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[Section 12 in THE ARBITRATION AND CONCILIATION ACT, 1996](#)

[Section 14 in THE ARBITRATION AND CONCILIATION ACT, 1996](#)

[Section 14\(1\)\(a\) in THE ARBITRATION AND CONCILIATION ACT, 1996](#)

[THE ARBITRATION AND CONCILIATION ACT, 1996](#)

[Section 17 in THE ARBITRATION AND CONCILIATION ACT, 1996](#)

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Delhi High Court

Maj Pankaj Rai vs Niit Ltd on 16 May, 2023

NEUTRAL CITATION NO. 2023:DHC:3394

2023 * IN THE HIGH COURT OF DELHI AT NEW DELHI
% Reserved on : 23rd February
2023 Pronounced on: 16th May

2023 + O.M.P. (T) (COMM.) 3/2023 & I.A. 318/2023 & I.A. 319/2023
MAJ PANKAJ RAI

Petitioner Through: Petitioner-in-person
versus

Respondent NIIT LTD

Through: Mr. Rajat Navet, Mr. Kushagra
Pandit and Mr. Shashi Kant,
Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

JUDGMENT

CHANDRA DHARI SINGH, J.

1. The instant petition under [Section 14\(1\)\(a\)](#) of the Arbitration and Conciliation Act, 1996 (the "Act") has been filed by the petitioner seeking termination of mandate of the Arbitrator appointed for adjudication of disputes between petitioner and the respondent. The following reliefs have been sought by the petitioner:

"(a) Terminate the mandate/appointment of the present Arbitrator Mr Vijay Shali, Senior Advocate/Retired Judge A- 8 Pamposh Enclave, Greater Kailash, New Delhi.

(b) Declare the present Arbitrator Mr Vijay Shali, ineligible to act as an Arbitrator in the dispute between the Petitioner and the Respondent.

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NEUTRAL CITATION NO. 2023:DHC:3394

(c) Set aside the order dated 09.11.2022 passed by the Learned Arbitrator.

(d) Substitute the appointment of the Learned Arbitrator Mr Vijay Shali with anyone else on the panel of DIAC/Nani Palkhiwala Arbitration Centre.

(e) Pass any other order(s) as this Hon^{ble} may deem fit and proper to meet the ends of justice."

FACTUAL MATRIX

2. The petitioner and the respondent entered into a License Agreement dated 30th December 2015, wherein the petitioner was the indemnifier. The respondent had acknowledged the amount of Rs. 1.95 lakhs paid at the time of signing the Letter of Intent. The respondent repaid the amount of Rs. 1.95 lakhs collected as earnest money while signing the Letter of Intent as full and final settlement of the exit convenience, when the petitioner expressed his unwillingness to continue with the License Agreement.

3. Due to the aforesaid conflicts and other disputes between the parties pertaining to the License Agreement, the respondent had unilaterally appointed an arbitrator, who subsequently, recused himself from adjudicating the issues between the parties on 7th January 2018, since objections were raised by the petitioner to the constitution of the said Tribunal.

4. Thereafter, the petitioner approached this Court seeking adjudication of the disputes between the parties which had arisen out of their contractual relationship by way of filing an Arbitration Petition Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 bearing No. 447/2021 seeking appointment of an Arbitrator, after having issued a notice on 26th October, 2020 invoking the arbitration clause.

5. In the said matter, a Coordinate Bench of this Court appointed the erstwhile Arbitrator vide Order dated 4th March 2022 and arbitration proceedings were initiated between the parties.

6. The petitioner is now before this Court seeking termination of the mandate of the erstwhile Arbitrator.

SUBMISSIONS

7. The petitioner appearing in person submitted that after the erstwhile Arbitrator was appointed by the Coordinate Bench of this Court, the learned Arbitrator conducted a preliminary conference on 7th May 2022, which was intimated to the respondent by way of an email. The respondent sent an email dated 30th May 2022 to the learned Arbitrator requesting that the hearing may be conducted after 18th June 2022. Thereafter, the learned Arbitrator directed the petitioner to file a Statement of Claim before 5th July 2022 and also stated that the right to file claim after the said date shall stand forfeited. The petitioner accordingly filed his Statement of Claim on 28th June 2022 along with an application under [Section 17\(1\)\(d\)](#) of the Act.

8. It is submitted that on 5th July 2022, the learned Arbitrator directed the respondent to file the Statement of Defense within four weeks and then granted further three weeks" time on 9th August 2022. While granting the extension of time for filing the Statement of Defense, the learned Arbitrator did not raise any objection and did not provide for Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 penalty in case of failure to file the same. It is submitted that at the first instance, the respondent did not file the Statement of Defense within the stipulated time and further the respondent also did not file any application to show or explain the reasons for delay in filing the Statement of

Defense. It is submitted that contrary to the conduct of the learned Arbitrator towards the respondent, strict directions were passed against the petitioner when the Statement of Claim was called for.

9. The petitioner submitted that vide order dated 17th September 2022, the learned Arbitrator directed the parties to pay the fees payable to the Arbitrator in one or two installments with further direction to pay the first installment before the subsequent date of hearing. The petitioner, being aggrieved by the said order, filed an application seeking recall of the order dated 17th September 2022 under [Section 17](#) of the Act on 23rd September 2022. The respondent also filed their reply to the application. It is submitted that on the next date of hearing, the learned Arbitrator postponed the hearing since the first installment was not paid. It is submitted that on 20th October 2022, the petitioner paid a sum of Rs. 1.65 lakhs towards the fees payable, however, the learned Arbitrator did not issue the receipt of the fees so paid. The learned Arbitrator heard the arguments of the parties on the application of recall.

10. It is submitted that the learned Arbitrator was appointed as a Senior Advocate by the Hon'ble Supreme Court on 7 th July 2022 with retrospective effect from 20th May 2022, however, he did not disclose the fact to the parties. It was only on 27th October 2022, that the petitioner came to know about the designation of the learned Arbitrator as a Senior Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 Advocate. It is submitted that the petitioner also found that the Arbitrator was advertising his services as an advocate on a website bearing URL „www.grotal.com“, where he also sought reviews for his services. Subsequently, the petitioner filed an application under [Section 16\(3\)](#) of the Act alleging that the learned Arbitrator had exceeded the scope of his authority, while also intimating him that the petitioner shall be approaching this Court seeking termination of his mandate because the learned Arbitrator was soliciting clients and also because there were reasons to believe that he was not impartial.

11. The learned Arbitrator disposed of the applications filed by the petitioner on 23rd September 2022, without stating sufficient reasons, which is a testament to the fact that the learned Arbitrator is unable to perform his functions without undue delay. The order suffers from errors on the face of the record. It is submitted that the learned Arbitrator did not give any reasons to dispose the application filed by the petitioner under [Section 16\(3\)](#) of the Act on 27th October 2022, and instead simply noted that the averments in the applications were "baseless and extraneous submissions". The learned Arbitrator did not specifically deny any of the aforesaid instances whereby he exceeded his authority and has also failed to pass a speaking order while disposing of the application under [Section 16\(3\)](#) of the Act.

12. The petitioner appearing in person submitted that the mandate and appointment of the learned Arbitrator is liable to be terminated since his conduct is contrary to the conduct expected of an advocate since he is inviting viewers to review and rate his services.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42
NEUTRAL CITATION NO. 2023:DHC:3394

13. The learned Arbitrator has acted arbitrarily and in a prejudiced manner. The learned Arbitrator has not disclosed the amount of fees paid by the respondent. He asked the petitioner to collect certified copy of the orders in the proceedings from his office even though he has the knowledge that the petitioner lives in Hyderabad. The learned Arbitrator has acted without jurisdiction and in violation of principles of natural justice.

14. Therefore, it is prayed that the mandate of the arbitrator may be terminated and a substitute independent arbitrator may be appointed by this Court for adjudication of the disputes between the parties.

15. Per Contra, the learned counsel for the respondent vehemently opposed the instant petition and submitted that the instant petition is misconceived and is nothing but an abuse of process of law.

16. The learned counsel submitted that the petition does not show any viable or justifiable ground for termination of mandate of the erstwhile Arbitrator which would entitle the petitioner to seek reliefs under [Section 14\(1\)\(a\)](#) of the Act and hence, at the very outset the petition is not maintainable.

Reliance has been placed upon the judgment passed in [Delhi Tourism and Transportation Development Corporation vs. Swadesh Civil Infrastructure Pvt. Ltd.](#), 2021 SCC OnLine Del 3876.

17. It is further submitted that the issue of impartiality and independence of the arbitrator is first to be raised before the arbitrator. However, the petitioner has directly approached this Court, without Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 taking the appropriate measures under [Section 13](#) of the Act and waiting for the decision by the learned Arbitrator on the same.

18. The petitioner submitted that the learned Arbitrator has been advertising his services and soliciting clients, however, it is submitted that „www.grotal.com“ is a search engine in which details with respect to various professions, businesses etc. are available and which are compiled by the website itself. The same does not in any manner imply that the learned Arbitrator has advertised his services. Furthermore, learned Arbitrator has very categorically and clearly dealt with the said submission in order dated 8th November 2022, wherein it has been recorded that the learned Arbitrator has never advertised on any site, as alleged.

19. It is submitted that the petitioner has failed to show that the learned Arbitrator is de facto or de jure unable to perform his duties. Therefore, the claims raised by the petitioner are bogus and frivolous.

20. It is submitted that the arguments by the petitioner that the learned Arbitrator did not furnish any reasons while disposing of his application are misconceived since it is a matter of record that before 8th November 2022, i.e., the date of listing for consideration of the application, the petitioner himself issued emails to the learned Arbitrator challenging his impartiality/independence and intimating that he shall be challenging the mandate of the Arbitrator before this Court and the petitioner also did not appear on the said date.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394

21. The petitioner submitted that the learned Arbitrator failed to reply to the objections raised by the petitioner claiming that the learned Arbitrator had exceeded his authority. To this argument, it is submitted that Memo dated 30th October 2022, by which the petitioner sought to challenge the scope of authority of the learned Arbitrator has not been disposed of by the learned Arbitrator and instead the petitioner has been afforded an opportunity to approach this Court as the petitioner has sought to raise questions about the impartiality of the learned Arbitrator and expressed his desire to have the arbitrator substituted. The same is duly recorded in the order dated 8th November 2022. Therefore, it is apparent that frivolous and scandalous allegations have been made by the petitioner in the instant petition.

22. It is submitted that the petitioner is aggrieved that the learned Arbitrator did not provide a copy of the order dated 10th October 2022, however, it is submitted on behalf of the respondent that the issue has been addressed by the learned Arbitrator in the order dated 8 th November 2022. It is submitted that no effective hearing took place on 10 th October 2022 and the matter was adjourned to enable the parties to pay the fee of the learned Arbitrator.

23. It is further submitted that vide order dated 22nd October 2022, the learned Arbitrator had noted that a sum of Rs. 1,65,000/- was received by him from the petitioner, i.e., claimant therein. Therefore, the submission of the petitioner pertaining to receipt of the fees does not stand ground.

24. It is submitted that no reason much less any justifiable reason or ground has been stated or disclosed by the petitioner which could even Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 remotely support his submission that the appointment of the learned Arbitrator is hit by [Section 14\(1\)\(a\)](#) of the Act and remains a controversy since then. The said allegation is totally baseless, irrelevant and liable to be rejected summarily.

25. In view of the said averments, it is submitted that the instant petition may be dismissed for being devoid of any merit.

26. Heard the petitioner and the learned counsel for the respondent. The record has also been perused.

FINDINGS AND ANALYSIS

27. The petitioner has filed the instant petition by way of invoking [Section 14\(1\)\(a\)](#) of the Act has approached this Court seeking termination of the mandate of the erstwhile Arbitrator. The petitioner has raised the following grounds while invoking [Section 14](#) of the Act:

- a. The erstwhile Arbitrator did not act as per the conduct expected of advocates.
- b. The learned Arbitrator disposed of the applications of the petitioner without stating any reasons.
- c. The learned Arbitrator did not furnish the copies of the orders passed by him to the petitioner.
- d. The learned Arbitrator has acted in a biased manner.

28. The law emanating out of the Arbitration and [Conciliation Act](#), 1996, has been time and again settled by the Courts of the country. The foundational idea and intent behind the Act are to facilitate efficient Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 disposal of disputes between parties, whether private or public, without excessive intervention of the Courts. The Hon'ble Supreme Court as well as this Court in several judgments have reiterated the purpose and spirit of the Act and have given strict interpretation to the provisions laid down therein. The scope and jurisdiction of the provision under [Section 14](#) has also been limited by way of such interpretations.

29. [Section 14](#) of the Act, which has been invoked by the petitioner, reads as under:

"14. Failure or impossibility to act.--

(1) [The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]--

(a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and

(b) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of [section 13](#), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section(3) of [section 12](#)."

30. The Section lays down circumstances where there is an impossibility or failure on part of the arbitrator to act. Sub-section 1(a) of Section 14, which has been invoked by the petitioner herein, provides for termination of mandate and substitution of the arbitrator, if the aggrieved Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 party is able to show that the arbitrator is de jure or de facto unable to perform his duties. The petitioner in the instant matter has not invoked any grounds as set forth under [Section 14](#) of the Act except that the learned erstwhile Arbitrator, while the conducting arbitration proceedings between the parties, has acted in a prejudiced and biased manner.

31. The issue which is to be adjudicated upon by this Court in the instant matter is whether learned Arbitrator has been de jure or de facto unable to perform his duties as an arbitrator.

32. While deciding the issue of de jure inability, bias or partiality, reference is to be made to [Section 12](#) as well as Schedule VII of the Act, which require the arbitrator to declare any kind of nexus or relationship with either of the parties to dispute before him in any arbitration proceedings and which also bars or makes the arbitrator „ineligible“ to act as an arbitrator for the reason of such nexus or interest. Once an arbitrator becomes ineligible, then under [Section 14\(1\)\(a\)](#) of the Act, he becomes de jure unable to perform his functions.

33. The [Section 12](#) and Schedule VII of the Act read as under:

"12. Grounds for challenge.--

(3) An arbitrator may be challenged only if--

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 of which he becomes aware after the appointment has been made.

[(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.]"

Schedule VII Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394

8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.

10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11. The arbitrator is a legal representative of an entity that is a party in the arbitration.

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom. Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.

16. The arbitrator has previous involvement in the case. Arbitrator's direct or indirect interest in the dispute

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.

18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42
NEUTRAL CITATION NO. 2023:DHC:3394

19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1.--The term "close family member" refers to a spouse, sibling, child, parent or life partner. Explanation 2.--The term "affiliate" encompasses all companies in one group of companies including the parent company.

Explanation 3.--For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.]"

34. [Section 12](#) of the Act in its first portion requires a declaration by the arbitrator regarding his interest in the proceedings or either party, if any. In the second part of the provision, there are grounds which may be invoked to challenge the appointment of an arbitrator which include, circumstances that give rise to justifiable doubts as to the independence or impartiality of the arbitrator, or 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. Therefore, for invoking [Section 12](#), the requisites under Seventh Schedule need to be satisfied. To satisfy this Court that the mandate of the learned Arbitrator is liable to be terminated, the test of the provisions under [Section 12](#), [14](#) and [15](#) of the Act is to be met. The law and position regarding termination of mandate on the ground of de jure inability is settled.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42
NEUTRAL CITATION NO. 2023:DHC:3394

35. With reference to the question of impartiality and independence, under [Section 12](#) of the Act, the grounds which have been raised by the petitioner herein to seek the relief of termination of the

Arbitrator's mandate, in [Voestalpine Schienen GmbH vs. Delhi Metro Rail Corpn. Ltd.](#), (2017) 4 SCC 665, the Hon'ble Supreme Court observed 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 rational 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 Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 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.

25. [Section 12](#) has been amended with the objective to induce neutrality of arbitrators viz. their independence and impartiality. The amended provision is enacted to identify the "circumstances" which give rise to "justifiable doubts" about the independence or impartiality of the arbitrator. If any of those circumstances as mentioned therein exists, it will give rise to justifiable apprehension of bias. The Fifth Schedule to the Act enumerates the grounds which may give rise to justifiable doubts of this nature. Likewise, the Seventh Schedule mentions those circumstances which would attract the provisions of sub-section (5) of [Section 12](#) and nullify any prior agreement to the contrary. In the context of this case, it is relevant to mention that only if an arbitrator is an employee, a consultant, an advisor or has any past or present business relationship with a party, he is rendered ineligible to act as an arbitrator. Likewise, that person is treated as incompetent to perform the role of arbitrator, who is a manager, director or part of the management or has a single controlling influence in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration. Likewise, persons who regularly advised the appointing party or affiliate of the appointing party are incapacitated. A comprehensive list is enumerated in Schedule 5 and Schedule 7 and admittedly the persons empanelled by the respondent are not covered by any of the items in the said list."

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394

36. The judgment clarifies that the provision lays down circumstances which when fulfilled will give rise to justifiable apprehension of bias or impartiality. The list as stipulated under Schedule VII of the Act delineates the cases in which the arbitrator appointed to adjudicate between the parties shall be ineligible to act in that capacity.

37. While referring to the aforesaid judgement in Voestalpine Schienen GmbH (supra), the Hon'ble Supreme Court in [HRD Corporation \(Marcus Oil and Chemical Division\) vs. GAIL \(India\) Limited \(Formerly Gas Authority of India Limited\)](#), (2018) 12 SCC 471, discussed the scope of [Section 12\(5\)](#), the relevant provision for adjudication of the case at hand, and observed as under:

"12. After the 2016 [Amendment Act](#), a dichotomy is made by the Act between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, [Section 12\(5\)](#) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, under [Section 14\(1\)\(a\)](#), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible". In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the Arbitral Tribunal under [Section 13](#). Since such a person would lack inherent jurisdiction to proceed any further, an application may be filed under [Section 14\(2\)](#) to the Court to decide on the termination of his/her mandate on this ground. ..."

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42
NEUTRAL CITATION NO. 2023:DHC:3394

38. The de jure inability of the arbitrator to perform his functions is, hence, determined when the aggrieved party is able to meet the circumstances laid under [Section 12\(5\)](#) read with Schedule VII.

39. The requisites of successfully invoking and establishing the grounds under the provision have been deliberated upon by the Hon'ble Supreme Court in [Bharat Broadband Network Ltd. v. United Telecoms Ltd.](#), (2019) 5 SCC 755 as well. The relevant portion of the judgment is reproduced hereunder:

"15. [Section 12\(5\)](#), on the other hand, is a new provision which relates to the de jure inability of an arbitrator to act as such. Under this provision, any prior agreement to the contrary is wiped out by the non obstante clause in [Section 12\(5\)](#) the moment any person whose relationship with the parties or the counsel or the subject-matter of the dispute falls under the Seventh Schedule. The sub-section then declares that such person shall be "ineligible" to be appointed as arbitrator. The only way in which this ineligibility can be removed is by the proviso, which again is a special provision which states that parties may, subsequent to disputes having arisen between them, waive the applicability of [Section 12\(5\)](#) by an express agreement in writing. What is clear, therefore, is that where, under any agreement between the parties, a person falls within any of the categories set out in the Seventh Schedule, he is, as a matter of law, ineligible to be appointed as an arbitrator. The only way in which this ineligibility can be removed, again, in law, is that parties may after disputes have arisen between them, waive the applicability of this sub-section by an "express agreement in writing". Obviously, the "express agreement in writing" has reference to a person who is interdicted by the Seventh Schedule, but who is stated by parties (after the disputes have arisen between them) to be a person in whom they have faith notwithstanding the fact that such person is interdicted by the Seventh Schedule.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42
NEUTRAL CITATION NO. 2023:DHC:3394

17. The scheme of [Sections 12, 13 and 14](#), therefore, is that where an arbitrator makes a disclosure in writing which is likely to give justifiable doubts as to his independence or impartiality, the appointment of such arbitrator may be challenged under [Sections 12\(1\) to 12\(4\)](#) read with Section

13. However, where such person becomes "ineligible" to be appointed as an arbitrator, there is no question of challenge to such arbitrator, before such arbitrator. In such a case i.e. a case which falls under [Section 12\(5\)](#), [Section 14\(1\)\(a\)](#) of the Act gets attracted inasmuch as the arbitrator becomes, as a

matter of law (i.e. de jure), unable to perform his functions under [Section 12\(5\)](#), being ineligible to be appointed as an arbitrator. This being so, his mandate automatically terminates, and he shall then be substituted by another arbitrator under [Section 14\(1\)](#) itself. It is only if a controversy occurs concerning whether he has become de jure unable to perform his functions as such, that a party has to apply to the Court to decide on the termination of the mandate, unless otherwise agreed by the parties. Thus, in all [Section 12\(5\)](#) cases, there is no challenge procedure to be availed of. If an arbitrator continues as such, being de jure unable to perform his functions, as he falls within any of the categories mentioned in [Section 12\(5\)](#), read with the Seventh Schedule, a party may apply to the Court, which will then decide on whether his mandate has terminated. Questions which may typically arise under [Section 14](#) may be as to whether such person falls within any of the categories mentioned in the Seventh Schedule, or whether there is a waiver as provided in the proviso to [Section 12\(5\)](#) of the Act. As a matter of law, it is important to note that the proviso to [Section 12\(5\)](#) must be contrasted with [Section 4](#) of the Act. [Section 4](#) deals with cases of deemed waiver by conduct; whereas the proviso to [Section 12\(5\)](#) deals with waiver by express agreement in writing between the parties only if made subsequent to disputes having arisen between them.

40. The ineligibility of the arbitrator is hence to be tested in light of the interpretation and requirements laid down by the Hon^{ble} Supreme Court Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 in the various cases as reproduced above. At this stage, therefore, it is pertinent to deliberate on the mandate of [Section 12](#) and the Schedule VII, to test whether the learned Arbitrator in the instant case has become de jure unable to perform his duties. Therefore, the petitioner shall meet the circumstances laid down under the [Section 12](#) or by extension under Schedule VII of the Act to successfully challenge the appointment of the learned Arbitrator.

41. While alleging that the mandate of the learned Arbitrator in the case at hand is liable to be terminated, the petitioner cited instances where according to him the learned Arbitrator acted in a biased manner. He stated that the learned Arbitrator did not supply the copies of the orders to him and also that time for filing and completion of pleadings was given inconsistently by him to the parties. After a perusal and reference of the precedents in the cases cited above it is clear that an aggrieved party approaching the Court of law under [Section 14](#) seeking termination of mandate on the ground of de jure inability must satisfy the circumstances as stated under the Act and as reiterated by the Hon^{ble} Supreme Court.

42. To establish that the learned Arbitrator in the instant case has become de jure unable to perform his functions, in accordance with [Section 14\(1\)\(a\)](#) of the Act, the petitioner, had to satisfy the Court that his case fell within the ambit of the conditions/circumstances as laid down under Schedule VII of the Act. However, the petitioner has argued beyond the limitations and scope of the provision under the Act to challenge the appointment of the learned Arbitrator. As reproduced above, the learned Arbitrator's mandate would be terminated for the Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 reason of his ineligibility if the petitioner is able to show that there is a relationship of the learned Arbitrator with either of the parties or their counsel or there is a relationship of the learned Arbitrator to the dispute or even if there direct or indirect interest of the learned Arbitrator in the dispute. He did not argue, much less establish, any of such grounds as provided for under [Section 12\(5\)](#) read with Schedule VII of the Act. The petitioner failed to show that the learned Arbitrator is ineligible as per the terms under [Section 14](#) and [12](#) read with Schedule VII of the Act and neither has he been able to show that there are justifiable grounds to impartiality or independence of the learned Arbitrator. Moreover, in compliance of [Section 12](#) of the Act, the learned Arbitrator also furnished his declaration that he did not have any relations, interest in the subject matter of the dispute either financial, business related, professional or that of any other kind, which was likely to give rise to justifiable doubts as to his independence or impartiality. It is also not the case of the petitioner that the learned Arbitrator had become de facto unable to perform his functions. Therefore, the case of the petitioner does not fall within the ambit of [Section 14\(1\)\(a\)](#) of the Act.

43. The petitioner has also claimed that the learned Arbitrator disposed of the applications filed by him without stating any reasons. The precedents reproduced and the analysis made in the foregoing paragraphs makes it clear that the relief under [Section 14](#) of the Act cannot be granted for the grounds other than those stipulated in the provision. The instant ground raised by the petitioner against the learned Arbitrator, at the first instance, does not fall in the ambit of [Section 14](#) on the issues Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 raised qua the proceedings or his conduct. Therefore, the grounds invoked by the petitioner are not maintainable under [Section 14](#) of the Act. Having said so, even if the grounds invoked by the petitioner were to be considered, the orders may be reproduced for reference on the claims made by the petitioner.

44. The petitioner argued that the petitioner was given only one opportunity to file his Statement of Claim and the learned Arbitrator had stated that the right to file claim after the said date shall stand forfeited. The said communication/order is reproduced herein:

"Both the parties are directed to suggest a convenient date for hearing in the month of July 2022. The Claimant is directed to file his Statement of Claim before the next date of hearing with an advance copy to the Respondent. Please note that no further extension of time will be granted for filing of Statement of Claim."

45. The said order in no manner reflects that the right to file the Statement of Claim was intended to be fortified after the first opportunity.

46. Thereafter, the petitioner argued that time to file the Statement of Defence was granted in a biased manner to the respondent. The relevant orders are produced in order to adjudicate the said claim:

Order dated 5th July, 2022 "The video-conferencing link shared by Maj Pankaj Rai for today's hearing was not working. I spoke to both the parties telephonically. Mr. Kushagara Pandit, Ld. Counsel for the Respondent sought 6 weeks' times to file statement of defence. Let the statement of defence be filed within 4 weeks from today with an advance copy to the Petitioner and the office of the Ld. Arbitrator.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 The matter will be taken up for further proceedings on 9th August 2022 at 4 pm through VC. Respondent to share the hearing link one day in advance."

Order dated 9th August, 2022 "The learned counsel for the respondent has sought further time of 3 (three) weeks to file the Statement of Defence which is not opposed. Let the Statement of Defence be filed within 3 weeks with an advance copy to the claimant who may file his rejoinder within 2 weeks thereafter."

47. A perusal of the orders of the learned Arbitrator shows that at the first instance the respondent sought time for six weeks to file the Statement of Defence, however, only four weeks were granted to the respondent for the same. Thereafter, when the extension was sought on behalf of the respondent and was granted to him by the learned Arbitrator, the „no-objection“ of the petitioner was noted, which has not been challenged by him. Hence, at this stage reliance upon the said order to challenge the appointment and mandate of the learned Arbitrator by the petitioner is completely misplaced. Moreover, the arguments by the petitioner on the time and office hours at the time of filing the documents by the respondent are exceptionally beyond the scope of argument and consideration under [Section 14\(1\)\(a\)](#) of the Act.

48. The petitioner filed an application for recall of order dated 17th September 2022. While considering the said application on 22nd October 2022, the learned Arbitrator observed and directed as under:

"2. Arguments on the recall of the Order passed on 17.09.2022 have been heard. During the course of the arguments he has referred to two judgements namely (i) Secretary Irrigation Department Vs G.C. Roy - AIR 1992 SC Signature Not Verified Digitally Signed

By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 732 and (ii) *A.V. Papayya Sastry & Ors vs Government of A.P. & Ors* - AIR 2007 SC 1456 AP to contend that the provision of CPC are applicable to the arbitration proceedings and therefore his application for recalling the Order dated 17.09.2022 is maintainable."

49. The said application as well as the other applications filed by the petitioner, were further referred to and considered in the order dated 8th November 2022 as under:

"4. On 17.09.2022 the matter was taken up for hearing on the application filed by the Claimant under [Section 19](#) of the Arbitration & [Conciliation Act](#), 1996 („the Act“) seeking cross examination of Mr. Taposh Roy under whose signature the Statement of Defence was filed. Prior to this, the Claimant had also filed an application under [Section 17](#) of the Act. Both these applications were filed through email.

5. So far as the application filed by the Claimant u/s 19 for cross-examination of the Mr. Taposh Roy was concerned, it was observed that the same was premature, as the parties were yet to file their affidavits of admission and denial of documents. The issues were also yet to be framed. Therefore, the Tribunal was of the view that as and when the Respondent adduces its evidence, the Claimant will have a right to cross examine the witnesses. However, it seems that the Claimant was not satisfied about this aspect of the matter. It is pertinent to mention herein that the Claimant was free to take appropriate remedy available to him in accordance with law in case he felt aggrieved.

12. On 22.10.2022, arguments on the application seeking recall/modification of order dated 17.09.2022 were heard but since the Claimant was referring to some paragraphs of the judgments, he was told that in all fairness he ought to have shared the judgments relied upon by him either through email or by way of hard copies to the Arbitral Tribunal as well as with the Opposite Counsel so that an effective Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 hearing could take place.

13. The Ld. Counsel for the Respondent pointed out that one of the citations relied upon by the Claimant was wrong. The Claimant assured that he will either send the soft or the hard copies of the judgments by Wednesday i.e. 26.10.2022. With the consent of the parties, the matter was adjourned to 08.11.2022 for orders.

14. On 27.10.2022, the Claimant filed a fresh application under [Section 16\(3\)](#) of the Act by email on the ground that the Arbitral Tribunal has exceeded its authority by passing order dated 22.10.2022. The averments made in the application are a matter of record.

17. Keeping in view all these baseless and extraneous submissions, the Claimant has raised questions about the impartiality of the Tribunal and expressed his desire to get the Arbitral Tribunal changed by approaching the High Court and therefore I feel that the Tribunal should not rush to the disposal of pending applications which are pending. Therefore, I give time to the Claimant to take such steps as he may feel necessary. I only expect that the Ld. Counsel for the Respondent would place before the Hon^{ble} High Court the entire emails which have been sent by the Claimant to the Arbitral Tribunal from 17.09.2022 till the present day, copies of which have been shared with the Ld. Counsel for the Respondent."

50. A perusal of the order clearly and unequivocally clarifies that the applications filed by the petitioner remain pending and have not been decided by the learned Arbitrator finally. Therefore, there arises no ground for challenging the intention, independence or objectivity of the learned Arbitrator on the same.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394

51. The petitioner also filed an application under [Section 17](#) of the Act, however, the order dated noted 22nd October 2022 the withdrawal of the application and recorded as under:

"5. The Claimant has also not pressed his application filed under [Section 17](#) for a fresh interim relief for attachment of sum of Rs.2,85,00,000/-. In view of the statement made by Mr. Rai, the application under [Section 17](#) filed a fresh is dismissed as withdrawn."

52. The petitioner also argued that the learned Arbitrator has not acknowledged the payment made by him towards the fee of the Arbitrator, however, the portion of the order dated 22nd October 2022 and 8th November 2022, as reproduced under, show the contrary:

22nd October 2022 "The Claimant has stated that he has already credited a sum of Rs.1,45,000/- and Rs.20,000/- totalling to Rs.1,65,000/- in the account of the Arbitrator through RTGS being the first installment of his fee. He assures that the balance amount of fee shall be deposited before the next date of hearing. Mr. Rajat Navet has stated that the Respondent has also deposited their share of the fees in the account."

8th November 2022 "11. On 20.10.2022, an email was received from the Claimant stating that a sum of Rs. 20,000/- has been deposited towards the Arbitral Fee via NEFT on 14.10.2022 and a sum of Rs 1,45,000/- has been deposited on 19.10.2022 through NEFT. The Claimant further sought time till 19.12.2022 to deposit the balance fee, i.e., Rs 1,61,812/- in two instalments. On the same date, i.e., 20.10.2022 vide a separate email the Claimant filed its written submissions for hearing scheduled on 22.10.2022. On 20.10.22, a third email was received from the Claimant, apologising for sending a Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42 NEUTRAL CITATION NO. 2023:DHC:3394 hard copy of the rejoinder to his application under [Section 17](#) of the Arbitration & [Conciliation Act](#), 1996 running into 125 pages which were not even tagged."

53. The petitioner has blatantly argued on the conduct of the learned Arbitrator and submitted that the learned Arbitrator has not answered the queries raised by the petitioner. However, the contents of the order dated 8th November 2022 show the opposite. The relevant paragraph is reproduced as under:

"15. On 29.10.2022, the Claimant once again sent an email not only challenging the continuation of the undersigned as an Arbitrator but even the contents of the order dated 22.10.2022. It was alleged that the undersigned is advertising on some sites googled by the Claimant as a Senior Advocate. The Claimant further sought receipt of the sum transferred in the account of the undersigned. It is pertinent to set the record straight to the extent that the undersigned has never advertised on any site as alleged by the Claimant. On checking the site what is stated therein is the email address and old telephone numbers which are no more in existence as they have ceased to be operational almost 15 years back. So far as the question of receipt of fee paid by the Claimant is concerned, this factum is recorded in the order dated 22.10.2022. Regarding furnishing the details of administrative expenses, it was pointed out that neither a single rupee has been paid or deposited to any person by way of administrative expenses. As a matter of fact, the charges of Mr. Dimri, Stenographer who has been associated with the hearing on each and every date has not been paid till date and therefore there is no question of rendering any account on that scope. Further, absurd submissions are made by the Claimant in the application by stating that the Hon"ble High Court has not appointed Mr. Dimri and he has been appointed by the Arbitral Tribunal and therefore his payments must be accounted for although no payment has been paid till date."

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42
NEUTRAL CITATION NO. 2023:DHC:3394

54. Reiterating as aforesaid, the grounds raised by the petitioner at the first instance do not fall within the scope and limitations of [Section 14\(1\)\(a\)](#). The alleged conduct of the learned Arbitrator shall not be tested in the instant proceedings as they are grossly barred by the mandate of [Section 14\(1\)\(a\)](#) of the Act.

CONCLUSION

55. Upon hearing the submissions and perusing the pleadings, including the orders and communications to and from the learned Arbitrator, and the consideration thereto, this Court is of the considered view that the instant petition is nothing but sheer abuse of process of law. Neither before the learned Arbitrator nor before this Court, has the petitioner been able to show that there is any merit to the claims raised him that are beyond the scope of the merits of the case arising out of the License Agreement. Instead of pressing the claims to the actual dispute, the petitioner has been invoking and pressing the grounds on the alleged conduct and demeanor of the learned Arbitrator, without being able to substantiate the same.

56. All the orders on record passed by the learned Arbitrator in the proceedings before him evince that the proceedings are being proceeded with without there being any illicit or unfair treatment to the petitioner. The due process is being followed and due time period has been given to the petitioner to present his case before the learned Arbitrator. This Court is also of the opinion that the petitioner has misconceived the mandate of [Section 14\(1\)\(a\)](#) of the Act and hence, has not been able to show any cogent reason for terminating the mandate of the learned Arbitrator.

Signature Not Verified Digitally Signed By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42
NEUTRAL CITATION NO. 2023:DHC:3394

57. Therefore, keeping in view the entirety of the matter, the submissions made on behalf of the parties, the contentions raised in the pleadings, the record as reproduced by the parties and the law settled pertaining to termination of mandate of an arbitrator by the Hon^{ble} Supreme Court, this Court does not find any merit in the instant petition and is inclined to dismiss the same.

58. Accordingly, the instant petition is dismissed for being devoid of any merit.

59. Pending applications, if any, also stand dismissed.

60. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH) JUDGE MAY 16, 2023 gs/ms Signature Not Verified Digitally Signed
By:GAURAV SHARMA Signing Date:16.05.2023 18:01:42