



IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on:19.12.2025

Pronounced on :22.12.2025

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**Whether the operative
part or full judgment is pronounced: Full**

CM(M) No. 568/2025
CM No. 8559/2025 Caveat No. 2540/2025

UNION TERRITORY OF J&K

..... PETITIONER/APPELLANTS (S)

Through: Mr. Syed Musaib, Dy. AG

V/s

M/S SRM CONTRACTORS LTD

..... RESPONDENT(S)

Through: Mr. Syed Faisal Qadiri, Sr. Advocate
with Mr. Manik and
Mr. Sikander Hayat Khan, Advocates

Coram:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioner has, challenged order dated 16.10.2025 passed by the learned Additional District Judge, Srinagar whereby application of the petitioner under Section 14 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "Act of 1996"), has been dismissed.

2. Briefly stated case of the petitioner is that the respondent was awarded contract for "Upgradation of Tutan di Khuie to Khada-Madana Road" under the Jhelum Tawi Flood



Recovery Project pursuant to Letter of Acceptance dated 02.11.2020. In this regard, the contract agreement was executed on 6th January 2021. Notice to proceed was issued on 07.01.2021 and the completion period for the sub project was 15 months with 15.04.2022 as the original date of completion. The contract between the parties was governed by the General Conditions of Contract containing the disputes resolution clause which reads as under:

“24.1 If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to the Adjudicator/DRE within 14 days of the notification of the Project Manager’s decision.

24.2. The Adjudicator/DRE shall give a decision in writing within 28 days of receipt of a notification of a dispute.

24.3.....Whatever decision is reached by the Adjudicator/DRE, either party may refer that decision to an Arbitrator within 28 days of the Adjudicator’s/DRE written decisions. If neither party refers the dispute to the arbitration within the above 28 days, the Adjudicator/DRE’s decision shall be final and binding....

3. It has been averred in the petition that contrary to the agreed procedure and the mandate of Section 11(2) and Section 12(5) read with the Seventh Schedule of the Act of 1996, the respondent proceeded unilaterally to appoint Engineer Khalid Muzaffar, a former Director of Jammu and



Kashmir Economic Reconstruction Agency (hereinafter referred to as “ERA”) as an Arbitrator. According to the petitioner, the aforementioned person could not have acted as an Arbitrator under Section 12(5) and the Seventh Schedule of the Act due to his past association with the petitioner. It has been submitted that the said Arbitrator did not make any disclosure in this regard as was mandated under Section 12 of the Act.

4. It is further case of the petitioner that the respondent had also procured nomination of Engineer Iftikhar Drabu as an Arbitrator on behalf of the petitioner through Institution of Engineers (India) without the consent or participation of the petitioner. Subsequently Shri M K Aggarwal was inducted as Presiding Arbitrator without following statutory mechanism under Section 11 of the Act. It is case of the petitioner that it has never consented to such appointments and instead, vide its communication dated 29.04.2024, the petitioner objected to the constitution of the Tribunal highlighting the unilateral nature of the appointment and the ineligibility of the nominated Arbitrators. Despite these objections, the Tribunal



proceeded to enter upon reference and entertain claims of the respondent.

5. It has been submitted that on 04.04.2025, the respondent filed an application to place on record 140 additional documents which was objected to by the petitioner but the Tribunal vide its order dated 20.04.2025, permitted the filing of the additional documents and observed that these documents buttress the existing claims and recorded adverse remarks against the petitioner by observing that objections of the petitioners were dilatory. It has also been submitted that on 10.05.2025, the Arbitral Tribunal conducted the site inspection at the project location without proper notice, recording, or opportunity for the officials of the petitioner to explain. According to the petitioner, the site inspection was unilateral and undocumented, making the Arbitrators part of the proceedings as witnesses. It has been submitted that the Presiding Arbitrator made observations that Right of Way (RoW) was not available which amounted to prejudging the main dispute.

6. It has been submitted that the petitioner had filed a detailed application before the Arbitral Tribunal highlighting



all these aspects. Even counsel appearing for the petitioner requested for re-assigning of the case to another counsel citing arbitrariness, non-observance of the principles of Natural Justice and lack of fairness on the part of the Tribunal. Highlighting the aforesaid facts and circumstances, the petitioner filed a detailed petition under Section 14 of the Act before the learned Additional District Judge, Srinagar who vide order dated 04.10.2025, has dismissed the said application.

7. In its reply, filed before the learned Additional District Judge, Srinagar, the respondent submitted that the petitioner cannot maintain petition under Section 14 of the Act of 1996 for challenging the order passed by the Arbitral Tribunal on the application filed by the petitioner under Section 16 of the Act which was dismissed by the Tribunal on 25.08.2025. It was submitted that if at all the petitioner has any cause, it can raise the contentions only at the time of challenging the award under Section 34 of the Act.

8. On the facts, respondent contended before the learned Additional District Judge that when certain disputes arose between the parties it issued notices/letters to the petitioner



requesting for appointment of Arbitrator in terms of covenants of the Contract Agreement but the said request was turned down by the petitioner. Thereafter, the respondent invoked Arbitration Clause with a request to the petitioner to appoint its Arbitrator in accordance with the provisions of the Contract agreement but despite issuance of notices, the petitioner failed to appoint its Arbitrators. This constrained the respondent to approach the Institution of Engineers (India) in terms of Arbitration Clause with a request to appoint the Arbitrators. The Institution of Engineers (India) recommended name of Er. Iftikhar Drabu to be appointed as nominee Arbitrator of the petitioner. It has been submitted that vide communication dated 26.06.2024, issued by Director, Technical of the petitioner Department, consent for appointment of Er. Iftikhar Drabu as an Arbitrator on behalf of the petitioner was granted. Thereafter, Er. M K. Aggarwal was nominated as a Presiding Arbitrator.

9. It was submitted that on 22.07.2024, Arbitral Tribunal held its first meeting and the Arbitrators furnished their declaration under Section 12 of the Act of 1996, whereafter on 20.08.2024, the respondent filed its statement of claims. It



was submitted that on 17.10.2024, the petitioner filed its statement of defence and counter claims. It was further submitted that the petitioner continued to participate in the Arbitral proceedings. It was also submitted that in the meeting held on 19.04.2025, certain queries were raised and the Arbitral Tribunal desired to conduct a site visit. According to the respondent, during the site inspection by the Arbitral Tribunal, officials of the petitioner Department including Mr. Harvinder Singh, Deputy Project Manager (T), Mr. Kuldeep Raj, (AEE) and Mr. Rajiv Kaul (JE ERA) along with their counsel Mr. Danish Butt (Advocate) were present on site.

10. It was submitted that the respondent concluded its arguments before the Arbitral Tribunal on 20.04.2025, whereafter the matter was posted for arguments on behalf of the petitioner on 12.07.2025 and 13.07.2025. On 04.08.2025, the petitioner filed an application seeking termination of the Arbitral proceedings. On 25.08.2025, the Arbitral Tribunal dismissed the petition filed by the petitioner and in the said order all the contentions raised by the petitioner in their application under Section 16 of the Act were dealt with.



11. It was submitted by the respondent that Er. Khalid Muzaffar is retired employee of the petitioner and he is not ineligible to act as an Arbitrator. It was contended that it is only if a person has business relationship with a party that he becomes ineligible to act as an Arbitrator but being a former employee of party, does not debar such person from acting as an Arbitrator.

12. The learned Additional District Judge, Srinagar, after hearing the parties and after analyzing the material on record, came to a conclusion that the petitioner has failed to make out a case under Section 14 of the Act warranting termination of the mandate of the Arbitral Tribunal. It has been observed by the learned Additional District Judge that the grounds raised by the petitioner pertain to matters of procedure, interpretation and evaluation which can at best be available for challenge of the Award under Section 34 of the Act after conclusion of the arbitral process.

13. I have heard learned counsel for the parties and perused record of the case.

14. Learned counsel for the petitioner while assailing the impugned order passed by the learned Additional District



Judge has reiterated and reaffirmed the grounds which the petitioner has projected in the petition. While relying upon the judgment of High Court of Delhi in **Roshan Real Estates Pvt. Ltd Vs. Government of NCT of Delhi** (OMP (T) (Comm.) No.23/2025 *decided on 01.07.2025*), learned counsel for the petitioner has submitted that in the said case, in somewhat similar circumstances, the Delhi High Court terminated mandate of the Arbitrator who had been an employee of Government of NCT of Delhi. He has vehemently contended that the Arbitral Tribunal has become biased against the petitioner as is clear from the proceedings conducted by the Tribunal as also from the unilateral decision taken by the Tribunal to hold site visit that too in absence of the representatives of the petitioner. It has been contended that members of the Arbitral Tribunal have virtually become witnesses and as such, they have rendered themselves ineligible to preside over the Arbitral Tribunal. Besides this, the learned counsel has also highlighted the contention with regard to defective constitution of the Arbitral Tribunal.

15. The primary ground that has been urged by the petitioner is that the appointed Arbitrator namely Er. Khalid



Muzaffar who is a former Director of ERA was ineligible under Section 12(5) read with Entry-1 of the Seventh Schedule of the Act due to his past relationship with the petitioner. Section 12(5) of the Seventh Schedule and Section 14(1) a of the Act provide that Arbitrator becomes *de jure* or *de facto* unable to act if any of the disqualification clauses in the Seventh Schedule of the Act are attracted.

16. It would be apt to refer to relevant provisions of the Act of 1996. The same are reproduced as under:

S.12 (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.

xxx xxx xxx xxx

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

Entry-I of the Seventh Schedule makes a person, who has had past relationship with a party or who has served in



managerial or supervisory capacity ineligible. Entry-1 reads as under:

“The Arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.”

Reliance has also been placed by the learned counsel for the petitioner on Entry 15 of the Seventh Schedule of the Act. The same is reproduced as under:

“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.”

17. From a conjoint reading of the afore-quoted provisions, it comes to the fore that the mandate of Arbitrator would terminate if he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay. Sub Section (5) of Section 12 makes a person ineligible to be appointed as an Arbitrator if such a person has any relationship with the parties or subject matter of dispute which falls under category specified in the Seventh Schedule of the Act. In the present case, we are concerned with Entries-1 and 15. Thus, if it is shown that Er. Khalid Muzaffar is an employee, consultant, advisor or he has any other past or present business relationship with the petitioner or that he has given legal advice or provided expert opinion



on the dispute to any of the parties, he would become ineligible to be a member of the Arbitral Tribunal.

18. The Supreme Court in case of **HRD Corporation (Marcus Oil and Chemical Division) Vs. Gail (India) Limited (Formerly Gas Authority of India Ltd.)** (2018) 12 SCC 471, has, after analyzing the relevant provisions of the Arbitration and Conciliation Act, 1996, including the provisions of the Seventh Schedule explained the legal position in the following manner:

“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. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings under Section 13(4) and make an award. It is only after such award is made, that the party challenging the arbitrator's appointment on



grounds contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with Section 34 on the aforesaid grounds. It is clear, therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on items contained in the Fifth Schedule under which the appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal.”

19. From the foregoing analysis of the legal position, it is clear that if a person becomes ineligible to act as an Arbitrator for the reasons which would fall in any Category specified in the Seventh Schedule of the Act, he then becomes *de jure* unable to perform his functions and therefore his mandate can be terminated under Section 14 of the Act.

20. Coming to the facts of the present case, it is the contention of the petitioner that Er. Khalid Muzaffar was a retired employee of the petitioner. There is no other allegation against the said Arbitrator leveled by the petitioner. It is not even alleged that said Arbitrator had been a consultant, advisor or he had any past or present business relationship with either of the parties. It is also not the case of the petitioner that the said Arbitrator has given legal advice or provided expert opinion on the dispute which is subject matter of the present petition to any of the parties. The only



ground on which the petitioner seeks declaration of Er. Khalid Muzaffar as ineligible is that he was a former employee of the petitioner. The question that arises for determination is as to whether a person merely because he has been a former employee of the parties becomes ineligible to act as an Arbitrator of either of the parties.

21. The aforesaid issue came up for consideration before Supreme Court of India in case titled **Government of Haryana PWD Haryana (B and R) Branch Vs. G. F. Toll Road Private Limited and others** reported in (2019) 3 SCC 505. In the said case, the Supreme Court held that the Act, of 1996 does not disqualify a former employee to act as an Arbitrator provided there are no justifiable doubts as to his independence or impartiality. In the facts and circumstances of the said case, the Supreme Court held that the fact that the Arbitrator was in the employment of State of Haryana over 10 years ago, would not make the allegation of bias tenable.

22. Thus, merely because a person has been in employment of either of the parties in the previous past does not make him ineligible to be appointed as an Arbitrator. Entry-1 of the Schedule of the Act debars an employee of a party to be an



Arbitrator. It also debars a consultant, advisor or a person who has any past or present business relationship with a party from acting as an Arbitrator. Er. Khalid Muzaffar is admittedly a former employee of the petitioner but he is neither a consultant nor an advisor of any party nor he has any past or present business relationship with the petitioner. Therefore, he does not fall either in Entry-1 or Entry-15 of the Seventh Schedule of the Act so as to be ineligible to act as an Arbitrator. The contention of the petitioner is, therefore, without any substance.

23. The second ground on which the petitioner is seeking termination of the mandate of the Arbitral Tribunal is that it has not consented to the appointment of Er. Iftikhar Drabu to be its nominee Arbitrator. A perusal of the copy of the communication dated 26.06.2024 issued by the Director Technical J&K ERA to Honorary Secretary, IEI-J&K State Centre, Srinagar would reveal that the petitioner has formally conveyed its acceptance to the appointment of Er. Iftikhar Drabu as Arbitrator on its behalf. Thus, it does not lie in the mouth of the petitioner to contend that it had not given



consent to the nomination of aforementioned person as Arbitrator on its behalf.

24. The third ground on the basis of which the petitioner has challenged mandate of the Arbitral Tribunal is that the proceedings are being conducted by the Tribunal in a manner which gives rise to reasonable apprehension that the Arbitrators are prejudiced and biased against it. In this regard, reference has been made to the order passed by the Arbitral Tribunal whereby additional documents filed by the respondent have been taken on record and certain remarks have been made by the Arbitral Tribunal against the petitioner. Another incident of bias that has been quoted by the petitioner is holding of site inspection by the Arbitral Tribunal without giving notice to the petitioner and without seeking presence of its representatives on spot, together with making of observation with regard to core dispute between the parties.

25. In the above context, it is to be noted that the petitioner had made an application under Section 16 of the Act before the Tribunal, highlighting all the aforesaid circumstances. The said application has been dismissed by the Tribunal vide



its order dated 25.08.2025. As has been already noted hereinbefore, the Supreme Court in the case of **HRD Corporation** (supra) has held that if a challenge is laid to the jurisdiction of the Arbitral Tribunal on the ground of Arbitral Tribunal's independence or impartiality and the said challenge is not successful before the Arbitral Tribunal, then the arbitral proceedings have to continue and the award has to be made. The Supreme Court has further held that it is only after such an award is made that the party challenging Arbitrators appointment on the aforesaid ground, can make application for setting aside the arbitral award in accordance with Section 34 of the Act on the aforesaid ground. Prior to the aforesaid judgment of the Supreme Court, a Constitution Bench of the Supreme Court in case titled **SBP & Co. Vs. Patel Engineering Ltd. and another** reported in (2005) 8 SCC 618 has held that an aggrieved party against in- between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act, has to wait until the award is passed by the Tribunal and such a party can ventilate its grievance against the award under Section 34 of the Act . A similar view has been taken by the Delhi High Court in case titled **Sacheerome Advanced Technologies**



(SAT) Vs. NEC Technologies Pvt. Ltd (NECI) reported in *2022 LiveLaw (Del)* 266 wherein it has been held that only recourse available to a party against order passed by the Arbitral Tribunal challenging appointment of the Arbitrator is to proceed with arbitral proceedings and challenge the arbitral award under Section 34 of the Act.

26. In view of the aforesaid consistent legal position, it is not open to the petitioner to ventilate its grievance against the order passed by the Arbitral Tribunal under Section 16 of the Act by making application under Section 14 of the Act seeking termination of the mandate of the Arbitral Tribunal. The only course available to the petitioner is to allow the arbitral proceedings to conclude and raise all these grounds at the time of challenging the final award under Section 34 of the Act. In this view of the matter, this Court refrains from making any observation on the merits of the contentions raised by the petitioner regarding its apprehension of bias of the Arbitral Tribunal and non-adherence to the procedure by the Tribunal, lest it may prejudice the case of the parties at the time of challenge to the Arbitral Award that may be passed.



27. For what has been discussed herein above, there is no ground to interfere with the impugned order passed by the learned Additional District Judge Srinagar. The petition lacks merit and is dismissed. It is however, made clear that any observation made in the impugned order regarding contentions raised by the petitioner on the aspects of bias of the Arbitral Tribunal and non-adherence to the procedure, shall not be taken as expression of opinion on merits of these contentions.

(Sanjay Dhar)
Judge

SRINAGAR
22.12.2025
Aasif

<i>Whether the judgment is speaking:</i>	YES
<i>Whether the judgment is reportable:</i>	YES/NO