IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KHOT

ON THE 17th OF JUNE, 2026

ARBITRATION CASE No. 155 of 2025

ROYAL INFRACONSTRU LIMITED

Versus

THE GENERAL MANAGER AND OTHERS

Appearance:

Shri Abhishek Singh - Advocate for the applicant.

Shri Piyush Bhatnagar - Advocate for the respondent/Caveator.

ORDER

The present application has been filed by the applicant under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996') for appointment of an Arbitrator to resolve the dispute arose between the parties pursuant to the Purchase Order 81235734103663 dated 01.11.2024 and the Tender No. 81235734 opened on 06.09.2024.

2. It is the case of the applicant that the respondent Principal Chief Material Manager, West Central Railway had floated an e-tender against Tender No. 81235734 on 13.08.2024 with a closing date 06.09.2024. The respondents invited bids for the purpose of manufacture and supply of Elastic Rail Clip MK-V with flat toe for 60 Kg. UIC/52 Kg.

3. It is submitted that the applicant is in the business of manufacturing

and production of several Railway safety goods including the goods as were sought to be purchased by the Railways under the aforesaid tender, therefore, the applicant participated in the said e-tender by submitting its bid. It is submitted that the bid under the aforesaid tender was opened on 06.09.2024 and the applicant being the lowest bidder came out as a successful bidder. The applicant was awarded with the Purchase Order dated 01.11.2024 for the purpose of manufacture and supply of the aforesaid goods of this specified quantity mentioned in the Purchase Order and the payment was supposed to be made against the receipt, inspection and accepted materials consigned to destination.

4. It is submitted that in the original tender it was specifically mentioned that "Stage Inspection Not Required", therefore, at the time of submitting the bid, the applicant had considered that only Stage-I (i.e. initial market material inspection) would be carried out by the authorities and accordingly quoted its rates. After issuance of the initial PO, the authorities have also issued a Modification Advise dated 01.11.2024 inter alia, mentioning therein the respective delivery period for the quantities to be supplied by the applicant. The initial quantity of 4,86,360 number of Elastic Rail Clips were amended to 1,21,590 numbers and accordingly the delivery period was also amended to 01.04.2025 from the earlier delivery period of 01.08.2025. Therefore, two new PO i.e. Serial No. 002, 003 and 004 were added, by dint of which further quantities of 1,21,590 each against the new PO were mentioned with revised delivery dates, meaning thereby, the initial quantity of 4,86,360 numbers were afterward split into four number of

work orders keeping the initial work order as Serial No.1 for a revised quantity and also by placing 3 new POs in favour of the petitioners.

5. It is submitted that as per the original terms of the tender, the applicant immediately after procuring the Raw Materials had requested the respondent vide its letter dated 9.12.2024 signed on 19.12.2024 to take the initial material inspection as per the tender clause. The said inspection was duly carried out and the Raw Materials were certified and the petitioner was given clear approval for proceeding with the production. It is submitted that immediately thereafter on 03.12.2024 the respondent issued unilaterally another Modification Advise in respect of the subject Purchase Order whereby the respondent sought to change the earlier stage inspection details of initial material inspection as contemplated in the original tender which is after such a belated stage after commencement of the productions by the applicant. However, the first lot of goods was delivered to the satisfaction of the Railway authorities.

6. It is submitted that when the applicant was in full swing with its production activity, all of a sudden in a most arbitrary manner the respondent authorities by virtue of a letter dated 03.02.2025 once again sought to change the inspection, this time by introducing 'Process Inspection from Stage 1 to Stage 8. It is submitted that the proposed Modification Advices dated 03.02.2025 also unilaterally prescribe some special conditions for inspection of Elastic Railway Clips through process inspection by M/s. RITES Limited purportedly invoking some IRS Clauses.

7. It is submitted that introduction of Process Inspection clause in the middle of the production caused huge inconveniences to the applicant, firstly a number of stages has already been over in the meantime due to the ongoing production activities and secondly the many folded (8 stages) inspections in place of 1 or 2 (i.e. inspection of Raw Materials and Inspection of Final Goods) would not only make the entire production to a conversion process but also the production cost would be increased many times.

8. It is submitted that immediately after receiving the aforesaid unilateral modification, the applicant issued a letter dated 03.02.2025, inter alia, asking for clarification as to how the contract was modified unilaterally. Despite issuance of the letter dated 03.02.2025, since no reply was received from the respondents, the applicant issued a reminder letter dated 08.04.2025.

9. It is stated that the manner in which in the midst of a production, the Railways have sought to change the modus of inspection from Initial Material Inspection to Process Inspection involving 8 (eight) stages of inspection, would not only amounts to altering the material terms but also affects the entire performance and viability of the project. Therefore, the action of seeking modification is also otherwise malafide.

10. It is submitted that the modification sought to be enforced is clearly arbitrary and thus the rates quoted by the bidders in 8 (eight) stages of inspection, procedure would have been much higher than the stage 1 (one) inspection. It is submitted that the applicant in its letter dated 20.05.2025

vehemently opposed to such unilateral modification and categorically pointed out that it cannot confer its consent to such modification since such changes would affect the overall viability of the project and also requested for cancellation/withdrawal of the Modification Advise dated 03.02.2025.

11. It is submitted that by a letter dated 16.06.2025, the respondent authorities in exercise of its superior bargaining position and with utmost highhandedness rejected the contentions of the applicant and tried to forcefully impose upon the applicant the Modification Advices dated 03.02.2025 under the threat of contractual consequences. However, the applicant had already supplied a substantial quantity of the tendered item to the West Central Railway Authority. Further due to the unilateral action of modification to such a huge extent, a substantial dispute has cropped up between the parties in respect of the aforesaid purchase order in the contract. It is submitted that applicant has already substantially progressed with its production activities immediately after receiving the Purchase Order and therefore it is not feasible in any manner for the applicant to comply with the new inspection criterion under the unilateral Modification Advise dated 03.02.2025.

12. It is submitted that the Indian Railways Standard Conditions of Contract as amended in clause 2900 provides for an Arbitration. The applicant has requested for amicable settlement of difference and disputes as per clause 2900, but the respondent No.2 did not take any steps to settle the disputes. However, the respondent has issued the impugned notice dated

17.11.2025 under Clause-1 of Special Conditions of NIT.

13. Although the respondents have very categorically denied all the averements made in the application by filing reply, however, in para-6 of the reply the respondents have submitted that they never failed in their duty to appoint the arbitrator to resolve the dispute. The respondents have always performed their duty in terms of IRS Conditions of Contract. It is submitted that the contract executed between the parties is governed by IRS Conditions of Contract, and all other terms and conditions incorporated in the tender document. It is submitted that as per Clause 9.6 of NIT/Tender Document, the tender in question is governed by the Clauses of IRS Conditions of Contract. It is submitted that Clauses 2900 to 2910 of IRS Conditions of Contract provide for a detailed mechanism in relation to settlement of disputes, conciliation of disputes, demand of arbitration and appointment of arbitrator.

14. It is further submitted that in response to the request letter dated 11.07.2025 in regard to appointment of Arbitrator, the respondent vide letter dated 08.12.2025 asked the petitioner to submit its consent/No-consent to waive of applicability of Section 12(5) and Section 31A(5) of Arbitration and Conciliation (Amendment) Act, in Reference Para 2905(a) and 2905(b) of IRS Conditions of Contract, copy whereof is Annexure R/4, however, no response was received from the applicant and consequently process of appointment of arbitrator could not be initiated by the respondent.

15. It is submitted that all the disputes and difference of any kind arising out of or in connection with contract, whether during the currency of

the contract or after its completion and whether before or after the determination of contract, shall have to be settled by utilizing the provisions of IRS Conditions of Contract. Accordingly, the dispute has to be resolved through the arbitral proceedings as per the mutually agreed terms of contract.

16. It is submitted by the counsel for the respondent that since the applicant failed to supply the balance quantity of the items against the purchase orders, therefore, expiry of delivery period and non-supply of material compelled the respondent to take the action as per the provisions available in the contract. Accordingly, the contract for balance quantity was cancelled on 17.11.2025. However, at the last, it is submitted by the counsel for the respondent that since the consent/no-consent of the applicant to waive off applicability of Section 12 and Section 31A(5) of the Arbitration and Conciliation (Amendment) Act in reference to para 2905(a) and 2905(b) of IRS Conditions of Contract was not received, therefore, the further process of appointment of arbitrator could not be initiated by the respondent.

17. Heard learned counsel for the parties and perused the record.

18. The parties have agreed that the dispute still exists and there exists an arbitration clause. They have also agreed that the contract executed between the parties is governed by the Indian Railways Standard Conditions of Contract as amended in Clause 2900 provided for an Arbitration Clause and all other terms and conditions incorporated in the tender document. It is also admitted that any dispute arose between the parties pursuant to the contract was required to be resolved as per the settlement clause, but it is submitted by learned counsel for the non-applicant that as the applicant did

not perform its obligation at all, therefore, the non-applicant was left with no other option but to cancel the contract. However, he has candidly admitted that though letter dated 08.12.2025 (Annexure R/4) was issued by the non-applicant for waving of the applicability of Section 12 of the Act, 1996, but the same has not been given by the applicant. Therefore, dispute is not arbitrable. However, this submissions of learned counsel for the respondent is not just and proper and against the settled principle of law.

19. Hon'ble the Apex Court in a case reported in a case reported in **(2020) 20 SCC 760 [Perkins Eastman Architects DPC v. HSCC (India) Ltd.]** has observed as under:-

> *'18. The issue was discussed and decided by this Court as under : (TRF case [TRF Ltd. v. Energo Engg. Projects Ltd. , (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , SCC pp. 403-04, paras 50-54) "50. First, we shall deal with clause (d). There is no quarrel that by virtue of Section 12(5) of the Act, if any person who falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as the arbitrator. There is no doubt and cannot be, for the language employed in the Seventh Schedule, the Managing Director of the Corporation has become ineligible by operation of law. It is the stand of the learned Senior Counsel for the appellant that once the Managing Director becomes ineligible, he also becomes ineligible to nominate. Refuting the said stand, it is canvassed by the learned Senior Counsel for the respondent that the ineligibility cannot extend to a nominee if he is not from the Corporation and more so when there is apposite and requisite disclosure. We think it appropriate to make it clear that in the case at hand we are neither concerned with the disclosure nor objectivity nor impartiality nor any such other circumstance. We are singularly concerned with the issue, whether the Managing Director, after becoming ineligible by operation of law, is he still eligible to*

nominate an arbitrator. At the cost of repetition, we may state that when there are two parties, one may nominate an arbitrator and the other may appoint another. That is altogether a different situation. If there is a clause requiring the parties to nominate their respective arbitrator, their authority to nominate cannot be questioned. What really in that circumstance can be called in question is the procedural compliance and the eligibility of their arbitrator depending upon the norms provided under the Act and the Schedules appended thereto. But, here is a case where the Managing Director is the "named sole arbitrator" and he has also been conferred with the power to nominate one who can be the arbitrator in his place. Thus, there is subtle distinction. In this regard, our attention has been drawn to a two-Judge Bench decision in State of Orissa v. Commr. of Land Records & Settlement [State of Orissa v. Commr. of Land Records & Settlement, (1998) 7 SCC 162] . In the said case, the question arose, can the Board of Revenue revise the order passed by its delegate. Dwelling upon the said proposition, the Court held : (SCC p. 173, para 25)

'25. We have to note that the Commissioner when he exercises power of the Board delegated to him under Section 33 of the Settlement Act, 1958, the order passed by him is to be treated as an order of the Board of Revenue and not as that of the Commissioner in his capacity as Commissioner. This position is clear from two rulings of this Court to which we shall presently refer. The first of the said rulings is the one decided by the Constitution Bench of this Court in Roop Chand v. State of Punjab [Roop Chand v. State of Punjab , AIR 1963 SC 1503] . In that case, it was held by the majority that where the State Government had, under Section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, delegated its appellate powers vested in it under Section 21(4) to an "officer", an order passed by such an officer was an order passed by the State Government itself and "not an order passed by any officer under this Act" within Section 42 and was not revisable by the State Government. It was pointed out that for the purpose of exercise of powers of revision by the State under

Section 42 of that Act, the order sought to be revised must be an order passed by an officer in his own right and not as a delegate of the State. The State Government was, therefore, not entitled under Section 42 to call for the records of the case which was disposed of by an officer acting as its delegate.'

51. Be it noted in the said case, reference was made to Behari Kunj Sahkari Awas Samiti v. State of U.P. [Behari Kunj Sahkari Awas Samiti v. State of U.P. , (1997) 7 SCC 37] , which followed the decision in Roop Chand v. State of Punjab [Roop Chand v. State of Punjab , AIR 1963 SC 1503] . It is seemly to note here that the said principle has been followed in Indore Vikas Pradhikaran [Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705] .

52. Mr Sundaram has strongly relied on Pratapchand Nopaji [Pratapchand Nopaji v. Kotrike Venkata Setty & Sons , (1975) 2 SCC 208] . In the said case, the three-Judge Bench applied the maxim "qui facit per alium facit per se ". We may profitably reproduce the passage : (SCC p. 214, para 9)

'9. … The principle which would apply, if the objects are struck by Section 23 of the Contract Act, is embodied in the maxim:"qui facit per alium facit per se " (what one does through another is done by oneself). To put it in another form, that which cannot be done directly may not be done indirectly by engaging another outside the prohibited area to do the illegal act within the prohibited area. It is immaterial whether, for the doing of such an illegal act, the agent employed is given the wider powers or authority of the "pucca adatia", or, as the High Court had held, he is clothed with the powers of an ordinary commission agent only.'

53. The aforesaid authorities have been commended to us to establish the proposition that if the nomination of an arbitrator by an ineligible arbitrator is allowed, it would tantamount to carrying on the proceeding of arbitration by himself. According to the learned counsel for the appellant, ineligibility strikes at the root of his power to arbitrate or get it arbitrated upon by a nominee.

54. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity nor the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or to put it differently, once the identity of the Managing Director as the sole arbitrator is lost, the power to nominate someone else as an arbitrator is obliterated. Therefore, the view [TRF Ltd. v. Energo Engg. Projects Ltd., 2016 SCC OnLine Del 2532] expressed by the High Court is not sustainable and we say so."

19. It was thus held that as the Managing Director became ineligible by operation of law to act as an arbitrator, he could not nominate another person to act as an arbitrator and that once the identity of the Managing Director as the sole arbitrator was lost, the power to nominate someone else as an arbitrator was also obliterated. The relevant clause in said case had nominated the Managing Director himself to be the sole arbitrator and also empowered said Managing Director to nominate another person to act as an arbitrator. The Managing Director thus had two capacities under said clause, the first as an arbitrator and the second as an appointing authority. In the present case we are concerned with only one capacity of the Chairman and Managing Director and that is as an appointing authority.

20. We thus have two categories of cases. The first, similar to the one dealt with in TRF Ltd. [TRF Ltd. v. Energo Engg. Projects Ltd. , (2017) 8 SCC 377 : (2017)

4 SCC (Civ) 72] where the Managing Director himself is named as an arbitrator with an additional power to appoint any other person as an arbitrator. In the second category, the Managing Director is not to act as an arbitrator himself but is empowered or authorised to appoint any other person of his choice or discretion as an arbitrator. If, in the first category of cases, the Managing Director was found incompetent, it was because of the interest that he would be said to be having in the outcome or result of the dispute. The element of invalidity would thus be directly relatable to and arise from the interest that he would be having in such outcome or decision. If that be the test, similar invalidity would always arise and spring even in the second category of cases. If the interest that he has in the outcome of the dispute, is taken to be the basis for the possibility of bias, it will always be present irrespective of whether the matter stands under the first or second category of cases. We are conscious that if such deduction is drawn from the decision of this Court in TRF Ltd. [TRF Ltd. v. Energo' Engg. Projects Ltd. , (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] , all cases having clauses similar to that with which we are presently concerned, a party to the agreement would be disentitled to make any appointment of an arbitrator on its own and it would always be available to argue that a party or an official or an authority having interest in the dispute would be disentitled to make appointment of an arbitrator.

20. Further, the Hon'ble Apex Court in a case reported in **(2025) 4 SCC 641 [Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV)]** has observed as under:-

'31. The above extract suggests that an arbitration agreement entered into by the parties is subject to certain well-defined and mandatory legal principles. For instance, Section 34(2)(a)(v) allows for refusal of enforcement of arbitral awards if the composition of the Arbitral Tribunal or arbitral procedure was not following the agreement of the parties unless such agreement conflicts with the mandatory provisions of

the law. [Section 34(2)(a)(v), Arbitration Act. It reads:" 34. (2)(a) (v) the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or failing, such agreement, was not in accordance with this Part;"] The composition of the Arbitral Tribunal or the arbitral procedure must not only be in accordance with the agreement of the parties but also be consistent with the mandatory standards laid down under the Arbitration Act. [Report of the United Nations Commission on International Trade Law on the work of its Eighteenth Session (3-6-1985 to 21-6-1985) Supplement No. 17 (A/40/17) [290]. The Report states:"290. As regards the standards set forth in the sub-paragraph, it was understood that priority was accorded to the agreement of the parties. However, where the agreement was in conflict with a mandatory provision of "this Law" or where the parties had not made an agreement on the procedural point at issue, the provisions of "this Law", whether mandatory or not, provided the standards against which the composition of the Arbitral Tribunal and the arbitral procedure were to be measured."] In case of a conflict, mandatory provisions of the Arbitration Act prevail over the arbitration agreement between the parties. [A/CN.9/246, para 135.]"

169. In the present reference, we have upheld the decisions of this Court in TRF [TRF Ltd. v. Energo Engg. Projects Ltd. , (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] and Perkins [Perkins Eastman Architects DPC v. HSCC (India) Ltd. , (2020) 20 SCC 760] which dealt with situations dealing with sole arbitrators. Thus, TRF [TRF Ltd. v. Energo Engg. Projects Ltd. , (2017) 8 SCC 377 : (2017) 4 SCC (Civ) 72] and Perkins [Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760] have held the field for years now. However, we have disagreed with Voestalpine [Voestalpine Schienen GmbH v. DMRC Ltd., (2017) 4 SCC 665 : (2017) 2 SCC (Civ) 607] and CORE [Central Organisation for Railway Electrification v. ECISPIC-SMO-MCML (JV) , (2020) 14 SCC 712] which dealt *with the appointment of a three-member Arbitral Tribunal. We are aware of the fact that giving retrospective effect to the law laid down in the present case may possibly lead to the nullification of innumerable completed and ongoing arbitration proceedings involving three-member tribunals. This will disturb the commercial bargains entered into by both the government and private entities. Therefore, we hold that 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 only applies to three-member tribunals.*

170.3. 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;

21. Likewise, in a case reported in a case reported in **2024 SCC OnLine SC 1754 [SBI General Insurance Co. Ltd. v. Krish Spinning]**, the Hon'ble Apex Court has observed as under:-

'108. Section 11 of the Act, 1996 is provided to give effect to the mutual intention of the parties to settle their disputes by arbitration in situations where the parties fail to appoint an arbitrator(s). The parameters of judicial review laid down for Section 8 differ from those prescribed for Section 11. The view taken in SBP & Co. (supra) and affirmed in Vidya Drolia (supra) that Sections 8 and 11 respectively of the Act, 1996 are complementary in nature was legislatively overruled by the introduction of Section 11(6-A) in 2015. Thus, although both these provisions intend to compel parties to abide by their mutual intention to arbitrate, yet the scope of powers conferred upon the courts under both the sections are different.

110. The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of *the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*

111. The use of the term 'examination' under Section 11(6-A) as distinguished from the use of the term 'rule' under Section 16 implies that the scope of enquiry under section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the arbitral tribunal to 'rule' under Section 16. The prima facie view on existence of the arbitration agreement taken by the referral court does not bind either the arbitral tribunal or the court enforcing the arbitral award.'

22. On the basis of aforesaid enunciation of law by the Apex Court, it is clear that section 12(5) has been inserted in the statute with an object to curtail one sided contract based on bias. The only exception has been carved out is the waiver of the applicability, that too, with the consent of both the parties. In the present case at hand though, non-applicant has accepted notice of applicant to invoke arbitration to resolve dispute but later forced applicant to sign waiver form which is against the mandate of Act of 1996 as well as law propounded by the Hon'ble Apex Court in aforementioned cases.

23. Accordingly, the application filed by applicant is allowed and following order is passed:-

24. Considering the list of empanelled Arbitrators issued by the M.P. Arbitration Centre, Jabalpur, following order is passed :

(i) **Shri Pritinker Diwakar, Former Chief Justice of High Court of Allahabad (UP), Address - Shatabdipuram, In front of Kesharwani**

College, Ukhri Road, Vijay Nagar, Jabalpur, Mo. No. 094252-23330, Email pdiwaker@rediffmail.com, who has consented in terms of Section 11(8) of the Act of 1996, is appointed as sole Arbitrator to resolve the dispute between the parties in the case.

(ii) Arbitrator shall issue the notices and fix the date and suitable venue for arbitration. Said arbitration will take place at Jabalpur.

(iii) Parties are directed to deposit necessary charges and fees as per M.P. Arbitration Center (Domestic and International) Rule, 2019.

(iv) Director of Madhya Pradesh Arbitration Centre, Domestic and International, Jabalpur (M.P.D.I.A.C.) shall communicate the decision of this Court to the Sole Arbitrator.

(v) Other provisions of Section 15(3)(4) of the Arbitration and Conciliation Act, 1996 will apply to substitute Arbitrator.

25. With the aforesaid directions, the Arbitration Case is disposed of.

(DEEPAK KHOT)
JUDGE

RAGHVENDRA