongst the members, three are nominated by NHAI while the other three by NHBFI. Clause 23.2 of Articles of Association of SAROD provides for formation of a Committee to prepare a panel of Arbitrators which examines and evaluates applications for empanelment/re-empanelment of Arbitrators with four members having equal representation of NHAI and NHBFI. SAROD invites applications from candidates/Arbitrators desirous of being empanelled and after careful scrutiny of the applications, credentials etc. of the applicants, prepares the panel in a transparent manner. The endeavour is to take Arbitrators from diverse fields with experiences in law, administration, engineering etc. The panel therefore cannot be held to be hit by the judgment in CORE (supra).

.....

35. Therefore, what was disapproved by the Supreme Court in CORE (supra) was a procedure where one contracting party curates a limited panel of Arbitrators and restricts the choice of the other party to appoint from the said panel. It bears repetition to state that in the present case, SAROD panel is not a restricted panel but broad-based and Petitioners have a free choice to nominate the nominee Arbitrators from the entire panel and of their choice. The nominated Arbitrators in turn have to appoint the Presiding Arbitrator and therefore as held in CORE (supra), any perceived tilt of an Arbitrator in favour of a party which nominated that Arbitrator is offset by the appointment of third Arbitrator. As observed in Perkins (supra), whatever advantage a party may derive by nominating an

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Arbitrator of its choice would get counterbalanced by equal power with the other party. Thus, from a reading of the SAROD Rules as also considering that the SAROD panel is a broad-based panel in consonance with the principles elucidated in Voestalpine Schienen GmbH (supra), I am unable to agree with the Petitioners that by nominating their Arbitrators from the SAROD panel party autonomy is compromised and Court should accept their nominations made and appoint the nominee arbitrators of NHAI..”

9. Similarly, in the case of **M/s. KNR Tirumala Infra Pvt. Ltd. v. National Highways Authority of India**⁴, the coordinate Bench of this Court in paragraph 32 had approved the mechanism of appointment of arbitrator under SAROD, the same reads as under:

“32. The judgment in CORE (supra) is distinguishable on the facts and has no application to the present case. In CORE (supra), the contractor was confined to selecting two names from a list of four officers of the Railways, from which the General Manager would choose the contractor’s nominee, while retaining the exclusive power to appoint the remaining arbitrators. The clause was struck down as it vested one party with a dominant role in the appointment process. Such a situation is entirely different from cases of institutional arbitration, such as under the SAROD or ICA framework, where appointments are regulated by independent rules and drawn from a neutral panel.”

10. Though this decision is sub judice before the appellate Court, however, the same has not been stayed.

11. The petitioners have failed to place on record any material to demonstrate that the arbitral mechanism under SAROD is perversely controlled by respondent no.3/NHAI, or is otherwise *ex facie* unreasonable. The SAROD framework stands on a different footing from the mechanism considered by the Supreme Court in *CORE*. The framework herein is constituted with equal involvement of respondent no.3/NHAI and NHBF (a private association of builders); here, there is an equal participation of private members, apart from the ones nominated by NHAI. Moreover, even



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with respect to the nominations made by respondent no.3, there is no requirement that the person nominated may be only officers of NHAI, the nominee may also be a retired Judge, or an expert in the relevant field.

12. For all those aforementioned reasons, finding no justification to interfere, the petition stands dismissed.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 22, 2026/P

⁴ ARB.P.NO. 1733 of 2024 dated 29.08.2025