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

+ O.M.P. (T) (COMM.) 144/2024 & I.A. 47669/2024

SWADESHI CIVIL INFRASTRUCTURE PRIVATE LIMITED

.....Petitioner

Through: Mr. Dinkar Singh & Mr. Rohit Singh,
Advs.

versus

**THE EXECUTIVE ENGINEER SENIOR MANAGER PROJECT
DIVISION I CPWD**

.....Respondent

Through: Mr. Shashank Dixit, CGSC with Mr.
Kunal Raj, Adv.

CORAM:

HON'BLE MR. JUSTICE AVNEESH JHINGAN

ORDER

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20.03.2026

1. This petition is filed under Section 14 of the Arbitration and Conciliation Act, 1996 (For Short 'the Act') for substitution of the arbitrator on the ground that the appointment of the arbitrator was unilateral.
2. The brief facts are that the applicant was a successful bidder and was awarded work by non-applicants for re-development of the Government of India Press at Minto Road, New Delhi. Clause 25 of the agreement provides for dispute resolution through arbitration. As per the clause, the Chief Project Manager within thirty days of the receipt of the request from either of the parties in a prescribed performa shall appoint two arbitrators from panel of seven arbitrators. The two arbitrators appointed shall appoint the third arbitrator from the same panel. On 17.05.2023 two arbitrators were



appointed and subsequently on 22.05.2023 the two arbitrators appointed the third arbitrator. The grievance raised is that the appointment is in violation of the amended Section 12(5) of the Act.

3. Learned counsel for the respondent contends that the applicant had participated in arbitration proceedings and at this stage cannot raise an objection.

4. The contention raised by the learned counsel for the respondent lacks merit.

5. The Supreme Court in **Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India**, 2026 INSC 6 held that waiver involves a conscious decision to abandon the existing legal right and can be made only by a person fully aware of such right. A legal right cannot be taken away by implications. The waiver has to be an unequivocal expression and it cannot be lost sight of that by such waiver the restriction imposed by Section 12(5) is sought to be overcome.

6. It is case of neither of the parties that there was an express waiver by the petitioner under Section 12(5) of the Act. Consequently the appointment of the arbitral tribunal is within the teeth of amended Section 12(5) of the Act. The tribunal is *de jure* ineligible in view of the amendment.

7. The application is allowed.

8. Learned counsel for the parties on instructions are in agreement that instead of a three member tribunal a sole arbitrator should be substituted by this court.

9. The petition is disposed of by appointing Hon'ble Mr. Chief Justice (Retd.) Ali Mohammad Magrey as the sole arbitrator.



10. The fees of the learned Arbitrator will be governed by Schedule IV of the Act. Before entering upon reference, the learned Arbitrator will comply with Section 12 of the Act.

11. It is made clear that since this Court has not expressed any opinion on the merits of the rival claims of the parties, it will be open for the parties to file their respective claims/counter claims before the learned Arbitrator which will be considered in accordance with law.

12. A copy of this order be forwarded to the learned Arbitrator for information.

AVNEESH JHINGAN, J

MARCH 20, 2026/‘JK’