



\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 15th October, 2025

+

O.M.P. (T) (COMM.) 44/2025 and I.A. 13797/2025

**NATIONAL HIGHWAY INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD (NHIDCL)**Petitioner

Through: Mr. Raj Shekhar Rao, Senior Advocate with Mr. Avneesh Garg, Mr. Rohit Rishi, Mr. Anshul, Mr. Utkarsh Sharma, Mr. Zahid Ahmad and Ms. Iptisha, Advocates.

versus

NSPR VKJ JV & ORS.

.....Respondents

Through: Dr. Amit George, Mr. Shashwat Kabi, Mr. Adhishwar Suri, Mr. Ganesh Chandra Kabi, Ms. Vartika Singhania, Mr. Aadarsh Mittal, Ms. Shristi Gupta and Ms. Subhashni Kumari, Advocates for R-1, 2 and 3.
Mr. Sunny Choudhary, Advocate for R-4.
Ms. Asmita Narula, Advocate for R-5.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J.**

1. This petition is filed on behalf of the Petitioner under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996 ('1996 Act') seeking termination of the mandate of the Presiding Arbitrator and for appointment of substitute Presiding Arbitrator to adjudicate the disputes arising between the parties out of Engineering Procurement and Construction Agreement dated 05.09.2019 ('EPC Agreement').
2. To the extent relevant, case of the Petitioner is that an EPC Agreement was executed between the Petitioner, which is an enterprise



under Ministry of Road Transport and Highways and Respondent No. 1/M/s. NSPR-VKJ, which is a joint venture between NSPR Constructions (India) Pvt. Ltd./Respondent No. 2 and M/s Vinod Kumar Jain/Respondent No. 3, for Construction and Upgradation of Existing Road to 2-Lane with paved shoulder of Bagrakot to Kafer section of NH-717A from Km. 0.000 to Km. 13.000 on EPC basis under SARDP-NE Phase 'A' in the State of West Bengal (Package-IVA).

3. It is averred by the Petitioner that disputes arose between the parties with respect to non-performance by Respondent No. 1 of its obligations under the contract. Due to non-payment of the agreed consideration, Respondent No. 1 invoked Clause 26.3 of EPC Agreement, which provided that any dispute which was not resolved amicably through conciliation as provided in Clause 26.2, shall be finally settled by arbitration, in accordance with rules of Arbitration of the Society for Affordable Redressal of Disputes ('SAROD'), and vide letter dated 06.01.2024 wrote to SAROD for commencement of arbitration under Rule 4 of SAROD Rules. For constituting the three-member Arbitral Tribunal, Respondent No. 1 nominated a retired Director General, CPWD as its nominee Arbitrator from the list of Arbitrators maintained by SAROD.

4. It is stated that SAROD forwarded the notice of arbitration to the Petitioner vide letter dated 30.01.2024 for submitting a brief of the matter, proposing the name of its nominee Arbitrator and payment of the fees, in compliance of which Petitioner vide e-mail dated 13.02.2024 nominated a former Judge of the Supreme Court as its nominee Arbitrator within the time stipulated in Rule 5.1 of SAROD Rules. However, the Arbitrator nominated by the Petitioner recused himself from the proceedings owing to prior engagements and vide letter dated 11.03.2024, Petitioner nominated former



Chief Justice of India as its nominee Arbitrator but SAROD informed the Petitioner that on account of three previous assignments, which was the upper limit under Rule 11.6, the nominated Arbitrator could not act as an Arbitrator in the present matter and thus Petitioner nominated another Arbitrator on 08.04.2024.

5. It is stated that as the two nominee Arbitrators were unable to reach a consensus on appointment of the Presiding Arbitrator as per Rule 11.2, Respondent No. 1 invoked Rule 11.5 and requested SAROD on 05.06.2024 to appoint the Presiding Arbitrator by draw of lots, which was conducted on 18.06.2024 and Respondent No. 4 was appointed as the Presiding Arbitrator. By communication dated 24.06.2024, SAROD informed the parties of constitution of the Arbitral Tribunal with a request to the Arbitrators to give disclosures under Section 12 of the 1996 Act, which were admittedly given by the Arbitrators and thereafter Statement of Claim was filed by Respondent No. 1 in August, 2024.

6. Petitioner avers that while it was in the process of preparing its Statement of Defence (SoD) and counter claim, it was learnt on 20.09.2024 that Respondent No. 4 was arrayed as an accused in an FIR registered at the instance of Madhya Pradesh Lokayukta and upon making searches, Petitioner came across various news articles disclosing that in the year 2016, Lokayukta had directed registration of FIR against Respondent No. 4 relating to charges of corruption. Petitioner also learnt after making enquires that on recommendation of Lokayukta, Case No. 0094/E/2022 was registered and investigation was ongoing pertaining to high level corruption in matters of public distribution system/awarding of contracts, against the interest of the Government authorities. None of these facts were disclosed by Respondent No. 4 while making disclosure on 25.06.2024.



7. It is stated that in this backdrop, Petitioner requested Respondent No. 4 vide letter dated 27.09.2024 to recuse from the matter but there was no response and Petitioner filed a petition under Sections 14 and 15 of the 1996 Act in this Court being OMP (T) (COMM) No. 105/2024 seeking termination of mandate of Respondent No. 4. Court impleaded the Presiding Arbitrator as a Respondent while issuing notice on 09.10.2024. While the petition was pending, Petitioner sought extension of time in the arbitration proceedings to file the SoD, however, vide letter dated 24.10.2024 Respondent No.4 declined to grant extension unless Petitioner gave up the objection to his continuation in the proceedings.

8. It is stated that Respondent No. 4 filed his reply in the said petition denying pendency of any case against him and on 17.12.2024, petition was disposed of by the Court observing that Petitioner should first exhaust its remedy under the SAROD Rules for substitution of Respondent No. 4. Petitioner gave a detailed representation dated 31.12.2024 to SAROD seeking substitution under Rule 18 of the SAROD Rules, but vide order dated 14.01.2025 representation was rejected on the ground that mere allegations were insufficient to change the Presiding Arbitrator and that Petitioner must substantiate the allegations with concrete facts and evidence which he failed to do to show that there were justifiable doubts concerning impartiality of the Arbitrator.

9. Petitioner filed a writ petition under Articles 226 and 227 of Constitution of India aggrieved by the rejection of the representation, being W.P.(C) 1915/2025, which was withdrawn on 29.04.2025 with liberty to take recourse to remedy under Section 14 of the 1996 Act. In the meantime, Petitioner substituted the nominee Arbitrator as the existing nominee resigned. Subsequent thereto, present petition was filed.



10. Questioning the appointment and continuation of Respondent No. 4 as Presiding Arbitrator, learned counsel for the Petitioner argued that owing to serious allegations of corruption against Respondent No. 4, he was *de jure* ineligible to be appointed as the Presiding Arbitrator of the Arbitral Tribunal and that even though corruption and/or doubtful integrity of an Arbitrator may not be directly a ground for termination of mandate under Fifth or Seventh Schedule of Section 12(1)(b) and 12(5) of the 1996 Act, there is no gainsaying that appointment of an Arbitrator with corruption charges will undermine the credibility of arbitral process.

11. It was also argued that there are justifiable doubts as to independence and impartiality of the Presiding Arbitrator inasmuch as immediately after service of notice in the earlier Section 14 petition on the contractor, in which Petitioner had taken a specific ground that Respondent No. 4 had not responded to Petitioner's letter dated 27.09.2024, Respondent No. 4 sent his reply on the same day, despite the fact he was not a party and this reflects active collusion between him and the contractor. Bias is also apparent from the fact that Respondent No. 4 threatened the Petitioner with closure of his right to file SoD vide letter dated 24.10.2024, unless Petitioner gave up its objection against his continuance. This letter was sent unilaterally by Respondent No. 4 without concurrence of other members of the Tribunal which also shows highhandedness of Respondent No. 4.

12. Learned counsel for the Petitioner relied on the judgment of Madras High Court in ***Clarke Energy India Pvt. Ltd. v. SAS EPC Solution Private Limited and Another***, 2021 SCC OnLine Mad 6121, where the Court drew a distinction between a challenge to the appointment of an Arbitrator under Sections 12 and 13 on one hand and Section 14 on the other and observed that *de jure* inability to perform functions applies to legal disability and one



of the illustrations would be where the Arbitrator is ineligible in terms of the Seventh Schedule and referring to the judgment of the Supreme Court in ***HRD Corporation (Marcus Oil and Chemical Division) v. Gail (India) Limited (Formerly Gas Authority of India Ltd.)***, 2017 SCC OnLine Del 8034, it was held that ineligibility under Seventh Schedule is an area of intersection between Sections 12 and 13 and Sections 14 and 15 and when the Arbitrator is ineligible under Seventh Schedule, a party can approach a Court to challenge the appointment without waiting for the award to be passed. Reliance was also placed on the judgment of the Hyderabad High Court in ***Mr. Gurcharan Singh Sahney and Others v. Mr. Harpreet Singh Chhabra and Others***, 2016 SCC OnLine Hyd. 90, wherein it was held that challenge under Sections 12(3) and 13(2) of the 1996 Act is to the very appointment of the Arbitrator while the remedy under Section 14 is to continuance of the Arbitrator. When a disability arises under Section 14 which is an independent provision, party can approach the Court which would then declare that the mandate of the Arbitrator stands terminated and the order is merely declaratory since the mandate stands terminated on the happening of the event referred to in Section 14(1). Bias vitiates the entire arbitration process and reasonable apprehension of bias or predisposition based on cogent material is enough to terminate the mandate and it is not necessary to prove actual bias. Court observed that incapacities referred to in Section 14(1)(a) have a direct nexus with the ineligibility of the Arbitrator to perform his functions. The *de jure* impossibility is the impossibility which occurs due to factors personal to the Arbitrator while *de facto* inability occurs due to factors beyond the control of the Arbitrator. *De jure* incapacity refers to instances such as bankruptcy, conviction in a criminal offence etc. Relying on this judgment it was argued that involvement in a criminal case



of corruption is a *de jure* disability and hence, mandate of the Arbitrator deserves to be terminated under Section 14(1)(a).

13. Learned counsel for Respondents No.1 to 3 argued that there is no merit in the petition and the same deserves to be dismissed. The entire case of the Petitioner is predicated on an alleged FIR registered against Respondent No.4 at the instance of Madhya Pradesh Lokayukta. Petitioner had earlier also filed a petition under Sections 14 and 15 of 1996 Act being OMP (T) (COMM) No. 105/2024 which was dismissed vide order dated 17.12.2024 with liberty to the Petitioner to approach SAROD for substitution of the Presiding Arbitrator, which the Petitioner did but his representation was rejected on 14.01.2025 with an observation that the allegations were unsubstantiated. Petitioner preferred a writ petition being W.P.(C) 1915/2025 to assail the order passed by SAROD but Court was not inclined to entertain the petition and faced with this Petitioner withdrew the same on 29.04.2025. Being unsuccessful in before all forums, Petitioner has filed the present petition as yet another desperate attempt to remove Respondent No.4, levelling false allegations.

14. It was argued that case of the Petitioner is premised on some newspaper articles referring to FIR against Respondent No.4, however, the fact remains that even till date no FIR has been registered against him. This has been the consistent stand of Respondent No.4 from the time when reply was filed to the first Section 14 petition and order dated 17.12.2024 in the present case also records this stand. Even otherwise, mere registration of an FIR does not prove the guilt of an accused in criminal jurisprudence as FIR is only for the purpose of setting the criminal machinery for investigation in motion. It was also urged that Fifth and Seventh Schedule of 1996 Act provide the grounds under which mandate of the Arbitrator can be



terminated and registration of FIR is not a ground under either of the two Schedules. It is trite that Courts cannot step outside the two Schedules to terminate the mandate of the Arbitrators under Sections 12 and 14. Learned counsel for Respondent No.4 strenuously urged for a strict action against the Petitioner for making false averments in the petition relating to registration of FIR for corruption charges and emphasised that such reckless allegations should not have been made without proper verification of facts since this impacts the formidable reputation of Respondent No.4, who has retired as a senior officer from the Government.

15. Heard learned counsels for the parties and examined their rival submissions.

16. From a plain reading of the petition, it is palpably clear that mandate of Respondent No.4 is challenged by the Petitioner on two-fold grounds i.e., firstly, registration of FIR for indulging in corrupt practices coupled with pendency of a case bearing No. 0094/E/2022 before the Madhya Pradesh Lokayukta and secondly, justifiable doubts with respect to impartiality and independence of Respondent No.4 since he threatened to close the right of the Petitioner to file SoD, if Petitioner did not give up its objection.

17. It is settled that Sections 12, 13 and 14 of the 1996 Act, the trinity provisions are the repository of provisions dealing with challenge to Arbitrator's appointment and termination of mandate. In **HRD Corporation (supra)**, the Supreme Court held that after the 2016 Amendment Act, a dichotomy is made in the 1996 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 Seventh Schedule makes it clear that if Arbitrator falls in any one of the categories specified in Seventh



Schedule, he becomes ineligible to act as an Arbitrator and consequently, becomes *de jure* unable to perform his functions under Section 14(1)(a) inasmuch as he is regarded ineligible in law. 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 and since such a person lacks inherent jurisdiction to proceed any further, an application may be filed under Section 14(2) before the Court seeking termination of his mandate. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to Arbitrator's independence and impartiality, such doubts have to be determined under Sections 12 and 13 and if the challenge is unsuccessful, the Arbitral Tribunal continues the proceedings and makes an award and it is only thereafter that a party can challenge the award under Section 34 of the 1996 Act.

18. In ***Union of India v. Reliance Industries Limited and Others, 2022 SCC OnLine Del 4310***, petition was filed under Section 14(2) read with Section 15(2) of the 1996 Act seeking termination of mandate, basis some procedural orders passed by the Arbitral Tribunal as also the manner in which proceedings were being conducted. This, according to the Petitioner amounted to *de jure* ineligibility and it was urged that even if the case did not strictly fall under the entries in the Seventh Schedule of 1996 Act, mandate could be terminated in special circumstances such as elevation of the Arbitrator as a Judge etc. It was observed by the Court that on a conjoint reading of Sections 12, 13 and 14 of 1996 Act, it was clear that the disqualifications set out in the Seventh Schedule alone can be recognized as *de jure* disqualifications as *de jure* means something stipulated or prescribed by law or according to law. Bias would have to be axiomatically established as a matter of fact and proved and thus it is manifest that it would clearly fall



outside the pale of a *de jure* ineligibility. It was further observed that Sections 12 and 13 when read together appear to constitute a complete and independent code for purpose of trial of subject of bias and justifiable doubts and it would be tenuous to hold that allegations of bias would be one which would be triable in a Section 14 proceeding also. Any enquiry by a Court with respect to grounds covered under Sections 12 and 13 in a Section 14 petition would not only fall foul of principles enunciated in ***HRD Corporation (supra)*** and ***Bharat Broadband Network Limited v. United Telecoms Limited, (2019) 5 SCC 755***, but would appear to be contrary to legislative intent, enshrined in sub-Sections (3), (4) and (5) of Section 13.

19. Tested on the anvil of these principles, challenge to the appointment of Respondent No.4 as Presiding Arbitrator on the ground that there are justifiable doubts with respect to his impartiality because he threatened to close the right to file SoD, if the objection to his continuance was not withdrawn, cannot be sustained. Through letter dated 24.10.2024, Arbitrator only responded to an e-mail dated 18.10.2024 sent by the Petitioner seeking extension of time to file SoD and counterclaim and sought confirmation if Petitioner had faith in the fairness and integrity of Respondent No.4 in the backdrop of a letter dated 27.09.2024 sent by Petitioner's Advocate asking the Arbitrator to recuse from the proceedings, owing to allegations of corruption and registration of an FIR. Having said that Respondent No.4 asked the Petitioner to respond within 7 days, failing which it would be presumed that Petitioner did not want to press the application for extension of time. The contents of the letter, in my view, are far from threatening as alleged by the Petitioner. In fact, it was only natural for Respondent No.4 to seek confirmation if Petitioner was interested in seeking extension to file SoD in light of its counsel's letter to recuse from the matter and no bias is



discernible from this communication. In any event, this is not a ground to hold that Respondent No.4 is *de jure* ineligible under Seventh Schedule or Section 14. Justifiable doubts on impartiality and independence are specifically provisioned in Section 12 and once legislatively, a subject stands included in the said Section, as held by this Court in ***Reliance Industries (supra)***, it would be tenuous to hold that the same ground can be raised under Section 14. Clearly, this objection falls outside the scope of Section 14 and cannot be entertained in light of the judgments of the Supreme Court in ***HRD Corporation (supra)*** and ***Bharat Broadband (supra)***.

20. In this context, I may also refer to the judgment of the Bombay High Court in ***Uvik Technologies Private Limited v. Nearby Technologies Private Limited and Another, 2025 SCC OnLine Bom 2741***, where a Section 14 petition was filed seeking termination of the mandate of the Arbitrator since his visit to the office of Stamp Authorities came up for a sharp criticism by the Petitioner after the Arbitrator impounded the instrument containing the Arbitration Agreement. Referring to the decision in ***HRD Corporation (supra)***, the Court observed as follows:-

“29. A plain reading of the foregoing would show that the jurisdiction of this Court under Section 14(2) would arise only if a controversy remains concerning any of the grounds referred to in Section 14(1)(a). The grounds referred to in Section 14(1)(a) are the grounds of an arbitrator being de jure unable, or de facto unable to perform her functions.

30. An arbitrator being de facto unable to perform functions could emerge from various factual situations where it would be the sheer physical inability of the arbitrator to conduct the arbitration. This facet is not relevant for the matter at hand. As regards the de jure inability to function as an arbitrator, the circumstances relied upon ought to be of the nature that renders the arbitrator ineligible to function. The circumstances of de jure inability to function are a matter of ineligibility to function. Therefore, regard must be had to the Seventh Schedule of the Act to consider ineligibility. If there is a controversy over whether the Seventh Schedule has been rightly applied or whether circumstances attracting the



Seventh Schedule exists, that controversy would fall within the scope of the jurisdiction under Section 14(2) of the Act. There may arise a situation not covered by the Seventh Schedule but making an arbitrator de-jure unable to function - say, elevation as a judge (that too could actually be a fact situation).

31. Learned Counsel for the Petitioner fairly states that the Seventh Schedule and any entry in it is not being invoked. However, it is his case that reliance on the principles underlying the Fifth Schedule and becoming aware of circumstances that lead to independence and impartiality being undermined would enable approach to this Court under Section 14 of the Act. Indeed, the objection may be taken up before the Learned Arbitral Tribunal, he would submit, and if the party applying is dissatisfied with the outcome, controversy would remain, and therefore the jurisdiction under Section 14(2) would be available.”

21. The second ground to allege *de jure* ineligibility is registration of FIR against Respondent No.4 as also pendency of a case before Madhya Pradesh Lokayukta relating to alleged charges of corruption. Insofar as registration of FIR is concerned, counsels for Respondents No.1 to 3 as also Respondent No.4 categorically stated during the course of hearing that till date no FIR has been registered against Respondent No.4 and this is also specifically pleaded in Paragraph 13 of reply dated 26.07.2025. Petitioner was unable to controvert this position and prove to the contrary. Since there is no FIR, part of this objection must be straightaway overruled. It must be penned down that Respondents are right in contending that Petitioner ought to have verified the true and correct facts before making serious allegations of corruption against Respondent No.4 and pleading that FIR was registered.

22. As for the complaint case pending before Madhya Pradesh Lokayukta, as per Petitioner's own showing, the source of this information are newspaper articles and a letter dated 28.09.2022 from the office of the Lokayukta to the complainant Shri Nemichand Jain, informing him of registration of the complaint. Petition is bereft of any detail with respect to the contents of the complaint and/or its status or outcome and contains



vague averment that there are serious allegations of corruption. Be that as it may, it is well settled that mandate of an Arbitrator cannot be terminated solely on the basis of unsubstantiated allegations or mere complaints. Section 14 of the 1996 Act provides for termination of Arbitrator's mandate where he becomes *de jure* or *de facto* unable to perform his functions. *De jure* ineligibility is an inherent disability and mere allegations cannot meet this threshold. Unless the complaint leads to some tangible legal action or judicial finding even *prima facie*, it remains in the realm of a mere allegation and/or suspicion and cannot be a ground for termination. Terminating the mandate on a mere complaint, would be contrary not only to Section 14 of the 1996 Act, but would set a dangerous precedent where any party, unhappy with the course of arbitral proceedings, may refer to a complaint by a third party with unfounded and false accusations and seek termination of the mandate. There is no doubt that appointment of a person with proven charges of corruption will compromise the sanctity and credibility of arbitral process and undermine public faith but at the same time it must not be forgotten that arbitration framework demands a delicate balance between fairness and integrity on one side and unwarranted removal of Arbitrators on unverified and uncorroborated allegations, on the other. Preserving the integrity of arbitration is paramount to save public confidence in the process, however, this imperative must be carefully balanced against the rights of individuals who may be the subject of unproven and motivated allegations. Termination of mandate of an Arbitrator on unsubstantiated claims could itself erode 'fairness' that arbitration regime seeks to uphold.

23. Coming to the instant case, even during the course of hearing, counsel for the Petitioner was unable to show if the so called allegations of corruption against Respondent No.4 have been proved or substantiated in



any forum. It would seriously undermine the arbitral process if this Court was to terminate the mandate of Respondent No.4 on a mere and vague assertion in the petition that a case was registered before the Madhya Pradesh Lokayukta, in 2016, without anything more. In fact, be it noted that even SAROD rejected Petitioner's representation observing that mere allegations were insufficient to change the Presiding Arbitrator and that Petitioner must substantiate the allegations with concrete facts and evidence, which he failed to do to and thus even before SAROD, Petitioner was unsuccessful in demonstrating the Respondent No.4 needs to be substituted.

24. Reliance by the Petitioner on the judgment of the Madras High Court in *Clarke Energy (supra)* is of no consequence. Reading of the judgment shows that Petitioner sought termination of mandate of the Arbitrator on the ground that Arbitrator was demanding exorbitant fees in contravention of Fourth Schedule and was thus *de jure* unable to perform his functions. The Court held that charging of high fee *per se*, if charged equally from both or all parties, cannot lead to an inference of bias. Finally, the petition was disposed of leaving it open to the parties to reagitate the issue before the Arbitral Tribunal in light of the fact that both parties had agreed that there were grave computational errors made by the Tribunal and neither party had pointed out to the Tribunal that computation was not in consonance with the Fourth Schedule. Insofar as reliance on the decision in *Mr. Gurcharan Singh Sahney (supra)* is concerned, the judgement extensively deals with grounds of termination under Sections 12, 14 and 15 and the stages at which these can be invoked before the respective forums. To the extent the Petitioner relies on the judgement to argue that if an individual is convicted for an offence, he will be *de jure* ineligible to be appointed as an Arbitrator, there is no quarrel but there is a distinction in conviction and a mere



2025:DHC:9161



complaint and thus this judgement will not help the Petitioner in the facts of this case.

25. For all the aforesaid reasons, no ground is made out by the Petitioner warranting termination of the mandate of Respondent No.4 as the Presiding Arbitrator of the Arbitral Tribunal and the petition is dismissed along with pending application.

JYOTI SINGH, J

OCTOBER 15, 2025/YA