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

CNR No. DLHC010237572026

+ **ARB.P. 939/2026**

RAIL UDYOG

.....Petitioner

Through: **Mr. Ashish Khorana, Advocate.**

versus

**PRINCIPAL CHIEF MATERIAL MANAGER, NORTHERN
RAILWAY**

.....Respondent

Through: **Ms. Radhika Bishwajit Dubey, CGSC
with Ms. Gurleen Kaur Waraich, Mr.
Kritarth Upadhyay, Mr. Vivek Sharma,
Mr. Amulya Dev Mishra, Mr. Saksham
Sharma and Mr. Ayush Dogra,
Advocates.**

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

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05.08.2026

1. It is stated that the disputes had arisen in respect of the tender dated 24.12.2022 and the formal Purchase Order issued on 30.01.2023.
2. It is further stated that while the purchase order was in subsistence, on 10.05.2025 an amount of Rs.15,08,252/- was alleged to have been illegally recovered against rejected stores worth Rs.15,08,252/- from the petitioner's pending bills and Rs.1,98,828/- was withheld on account of full liquidated damages.
3. The relevant clauses relating to arbitration in the contract agreement executed between the parties is at Clause 5 of the Purchase Order which is extracted hereunder:

"5 Standard Governing Conditions IRS Conditions of Contract: The contract shall be governed by latest version (along with all correction slips) of IRS



conditions of contract, and all other terms and conditions incorporated in the tender documents. ”

4. It is apparent that the remaining conditions not contained in the purchase order would be governed by the conditions prescribed in the IRS Conditions of Contract. The relevant clause containing the arbitration agreement provided in Clause 2905 of the IRS Conditions of Contract is extracted hereunder:

“2905 : Appointment of Arbitrator:

2905(a) : Appointment of Arbitrator where applicability of section 12 (5) of Arbitration and Conciliation Act has been waived off:

(i): In cases where the total value of all claims in question added together does not exceed 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below Junior Administrative Grade, nominated by the General Manager. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by General Manager.

(ii): In cases where the total value of all claims in question added together exceeds 1,00,00,000/- (Rupees One Crore only), the Arbitral Tribunal shall consist of a panel of three Gazetted Railway Officers not below Junior Administrative Grade or 2 Railway Gazetted Officers not below Junior Administrative Grade and a retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrators. For this purpose, the Railway will send a panel of at least four (4) names of Gazetted Railway Officers of one or more departments of the Railway which may also include the name(s) of retired Railway Officer(s) empanelled to work as Railway Arbitrator to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'presiding arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them is from the Accounts Department. An officer of Selection Grade of the Accounts Department may be considered of equal status to the officers in Senior Administrative Grade of other departments of the Railway for the purpose of appointment of arbitrator.

iii: The serving railway officer working in arbitral tribunal in the ongoing arbitration cases as per clause 2905(a)(i) and clause 2905(a)(ii) above, can continue as arbitrator in the tribunal even after his retirement.

2905(b): Appointment of Arbitrator where applicability of Section 12 (5) of Arbitration and Conciliation Act has not been waived off:



(i) In cases where the total value of all claims in question added together does not exceed 50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of a Retired Railway Officer, retired not below the rank of Senior Administrative Grade Officer, as the arbitrator.

For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrator duly indicating their retirement dates to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager. Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as arbitrator within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the arbitrator.

(ii) In cases where the total value of all claims in question added together exceeds 50,00,000/- (Rupees Fifty Lakh only), the Arbitral Tribunal shall consist of three (3) retired Railway Officers, retired not below the rank of Senior Administrative Grade Officer,. For this purpose, the Railway will send a panel of at least four (4) names of retired Railway Officer(s) empanelled to work as Railway Arbitrators duly indicating their retirement date to the Contractor within 60 days from the day when a written and valid demand for arbitration is received by the General Manager.

Contractor will be asked to suggest to General Manager at least 2 names out of the panel for appointment as Contractor's nominee within 30 days from the date of dispatch of the request by Railway. The General Manager shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators either from the panel or from outside the panel, duly indicating the 'Presiding Arbitrator' from amongst the 3 arbitrators so appointed. General Manager shall complete this exercise of appointing the Arbitral Tribunal within 30 days from the receipt of the names of Contractor's nominees. While nominating the arbitrators, it will be necessary to ensure that one of them has served in the Accounts Department.

2905(c)(i): If the contractor does not suggest his nominees for the arbitral tribunal within the prescribed timeframe, the General manager shall proceed for appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.

2905(c)(ii) If one or more of the arbitrators appointed as above refuses to act as arbitrator, withdraws from his office as arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as arbitrator for any reason whatsoever or dies or in the opinion of the General Manager fails to act without undue delay, the General Manager shall appoint new arbitrator/arbitrators to act in his/their place in the same manner in which the earlier arbitrator/arbitrators had been appointed. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous arbitrator (s).

2905(c)(ii)(a) Fast Track procedure: Parties to the arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in Section 29B of the Arbitration & Conciliation Act, 1996, as



amended.

2905(c)(ii) (b) Before proceeding into the merits of any dispute, the Arbitral Tribunal shall first decide and pass its orders over any plea submitted/objections raised by any party, if any, regarding appointment of Arbitral Tribunal, validity of arbitration agreement, jurisdiction and scope of the Tribunal to deal with the dispute (s) submitted to arbitration, applicability of time 'limitation' to any dispute, any violation of agreed procedure regarding conduct of the arbitral proceedings or plea for interim measures of protection and record its orders in day to day proceedings. A copy of the proceedings duly signed by all the members of tribunal should be provided to both the parties.

2905(c)(iii): (i) Qualification of Arbitrator (s):

(a) Serving Gazetted Railway Officers of not below JA Grade level.

(b) Retired Railway Officers not below SA Grade level, one year after his date of retirement.

(c) Age of arbitrator at the time of appointment shall be below 70 years.

(ii) An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

(iii) While appointing arbitrator(s) under Sub-Clause 2905(a)(i), 2905(a)(ii), 2905(b)(i) & 2905(b)(ii) above, due care shall be taken that he/they is/are not the one/those who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per annexure shall be taken from Arbitrators. The proceedings of the Arbitral tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

2905(d)(i): The arbitral award shall state item wise, the sum and reasons upon which it is based. The analysis and reasons shall be detailed enough so that the award could be inferred there from.

2905(d)(ii): A party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a Tribunal and interpretation of a specific point of award to Tribunal within 60 days of receipt of the award.

2905(d)(iii): A party may apply to Tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.”

5. It is in this regard that the petitioner had issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “the Act”) dated 27.10.2025, requiring the respondent to concur for reference of disputes to arbitration. It is further stated that the respondent vide communication dated 15.12.2025 agreed to appoint one of their officers as



arbitrator, however, only on the condition that the rigour under Section 12(5) of the Act be waived by the petitioner.

6. It is stated that the said condition was not acceptable to the petitioner, constraining the petitioner to file the present petition.

7. Having heard Mr. Ashish Khorana, learned counsel appearing for the petitioner and Ms. Radhika Bishwajit Dubey, learned CGSC appearing for the respondent, it appears that so far as the reference of the dispute to the arbitration is concerned, the respondent has no objection except the objections raised in its reply letter dated 15.12.2025.

8. Keeping in view the judgment of *Perkins Eastman Architects DPC and Anr. Versus HSCC (India) Limited: (2020) 20 SCC 760* and the subsequent judgment of the Supreme Court in *SBI General Insurance Co. Ltd Versus Krish Spinning: (2024) 12 SCC* and *Central Organisation for Railway Electrification Versus ECI SPIC SMO MCML(JV) A Joint Venture Company: (2025) 4 SCC 641*, the respondent is denuded from exercising any powers of nominating any of its employees as an arbitrator to arbitrate the present dispute.

9. That apart, the judgment of the Supreme Court in *SBI (supra)* has categorically held that the Court appointing arbitrator under Section 11 of the Act is only required to be satisfied as to the existence of an arbitration clause. There is no requirement for the Court to go into the merits of the disputes.

10. Having regard thereto and in consonance to the ratio laid down by the Supreme Court in the aforesaid judgements, the petition is allowed.

11. Accordingly, **Mr. Rakesh Kumar Dudeja (Ph: 9810147798)** is appointed as an Arbitrator. The fees of the arbitrator shall be governed under Schedule IV of the Arbitration and Conciliation (Amendment) Act, 2015. The proceedings shall be carried out under the aegis of the Delhi International Arbitration Centre.



12. Let the copy of this order be sent to the Delhi International Arbitration Centre forthwith.

13. The petition is disposed of accordingly.

TUSHAR RAO GEDELA, J

AUGUST 5, 2026

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