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

% *Date of Reserve: 02nd August, 2022*
Date of Decision: 22nd August, 2022

\+ **ARB.P. 18/2020**

OVERNITE EXPRESS LIMITED

..... Petitioner

Through: Mr. Rohit Gandhi, Mr. Adhish Srivastava, Mr. Pradeep and Mr. Hargun Singh Kalra, Advocates.

versus

DELHI METRO RAIL CORPORATION

..... Respondent

Through: Ms. Vibha Mahajan Seth and Ms. Divyanshi Anand, Advocate.

\+ **ARB.P. 19/2020**

OVERNITE EXPRESS LIMITED

..... Petitioner

Through: Mr. Rohit Gandhi, Mr. Adhish Srivastava, Mr. Pradeep and Mr. Hargun Singh Kalra, Advocates.

versus

DELHI METRO CORPORATION LIMITED

..... Respondent

Through: Ms. Vibha Mahajan Seth and Ms. Divyanshi Anand, Advocate.

\+ **ARB.P. 20/2020**

OVERNITE EXPRESS LIMITED

..... Petitioner

Through: Mr. Rohit Gandhi, Mr. Adhish Srivastava, Mr. Pradeep and Mr. Hargun Singh Kalra, Advocates.

versus

DELHI METRO RAIL CORPORATION

..... Respondent

Through: Ms. Vibha Mahajan Seth and Ms. Divyanshi Anand, Advocate.

\+ **ARB.P. 21/2020**

OVERNITE EXPRESS LIMITED

..... Petitioner

Through: Mr. Rohit Gandhi, Mr. Adhish Srivastava, Mr. Pradeep and Mr. Hargun Singh Kalra, Advocates.

versus

DELHI METRO RAIL CORPORATION

..... Respondent

Through: Ms. Vibha Mahajan Seth and Ms. Divyanshi Anand, Advocate.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

1. A petition under **Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "*the Act*") has been filed for appointment of the Arbitrator**.

2. It is submitted in the petition that the respondent-Delhi Metro Rail Corporation (hereinafter referred to as "*DMRC*") had invited open bids by

way of Open e-Tender bearing NIT No.118A0004 for licensing of commercial space/ area at different floors/ levels at New Delhi Metro Station of Delhi Airport Express Line of DMRC network on **"as is where is"** basis. Subsequent to the Pre-Bid, site visit was made on 19th July, 2019 by the petitioner who then formulated and submitted its Bid on 08th August, 2018. The petitioner was declared the successful bidder in terms of Letter of Acceptance dated 22nd October, 2018 and the Contract was accorded to it. Four license Agreements dated 04th February, 2019 were executed which were duly registered on 26th April, 2019 with the Sub Registrar. Thereafter, the petitioner was called for joint measurement and for taking possession on 11th February, 2019. However, during the joint measurements, it was shocked and surprised to find that the scheduled commercial space/ license areas were in badly damaged condition and was in materially different condition from the one that existed during the Pre-Bid visit held on 19th July, 2018. The actual area sought to be handed over was much less than the area as represented in the Tender. The petitioner immediately called upon the respondent to rectify the defects and to restore the scheduled commercial space in the same position and condition as it existed at the time of Pre-Bid visit. The possession of Schedule II, III, IV area was deferred since it was not offered on **"as is where is"** basis. For Schedule I, the possession cannot be said to have been handed over/ taken till the time the defects were rectified.

3. However, despite the repeated requests, DMRC issued Letter of Deemed Handing Over of the Schedule II, III and IV Areas. When the petitioner raised issues with the officials of DMRC, they orally assured that the action would be taken to repair and rectify the defects and all the

concerns of the petitioner would be addressed. It was further informed that these issues were already pending consideration before the Competent Authority. Despite numerous correspondences, the respondent failed to take any action and even refused to make functional the essential common services like lift, escalators, toilets etc. which were available at site and were necessary and essential for the utilization of the areas and spaces. Moreover, plans, drawings and other permissions pending with the DMRC were not processed despite lapse of considerable period of time.

4. The DMRC thereafter wrongfully raised Invoices for payment of License Fee and issued Cure Notice, even though the License Fee could only commence after the rectification/ removal of the defects and the commercial space was restored and handed over in accordance with the Schedules.

5. The petitioner approached High Court of Delhi seeking interim relief by filing O.M.P.(I)(COMM) 254, 255, 256 and 257 in 2019. The respondent was restrained from taking any coercive steps vide Order dated 06th September, 2019 which is still continuing.

6. The DMRC thereafter carried out some rectification and restoration work, but neither it has not been completed nor the drawings, plants and permissions approved.

7. The petitioner then issued a Notice of Invocation of Arbitration dated 02nd November, 2019 invoking Clause 13 of the License Agreement which was duly served upon the respondent on 05th November, 2019. Since, the claim was above ₹50 lakhs, the petitioner nominated its nominee Arbitrator Hon'ble Mr. Justice Permod Kohli (Retired) and further suggested that considering the cost, time and efficiency, the Sole Arbitrator possessing the

qualification of retired High Court Judge be appointed with the consent of the respondent.

8. The respondent vide its letter dated 18th November, 2019 requested the petitioner to submits its Claim so that further action could be taken in terms of the Arbitration Clause. The respondent, however, has failed to nominate its Arbitrator and has also not consented to appointment of a Sole Arbitrator. Instead, they have forwarded Letters dated 18th November, 2019 and 19th December, 2019 suggesting a panel of five Arbitrators, from which an option was given to the petitioner to choose any one Arbitrator.

9. It is asserted that the respondent vide its Letters dated 18th November, 2019 and 19th December, 2019 has restricted the choice to nominate Arbitrator from the panel as suggested by it, which is contrary to the provisions of the Arbitration Act, 2015. A person who is having an interest in the dispute or in the outcome of the decision thereof, is not only ineligible to act as an Arbitrator but is also ineligible to appoint anyone else as an Arbitrator or suggest a panel of Arbitrators, and such persons cannot and should not have any role in chartering the course of dispute resolution. The mechanism as suggested by respondent, is one sided and gives unfair advantage to DMRC which is contrary to the principles of natural justice. A prayer is, therefore, made to confirm the appointment of the nominee Arbitrator nominated by the petitioner and appoint an independent nominee Arbitrator on behalf of the respondent and thereby constitute an independent Arbitral Tribunal to adjudicate the disputes between the parties or in the alternative appoint an independent Sole Arbitrator for adjudication.

10. The **respondent in its Reply** has taken preliminary objection that insolvency proceedings were initiated against the petitioner Company by

one M/s Hitech Resource Management Ltd. under Section 7 of the Insolvency and Bankruptcy Code, 2016. The National Company Law Tribunal *(hereinafter referred to as "NCLT")* admitted the petition vide its Order dated 02nd March, 2020 and declared the moratorium and appointed Interim Resolution Professionals *(hereinafter referred to as "IRPs")*. However, an Appeal was preferred by the petitioner, wherein the parties arrived at a settlement and National Company Law Appellate Tribunal (hereinafter referred to as "NCLAT") vide its Order dated 12th March, 2020 directed the IRPs not to constitute the Committee of Creditors. The exact status of the proceedings thereafter is not known to the respondent. However, all subsequent exchange of correspondence has been with the IRP on behalf of the petitioner.

11. **On merits**, it is asserted that the commercial spaces were handed over to the petitioner on **"as is where is"** basis. While the licensed commercial space, as defined in Schedule I, was handed over to the Licensee on 11th February, 2019, the joint measurements of the other spaces mentioned in Schedule II, III and IV could not be carried out on account of non-availability of the petitioner. Subsequently, joint measurements were done on 28th February, 2019 as per the convenience of the petitioner and there was deemed handing over of these sites. It is denied that the spaces were in badly damaged condition or were in materially different condition from the one that existed during Pre-Bid visit on 19th July, 2018. It is clarified that as per Clause 5.3 of the Contract/ General Conditions, the areas as indicated in the Schedules in the Tender and in all the Schedules, were only approximate and the actual area was to be measured at the time of handing over of the spaces. In case of any variation in the area, the license fee and other dues

were to be charged on the basis of actual area that was handed over. The respondent vide its letter dated 23rd July, 2019 had clarified all the issues raised by the petitioner.

12. It is further asserted that all essential facilities regarding general upkeep of the area like removal of garbage, maintenance of common areas etc. was duly provided to the petitioner. The feasibility of the operational elevators and escalators at first floor was checked and since the same required deployment of additional CISF Staff and additional cost, the same could not be made operational. The common washrooms which were available at the concourse level base sufficed the need of the DMRC commuters. Regarding drawing and plans of commercial space, various meetings were arranged with the Fire Department of DMRC for approval, but the petitioner failed to submit the requisite documents.

13. The respondent has admitted Invocation of Arbitration by the petitioner, but has claimed that it was not as per the provisions of the License Agreement and also the claim amount was not mentioned in the letter of Invocation dated 02nd November, 2019. The Corrigendum dated 16th November, 2019 was also not in accordance with the provisions of the License Agreement.

14. The respondent has further asserted that on receipt of Notice of Invocation, the respondent vide its letter dated 18th December, 2019 provided a panel of five Arbitrators to nominate any one as an Arbitrator for constitution of Arbitral Tribunal, but the petitioner has failed to do so. It is submitted that in terms of the Arbitration Clause as provided in Clause 13.1 of the License Agreement, was valid and binding and the Sole Arbitrator as

claimed by the petitioner, cannot be appointed. It is submitted that the petition is without merit and is liable to be dismissed.

15. **Submissions heard**.

16. The main objection taken by the petitioner is in regard to the procedure followed for appointment of the Arbitrator. The respondent had offered a panel of five Arbitrators to the petitioner from which to select any Arbitrator. The petitioner has challenged it on the ground of being in breach of impartiality and neutrality of the Arbitrator and has sought appointment of the Arbitrator under Section 11(6) of the Act.

17. It is a principle which needs no reiteration that the autonomy of the parties to mutually agree on the procedure to be followed for dispute resolution and appointment of Arbitrator is to be respected. In this context reference may be made to the observations of the Hon'ble Supreme Court in *Union of India vs. Parmar Construction Company* MANU/SC/0445/2019 that the High Court was not justified in appointing in an independent Arbitrator without resorting to the procedure for appointment of the Arbitrator which has been prescribed under Clause 64(3) of the Contract under the built-in mechanism as agreed by the parties. The ratio of *Parmar Construction Co.* (supra) was applied by the Supreme Court in *Union of India vs. Pradeep Vinod Construction Co.* MANU/SC/1573/2019 to hold that the appointment of an Arbitrator should be in terms of the Agreement and an independent Arbitrator should not be appointed ignoring the Agreement between the parties. It is thus, a settled proposition that the Court must refrain from appointment of an Arbitrator by ignoring the admitted procedure as agreed by the parties.

18. Thus, while recognizing the right of the parties to choose the procedure for dispute resolution including appointment of the Arbitrator in the Agreement, it has been countenanced that at fairness, transparency and impartiality are the virtues which are equally important incidents for consideration. The autonomy to choose the arbitrator is not unbridled and has to be tested on the anvil of neutrality and impartiality of the Arbitrator sought to be appointed by the parties, since these are the bedrock on which the foundation of arbitration rests.

19. In *Voestalpine Schienen GMBH vs. DMRC* (2017) 4 SCC 665 the Supreme Court dealt with the significance of independence and impartiality of the Arbitrator. It observed as under:

> *"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 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 vs. Jivraj in the following words: (WLR P.1889, para 45)*

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

Similarly, Cour de Cassation, France, in a judgment delivered in 1972 in Consorts Ury, underlined that:

"an independent mind is indispensable in the exercise of judicial power, whatever the source of that power may be, and it is one of the essential qualities of an arbitrator."

20. The Supreme Court in the case of <u>*TRF Ltd. vs. Energo Engineering Projects Ltd.*</u> (2017) 8 SCC 377 held that the test for determination of

competence of an Arbitrator proposed to be appointed was: "*whether he would have an interest in the outcome of the dispute"*. The element of eligibility was relatable to the interest that he had in the decision. The decision of the Apex Court in *Perkins Eastman Architects DPC & Anr. Vs. HSCC (India) Ltd.* 2019 SCC OnLine 1517 recognises the importance of ensuring that the Arbitrator having an interest in the outcome of the matter is not appointed so as to obviate any doubt as to the impartiality and independence of Arbitral Tribunal.

21. In *Proddatur Cable TV Digi Services vs. Siti Cable Network Ltd.* (2020) 267 DLT 51, coordinate bench of this court observed that one has to see the rationale and reasoning behind the judgment in the case of *Perkins Eastman* (supra) which is to ensure that the Arbitrator sought to be appointed has no interest in the outcome of the case.

22. In this back drop, one may consider the manner in which this Test of impartiality and neutrality has been applied in myriad situations while considering the application for appointment of Arbitrator under Section 11 of the Act.

23. Generally, the mode of appointment of the Arbitrator may be delineated as under:

I. **Unilateral Appointment of the Arbitrator:**

(i) *Unilateral appointment of Sole Arbitrator by one party; or*

(ii) *Where the Managing Director is to be appointed as an Arbitrator or is empowered to appoint/ nominate the Arbitrator*.

24. In *Perkins Eastman* (supra), the arbitration clause provided for appointment of the Managing Director as the Sole Arbitrator. A reference

was made to *Pratapchand Nopaji vs. Kotrike Venkata Setty & Sons* (1975) 2 SCC 208 wherein the three Judge Bench of the Supreme Court applied the maxim "*qui facit per allium facit per se*", which is reproduced as under:

> *"9. ... The principle which would apply, if the objects are struck by Section 23 of the Contract Ac,t is embodied in the maxim: "qui facit per allium 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....."*

25. In *Perkins Eastman* (supra) this principle was endorsed and it was observed that if the nomination of an arbitrator by an ineligible arbitrator is allowed, it would tantamount to carrying on the proceedings of the arbitration by the Managing Director himself. The ineligibility strikes at the root of his power to arbitrate or get it arbitrated upon by a nominee. The procedure of appointment of a Managing Director of a Company as the Sole Arbitrator or any arbitrator so appointed by the MD of the Company was held to be hit by vice of bias and impartiality. The Managing Director or an Arbitrator so nominated by him may be objective or individual of respectability, but the irresistible conclusion is that once the Arbitrator having become illegible by operation of law, he cannot nominate another person as an Arbitrator. It is inconceivable in law that any person who is statutorily ineligible can nominate a person. Such MD or a nominee of the MD becomes ineligible on account of the prescriptions contained in Section 12(5) of the Act. Once, an infrastructure collapses, the superstructure is

bound to collapse. 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.

(iii) *Where the Company unilaterally is empowered to appoint the Sole Arbitrator.*

26. Where a Company is empowered to nominate an Arbitrator suffers from the same disability as the Managing Director or his nominee. This was specifically considered by the Co-ordinate Bench in the case of *Proddatur CableTV* (supra), wherein applying a test of a person being interested in the outcome of the arbitration, it was observed that a Company functions through its Board of Directors who according to Section 166 of the Company's Act, 2013 are under a duty to act in good faith to promote the objects of the Company and act in the best interest of the Company, its employees and shareholders. A Director shall not involve in a situation in which he may have a direct or indirect interest that conflicts or possibly may conflict with the interest of the Company. It is thus, shown that the Directors of the Company as part of the Board of Directors, would be interested in the outcome of the arbitration proceedings. The Company, therefore, acting through its Board of Directors would suffer the ineligibility under Section 12(5) read with Schedule 7 of the Act.

27. It may thus be **concluded** that the appointment of a Sole Arbitrator by one party or the company or appointment of the Managing Director or its nominee as the Arbitrator does not meet the test of impartiality and independence and is hit by the bar of Section 12(5) of the Act and are inherently incapable of being appointed as the Arbitrator as has been held in the various judgments, as discussed above.

II. Appointment of Arbitrator from the proposed Panel of Arbitrators.

The panel may be of the following kinds:

(i) From a panel of Arbitrators, a party may select three or five names and other party be given an option of selecting one Arbitrator, while the other Arbitrator from the same panel would be selected by the first party and the third Arbitrator to be selected jointly by the two nominee Arbitrators of each party; or

(ii) Where from the panel of arbitrators, a few names are selected by one party, from which it nominates one Arbitrator and the option is given to the other party to nominate an Arbitrator from that limited panel with the third Arbitrator is appointed by the first party.

28. The agreement between the parties provides for dispute resolution in clause 13. Relevant part of Clause 13 reads as under:

> *"13.1 Arbitration*
>
> *All disputes relating to this agreement or claims arising out of or relating to this agreement or breach, termination or the invalidity thereof or on any issue whether arising during the progress of the services or after the completion or abandonment thereof or any matter directly or indirectly connected with this agreement shall be referred to Arbitrator(s) appointed by Director, DMRC on receipt of such request from either party, after signing of the Agreement. Matters to be arbitrated upon shall be referred to a sole Arbitrator if the total value of the*

claim is up to Rs.50 Lakhs and to a panel of three Arbitrators, if total value of. claims is more than Rs.50 Lakhs. DMRC shall provide a panel of three Arbitrators for the claims up to Rs.50 Lakhs and a panel of five Arbitrators for claims of more than Rs.50 Lakhs. Licensee shall have to choose the sole Arbitrator from the panel of three and /or one Arbitrator from the panel of five in case three Arbitrators are to be appointed. DMRC shall also choose one Arbitrator from this panel of five and the two so chosen will choose the third Arbitrator from the panel only. The Arbitrator(s) shall be appointed within a period of 30 days from date of receipt of written notice / demand of appointment of Arbitrator from either party."

29. These clauses have been considered by the Supreme Court in *Voestalpine Schienen GMBH* (supra), wherein it was explained why the names of the arbitrators in the panel should not be limited to Government departments or Public Sector Undertakings and held that in order to instil confidence in the mind of the other party, it is imperative that apart from serving or retired engineers of Government Departments and Public Sector Undertakings, engineers of prominence and high repute from Private Sector should also be included. Likewise, the panel should comprise of persons with legal background like judges and lawyers of repute. While upholding the procedure of having a panel of Arbitrators from whom the Arbitrator

may be selected, it was observed that this panel should be broad based and not limited to the Officers/ officials of one party only.

30. This principle was followed by the Co-ordinate Bench in *SMS Ltd. vs. Rail Vikas Nigam Limited* (2020) SCC OnLine Del 77, wherein it was held that despite repeated judgments, the respondent had refused to comprehensively broad base its panel. Out of the panel of 37 names, only eight were Officers who had retired from the Organization other than the Railways and PSU or connected with the Railways. It was held that even though the panel was of 37 names, it does not satisfy the concept of neutrality of Arbitrators as it is not broad based. The Arbitration Clause providing for selection of five names from the list of 37 names was held to be not broad based and invalid.

31. Likewise, the Co-ordinate Bench in *BVSR KVR (Joint Ventures) vs. Rail Vikas Nigam Ltd.* ARB. P.370/2019 Decided on 12th February, 2022, held that the panel of five arbitrators who were all serving employees of the Respondent Company from which the petitioner was asked to select a nominee Arbitrator was invalid being hit by the prohibited relationship laid down in Schedule 7 of the Act. The persons forming part of the Arbitral Tribunal were held ineligible in law to be appointed as Arbitrators.

32. The learned Counsel for the respondent has relied upon the *Iworld Business Solutions Private Limited vs. Delhi Metro Rail Corporation Limited* O.M.P. (T) (COMM) 71/2020 Decided on 04th December, 2020 by the Co-ordinate Bench, wherein similar panel of five Members who were all retired District Judges was considered and it was held that considering that they were all retired Addl. District Judges/ District Judges, their impartiality and neutrality could not be questioned and the panel was held to be valid for

nomination of any one as an Arbitrator, by the petitioner. The said judgment had relied upon *Central Organisation for Railway Electrification vs. ECI-SPIC-SMO-MCML (JV)* MANU/SC/1758/2019, wherein it was observed that a panel consisting of the retired/ serving Officers of Railways cannot be held to be violative of Section 12 and the said panel was upheld. However, the Supreme Court in *Union of India vs. Tantia Constructions Ltd.* SLP(C) 12670/2020 decided on 11th January, 2021 by the Three Judge Bench of the Supreme Court upheld the decision of the High Court to appoint an independent Arbitrator under Section 11(6) of the Act. The Supreme Court had requested the Chief Justice of India to constitute a Larger Bench to look into the correctness of the decision in *Central Organisation* (supra). It observed as under:

> *"Having heard Mr. K.M. Nataraj, learned ASG for sometime, it is clear that on the facts of the case, the judgment of the High Court cannot be faulted with. Accordingly, the Special Leave Petition is dismissed. However, reliance has been placed upon a recent three-Judge bench decision of this Court delivered on 17.12.2019 in* ***Central Organisation for Railway Electrification vs. M/s ECI-SPIC-SMO-MCML (JV) A Joint Venture Company****, 2019 SCC OnLine 1635. We have perused the aforesaid judgment and prima facie disagree with it for the basic reason that once the appointing authority itself is incapacitated from referring the matter to arbitration, it does not then follow that notwithstanding this yet*

appointments may be valid depending on the facts of the case.

We therefore request the Hon'ble Chief Justice to constitute a larger Bench to look into the correctness of this judgment.

Pending application stands disposed of."

33. The validity of panel containing names of five proposed arbitrators as in present case, came up for consideration in *Voestalpine Schienen GMBH* (supra). The Supreme Court held as under:

"28. Before we part with, we deem it necessary to make certain comments on the procedure contained in the arbitration agreement for constituting the arbitral tribunal. Even when there are number of persons empanelled, discretion is with the DMRC to pick five persons therefrom and forward their names to the other side which is to select one of these five persons as its nominee (Though in this case, it is now done away with). Not only this, the DRC is also to nominate its arbitrator from the said list. Above all, the two arbitrators have also limited choice of picking upon the third arbitrator from the very same list, i.e., from remaining three persons. This procedure has two adverse consequences. ***In the first place, the choice given to the opposite party is limited as it has to choose one out of the five names***

> ***that are forwarded by the other side.*** *There is no free choice to nominate a person out of the entire panel prepared by the DMRC.* ***Secondly, with the discretion given to the DMRC to choose five persons, a room for suspicion is created in the mind of the other side that the DMRC may have picked up its own favourites. Such a situation has to be countenanced.*** *We are, therefore, of the opinion that Sub-clauses (b) & (c) of Clause 9.2 of SCC need to be deleted and instead choice should be given to the parties to nominate any person from the entire panel of arbitrators. Likewise, the two arbitrators nominated by the parties should be given full freedom to choose third arbitrator from the whole panel."*

34. The procedure of forwarding a panel of five names to the other contracting party to choose its nominee Arbitrator is now held to be no longer a valid procedure.

35. The respondent has no doubt given a panel of five retired District Judges, but it cannot be overlooked that it is a restrictive panel limiting the choice of the petitioner to pick up any one of those five which tantamounts to unilateral appointment of an Arbitrator by the Respondent, which may create a doubt about the Arbitrator being partial or biased. Though one may hasten to state and emphasise that the retired District Judges may be person of impeccable integrity, but the issue here is of a perceived bias which cannot be permitted. Hence, it is held that the procedure adopted by the

respondent for appointment of Arbitrator from the panel cannot be sustained in the light of the observations of the Apex Court in *Voestalpine Schienen GMBH* (supra).

36. Thus, in exercise of the powers under Section 11 of the Act, considering that there exists a valid Arbitration Agreement between the parties and arbitrable disputes have arisen between the parties, Mr. Arun Kumar Arya, Learned District Judge (Retired) (Mobile No. 9910384687) is appointed as the Sole Arbitrator to conduct the arbitration under the aegis of Delhi International Arbitration Centre. It is clarified that all rights and contentions of the parties are reserved with liberty to raise them before the Arbitrator.

37. This is subject to the learned Arbitrator making the necessary disclosure as required under Section 12(1) of the Act and not being ineligible under Section 12(5) of the Act.

38. The parties are at liberty to approach the learned Arbitrator for further proceedings.

39. Accordingly, the petition is allowed in the above terms.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 22, 2022
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