



\$~41

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 311/2025 & CM APPL. 68964/2025**

MTNL

.....Appellant

Through: Mr. Ravi Sikri, Sr. Adv. with Mr.
Prashant Sharma, Adv.

versus

M/S. PECON SOFTWARE LTD.

.....Respondent

Through: Mr. Manik Dogra, Sr. Adv. with Mr.
Mohit Seth, Mr. Dhruv Pande, Mr.
Imon Bhattacharya, Mr. Shivanshu
Tripathi, Advs.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

ORDER

% **01.04.2026**

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant under Section 37 of the Arbitration and Conciliation Act, 1996 (*hereinafter, the Act*) read with Section 13 of the Commercial Courts Act, 2015, *inter alia*, assailing the impugned judgment dated 11th August, 2025 passed by the Id. District Judge, Commercial Court- 01, Patiala House Courts, New Delhi (*hereinafter, 'impugned judgment'*).
3. *Vide* the impugned judgment, the arbitral award dated 31st August, 2019 passed by the sole arbitrator has been partially set aside, and some part of the arbitral award has been upheld in the following terms:



“[...]

In the present case, I find that the part of the award dealing with additional claim of the respondent (Relief-E of the Award) is clearly severable from the other part of the award. The relief granted in para A, B, C and D are based on well reasoned findings given by Id. Arbitrator and the petitioner herein had due opportunity to put his stand before Id. Arbitrator regarding those claims. It is the relief at serial no.E, which was based on additional application of the respondent herein. In my opinion, that can be severed. Accordingly, petition is allowed partially to set aside the relief granted in the impugned award for recovery of Rs. 16,61,600/- towards the refund of encashed Bank Guarantee with interest at the rate of 12% thereon. Award is upheld in respect of other part of the same and petition is rejected in respect of other objections.”

4. On 6th November, 2025 the Court had considered the submissions of the Appellant and had directed to requisition the arbitral records as also the Trial Court record in **OMP (COMM) 236/2019**. The submissions of the Appellant were recorded as follows:

“[...]

8. Id. Counsel for the Appellant raises various contentions, the same are enumerated below, for future reference:

(i) That there were three applications which were filed by the Respondent, which were not served upon the Appellant.

(ii) That the Arbitrator has not filed his disclosure of conflict of interest, prior to the commencement of the arbitration proceedings.



(iii) That the initial arbitral award had certain blanks, and the same was remanded, and it was only in the second round of the arbitration proceedings, that the Appellant filed replies to the applications.”

5. Thereafter, the matter has been heard from time to time. On the last date of hearing i.e., 23rd March, 2026, after hearing Id. Counsels for the parties, the following direction was issued:

“2. Let both the Id. Counsel seek instructions as to whether it would be acceptable if an independent Arbitrator is appointed by this Court with a fixed fee and a fixed time frame for deciding the matter. ”

6. The brief background of the present case is that, Respondent was to supply manpower to the Appellant for maintenance and running of the business of the Appellant. The statutory dues payable to the employees of the Respondent were not paid, thereby, the Appellant withheld the payments to the Respondent. The Respondent is stated to have defaulted in adherence to the terms of the tender and contract as well as statutory provisions of labour law.

7. The Appellant had revised the work order and the Respondent had to deposit a performance bank guarantee of Rs. 16,61,600/- in favour of the Appellant.

8. Thereafter, various disputes had arisen between the parties and the Respondent preferred a claim before Id. Arbitrator, arising out of ***Tender No. T.E. No. MM/WS/Call Centre 2015-2016/01*** and contract dated 5th March, 2016.

9. The arbitration clause which was invoked by the Respondent, in the



tender document, in respect of contract dated 5th March, 2016 is set out below:

"In the event of any question, dispute or difference arising under this agreement or in connection therewith (except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, MTNL or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CMD, MTNL or by whatever, designation such an officer may be called (herein after referred to as the said officer), and if designation such an officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CMD or the said officer."

10. Pursuant thereto, the sole arbitrator Sh. Naveen Kumar Manglur, had been appointed as the arbitrator to adjudicate the disputes between the parties.

11. A perusal of the arbitration clause would show that the CMD, MTNL was to appoint the arbitrator and the same was done.

12. Sh. Naveen Kumar Manglur, who was appointed as the arbitrator, was the Director General of Audit, CAG, and thereby, was a government employee.

13. The stand of the Appellant is that his appointment would be hit by the conflict of interest provisions of Act, particularly Section 12(5) of the Act read with the Seventh Schedule of the Act.

14. This position is disputed by Id. Counsel for the Respondent.

15. However, after taking instructions, both the Counsels for the parties have agreed to the appointment of a fresh arbitrator.



16. Accordingly, without going into the question as to whether the appointment of the arbitrator would be hit by the conflict of interest provisions of the Act, and leaving that question open, this Court with the consent of parties, appoints Dr. Amit George, Advocate as a sole arbitrator in this matter.

17. The sole arbitrator shall commence the arbitral proceedings *de-novo*, without being influenced by the earlier arbitral award dated 31st August, 2019. Ld. Counsel for the parties submit that after the initial claims were filed, there was amendment sought in the claim petition which was allowed without hearing the Appellant. In view of this submission, the entire proceedings have been directed to commence *de-novo*.

18. This Court is also informed that no evidence was led in the previous round. Accordingly, the arbitrator may consider using the fast track procedure under section 29B of the Act, for these proceedings.

19. The parties shall be permitted to file fresh claims and fresh pleadings in this matter.

20. The parties shall appear before the arbitrator on **11th April, 2026**. The arbitration proceedings shall take place in a time bound manner and shall be concluded by 31st December, 2026.

21. The Counsel for the parties have agreed for a lump-sum fee of Rs. 10 lakhs for the newly appointed arbitrator. The same shall be shared equally by both the parties. 50 % of the fee shall be paid at the outset and the remaining 50 % shall be paid at the time of commencement of final arguments. The arbitral award shall be rendered by 31st December, 2026.

22. The present appeal is allowed in the above terms. The impugned award dated 31st August 2019, and the judgment dated 11th August, 2025 are accordingly, set aside.



23. The present petition is disposed of in the above terms. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH, J.

MADHU JAIN, J.

APRIL 1, 2026/prg/sm