



2026:DHC:192



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 09th January, 2026**+ **ARB.P. 1455/2025****KALPATARU PROJECTS INTERNATIONAL LIMITED**

.....Petitioner

Through: Mr. Arvind Nayar, Sr. Advocate with
Mr. Ayush Agrawal, Mr. Vikrant
Bloria, Mr. Sushant Tomar, Dr. Sunil
Mittal, Mr. Amit Sagar, Mr. Amit
Kumar, Mr. Shubham Devrani, Mr.
Divyanshu Negi, Mr. Akshay Joshi
and Ms. Diksha Dadu, Advs.

Mob: 9711753862

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Versus

NORTHERN RAILWAY

.....Respondent

Through: Mr. P.S. Singh, CGSC, with Ms.
Minakshi Singh, Mr. Ashutosh Bharti
and Mr. Rajneesh K. Sharma, Advs.

Mob: 9810282890

Email: legalaxis.ps@gmail.com**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J. (Oral):**

1. The present petition has been filed under Sections 11(4) read with 11(6) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") filed on behalf of Kalpataru Projects International Limited. The petition initially sought appointment of the respondent's nominee Arbitrator in terms of the Arbitration Clause between the parties, however, at the time of hearing of the petition, the petitioner has prayed for appointment of a Sole Arbitrator.



2. It is the case of the petitioner that in terms of the agreed procedure, the petitioner by way of Notice of dispute dated 13th June, 2025, under Section 21 of the Arbitration Act, nominated Justice (Retd.) Kamalkishore Kapoorchandji Tated, Former Judge, High Court of Bombay as its nominee Arbitrator. Since the respondent failed to appoint its nominee Arbitrator, the present petition has been filed.
3. Learned Senior Counsel appearing for the petitioner submits that an independent Arbitrator be appointed by this Court, and the Arbitral Tribunal constituted by the Central Organisation for Railway Electrification (“CORE”), for adjudication of disputes between the parties arising out of the Engineering Procurement and Construction Agreement dated 25th February, 2021 (“Agreement”), be set aside.
4. Learned Senior Counsel for the petitioner raises objection as regards the legality of the Arbitration Clause, i.e., Clause 24 of the Agreement between the parties, which envisages three retired Railway Officers, not below the grade JA, for the constitution of the Arbitral Tribunal. He submits that the said Arbitration Clause is invalid, in view of the law laid down by the Supreme Court.
5. *Per contra*, learned counsel appearing for the respondent has justified the terms of the Arbitration Clause as contained in the Agreement. He submits that the present is not a case of unilateral appointment of Arbitrator, since in the present case there is a three member Tribunal, and the petitioner has a choice of choosing one nominee Arbitrator from the list of panel of three names of retired Railway Officers.
6. In response, learned Senior Counsel appearing for the petitioner relies upon the order dated 14th August, 2024, passed by the Supreme Court in *SLP*



(C) 2777/2024, titled as “*M/s. Kalpataru Projects International Limited Versus Central Organisation for Railway Electrification & Anr.*”, to submit that disputes arising out of the same Agreement were referred to a Sole Arbitrator, as appointed by the Supreme Court. He submits that a similar order for appointment of a Sole Arbitrator be also passed by this Court.

7. Having heard learned counsels for the parties, at the outset, this Court notes that in the present case, the Arbitration Clause as contained in Article 24 of the Agreement dated 25th February, 2021, includes Clause 24.1, which details the procedure for appointment of Arbitral Tribunal, and the same reads as under:

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ARTICLE 24		1
DISPUTE RESOLUTION		
24.1 Standing Arbitral Tribunal		
24.1.1	The Arbitral Tribunal shall consist of a panel of three Retired Railway Officers not below JA grade. The Standing Arbitral Tribunal shall be formed within three months from the date of the execution of the Contract. For this purpose, the Authority will send a panel of 3 (Three) names of Retired Railway Officers of one or more departments of the Railway, within two weeks from the receipt of the list, the contractor shall intimate in writing two names from the said list to the Authority. The Authority shall appoint at least one out of them as the Contractor's nominee and will, also simultaneously appoint the balance number of arbitrators from the panel approved by Authority indicating the presiding arbitrator from amongst the 3 arbitrators so appointed. While nominating the Arbitrators, it will be necessary to ensure that one out of them is from the Accounts department.	
24.1.2	If the Contractor fails to select the members from the approved panel within 14 (Fourteen) days of the date of the receipt of the said approved panel, the Authority Engineer shall immediately in writing inform this fact to the Authority. On receipt of this information, the Authority shall within two weeks, appoint one Arbitrator from the list of arbitrators given to the contractor.	
24.1.3	If one or more of the Arbitrators appointed refuses to act as Arbitrator, withdraws from his office as Arbitrator, or vacates his office or is unable or unwilling to perform his functions as Arbitrator for any reason whatsoever or dies or in the opinion of the Authority fails to act without undue delay, the Authority shall terminate the mandate of such Arbitrator and thereupon new Arbitrator shall be appointed in the same manner, as the outgoing Arbitrator had been appointed.	
24.1.4	In the specific cases of any misconduct by any of the members of the TRIBUNAL, the parties shall have the right to specifically bring it to the notice of the TRIBUNAL such conduct, through a statement filed with necessary documents in proof of such misconduct and the TRIBUNAL, after taking NOTICE of such conduct initiate the replacement of the member concerned, in the same manner the member to be replaced was appointed.	

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8. Perusal of the aforesaid Arbitration Clause shows that the same envisages that the Arbitral Tribunal shall consist of three retired Railway Officers, not below JA grade. For the constitution of an Arbitral Tribunal, the authority will recommend a panel of three names of retired Railway Officers and the contractor is required to intimate in writing, two names from the said list to the authority. Accordingly, the authority shall appoint at least one of them as the contractor's nominee. Further, the authority will also simultaneously appoint the balance number of Arbitrators from the panel approved by the authority, indicating the presiding Arbitrator from amongst the three Arbitrators so appointed.

9. Reference to the Arbitration Clause in the present case makes it evident that the same is not in consonance with the Principle of Independence and Impartiality of the Arbitrators. The aforesaid Arbitration Clause falls foul of Section 12(5) of the Arbitration Act, as the said Section renders such a person ineligible for appointment as an Arbitrator, whose relationship with the parties falls under any of the categories specified under the Seventh Schedule of the Arbitration Act. Retired employees of the respondent fall under the category of ineligible persons for appointment as an Arbitrator, in terms of the Seventh Schedule of the Arbitration Act.

10. It is also an undisputed position of law that a person, who is ineligible for appointment as an Arbitrator in view of Section 12(5) of the Arbitration Act, is disentitled from nominating another person as an Arbitrator. Thus, in the case of *Perkins Eastman Architects DPC and Another Versus HSCC (India) Limited*, (2020) 20 SCC 760, the Supreme Court dealt with a situation where a person who was rendered ineligible in terms of Section 12(5) of the Arbitration Act, was making an appointment of Sole Arbitrator.



The Supreme Court held that a person, who has an interest in the dispute or its outcome, should not have the power to unilaterally appoint a Sole Arbitrator. Accordingly, the Supreme Court in the said case, held as follows:

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21. But, in our view that has to be the logical deduction from TRF Ltd. [TRF Ltd. v. Energo Engg. 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.

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(Emphasis Supplied)

11. Furthermore, the Supreme Court in the case of ***Central Organization for Railway Electrification Versus ECI SPIC SMO MCML (JV) Joint Venture Company, (2025) 4 SCC 641***, has held that composition of the Arbitral Tribunal must be consistent with the mandatory standards laid down under the Arbitration Act, and in case of a conflict, the mandatory provisions of the Arbitration Act prevail over the Arbitration Agreement



between the parties. It has further been laid down that Independence and Impartiality of arbitral proceedings can be effectively enforced only if the parties can participate equally at all stages of an arbitral process, including, the stage of the appointment of Arbitrators. Thus, the Supreme Court has held as follows:

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31. The above extract suggests that an arbitration agreement entered into by the parties is subject to certain well-defined and mandatory legal principles. For instance, Section 34(2)(a)(v) allows for refusal of enforcement of arbitral awards if the composition of the Arbitral Tribunal or arbitral procedure was not following the agreement of the parties unless such agreement conflicts with the mandatory provisions of the law. [Section 34(2)(a)(v), Arbitration Act. It reads: “34. (2)(a)(v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or failing, such agreement, was not in accordance with this Part;”] The composition of the Arbitral Tribunal or the arbitral procedure must not only be in accordance with the agreement of the parties but also be consistent with the mandatory standards laid down under the Arbitration Act. [Report of the United Nations Commission on International Trade Law on the work of its Eighteenth Session (3-6-1985 to 21-6-1985) Supplement No. 17 (A/40/17) [290]. The Report states: “290. As regards the standards set forth in the sub-paragraph, it was understood that priority was accorded to the agreement of the parties. However, where the agreement was in conflict with a mandatory provision of “this Law” or where the parties had not made an agreement on the procedural point at issue, the provisions of “this Law”, whether mandatory or not, provided the standards against which the composition of the Arbitral Tribunal and the arbitral procedure were to be measured.”] In case of a conflict, mandatory provisions of the Arbitration Act prevail over the arbitration agreement between the parties. [A/CN.9/246, para 135.]

32. Under the Arbitration Act, the mandatory provisions must be deduced from their content. For instance, the use of the phrase “unless otherwise agreed by the parties” is an indicator of the fact that the provision is derogable because it gives priority to the agreement of the parties. In contrast, the use of the word “shall” in a provision is an indicator that the legislature intended to give it a



mandatory effect. However, the use of “shall” is not the sole indicator to determine the mandatory nature of a provision. The provision must be interpreted by having regard to its text and the context to determine its nature. [State of U.P. v. Babu Ram Upadhyaya, 1960 SCC OnLine SC 5, para 29 : AIR 1961 SC 751 : (1961) 2 SCR 679, para 29; Raza Buland Sugar Co. Ltd. v. Municipal Board, Rampur, 1964 SCC OnLine SC 119, para 8]

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67. **Section 18 contains the principle of natural justice to give full opportunity to parties to present their case.** [Associate Builders v. DDA, (2015) 3 SCC 49, para 30 : (2015) 2 SCC (Civ) 204; Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd., (2018) 11 SCC 470, para 16 : (2018) 5 SCC (Civ) 156] In Union of India v. Vedanta Ltd. [Union of India v. Vedanta Ltd., (2020) 10 SCC 1, para 121] , Indu Malhotra, J., writing for a three-Judge Bench, observed that the “[f]air and equal treatment of the parties is a non-derogable and mandatory provision, on which the entire edifice of the alternative dispute resolution mechanism is based”. **The purpose of Section 18 is to give the arbitral process a semblance of judicial proceedings by infusing the principles of equality and fairness.** [Lord Mustill and Stewart Boyd, Commercial Arbitration (2nd Edn., Butterworths, 2001) p. 58.] The theoretical basis for this understanding stems from the fact that arbitrators are authorities vested with powers to resolve disputes under the law. [Ilias Bantekas, “Equal treatment of parties in International Commercial Arbitration”, (2020) 69(4) International & Comparative Law Quarterly 991, 992.]

68. **The first part of Section 18 provides that “parties shall be treated with equality”. The broad nature of the prescription has to be complied with not only by the Arbitral Tribunals, but also by the parties while giving expression to party autonomy. The principle has to be followed in all procedural contexts of arbitral proceedings, including the stage of appointment of arbitrators.** [Fouchard Gaillard Goldman on International Commercial Arbitration, (Kluwer Law International, 1999) p. 465.] According to Peter Binder, the principle of equal treatment of parties “means that no party may be given preference in the arbitrator-selection process regardless of how strong its bargaining power may be”. [Peter Binder, International Commercial Arbitration and Conciliations in Uncitral Model Law Jurisdictions, (2nd Edn., Sweet and Maxwell, 2005) p. 109.] Countries such as Germany, [Section 1034(2) of the German Code of Civil Procedure, 1877. It reads: “1034. Composition of the Arbitral Tribunal.—(1) The parties are free to agree on the number of arbitrators. Absent such agreement, the number of arbitrators is three.



(2) If the arbitration agreement grants preponderant rights to one party with regard to the composition of the Arbitral Tribunal, thus placing the other party at a disadvantage, the latter party may request that the court appoint the arbitrator or arbitrators in derogation from the appointment or appointments already made or in derogation from the appointment procedure agreed. The application is to be made no later than the expiry of two weeks after the party has become aware of the composition of the Arbitral Tribunal. Section 1032(3) applies accordingly.”] the Netherlands, [Article 1028(1) of the Dutch Code of Civil Procedure, 2003. It reads: “If the arbitration agreement gives one of the parties a privileged position with regard to the appointment of the arbitrator or arbitrators, the other party may, despite the method of appointment laid down in that agreement, request the Provisional Relief Judge of the District Court within one month after the commencement of the arbitration to appoint the arbitrator or arbitrators. The other party shall be given an opportunity to be heard. The provisions of Article 1027(4) shall apply accordingly.”] Spain, [Article 15(2), Spanish Arbitration Act, 2003. It reads: “15. Appointment of arbitrators.—(1) * * * 2. The parties are able to freely agree on the procedure for the appointment of the arbitrators, provided that there is no violation of the principle of equal treatment.”] and Estonia [Section 721(2), Estonian Code of Civil Procedure. It reads: “(2) If an arbitral agreement gives one of the parties, in the formation of an Arbitral Tribunal, an economic or other advantage over the other party which is materially damaging to the other party, such party may request that the court appoint one arbitrator or several arbitrators differently from the appointment which already took place or from the rules of appointment agreed upon earlier.”] allow the party that has been disadvantaged by an asymmetric appointment clause to request courts to appoint an arbitrator or arbitrators. The underlying principle is that the courts should not recognise and enforce agreements that are unfair and biased.

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71. Arbitration is an adversarial system. It relies on the parties to produce facts and evidence before the Arbitral Tribunal to render a decision. Procedural equality is generally considered to contain the following indicia : (i) equal capability of parties to produce facts and legal arguments; (ii) equal opportunities to parties to present their case; and (iii) neutrality of the adjudicator. [Jerry L. Mashaw, “The Supreme Court's Due Process Calculus for Administrative Adjudication in *Mathews v. H Eldridge*, 1976 SCC OnLine US SC 22 : 47 L Ed 2d 18 : 424 US 319 (1976) : Three Factors in Search of a Theory of Value”, (1976) 44(28) University of Chicago Law Review



29, 52. [Professor Mashaw states that “insofar as adjudicatory procedure is perceived to be adversarial and dispute resolving, the degree to which procedures facilitate equal opportunities for the adversaries to influence the decision may be the most important criterion by which fairness is evaluated.”]] In an adversarial process, formal equality is important because it helps secure legitimate adjudicative outcomes and create a level playing field between parties. [William B. Rubenstein, “The Concept of Equality in Civil Procedure”, (2001-2002) 23 Cardozo Law Review 1865 at p. 1890.]

72. The defining characteristic of arbitration law (particularly ad hoc arbitration) is that it allows freedom to the parties to select their arbitrators. This is unlike domestic courts or tribunals where the parties have to litigate their claims before a pre-selected and randomly allocated Bench of Judges. Section 11(2) of the Arbitration Act allows parties to agree on a procedure for appointing the arbitrators. The “procedure” contemplated under Section 11(2) is a set of actions which parties undertake in their endeavour to appoint arbitrators to adjudicate their dispute independently and impartially. Without formal equality at the stage of appointment of arbitrators, a party may not have an equal say in facilitating the appointment of an unbiased Arbitral Tribunal. In a quasi-judicial process such as arbitration, the appointment of an independent and impartial arbitrator ensures procedural equality between parties during the arbitral proceedings. This is also recognised under Section 11(8) which requires the appointing authority to appoint independent and impartial arbitrators.

73. **The 2015 Amendment has introduced concrete standards of impartiality and independence of arbitrators. One of the facets of impartiality is procedural impartiality. Procedural impartiality implies that the rules constitutive of the decision-making process must favour neither party to the dispute or favour or inhibit both parties equally.** [William Lucy, “The Possibility of Impartiality”, (2005) 25(1) Oxford Journal of Legal Studies 3, p. 11.] Further, a procedurally impartial adjudication entails equal participation of parties in all aspects of adjudication for the process to approach legitimacy. [Id, p. 22.] Participation in the adjudicatory process is meaningless for a party against whom the arbitrator is already prejudiced. [Lon Fueller, “The Forms and Limits of Adjudication”, (1978) 92(2) Harvard Law Review 353, 364. [Professor Fueller states: “...whole analysis will derive from one simple proposition, namely, that the distinguishing characteristic of adjudication lies in the fact that it confers on the affected party a peculiar form of participation in the decision, that of presenting proofs and reasoned arguments for decision in his favor. Whatever heightens the



significance of this participation lifts the adjudication towards its optimum expression. Whatever destroys the meaning of that participation destroys the integrity of adjudication itself. Thus, participation through reasoned argument loses its meaning if the arbiter of the dispute is inaccessible to reason because he is insane, has been bribed, or is hopelessly prejudiced.”]] **Equal participation of parties in the process of appointment of arbitrators ensures that both sides have an equal say in the establishment of a genuinely independent and impartial arbitral process.**

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75. Independence and impartiality of arbitral proceedings and equality of parties are concomitant principles. The independence and impartiality of arbitral proceedings can be effectively enforced only if the parties can participate equally at all stages of an arbitral process. Therefore, the principle of equal treatment of parties applies at all stages of arbitral proceedings, including the stage of the appointment of arbitrators.

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170.3. 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;

170.4. 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 [Central Organisation for Railway Electrification v. ECI-SPIC-SMO-MCML (JV), (2020) 14 SCC 712] is unequal and prejudiced in favour of the Railways.

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(Emphasis Supplied)

12. The position of law is, thus, clear that even in cases, where there is a three member panel, an Arbitration Clause mandating the other party to select its Arbitrator from a curated panel of potential Arbitrators, is against the *Principle of Equal Treatment of Parties*. Accordingly, it is evident that the Arbitration Clause detailing the procedure for appointment of the



Arbitral Tribunal, i.e., Clause 24.1 in the present case cannot be sustained, and would be invalid.

13. In the present scenario, when the Arbitration Clause, i.e., Clause 24.1 of the Agreement between the parties is unsustainable, this Court is not powerless to pass an order for appointment of an Arbitrator to make appropriate alternative arrangements to give effect to the Arbitration Clause. Thus, in the case of *M/S. Singh Builders Syndicate Versus Union of India, 2006 SCC OnLine Del 389*, this Court held that the Court has power to appoint a Sole Arbitrator where Court doubts the impartiality of the designated authority and the Arbitrator. In the said case also, the Arbitration Clause envisaged an Arbitral Tribunal consisting of three employees of the authority in question. Considering the facts and circumstances of the said case, the Court appointed an independent Sole Arbitrator, by holding as follows:

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11. I may say at the outset that in view of provisions of Section 11(4), (5) & (6) of the Act, normally the procedure that has to be followed for appointment of an arbitrator should be the one which is agreed to between the parties. [See: *J.L. Prasad v. The General Manager, Southern Railway, Chennai, 2002 (1) Arb. LR 584, National Thermal Power Corporation Ltd. v. Raghu Constructions Pvt. Ltd., AIR 2005 Kerala 115*]. In the instant case, as per the procedure prescribed in clause 64 of the general terms and conditions of the contract; for the purpose of nominating its arbitrator, the petitioner has to choose one name out of the list for appointment forwarded by the General Manager. This is the procedure which was followed in the first instance when application filed by the petitioner (AA No. 202/2000) was disposed of vide order dated 11th November, 2002. Even when the nominee of the petitioner resigned, in subsequent applications filed by the petitioner, again, direction was given by this court to follow the said procedure.

12. However, the petitioner now wants an independent arbitrator to be appointed on the ground that the respondent has lost its right to



suggest the names. Under certain circumstances, notwithstanding the aforesaid procedure, the court has power to appoint its arbitrator.

13. Some of the circumstances which can be culled out from the case law, are the following:

(a) Where the designated authority fails to appoint the arbitrator.

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(b) Where the court doubts the impartiality of the designated authority and the arbitrator, the court can appoint an independent arbitrator. This happened in the case of *Interstate Construction v. NPCC Construction* reported as 2004 3 RAJ 672 (Del.) wherein the court observed as under;

“It is this type of conduct and dealing which sometimes compels a Court to override clauses in an agreement which waive objection as to impartiality of the Arbitration on the grounds that he is an officer of one of the parties to the dispute.”

(c) In peculiar circumstances where the court is faced with a move which is not covered by the provisions of the Act, this situation occurred in the case of *Sushil Kumar Rant v. Hotel Marina* reported as 2005 (81) DRJ 533 and the Division Bench appointed an independent arbitrator by observing as under:

“We are conscious of the position that arbitration admits of least judicial intervention and the manner in which an arbitrator is to be appointed. But we are faced with an impasse which is neither covered by the provisions of the Arbitration Act, nor any precedent. This, if left unattended would have the natural consequence of leaving the dispute between the parties unresolved which would be contrary to the spirit and intent of the Arbitration Act. It would, therefore, require to be broken which can be only done by the appointment of an impartial arbitrator. This may not be technically or strictly in tune with the provisions of the Act which do not provide for such tike eventualities but it is surely dictated by the interests of justice. Therefore to promote and secure the interests of Justice, it would be appropriate to set aside the impugned order and appoint an independent arbitrator.”

14. Keeping in view the aforesaid legal position in mind, I am of the opinion that in the present case also time is ripe for constituting an independent arbitral tribunal by this court. The arbitration clause contains a peculiar procedure for appointment of arbitrators. In the event of dispute, the General Manager, Railways has a right to appoint its arbitrator. In so far as nominee of the contractor is concerned, he is given choice of limited nature. There is no complete freedom given to him in this behalf. The General Manager,



Railways is required to send a panel of more than three names of Gazetted railway offices of one or more departments of the Railways to the contractor. The contractor is given an option to suggest to the General Manager one name out of the said list who shall then be appointed by the General Manager as the contractor's nominee. Thus even the contractor's nominee has to be the officer of Railways. The two arbitrators have to nominate the third arbitrator, called umpire, who is also to be a gazetted railway officer. Thus the tribunal consists of two/three arbitrators and all are the Government/railway officers.

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(Emphasis Supplied)

14. The aforesaid judgment of this Court was upheld by the Supreme Court in the case of *Union of India versus Singh Builders Syndicate, (2009) 4 SCC 523*, wherein the Supreme Court held as follows:

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14. It was further held in Northern Railway case [(2008) 10 SCC 240; (2008) 11 Scale 500] that the Chief Justice or his designate should first ensure that the remedies provided under the arbitration agreement are exhausted, but at the same time also ensure that the twin requirements of sub-section (8) of Section 11 of the Act are kept in view. This would mean that invariably the court should first appoint the arbitrators in the manner provided for in the arbitration agreement. But where the independence and impartiality of the arbitrator(s) appointed/nominated in terms of the arbitration agreement is in doubt, or where the Arbitral Tribunal appointed in the manner provided in the arbitration agreement has not functioned and it becomes necessary to make fresh appointment, the Chief Justice or his designate is not powerless to make appropriate alternative arrangements to give effect to the provision for arbitration.

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(Emphasis Supplied)

15. This Court followed the aforesaid judgment of the Supreme Court, in the case of *Twenty-Four Secure Services Pvt. Ltd. Versus Competent Automobiles Company Limited, 2024 SCC OnLine Del 4358*, and proceeded to appoint a Sole Arbitrator even when the Arbitration Clause



stipulated reference to arbitration by three arbitrators, each party having the authority to appoint a nominee Arbitrator, when the parties were unable to agree on appointment of a Sole Arbitrator. Thus, in the said case it was held as follows:

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22. In Union of India (UOI) v. Singh Builders Syndicate, (2009) 4 SCC 523 the High Court rejected the contention on behalf of the Government that the Court was not vested with any powers to appoint a Sole Arbitrator in distinction to the Arbitration Agreement which provided for the Tribunal of three members. The Apex Court upheld the order of this Court appointing a Sole Arbitrator by observing that the appointment of the Sole Arbitrator was valid.

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(Emphasis Supplied)

16. Accordingly, the dispute between the parties is referred to the Arbitral Tribunal, comprising a Sole Arbitrator. The following directions are issued in this regard:

- (i) HMJ (Retd.) Hima Kohli, Former Judge, Supreme Court of India (Mob. 9871300036) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- (ii) The learned Sole Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act, prior to entering into the reference. In the event there is any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.
- (iii) The remuneration of the Arbitrator shall be in terms of Schedule IV of the Arbitration Act.
- (iv) The parties shall approach the Arbitrator within two (02) weeks, from today.



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17. It shall be open to the respondent to raise counter-claims, if any, in the arbitration proceedings.
18. All the rights and contentions of the parties, including, the arbitrability of any of the claims and/or counter-claims, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.
19. It is made clear that this Court has not expressed any opinion on the merits of the case.
20. The petition is disposed of in the aforesaid terms.

MINI PUSHKARNA, J

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