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

Date of Decision: 18.03.2026

+ O.M.P. (COMM) 558/2025

MANISHA PROJECTS PVT LTD

.....Petitioner

Through: Mr. Ankur Mahindro, Mr.
Rohan Taneja, Mr. Ankush
Satija, Mr. Mohit Dagar, Mr.
Raghav Kalra, Mr. Animesh
Dubey, Ms. Creesha Shastri,
Ms. Jhanak Setia and Ms.
Radhika Agarwal, Advocates.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Sandeep Kumar Mahapatra
CGSC along with Ms.
Mrinmayee Sahu, Mr.
Tribhuvan, Mr. Abhimanyu
Asija, Advocates along with
Mr. Jagdish Kumar, Assistant
Executive Engineer.
Mr. Chetan Jadon, GP.

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (ORAL)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present petition has been filed under Section 34 of the **Arbitration and Conciliation Act, 1996¹** seeking to challenge the **Arbitral Award dated 15.08.2025²**, passed by the learned Arbitral

¹ Act

² Impugned Award



Tribunal in the matter titled “*Manisha Projects Pvt. Ltd. v. Union of India*”, wherein the claims of the Petitioner were allowed to the tune of Rs. 31.4 lakhs as against the claims of Rs. 7.2 crores.

2. The sole ground urged in support of the prayer seeking to set aside the Impugned Award is that the Award, having been rendered pursuant to a unilateral appointment of the Arbitrator, as mandated under the arbitration clause contained in the Agreement dated 08.02.2019, is contrary to the settled position of law in this regard.

3. The Arbitration Clause, with respect to the said Agreement is contained in the General Conditions of the Contract, specifically in clause 64. The relevant portion of the same is reproduced herein under for ready reference:

“64. (3) Appointment of Arbitrator :

64. (3) (a)(i) In cases where the total value of all claims in question added together does not exceed Rs. 25, 00, 000 (Rupees twenty five lakh only), the Arbitral Tribunal shall consist of a Sole Arbitrator who shall be a Gazetted Officer of Railway not below JA 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 GM

64. (3) (a)(ii) In cases not covered by the Clause 64(3)(a)(i), the Arbitral Tribunal shall consist of a Panel of three Gazetted Railway Officers not below JA Grade or 2 Railway Gazetted Officers not below JA Grade and a retired Railway Officer, retired not below the rank of SAG Officer, as the arbitrators. For this purpose, the Railway will send a panel of more than 3 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 GM 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. GM 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 shall be considered of equal status to the officers in SA grade of other departments of the Railway for the purpose of appointment of arbitrator.”

4. Mr. Ankur Mahindro, learned counsel appearing on behalf of

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the Petitioner submits that the Hon'ble Supreme Court had the occasion to deal with a similar clause in the case of ***Central Organization for Railway Electrification v. ECI SPICV SMO MCML (JV) A Joint Venture Company***³, wherein the Hon'ble Supreme Court has clearly held that the procedure envisaged under the said arbitration clause was impermissible in law insofar as it provided for a unilateral appointment of the Arbitrators.

5. He would further submit that the Hon'ble Division Bench of this Court in ***Mahavir Prasad Gupta and Sons v. Govt. of NCT of Delhi***⁴ and the Hon'ble Supreme Court in ***Bhadra International (India) Pvt. Ltd. and Ors. v. Airports Authority of India***⁵, have categorically held that, in the absence of an express waiver in writing as contemplated under the proviso to Section 12(5) of the Act, any unilateral appointment of an Arbitrator would be impermissible in law.

6. **Per contra**, learned CGSC appearing on behalf of the Respondent submits that the Impugned Award cannot be construed to be a case of unilateral appointment of the Arbitrator since Paragraph 1.2 of the said Award clearly records the no objection of the Petitioner as respects the constitution of the Arbitral Tribunal. The said paragraph reads as follows:

“1.2 The Arbitral Tribunal entered into reference on 05.04.2025 with the issue of Arbitration Notification No. 1. All the 3 Arbitrators had sent their respective declaration as per Section 12 of the Arbitration and Conciliation Act, 1996 to both the parties. However, they again declared in the first meeting held on 10.04.2025 that there were no circumstances or any interest whatsoever in any of the parties or in relation to the subject matter

³ 2024 SCC OnLine SC 3219

⁴ 2025 SCC OnLine Del 4241

⁵ 2026 SCC OnLine SC 7



in dispute that may give rise to any justifiable doubt about the Arbitrator's independence or impartiality or bias in the matter. Both the Claimant and the Respondent confirmed that they have full faith in the Arbitral Tribunal and have no objection whatsoever against the AT.”

(Emphasis supplied)

7. Learned counsel for the Respondent therefore submits that in view of the clear consensus accorded by the Petitioner, the present contention regarding unilateral appointment is not maintainable.

8. We have heard the learned counsel appearing on behalf of both the parties and with their able assistance, had the opportunity to peruse the necessary papers and the law in this regard.

9. This Court is of the view that the law with regard to unilateral appointment of an Arbitrator has been succinctly settled by the Hon'ble Supreme Court in its various judgments. It is now trite that unless there exists a clear and express waiver in writing, as contemplated under the proviso to Section 12(5) of the Act, any unilateral appointment of an Arbitrator would be impermissible in law. Consequently, any Award rendered pursuant to such unilateral appointment would stand vitiated by the very defect in the constitution of the Arbitral Tribunal.

10. Furthermore, the arbitration clause in the present case is also almost identical to that of the clause which is considered by the Hon'ble Supreme Court in *Central Organization for Railway Electrification (supra)*, wherein appointment of an Arbitral Tribunal under the said clause was held to be bad in law and therefore the orders appointing the Arbitral tribunal were set aside.

11. As a result of the above discussion, this Court is of the view that the present Petition needs to be allowed and the Arbitral Award is set-



aside.

12. Accordingly, the present Petition, along with pending Application(s), if any, stands disposed of in the above terms.

HARISH VAIDYANATHAN SHANKAR, J.
MARCH 18, 2026/tk/dj

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