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

*Judgment reserved on: 21.05.2025*

*Judgment pronounced on : 31.07.2025*

+ **O.M.P. (COMM) 151/2024, I.A. 7697/2024**

DAULAT RAM BRAKE MFG CO

.....Petitioner

Through: Mr. Siddhartha Nagpal, Ms. Kajal  
Kakani, Advs.

versus

UNION OF INDIA (THROUGH MINISTRY OF RAILWAYS) FOR  
NORTHERN RAILWAYS (NR) & ORS.

.....Respondents

Through: Dr. B. Ramaswamy, CGSC

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

### **JUDGMENT**

: **JASMEET SINGH, J**

1. This is a petition filed by M/s Daulat Ram Brake Manufacturing Co. (petitioner) under Section 34 of the Arbitration and Conciliation, Act, 1996 ("**1996 Act**") seeking to challenge the Arbitral Award dated 16.11.2023 ("**Impugned Award**"), whereby the counter claims of the respondent No. 1 were allowed and the petitioner was directed to pay an amount of Rs. 1,37,53,824/- to the respondent No. 1 within 90 days from the date of the award, failing which the awarded amount would carry a simple interest of 10% till the date of the actual payment.
2. By way of the present petition, the petitioner also seeks appointment of a fresh Arbitral Tribunal consisting of three independent arbitrators eligible under Section 12 and the Seventh Schedule of the 1996 Act.

### **FACTUAL MATRIX AS PER THE PETITIONER**

3. The Petitioner, M/s Daulat Ram Brake Manufacturing Co., is a proprietorship firm engaged in the business of manufacturing brake blocks used in passenger coaches.
4. Respondent No.1 is Union of India for Northern Railways (NR) represented through Dy. Chief Manager/Sig/NR, Baroda House, Northern Railway, New Delhi, 110001. Respondent No. 2 is the General Manager (Northern Railways), Baroda House, Northern Railway, New Delhi, 110001. The Respondent no. 2 is the appointing authority as per Railway Board Letter No.2018/TF/Civil/Arbitration Policy dated 12.12.2018 and the Indian Railways Standard Conditions of Contract, 2018 (“**IRS**”).
5. Respondent No.1 floated a tender dated 16.08.2018 for the supply of “*Non-Asbestos Based ‘K’ Type High Friction Composite Brake Blocks for coaches with bogie-mounted brake systems as per RDSO Drawing No. RDSO/ISK-98066, Alt (6), and Specification No. C9809 (Rev.-4) with Amendment-L*” (“**Contract agreement**”). In response, the petitioner submitted its bid, which was accepted by the respondent no.1. Pursuant thereto, respondent No. 1 issued a Purchase Order (PO) to the petitioner for the supply of 67,072 Composite Brake Blocks (CBBs) to the CSD, ANVT, Anand Vihar Terminal. The Contract agreement was governed by the IRS. The material supplied by the petitioner was inspected by the Research Designs and Standards Organization (RDSO), and due receipt notes were issued as confirmation of acceptance. Upon satisfaction with the supplies, respondent No.1 made payments to the petitioner.
6. Subsequently, a dispute arose between the petitioner and respondent No.1 concerning the quality of the material supplied by the petitioner.



Respondent No.1 in total, rejected 64,000 items supplied by the petitioner, through two rejection memos, one dated 10.02.2022, rejecting 31,531 items, and a final/second rejection memo dated 15.10.2022, rejecting the remaining 32,469 items.

7. Hence, in terms of the arbitration clause, the petitioner invoked arbitration vide legal notice dated 26.03.2022. The arbitration clause is contained as clause 2900 of the IRS. The relevant extract is reproduced below:

“2900.

*(a) In the event of any question, dispute or difference arising under these conditions or any special conditions of contract, or in connection with this contract (except as to any matters the decision of which is specially provided for by these or the special conditions) the same shall be referred to the sole arbitration of a Gazetted Railway Officer appointed to be the arbitrator, by the General Manager in the case of contracts entered into by the Zonal Railways and Production Units; by any Member of the Railway Board, in the case of contracts entered into by the Railway Board and by the Head of the Organisation in respect of contracts entered into by the other Organisations under the Ministry of Railways. The Gazetted Railway Officer to be appointed as arbitrator however will not be one of those who had an opportunity to deal with the matters to which the contract relates or who in the course of their duties as railway servant have expressed views on all or any of the matters under dispute or difference. The award of the arbitrator shall be final and binding on the parties to this contract.”*



8. The procedure for appointment of the arbitrator is contained under Clause 2905 of the IRS. The operative portion reads as under:

*“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.....*

*ii. In cases where the total value of all claims in question added together exceeds Rs.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 VERSION 1.0 Railway which may also include the name(s) of retired Railway Officer(s) empaneled 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.*

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

*i.....*

*ii. In cases where the total value of all claims in question added together exceeds Rs.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."*

9. Clause 2905 of the IRS, provides for the appointment of employees/ex-employees of Railways as Arbitrator(s), in both the cases, where the applicability of Section 12(5) has been waived off, and when the applicability of Section 12(5) has not been waived off. Aggrieved, the petitioner raised an objection to the appointment of an employee/ex-employee of the Railways as arbitrators and proposed that an independent Arbitrator must be appointed in accordance with the provisions of the 1996 Act. In this regard, various communications took place between the parties. The petitioner vide letter dated 02.05.2022 also denied the consent for waiving off the applicability of Section 12(5) of 1996 Act. Since there was no response from the respondent no. 1, the petitioner filed a petition under Section 11 of the 1996 Act before the High Court of Madhya Pradesh (Jabalpur), which was disposed of as infructuous vide order dated 27.05.2024.
10. Meanwhile, a three-member Impugned Tribunal was appointed by the respondent No. 1 and the Impugned Award came to be passed on 16.11.2023. As regards, the objection of the petitioner pertaining to

the appointment of the Arbitral Tribunal is concerned, the Arbitral Tribunal inter alia held as under:

*“9. Discussion and decision of the AT*

*9.1. Regarding objection to the constitution of the AT, it is noted that the Claimant took part in appointment of the AT and have not raised this matter during the hearing and pleadings. It is in the written arguments that they have mentioned this. The objections on this ground should have been made earlier by them in terms of Section 16 of the Act. The AC noted that the AT was formed in accordance with the provisions of the contract agreement and the IRS conditions governing the contract. Hence the Claimant's objection do not have any merit.”*

## **SUBMISSIONS**

### ***On behalf of the Petitioner***

- 11.** The petitioner has primarily challenged the Impugned Award on the premise that the constitution of the Arbitral Tribunal was void ab initio and that there exists justifiable doubts as to their impartiality and independence. The appointed arbitrators were former employees of respondent No.1 and were unilaterally appointed by its General Manager, despite the petitioner's repeated objections and refusal to waive the applicability of Section 12(5) of the 1996 Act.
- 12.** It is stated that the petitioner consistently objected to the appointment of employees or ex-employees of the respondent as arbitrators and repeatedly sought the appointment of independent arbitrators, as also noted in the notice invoking arbitration dated 26.03.2022. However, without responding to this request, respondent no.1, vide letter dated 13.04.2022, sought the petitioner's consent to waive the applicability



of Section 12(5) of the 1996 Act, which was expressly denied the petitioner vide its reply dated 02.05.2022. It is well-settled that a waiver under Section 12(5) must be express and in writing post the appointment of the Arbitral Tribunal, and such rights cannot be deemed waived by mere conduct.

- 13.** It is further stated that in anticipation of the appointment of ex-employees of the respondent No. 1 as arbitrator(s), the petitioner filed a petition under Section 11 of the 1996 Act before the High Court of Madhya Pradesh seeking appointment of an independent arbitrator. Despite duly informing both the respondent and the arbitral tribunal that the matter was sub judice before the High Court of Madhya Pradesh, the petitioner was compelled to nominate arbitrators from the respondent's panel and participate in the arbitral proceedings as Clause 2905(c)(i) of IRS provided that if the contractor fails to suggest his nominees for the arbitral tribunal within the prescribed time frame, then the General manager has the power to proceed for appointment of arbitral tribunal within 30 days of the expiry of such time provided to contractor.
- 14.** Vide letter dated 31.03.2023, the General Manager provided a restricted panel of only 4 retired railway officers, to the petitioner to nominate its arbitrator. Even from this limited panel, the petitioner was not allowed to appoint an arbitrator of its choice but was to suggest two names. The General Manager unilaterally appointed the arbitrators. As a result, the entire tribunal was constituted solely at the discretion of the General Manager, which is in violation of Section 18 of the 1996 Act and against the principles of party autonomy, natural justice, neutrality, and the independence and impartiality of arbitrators.



15. A party cannot be compelled to select its nominee arbitrator from a panel unilaterally curated by the opposing party, particularly when such panel is not ‘broad-based’. This practice undermines the principle of equal treatment of parties and disturbs the balance in the arbitral process, as it deprives the petitioner of equal participation in the constitution of the arbitral tribunal. Reliance is placed on the judgment passed by a coordinate bench of this Court in ***Taleda Square Private Limited v. Rail Land Development Authority*** 2023 SCC OnLine Del 6321 (paras 5 and 7).
16. Further, out of the proposed 4 names, one was that of Shri Khichchu Mal, which was rejected by the petitioner. However, the General Manager vide appointment letter dated 12.05.2023 appointed Shri Khichchu Mal as the ‘presiding arbitrator’ in this matter.
17. It is stated that the General Manager, being himself ineligible to act as an arbitrator, could not have appointed the arbitrator(s), as it is well-settled in law that a person who is disqualified from acting as an arbitrator is equally disqualified from appointing one.
18. Reliance is placed on the judgment passed by a Coordinate bench of this Court in ***BW Business World Media Pvt. Ltd. v. IRCTC***, 2022 SCC OnLine Del 226.

***On behalf of the Respondent***

19. Per Contra, it is stated that the constitution of the Arbitral Tribunal was carried out strictly in accordance with the agreed contractual terms set out in Clause 2900 of the IRS, which forms an integral part of the binding arbitration agreement between the parties.
20. Clause 2900 of the IRS, provides for the appointment of a Gazetted Railway Officer as the sole arbitrator, to be appointed by the General Manager or other competent authority. The said clause excludes those



officers who had “an opportunity to deal with the matters to which the contract relates” or who “have expressed views” on the dispute, thereby ensuring impartiality and neutrality. Reliance is placed on the judgment passed by the Hon’ble Supreme Court in *Voestalpine Schienen GmbH v. DMRC*, (2017) 4 SCC 665.

21. It is stated that despite initial objections raised by the petitioner regarding the constitution of the Arbitral Tribunal, the petitioner actively engaged in the arbitral proceedings over an extended period including nominating arbitrators, filing pleadings, and presenting arguments on merits. Consequently, any challenge to the constitution of the tribunal stands waived by the petitioner’s conduct.
22. It is stated that the petitioner’s argument that the General Manager is ineligible to appoint arbitrators cannot be entertained as it is a settled law that ineligibility under Seventh Schedule of 1996 Act applies to a person acting as an arbitrator, not merely appointing one unless such ineligibility is expressly extended through contractual interpretation or statutory bar, which is not the case here.
23. Further, the petitioner’s argument regarding lack of consent under Section 12(5) is untenable. The record demonstrates that the petitioner was issued a letter dated 13.04.2022 seeking waiver of Section 12(5), to which no objection was raised at that stage. On the contrary, the petitioner proceeded to nominate arbitrators from the panel, indicating acquiescence to the process.
24. The mere pendency of a Section 11 petition does not, in itself, preclude the continuation of arbitral proceedings, particularly where the Arbitral Tribunal has already been constituted in accordance with the terms of the contract. In the absence of any stay or judicial injunction, which the Petitioner has failed to produce, the tribunal was fully competent to proceed. In any event, the Arbitral Tribunal,

exercising its powers under Section 16 of the Act, duly considered and rejected the objections to its constitution. This determination, being squarely within the Tribunal's jurisdictional mandate, is not amenable to review under Section 34.

### **ANALYSIS**

25. I have heard learned counsel for the parties and perused the material and documents placed on record.
26. The gist of the arguments by the petitioner is that the respondent went on to unilaterally appoint the Arbitral Tribunal, despite the petitioner's continuous objection to its constitution vide its letter(s) dated 26.03.2022 and 02.05.2022. Even otherwise, the General Manager provided a restricted panel of only 4 retired railway officers, which cannot be said to be 'broad based'. Per Contra, the objection raised by the respondent in a gist is that the constitution of the Arbitral Tribunal was in accordance with Clause 2900 of the IRS.
27. A perusal of the Clause 2905 of the IRS as reproduced above indicates two distinct scenarios: (i) where the applicability of Section 12(5) of the 1996 Act has been expressly waived by the petitioner in accordance with the proviso thereto, and (ii) where no such waiver has been made. Therefore, the primary issue that arises before me is whether, in the facts of the present case, there has been a valid waiver by the petitioner of the ineligibility criteria of the Arbitral Tribunal under Section 12(5) of the 1996 Act.
28. In this regard, the respondent No. 1 has contended that although the petitioner initially objected to the constitution of the Arbitral Tribunal, it thereafter proceeded to actively participate in the arbitral proceedings, by nominating arbitrators, filing pleadings, and making submissions on merits. Such conduct clearly signifies acquiescence

and amounts to a waiver of any objection to the Arbitral Tribunal's constitution.

29. Section 12 (5) of the 1996 Act reads as under:

*“12. Grounds for challenge:*

*.....*

*(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:*

*Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.”*

30. To my mind, the argument by the respondent is meritless. The essence of Section 12 of the 1996 Act lies in ensuring the independence and impartiality of the Arbitral Tribunal. The provision mandates that any appointment made in violation of Section 12(5) read with the Fifth and the Seventh Schedule of the 1996 Act renders the arbitrator de jure ineligible. Such ineligibility goes to the very foundation of the arbitral process. The Hon'ble Supreme Court in *Voestalpine* (supra), inter alia held as under:

*“20. Independence and impartiality of the arbitrator are the hallmarks of any arbitration proceedings. Rule against bias is one of the fundamental principles of natural justice which applied to all judicial and quasi-judicial proceedings. It is for this reason that notwithstanding the fact that relationship between the parties to the arbitration and the arbitrators themselves are contractual in nature*

and the source of an arbitrator's appointment is deduced from the agreement entered into between the parties, notwithstanding the same non-independence and non-impartiality of such arbitrator (though contractually agreed upon) would render him ineligible to conduct the arbitration. The genesis behind this rationale is that even when an arbitrator is appointed in terms of contract and by the parties to the contract, he is independent of the parties. Functions and duties require him to rise above the partisan interest of the parties and not to act in, or so as to further, the particular interest of either parties. After all, the arbitrator has adjudicatory role to perform and, therefore, he must be independent of parties as well as impartial. The United Kingdom Supreme Court has beautifully highlighted this aspect in *Hashwani v. Jivraj* [*Hashwani v. Jivraj*, (2011) 1 WLR 1872 : 2011 UKSC 40] in the following words : (WLR p. 1889, para 45)

“45. ... the dominant purpose of appointing an arbitrator or arbitrators is the impartial resolution of the dispute between the parties in accordance with the terms of the agreement and, although the contract between the parties and the arbitrators would be a contract for the provision of personal services, they were not personal services under the direction of the parties.”

.....

22. Independence and impartiality are two different concepts. An arbitrator may be independent and yet, lack impartiality, or vice versa. Impartiality, as is well accepted,

*is a more subjective concept as compared to independence. Independence, which is more an objective concept, may, thus, be more straightforwardly ascertained by the parties at the outset of the arbitration proceedings in light of the circumstances disclosed by the arbitrator, while partiality will more likely surface during the arbitration proceedings.”*

*(emphasis supplied)*

31. The legal position with respect to Section 12(5) of the 1996 Act, read with the Seventh Schedule, is no longer *res integra*. It stands conclusively settled by a catena of judgments. It has time and again been held that any person having an ineligible relationship under the Seventh Schedule of the 1996 Act is disqualified from being appointed as an arbitrator, and such ineligibility cannot be cured except through an express written waiver in terms of the proviso to Section 12(5). The Hon’ble Supreme Court in ***Bharat Broadband Network Limited v. United Telecoms Limited*** (2019) 5 SCC 755 has explained the same. (For reference see para nos.15 and 17)
32. Now coming to the issue at hand, that whether a party waives its right under Section 12(5) of the 1996 Act through conduct, is now well settled. Any waiver of the disqualification contemplated under Section 12(5) of the 1996 Act, must be made expressly in writing. The statute does not permit an implied waiver through conduct or participation in arbitral proceedings. The requirement of a written waiver ensures that the party unequivocally agrees to proceed with the appointment, despite the disqualification, and avoids any ambiguity in this regard. In this regard, the Hon’ble Supreme Court in ***Bharat Broadband*** (*supra*) *inter alia* held as under:

*“20. This then brings us to the applicability of the proviso to Section 12(5) on the facts of this case. Unlike Section 4 of the Act which deals with deemed waiver of the right to object by conduct, the proviso to Section 12(5) will only apply if subsequent to disputes having arisen between the parties, the parties waive the applicability of sub-section (5) of Section 12 by an express agreement in writing. For this reason, the argument based on the analogy of Section 7 of the Act must also be rejected. Section 7 deals with arbitration agreements that must be in writing, and then explains that such agreements may be contained in documents which provide a record of such agreements. On the other hand, Section 12(5) refers to an “express agreement in writing”. The expression “express agreement in writing” refers to an agreement made in words as opposed to an agreement which is to be inferred by conduct. Here, Section 9 of the Contract Act, 1872 becomes important. It states:*

*“9. Promises, express and implied. —Insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express. Insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.”*

*It is thus necessary that there be an “express” agreement in writing. This agreement must be an agreement by which both parties, with full knowledge of the fact that Shri Khan is ineligible to be appointed as an arbitrator, still go ahead and say that they have full faith and confidence in him to continue as such. The facts of the present case disclose no such express*



**agreement.** *The appointment letter which is relied upon by the High Court as indicating an express agreement on the facts of the case is dated 17-1-2017. On this date, the Managing Director of the appellant was certainly not aware that Shri Khan could not be appointed by him as Section 12(5) read with the Seventh Schedule only went to the invalidity of the appointment of the Managing Director himself as an arbitrator.....”*

*(emphasis supplied)*

33. Following the law laid down in ***Bharat Broadband*** (supra) several other judgment(s) have been passed by this Court, on similar lines. Reliance is placed on ***Govind Singh vs Satya Group Pvt. Limited and Another*** 2023 SCC OnLine Del 37 and ***A K Builders vs Delhi State Industrial Infrastructure Development Corporation Ltd*** O.M.P. (T) (COMM.) 12/2022.
34. In the present case, the facts are not in dispute. The petitioner invoked arbitration vide letter dated 26.03.2022, whereby the petitioner indicated that an independent arbitrator be appointed. Letter dated 26.03.2022 is reproduced below:





## Daulat Ram Brake Mfg. Co.

25, NEW SECTOR, PHASE II, INDUSTRIAL AREA, MANDIDEEP, BHOPAL-462 046 (M.P.) INDIA  
TEL : +91-7480-405802/405807 FAX : +91-7480-233831  
E-MAIL : info@daulatrambrake.com Website : www.daulatrambrake.com

Ref : DRBMC/1805/015/Arbitration

Date : 26.03.2022

General Manager  
Office of the General Manager  
Northern Railway  
Baroda House, K G Marg  
New Delhi – 110001.

Kind Attn: - Mr.Ashutosh Gangal.

Subject: Notice for invocation of arbitration against your Purchase Order No. PO No. 07181585102139 dated: 14.03.2019.

Dear Sir,

This is in reference to the above mentioned PO No.07181585102139 dated 14.03.2019 in this connection we like to state that we have supplied full quantity of 67072 No's CBB's to CSD/ANVT, against which, we have received letter from Anand Vihar Depot vide letter No. 07181585102139/CSD/ANVT dated 30.12.2021 received at our end on 07.01.2022 regarding poor quality of Brake Blocks and rejected the part quantity of 31499 No's and advice to attend the Joint Inspection. Accordingly we have attended the Joint Inspection fixed on 08.02.2022(**Enclosed Copy of Joint Inspection**). During the Joint Inspection we have found CBB's has stored in open space for the last 1 year directly exposing to the Sunlight, rainfall and cold weather (**Enclosed Photographs**).

CBB's are manufactured, containing of various ingredients used in composite material like Phenolic resin, Glass Fiber, Potash, Calcium carbonate, Hexamine etc. Due to direct exposing to Sunlight, rainfall and cold weather deteriorated the mechanical properties of CBB's and steel Back Plate started rusting. We are enclosing herewith expert opinions "**EFFECTS OF CLIMATE ON POLYMER COMPOSITE MATERIAL PROPERTIES**" by Google Search, International Standard ISO 4582:2017 scientifically established that weather deteriorate the mechanical properties of composite materials.

In addition to that we have checked the Brake Head with our calibrated guage and found the profile is not as per drawing no.T-31-806 of ICF and the surface of the Break Head is uneven due to unmatched of profile, Brake Head and Composite Blocks are not fitting properly on the Break Head.

We have received letter No. 07181585102139/CSD/ANVT dated 16.03.2022 from CSD/ANVT received at our end on 22.03.2022, regarding retesting or replacement of remaining 35541 No's of CBB's, as CBB's has stored in open space for the last 1 year directly exposing to the Sunlight, rainfall and cold weather, deteriorated the mechanical properties of CBB's, it is not possible for us to replace the material due to the mistake of your consignee.





## Daulat Ram Brake Mfg. Co.

25, NEW SECTOR, PHASE II, INDUSTRIAL AREA, MANDIDEEP, BHOPAL-462 046 (M.P.) INDIA  
TEL : +91-7480-405802/405807 FAX : +91-7480-233831  
E-MAIL : info@daulatrambrake.com Website : www.daulatrambrake.com

We have supplied the material duly inspected by RDSO inspecting engineers, for Mechanical, chemical and physical properties, due to improper storage of material, CBB's are broken and separating from the back plate during services. We cannot accept the rejection of material on that basis.

That, the aforesaid act on part of PCMM office not giving any opportunity of being heard to us before issuing rejection memo, is not only against the terms and conditions of the contract but also against the principles of natural justice. Thus, there exist a dispute and the same requires its adjudication of the General Conditions of Contract for Stores Department for the appointment of arbitrator, which is applicable to the instant contract as well.

That, in view of the amendments incorporated in the Arbitration & Conciliation Act in the Year 2015, the named Arbitrator under the contract cannot be an employee of the Railways and thus, an Independent Arbitrator is required to be appointed forthwith in consonance with the provisions of Arbitration & Conciliation Act, 2015 to adjudicate the said dispute.

That, thus, in view of the aforesaid Clause in the contract, you are requested to nominate an Independent Arbitrator located at Bhopal and kindly informed us accordingly, so that, we may submit our consent / objection to the said appointment.

Thanking you,

Yours Faithfully,

For DAULAT RAM BRAKE MFG. CO.

Pankaj Das  
(Plant Head)  
☎ : 07480 – 405 802

CC to:-  
AMM/CSD/ANVT



35. Pursuant thereto, the respondent no. 1 vide letter dated 13.04.2022 asked for the petitioner's consent to waive off the applicability of Section 12(5) of the 1996 Act as Clause 2905 of the IRS provides for the appointment of employees/ex-employees of Railways as arbitrator(s). Letter dated 13.04.2022 is reproduced below:





NORTHERN RAILWAY

Speed Post

Headquarters Office,  
Baroda House,  
New Delhi.

No.ARB/Rej./P-07/Daulat Ram Mfg. Bhopal/2022 DATE:-13/04/2022

✓ M/s. Daulat Ram Mfg.Co.,  
25, New Sector, Phase I  
Industrial Area,  
Mandeep, Bhopal-462046(M.P.)

Mr. Datta  
Railway Board  
dt. 12.12.18  
received this  
letter call  
copy  
b1

Sub:- Notice for invocation of Arbitration against Purchase Order  
No.071815855102139 dated 14/03/2019.

Ref: (i) M/s. Daulat Ram Mfg.Co., 25, New Sector, Phase I Industrial Area,  
Mandeep, Bhopal-462046 (M.P.) letter No.DRBMC/1805/015/  
Arbitration dated 26/03/2022.

(ii) Railway Board letter No.2018/TF/Civil/Arbitration Policy  
dated 12.12.2018.

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Vide above letter, you have requested to invocation Arbitrator to  
adjudicate the dispute. It is informed that Clause 2900 of the Indian  
Railways Standard Conditions of Contract has been revised vide Railway  
Board's letter no. 2018/TF/Civil/Arbitration Policy dated 12.12.2018  
(copy enclosed).

Keeping in view of above clause, if you are agreed to waive of the  
applicability of Section 12(5) of Arbitration and Conciliation  
(Amendment) Act, 2018 and applicability of revised Clause Please submit  
your consent in the enclosed Annexure-XV & revised arbitration clause  
2900.

Above information is urgently required for processing the case for  
appointment of Arbitrator. You are also further requested to furnish your  
consent under section 31(5) of Arbitration and Conciliation (Amendment)  
Act within 30 days.

DA/As above.

Dy.CMM/Sig-C  
For PCMM

बलजीत सिंह

BALJIT SINGH

उप मुख्य सामग्री प्रबन्धक/सिग्नल-निर्माण  
Dy. Chief Material Manager/Signal-Construction  
2020 बड़ौदा हाऊस, नई दिल्ली-01  
Baroda House, New Delhi-01



36. In response, the petitioner denied the waiver vide letter dated 02.05.2022 which is as under:

Ref : - DRBMC/1805/016  
Date : - 02.05.2022

**Daulat Ram Brake Mfg. Co.**



25, NEW SECTOR, PHASE II, INDUSTRIAL AREA, MANDIDEEP, BHOPAL-462 046 (M.P.) INDIA  
TEL : +91-7480-405802/405807 FAX : +91-7480-233831  
E-MAIL : info@daulatrambrake.com Website : www.daulatrambrake.com

Dy. Chief Material Manager/Signal construction,  
Northern Railways,  
Headquarters Office,  
Baroda House,  
New Delhi- 110001.

Kind Attn: Mr. Baljit Singh

Subject- Notice for invocation of Arbitration against Purchase Order No. 071815855102139 dated 14/03/2019.

Ref- (1) Our letter No.DRBMC/1805/015/Arbitration dated 26/03/2022.

(2) Your letter No. ARB/Rej./P-07/Daulat Ram Mfg. Bhopal/2022 dated 13/4/2022.

Dear Sir,

Vide your letter under reference (2)ARB/Rej./P-07/Daulat Ram Mfg. Bhopal/2022 dated 13/4/2022, you have asked us to give our consent under section 13(5) of the Arbitration and Conciliation Amendment Act and have also asked for our consent to waive off the applicability of section 12(5) Arbitration and Conciliation Amendment Act 2018.

We cannot give our consent and therefore deny the same. We do not agree with the appointment of Railway/Ex-Railway employees to be appointed as arbitrators for obvious reasons of the natural inclination towards Railways.

We proposed to appoint a retired District judge to be appointed as arbitrator to resolve the dispute raised vide our letter No. DRBMC/1805/015/Arbitration dated 26/03/2022.If you agree, then we can discuss and agree on one of the names from among the retired District Judges residing and situated at Bhopal. Please communicate your consent for the above procedure to proceed ahead; else we will be compelled to file a petition under section 11 of the Arbitration and Conciliation Act before the High Court of Madhya Pradesh, Jabalpur for the appointment of an independent arbitrator.

Thanking you,

Yours Faithfully,

For DAULAT RAM BRAKE MFG. CO

Pankaj Das  
(Plant Head)  
07480-405 802







**37.** On 31.03.2023, the General Manager provided a panel of 4 names, all ex-employees of the respondent No. 1, out of which the petitioner was to suggest 2 names. Letter dated 31.03.2023 is reproduced below:

**NORTHERN RAILWAY**

Headquarters Office,  
Baroda House,  
New Delhi.

Speed Post  
No.ARB/Rej./P-07/Daulat Ram Mfg.Co.Bhopal/2022. DATE:- 31/03/2023

M/s. Daulat Ram Mfg.Co.,  
25, New Sector, Phase I,  
Industrial Area, Mandep,  
Bhopal-462046 (M.P.)

Sub: Appointment of Arbitral Tribunal in the matter of dispute between M/s. Daulat Ram Mfg.Co., 25, New Sector, Phase I, Industrial Area, Mandep, Bhopal-462046 (M.P.) against Purchase Order No.071815855102139 dated 14/03/2019, for supply of Non Asbestos Based K Type High Friction composite Brake Block for Coaches with Bogie mounted Brake System.

Ref: Your letter No.DRBMC/1805/015/Arbitration dated 26/03/2022 & 02/05/2022.

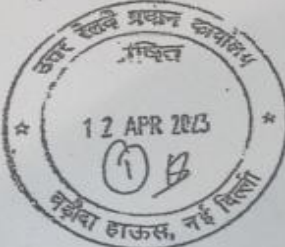
\*\*\*\*\*

Sir,

With reference to your above referred letter, General Manager/Northern Railway has approved the following panel of four retired Railway Officers, for appointment of Arbitrator in terms of Railway Board's letter No.2018/TF/Civil/Arbitration Policy dated 12.12.2018 and Clause 2900B(ii) of revised IRS Condition of Contract:-

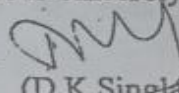
S.No.	Name	Designation
1.	Shri Brijesh Kumar Gupta	Retd.PCMM/ECR
2.	Shri Vijender Kumar Jain	Retd.PCMM/CR
3.	Shri Khichchu Mal	Retd.PCE/ECR
4.	Shri Ajay Kumar Lal	Retd.FA&CAO/System/NR

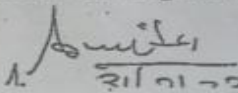
You are requested to suggest two name out of the above panel for appointment as Arbitrator within 30 days from the date of issue this letter, so that further action may be taken in this matter.



**VED PRAKASH SHARMA**  
VED PRAKASH SHARMA  
Genl. Manager/NR  
Baroda House, New Delhi-01

Your Sincerely,

  
(D.K.Singla)  
Dy.CMM/HQ

  
General Manager/NR



38. Out of the 4 names provided by the General Manager on 31.03.2023, the petitioner suggested the names of Mr. Vijendra Kumar Jain and Mr. Ajay Kumar Lal vide its letter dated 10.04.2023 which is as under:

**Daulat Ram Brake Mfg. Co.**  
25, NEW SECTOR, PHASE II, INDUSTRIAL AREA, MANDIDEEP, BHOPAL - 462 046 (M.P.) INDIA  
TEL: +91-7480-405802 / 405807 FAX: + 91-7480-223831  
E-MAIL: info@daulatrambrake.com WEBSITE: www.daulatrambrake.com

Ref : DRBMC/1704/048/Arbitration  
Date : 10.04.2023

Dy.CMM/HQ  
For General Manager  
Headquarter Office,  
Northern Railways  
Baroda House, K G Marg  
New Delhi - 110001.

Kind Attn: Mr D.K.Singla

Subject: Appointment of Arbitral Tribunal against PO No: 07171585104488 dated 23.10.2017 and 071815855102139 date: 14.03.2019 for the supply of CBS's.

Ref: Your letter ref No: ARB/Rej/P-07/Daulat Ram Mfg,Co,Bhopal/2022 Date: 31.03.2023.

Dear Sir,

We are in receipt of your above referred letter, you have mentioned the name for the Appointment of Arbitrator, for PO No. 071815855102139 date: 14.03.2019. We have also requested for appointment of Arbitrator for PO No. 07171585104488 dated 23.10.2017 vide our consequent letter no. DRBMC/1704/042/Arbitration dated: 05.05.2022 to DRBMC/1704/047/Arbitration dated: 03.03.2023.

You are requested to add the above referred PO also for the appointment of arbitrator.

Here we give our consent for the appointment of Arbitrator as under:-

1. Shri. Vijendra Kumar Jain	Retd. PCMM/CR
2. Shri. Ajay Kumar Lal	Retd. FA & CAO/System/NR

Thanking you,  
Yours Faithfully,  
For DAULAT RAM BRAKE MFG. CO.

Pankaj Das  
(Plant Head)  
☎ : 07480 - 405 802

VED PRAKASH SHARMA  
Sd/- Dy. CMM / Signal / Construction  
Northern Railways, New Delhi





39. Thereafter, the Arbitral Tribunal came to be constituted on 12.05.2023.  
Letter dated 12.05.2023 is as under:

**NORTHERN RAILWAY**

Headquarters Office,  
Baroda House,  
New Delhi.

*Special Post*  
No. ARB/Rej./P-07/Daulat Ram Mfg. Co. Bhopal/2022      Date:- 12/05/2023.

**Appointment of Arbitral Tribunal**

The General Manager, Northern Railway has appointed Arbitral Tribunal consisting of panel of following Ex. Railway Officers, under the provisions/powers contained in the Arbitration and Conciliation Act, 1996 (as amended) and Railway Board letter No.2018/ TF/ Civil/Arbitration/Policy dated 12.12.2018 to settle the dispute between M/s. Daulat Ram Mfg.Co., 25, New Sector, Phase II, Industrial Area, Mandeep, Bhopal-462046 (M.P.) and Union of India through General Manager, Northern Railway, Baroda House, New Delhi against Purchase Order No.071815855102139 dated 14/03/2019, for supply of Non Asbestos Based K Type High Friction Composite Brake Block for Coaches with Bogie Mounted Brake System.

In view of request made by the M/s. Daulat Ram Mfg.Co., vide letter dated 26/03/2022 and 02/05/2022. The details is as under:-

S.No.	Name (S/Shri)	Address	Contact Details
01	Khichchu Mal, Retd.PCE/ECR	Flat No. 729, Executive Apartment, Bhawna Estate, Sikandra, Agra, Pin-282007	Mob. 8800010978 E-mail- <a href="mailto:kmal.kmaliitian.si@gmail.com">kmal.kmaliitian.si@gmail.com</a>
02	Vijender Kumar, jain, Retd.PCMM/ CR	3 <sup>rd</sup> Floor, plot No. 429, B Block, Sushant Lok, Phase-1, Sector-43, Gurugram, (Haryana)-122009. E-mail:-	Mob. 9818834729 E-mail- <a href="mailto:vijender126@yahoo.com">vijender126@yahoo.com</a>
03	Harsh Kumar, Retd.FA & CAO/C/NR	C/o Mr. Atul Kumar , House No. 82-L, New Colony, Sector -7, Gurugram-122001,	Mob. 9999904422 01123371399 01292418870 E-mail- <a href="mailto:harshkumar@live.com">harshkumar@live.com</a>

All terms and conditions for the appointment of Arbitrator Tribunal and applicable fee etc. shall be governed as per Railway Board letter dated 12.12.2018 and 2009/CE-1/CT/14/Main dated 04/09/2019.

It is requested to enter into terms of reference with the parties at the earliest M/s. Daulat Ram Mfg.Co., 25, New Sector, Phase II, Industrial Area, Mandeep, Bhopal-462046 (M.P.) is the Claimant in this case. Arbitration proceedings may be initiated at the earliest

*(Naveen Chandra Joshi)*  
Dy.CMM/G  
For P.C.M.M./NR

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40. A perusal of the appointment letter dated 12.05.2023 issued by the respondent No.1 reveals that the General Manager has sought to justify the constitution of the Arbitral Tribunal by placing reliance on the petitioner's letters dated 26.03.2022 and 02.05.2022.
41. A plain reading of the letter(s) dated 26.03.2022 and 02.05.2022 makes it clear that at no point did the petitioner consent to the appointment of the respondent's nominees as members of the Arbitral Tribunal. In fact, the petitioner had categorically communicated its objection to such a constitution and vide letter dated 26.03.2022 had specifically requested that an independent arbitrator be appointed. Further, vide letter dated 02.05.2022, the petitioner while refusing to give consent to waive off the applicability of Section 12(5), had communicated that a Retd. District Judge be appointed as an arbitrator for the adjudication of disputes.
42. The appointment letter dated 12.05.2023 though refers to the letter(s) dated 26.03.2022 and 02.05.2022, but fails to give any reasons as to why the request of the petitioner, was ignored. The letter of 10.04.2023 is a letter giving consent for appointment of Mr. Vijendra Kumar Jain and Mr. Ajay Kumar Lal is a letter prior to the constitution of the Arbitral Tribunal.
43. Admittedly, in terms of clause 2905 of the IRS, all the members so appointed of the Arbitral Tribunal are to be ex-employees of respondent no. 1. Hence, the members of the Arbitral Tribunal are clearly barred under Serial No. 1 of the Seventh Schedule that states that any person is ineligible to act as an arbitrator if the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party. There is no written waiver in terms of the proviso to Section 12(5) by the petitioner after the Arbitral Tribunal



was constituted. Merely participating in the arbitral proceedings or raising no immediate objection cannot be treated as a waiver.

44. Having said that it is also apposite to note that the petitioner had denied the waiver vide letter dated 02.05.2022 i.e. before the Arbitral Tribunal was constituted on 12.05.2023.
45. I have already taken a view in ***M.V. Omni Projects (India) Ltd vs Union of India Through dy Chief Engg Northern Railway and Another*** 2025 SCC OnLine Del 3379 that even if a party intends to waive the bar under Section 12(5) of the 1996 Act, such waiver must be made only after the constitution of the Arbitral Tribunal is known, that is, when the names and particulars of the proposed arbitrators are disclosed. A waiver without knowledge of who the arbitrators will be, is not a valid waiver. The whole purpose of the proviso is to allow parties to consciously waive the disqualification, knowing fully well the identity and background of the arbitrator being appointed. The operative portion of the judgment reads as under:

*“24. In the present case, the petitioner had waived off the applicability of section 12(5) before the constitution of the Arbitral Tribunal and not to the members of the Arbitral Tribunal. The Arbitral Tribunal was constituted on 21.03.2024 and the petitioner had waived off the applicability of section 12(5) on 23.02.2024 i.e. before the constitution of the Arbitral Tribunal. The members of the Arbitral Tribunal were the serving employees of the respondent and are clearly barred by under S. No. 1 of seventh schedule of 1996 Act. The judgment of Central Organisation for Railway Electrification (supra) clearly states that the clauses appointing unilateral Arbitrators raises doubt to the independent and impartiality of the*

*Arbitrators and is unequal. To my mind, such clauses strike at the core of the neutrality contemplated under the 1996 Act. Further and most importantly, even if a party agrees to waive off the applicability of section 12(5) of 1996 Act, the same has to be done once the Arbitrator are appointed with the names and details. Any waiver under proviso of section 12(5) of 1996 Act before the details of the Arbitrators/Arbitral Tribunal is known to the party waiving the applicability of section 12(5) of 1996 Act is no waiver in the eyes of law. Hence, for the reasons noted above, the members of the Arbitral Tribunal are clearly ineligible to act as the Arbitrators by virtue of S. No. 1 of seventh schedule of 1996 Act and the waiver was to the constitution of the Arbitral Tribunal not to the members of the Arbitral Tribunal.*

*(emphasis supplied)*

46. For the said reasons, the letter dated 02.05.2022 and 10.04.2023 cannot be termed as a waiver much less a valid waiver in the eyes of law. The waiver under proviso to Section 12(5) has not been made, in the present case. The appointment and constitution of the entire Arbitral Tribunal is barred under Serial No. 1 of the Seventh Schedule of the 1996 Act.
47. In addition, I am of the view that Clause 2905 and letter dated 31.03.2023, not only restricts the choice of the petitioner to appoint retired Railway Officers empanelled by the Railways, but also limits the petitioner's ability to freely nominate its arbitrator. On 31.03.2023, the petitioner was asked to suggest two names out of a panel of 4 retired Railway Officers forwarded by the General Manager, from

which even the petitioner's nominee was ultimately appointed by the General Manager of the respondent No.1. The power to appoint the remaining arbitrators, including the presiding arbitrator, also rests entirely with the General Manager. Such a mechanism vests unilateral control over the constitution of the Arbitral Tribunal with one party to the dispute, which is not in consonance with the principles laid down in *Voestalpine* (supra) wherein the Hon'ble Supreme Court emphasized the importance of a 'broad based' panel. The operative portion of the judgment reads as under:

*“28. Before we part with, we deem it necessary to make certain comments on the procedure contained in the arbitration agreement for constituting the Arbitral Tribunal. Even when there are a number of persons empanelled, discretion is with DMRC to pick five persons therefrom and forward their names to the other side which is to select one of these five persons as its nominee (though in this case, it is now done away with). Not only this, DMRC is also to nominate its arbitrator from the said list. Above all, the two arbitrators have also limited choice of picking upon the third arbitrator from the very same list i.e. from remaining three persons. This procedure has two adverse consequences. In the first place, the choice given to the opposite party is limited as it has to choose one out of the five names that are forwarded by the other side. There is no free choice to nominate a person out of the entire panel prepared by DMRC. Secondly, with the discretion given to DMRC to choose five persons, a room for suspicion is created in the mind of the other side that DMRC may have*

**picked up its own favourites. Such a situation has to be countenanced.** We are, therefore, of the opinion that sub-clauses (b) & (c) of Clause 9.2 of SCC need to be deleted and instead choice should be given to the parties to nominate any person from the entire panel of arbitrators. Likewise, the two arbitrators nominated by the parties should be given full freedom to choose the third arbitrator from the whole panel.

29. Some comments are also needed on Clause 9.2(a) of GCC/SCC, as per which DMRC prepares the panel of “serving or retired engineers of government departments or public sector undertakings”. It is not understood as to why the panel has to be limited to the aforesaid category of persons. Keeping in view the spirit of the amended provision and in order to instil confidence in the mind of the other party, it is imperative that panel should be broad-based. Apart from serving or retired engineers of government departments and public sector undertakings, engineers of prominence and high repute from private sector should also be included. Likewise panel should comprise of persons with legal background like Judges and lawyers of repute as it is not necessary that all disputes that arise, would be of technical nature. There can be disputes involving purely or substantially legal issues, that too, complicated in nature. Likewise, some disputes may have the dimension of accountancy, etc. Therefore, it would also be appropriate to include persons from this field as well.

*30. Time has come to send positive signals to the international business community, in order to create healthy arbitration environment and conducive arbitration culture in this country. Further, as highlighted by the Law Commission also in its report, duty becomes more onerous in government contracts, where one of the parties to the dispute is the Government or public sector undertaking itself and the authority to appoint the arbitrator rests with it. In the instant case also, though choice is given by DMRC to the opposite party but it is limited to choose an arbitrator from the panel prepared by DMRC. It, therefore, becomes imperative to have a much broad-based panel, so that there is no misapprehension that principle of impartiality and independence would be discarded at any stage of the proceedings, specially at the stage of constitution of the Arbitral Tribunal. We, therefore, direct that DMRC shall prepare a broad-based panel on the aforesaid lines, within a period of two months from today.”*

*(emphasis supplied)*

- 48.** Further, I find force in the submission of the petitioner that the General Manager being himself ineligible to act as an arbitrator under the Seventh Schedule, cannot appoint the Arbitral tribunal. In this regard, the respondent No. 1 has contended that the ineligibility under Seventh Schedule of 1996 Act applies to a person acting as an arbitrator not merely appointing one.
- 49.** The fact of the matter is that the Arbitral Tribunal was appointed by the General Manager of the respondent vide appointment letter dated 12.05.2023. The General Manager is an officer of the respondent No. 1 itself, which is a party to the dispute and thus an interested party in

the outcome of the arbitration. It has time and again been held that an interested party cannot be permitted to unilaterally appoint an arbitrator, as it undermines the fundamental requirement of neutrality in arbitral proceedings. The independence and impartiality of the arbitral tribunal is the cornerstone of the arbitration process, and any appointment made by a person who has a vested interest in the dispute is impermissible. The Hon'ble Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.*** (2020) 20 SCC 760, following its earlier decision in ***TRF Ltd. v. Energo Engg. Projects Ltd.***, (2017) 8 SCC 377 has clarified the law in para 21 of the judgment.

50. The issue in question has further been settled by the Hon'ble Supreme Court in ***Central Organisation for Railway Electrification vs ECI SPIC SMO MCML (JV) A Joint Venture Company*** 2024 SCC OnLine SC 3219 wherein it was inter alia held as under:

“.....

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.

.....

130. In comparison, a three-member arbitral tribunal usually allows each party to nominate one arbitrator of their choice, with the third arbitrator being appointed either by the two party-appointed arbitrators or by agreement of parties. The fact that both parties nominate their respective arbitrators gives them “a sense of investment in the arbitral tribunal.” A three-member arbitral tribunal also enhances the quality of the adjudicative deliberations and ensures compliance with due process. According to Gary Born, the major advantage of a three-member tribunal is that the parties can participate in the selection of the tribunal to the maximum extent possible.

131. In a three-member tribunal, each of the parties seeks to appoint a co-arbitrator. However, the third arbitrator is usually appointed by a process which allows equal participation of both parties in the appointment process. The equal participation of parties enables the appointment of an independent and impartial third arbitrator. Hence, any perceived tilt of an arbitrator in favour of the party which nominated that arbitrator is offset by the appointment of the third arbitrator in the course of a deliberative process

*involving both the arbitrators or as envisaged in the agreement between parties. Perkins (supra) rightly observed 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. This counter-balancing will ideally apply only in situations where the arbitrators are appointed by the parties in the exercise of their genuine party autonomy. TRF (supra) and Perkins (supra) have been relied upon by this Court on numerous occasions, including in *Glock Asia-Pacific Limited v. Union of India*<sup>245</sup> and *Lombardi Engg Ltd. v. Uttarakhand Jal Vidyut Nigam Ltd.**

.....

#### *J. Conclusion*

169. In view of the above discussion, we conclude that:

a. *The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;*

.....

c. *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;*

d. *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 (supra) is unequal and prejudiced in favour of the Railways;*

*e. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;*

*f. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule; and*

*g. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.”*

*(emphasis supplied)*

51. Even though it has been mandated that the judgment of **Central Organisation** (supra) is to have prospective effect, the said judgment has further crystallized the law of neutrality as laid down in **Perkins** (supra) and **Voestalpine** (supra). The fact of the matter remains that in the present case, there was no waiver, no consent and the respondent unilaterally appointed the Arbitral Tribunal.



52. For the reasons noted above, the present petition is allowed and the Impugned Award is hereby set aside.
53. The petition along with pending applications, if any are disposed of.
54. The Counter Affidavit along with documents handed over in Court are taken on record.

**JASMEET SINGH, J**

**JULY 31, 2025/ P**

*Click here to check corrigendum, if any*