

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

:SINGLE BENCH:

{HON'BLE SHRI JUSTICE ANAND PATHAK}

Arbitration Case No. 32/2021

M/s Om Sai RK Constructions Pvt. Ltd.
Vs.
M/s Foresight Infractech Pvt. Ltd.

Shri Harish Dixit, learned counsel for applicant.
Shri N.K.Gupta, learned Senior counsel with Shri Kamal Mangal
and Shri Chetan Kanungo, learned counsel for the respondent.

ORDER

(Passed on 29th day of April, 2022)

Present application is preferred by applicant under Section 11 (6) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act') for appointment of arbitrator.

2. Reliefs prayed for are as under:-

“(i) Annuling appointment of arbitrator vide letter dated 24.12.2020 (Annexure A-4).

(ii) Appointing an impartial arbitrator to resolve claims of the applicant.

(iii). Any other relief which this Hon'ble Court finds appropriate in the matter.

(iv) Costs.”

3. Precisely stated facts of the case are that applicant is a

company registered under Companies Act and filed this application through its Director. Applicant is a construction company having expertise in construction of high rise buildings and hereinafter would be referred to as Subcontractor. Respondent is also a company registered under Companies Act and represented through its Director Ms. Upasana Agrawal. Respondent is also engaged in construction work of high rise buildings and hereinafter would be referred to as Contractor.

4. applicant/Subcontractor through its Director Rajesh Kumar Kaushal entered into an agreement dated 2.3.2015 to construct residential township “Emerald Greens” [Four Tower/Blocks (Basement + Stilt + 8 Floors) as per design and planning, at village Khureri near Badagaon Flyover, Gwalior.

5. As per agreement, respondent/contractor was liable for supply of all the material, whereas applicant/subcontractor had to provide labour, false work and petty material i.e. nail, binding wires etc. Copy of agreement is enclosed as Annexure A-1. Contractor had been awarded the contract of development and construction of residential township “Emerald Greens” by the owner of the plot at aforesaid location and subsequent to it, contractor executed agreement with subcontractor assigning mainly labour part of the construction work to the subcontractor.

6. As pleaded, subcontractor executed the work to the best satisfaction of the contractor, its Engineers and also of the owner of the land and satisfaction can be recorded from the fact that contractor

made payment to subcontractor of more than Rs. 5 Crores after due measurements and verification of quantity and quality by its Engineers. It appears that in respect of some further payment, when asked for by the subcontractor, dispute emerged. It appears that in response to demand of money by the subcontractor (**applicant herein**), the contractor sent a letter dated 6.11.2020 vide annexure A-3 to subcontractor, informing it about appointment of Shri Chetan Kanungo (Advocate) as Arbitrator.

7. Surprised by the gesture of contractor, a legal notice dated 12.11.2020 at the instance of subcontractor vide **Annexure A-4** was sent in which demand of payment of due amount was reiterated.

8. Reacting to the said legal notice, contractor again issued a letter dated 24.12.2020 vide **Annexure A-5** sent by one Neeraj Kumar Sharma as authorized representative of respondent/contractor in which it has been informed that Shri Chetan Kanungo has declined to act as Arbitrator and Shri Neeraj Kumar Sharma as authorized representative appointed Shri M.L.Swarnakar (Advocate) as Sole Arbitrator by exercising the powers under Clause 19 of the agreement dated 2.3.2015. Immediately thereafter, Arbitrator Shri M.L.Swarnakar sent letter dated 26.12.2020 (**Annexure A-6**) to applicant/subcontractor informing him about his own acceptance as Arbitrator and declaration as per the provision of Section 12 and the Sixth Schedule of the Act was made. Interestingly, after acceptance of appointment by nominated Arbitrator (Shri M.L.Swarnakar) by contractor, reply to legal notice has been sent by the contractor vide

reply dated 28.12.2020 (**Annexure A-7**) in which demand of payment of money as claimed by the applicant/subcontractor was denied and advised to participate in arbitration proceedings before Arbitrator already appointed.

9. In the first meeting held on 21.02.2021 with nominated Sole Arbitrator, (**Annexure A-8**) subcontractor raised objection regarding appointment of arbitrator without its consent and sought the documents from respondent/contractor and also sought the statement of claim made by respondent before the Arbitrator. It appears from the proceedings dated 21.02.2021 that no document has been submitted by the respondents/contractor. Matter was placed on 7.3.2021.

10. On 7.3.2021 (**Annexure A-10**), applicant informed the nominated arbitrator as well as the representative of respondent that appointment of arbitrator is contrary to law and therefore, applicant does not intend to participate in the proceedings and wants to approach the High Court for appointment of Arbitrator and therefore, requested the arbitrator, not to commence the arbitration proceedings.

11. It is the submission of learned counsel for the applicant/subcontractor that respondent/contractor first appointed Shri Chetan Kanungo as Arbitrator but later on one Neeraj Kumar Sharma on behalf of respondent as authorized representative appointed Shri M.L.Swarnakar as Sole Arbitrator and as per agreement, Clause 19 of the Agreement dated 2.3.2015, Shri

Swarnakar did not choose to appoint an Umpire and started proceedings which is an arbitrary exercise because applicant did not submit to the jurisdiction of such nominated arbitrator and after ascertaining that no other documents exists regarding appointment, nomination by alleged authorized representative Shri Neeraj Kumar Sharma that too, without consulting with the applicant, whole exercise of appointment is bad in law.

12. It is further submitted that appointment of arbitrator is *ex-facie* illegal/ invalid because it has been made much prior to arising of dispute. After appointment of arbitrator on dated 24.12.2020, contractor preferred to file reply to legal notice dated 28.12.2020 (**Annexure A-7**), denying the claim of applicant. It means that on 28.12.2020 denial was made for payment and much prior to it on 24.12.2020 itself, arbitrator was nominated, that too by an incompetent man purportedly appearing as authorized representative. Substitution of arbitrator is not as per law and contractor is not having any authority to authorize a stranger to appoint arbitrator as per Section 12 (5) of the Act read with Article 13 with Seventh Schedule in the Act. He has relied upon the judgments of the Supreme Court in the cases of **TRF Limited vs. Energo Engineering Projects Limited., AIR 2017 SC 3889** and **Perkins Eastman Architects DPC & Others vs. HSCC (India) Limited**, reported in **AIR 2020 SC 59** and submits that appointment of Shri M.L.Swarnakar unilaterally by respondent through its power of attorney is invalid and liable to be quashed.

13. It is further submitted that after execution of agreement dated 2.3.2015 with effect from 23.10.2015, Section 12 (5) of the Act came into force with Seventh Schedule under the Act, rendering the Clause 19 of the agreement invalid because dispute arose in year 2020, when appointment of arbitrator unilaterally by one party is held invalid. While referring the power under Section 11 of the Act, it is submitted that power can be exercised by this Court when Arbitrator has already been appointed by respondent and referred the judgment rendered in the case of **Perkins Eastman Architects DPC (supra)** in this regard and referred paragraphs 21 to 25. He also referred judgment of the Apex Court in the case of **Walter Bau Ag, Legal Successor, of the Original Contractor, Dyckerhoff And Widmann Ag vs. Municipal Corporation of Greater Mumbai And Another, 2015 (3) SCC 800.**

14. While referring the judgment rendered in the case of **Haryana Space Application Centre and Others vs. Pan India Consultants Pvt. Ltd., 2021 (3) SCC 103**, it is the submission of learned counsel for the applicant that the Court can set aside the “ineligible” appointment of arbitrator and appoint impartial arbitrator for adjudication. Learned counsel for the applicant fairly submitted that he is ready to appear before any Arbitrator appointed by this Court while referring the matter to M.P. High Court Arbitration Center, Jabalpur. He would get fair and transparent dispute redressal mechanism at Jabalpur.

15. Learned Senior counsel appearing on behalf of respondent

opposed the prayer and submitted that the application under Section 11 (6) of the Act is not maintainable because applicant did not issue any notice invoking arbitration before filing this application 11 (6) of the Act, therefore, same is not maintainable. He relied upon **Bharat Sanchar Nigam Limited and Others Vs. M/s Nortel Networks India Pvt., 2021 (5) SCC 738**. Since respondent has submitted to the jurisdiction of arbitrator Shri M.L.Swarnkar, therefore, now he cannot rescind from the said arbitration proceedings and seeks another arbitration proceedings. Reliance is placed on the judgment of the Supreme Court in the case of **Eurobearings India Pvt. Ltd. vs. Eurobearings R.I. Arbitration Petition, MANU/SC/1299/2021** and **Pricol Limited vs. Johnson Controls Enterprise Limited And Others, 2015 (4) SCC 177**. It is further submitted that Section 11 (6A) inserted by the 2015 Amendment Act, confines the scope of Section 11 (6) of the Act to the examination of the existence of an arbitration agreement only and no judgment decree or order of the Court would affect the appointment. Although, it is fairly submitted that it has been omitted by the 2019 Amendment but according to him, the said omission is yet to be notified, therefore, Section 11 (6A) of the Act continues to hold the field.

16. Learned Senior counsel for the respondent submitted that the mention of the word 'Umpire' in the arbitration clause is due to inadvertent error or typing mistake, and therefore it has no meaning and it appears from the legal definition of the word "Umpire" that the same is inserted erroneously and it is improbable that two

persons can be appointed in arbitral side.

17. According to respondent, Mr. Neeraj Kumar Sharma is authorized signatory of respondent company being a juristic entity, respondent company-M/s Foresight Infratech Private Limited could not perform day to day functions itself, therefore, relied upon authorized representative to carry out its and Mr. Neeraj Kumar Sharma continues to act on behalf of respondent company without authorization, therefore, plea regarding authorized representative does not hold grounds. Since in the case in hand Mr. M.L.Swarnakar appointed, therefore the judgment as relied upon by the applicant in **Walter Bau AG, Legal Successor (supra)** is no avail.

18. On the basis of Sections 12, 13, 14 of the Act as considered by the Supreme Court in the case of **Bharat Broadband Network Limited Vs. United Telecoms Ltd., 2019 (5) SCC 755** challenge procedure is prescribed under Section 13 of the Act and that can only be challenged when on justifiable doubts is arisen under sub-section (3) of Section 12 subject to sub-section 4 of Section 12 of the Act. Therefore, challenge procedure has not been adopted properly and filed the application. He prayed for dismissal of the application.

19. Heard the learned counsel for the parties at length and perused the documents appended thereto.

20. It is a case where applicant who was a subcontractor entered into an agreement dated 02.03.2015 with respondent as contractor. As per the agreement dated 02.03.2015, Clause 19 contains arbitration clause. The same is reproduced for ready reference :-

“19. In case any dispute or difference arises between the parties whether in respect of work done or in respect of delay in completion of works or in respect of payment of extra work required to be done and so executed or in respect of measurement of work done or in respect of delay in payment to the subcontractor or touching the interpretation, fulfilment of any of the terms of these presents or any other matter arising out of or in connection with these presents or the carrying out of the work, shall be referred to arbitration to be appointed by Contractor. The arbitrator shall appoint an umpire before entering upon the reference. The award of the arbitrator or umpire shall be final and binding on the parties and the parties, their executors and administrators shall on their respective parts obey, abide by the award and shall not challenge on any ground excepting fraud or collusion or error apparent on the face of the award. It is hereby agreed between the parties that the parties shall resort to arbitration, before filing any suit for the enforcement of any legal right under these presents.”

21. Perusal of Clause 19 indicates that dispute arises then matter can be referred to arbitration to be appointed by a contractor and arbitrator had to appoint an umpire before entering upon the reference, meaning thereby that appointment of Arbitrator and Umpire is in the discretion of contractor (respondent herein). The same is hit by Section 12 (5) of the Act as inserted by amendment with effect from 23.10.2015. The same reads as under:-

12. Grounds for challenge :

“(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(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.

22. Seventh Scheduled of the Act prescribes Arbitrator's relationship with the parties or counsel in which Clause 13 indicates that if the arbitrator has a significant financial interest in one of the parties or the outcome of the case, then ineligibility attracts.

23. Therefore, The said practice has been deprecated by the Apex Court in the case of **TRF Limited (supra)** and later on in the case of **Perkins Eastman Architects DPC (supra)**. Since Arbitration Clause 19 in agreement empowers non-applicant to unilaterally appoint arbitrator and dispute arisen in the year 2020 and by that time appointment of arbitrator by one party unilaterally is held invalid, therefore, appointment of arbitrator by power of attorney holder Shri Neeraj Sharma through letter dated 24.12.2020, appears

to be contrary to law.

24. This fact can further be seen in the light of the fact that earlier contractor/respondent appointed one Advocate as arbitrator who was also the counsel for contractor/respondent and therefore, this fact strengthened the apprehension of applicant about the approach of respondent and same has been taken care of by legislature also by incorporating Section 12 (5) of the Act 1996.

25. In the case in hand, arbitrator has been appointed by the respondent but at the same time, applicant raised this dispute before arbitrator also and therefore, power under Section 11 of the Act can be exercised in such situation because of the guidance given by the Apex Court in the case of **Perkins Eastman Architects DPC (supra)** wherein it has been held that:-

*“21. The further question that arises is whether the power can be exercised by this Court under Section 11 of the Act when the appointment of an arbitrator has already been made by the Respondent and whether the Appellant should be left to raise challenge at an appropriate stage in terms of remedies available in law. Similar controversy was gone into by a Designated Judge of this Court in **Walter Bau AG** Manu/SC/0053/2015 (2015) 3 SCC 800 and the discussion on the point was as under:-*

*“9. While it is correct that in **Antrix** MANU/SC/0514/2013 : (2014) 11 SCC 560 and **Pricol Ltd.** MANU/SC/1165/2014 : (2015) 4 SCC 177, it was opined by this*

Court that after appointment of an arbitrator is made, the remedy of the aggrieved party is not under Section 11 (6) but such remedy lies elsewhere and under different provisions of the Arbitration Act (Sections 12 and 13), the context in which the aforesaid view was expressed cannot be lost sight of. In Antrix MANU/SC/0514/2013 : (2014) 11 SCC 560, appointment of the arbitrator, as per the ICC Rules, was as per the alternative procedure agreed upon, whereas in Pricol Ltd. MANU/SC/1165 / 2014 : (2015) 4 SCC 177, the party which had filed the application under Section 11 (6) of the Arbitration Act had already submitted to the jurisdiction of the arbitrator. In the present case, the situation is otherwise.

10. *Unless the appointment of the arbitrator is ex facie valid and such appointment satisfies the Court exercising jurisdiction under Section 11 (6) of the Arbitration Act, acceptance of such appointment as a fait accompli to debar the jurisdiction under Section 11 (6) cannot be countenanced in law. In the present case, the agreed upon procedure between the parties contemplated the appointment of the arbitrator by the second party within 30 days of receipt of a notice from the first party. While the decision in Datar Switchgears Ltd.*

MANU/SC/0651/2000 : (2000) 8 SCC 151 may have introduced some flexibility in the time frame agreed upon by the parties by extending it till a point of time anterior to the filing of the application under Section 11 (6) of the Arbitration Act, it cannot be lost sight of that in the present case the appointment of Shri Justice A.D. Mane is clearly contrary to the provisions of the Rules governing the appointment of arbitrators by ICADR, which the parties had agreed to abide by in the matter of such appointment. The option given to the respondent Corporation to go beyond the panel submitted by ICADR and to appoint any person of its choice was clearly not in the contemplation of the parties. If that be so, obviously, the appointment of Shri Justice A.D. Mane is non est in law. Such an appointment, therefore, will not inhibit the exercise of jurisdiction by this Court under Section 11 (6) of the Arbitration Act. It cannot, therefore, be held that the present proceeding is not maintainable in law. The appointment of Shri Justice A.D. Mane made beyond 30 days of the receipt of notice by the applicant, though may appear to be in conformity with the law laid down in Datar Switchgears Ltd. MANU/SC/0651/2000 : (2000) 8 SCC 151., is clearly contrary to the agreed procedure which required the

appointment made by the respondent Corporation to be from the panel submitted by ICADR. The said appointment, therefore, is clearly invalid in law.”

22. *It may be noted here that the aforesaid view of the Designated Judge in **Walter Bau AG** MANU/SC/0053/2015 : (2015) 3 SCC 800 was pressed into service on behalf of the appellant in **TRF Limited** MANU/SC/0053/2015 : (2015) 3 SCC 377 and the opinion expressed by the Designated Judge was found to be in consonance with the binding authorities of this Court. It was observed:-*

*“32. Mr Sundaram, learned Senior Counsel for the appellant has also drawn inspiration from the judgment passed by the Designated Judge of this Court in **Walter Bau AG** MANU/SC/0053/2015 : (2015) 3 SCC 800, where the learned Judge, after referring to **Antrix Corpn. Ltd.**, distinguished the same and also distinguished the authority in **Pricol Ltd. v. Johnson Controls Enterprise Ltd.** MANU/SC/1165/2014 : (2015) 4 SCC 177 and came to hold that: (**Walter Bau AG** case MANU/SC/0053/2015 : (2015) 3 SCC 800 SCC p. 806,para 10)*

“10. Unless the appointment of the arbitrator is ex facie valid and such appointment satisfies the Court exercising jurisdiction under Section 11 (6) of the Arbitration Act,

acceptance of such appointment as a fait accompli to debar the jurisdiction under Section 11 (6) cannot be countenanced in law. ...”

33. We may immediately state that the opinion expressed in the aforesaid case is in consonance with the binding authorities we have referred to hereinbefore.”

*23. In **TRF Limited** MANU/SC/0755/2017 : (2017) 8 SCC 377, the Managing Director of the respondent had nominated a former Judge of this Court as sole arbitrator in terms of aforesaid Clause 33 (d), after which the appellant had preferred an application under Section 11 (5) read with Section 11(6) of the Act. The plea was rejected by the High Court and the appeal therefrom on the issue whether the Managing Director could nominate an arbitrator was decided in favour of the appellant as stated hereinabove. As regards the issue about fresh appointment, this Court remanded the matter to the High Court for fresh consideration as is discernible from para 55 of the Judgment. In the light of these authorities there is no hindrance in entertaining the instant application preferred by the Applicants.*

24. It is also clear from the Clause in the instant case that no special qualifications such as expertise in any technical field are required of an arbitrator. This was fairly accepted by the learned Senior Counsel for the respondent.

25. In the aforesaid circumstances, in our view a case is made out to entertain the instant

application preferred by the Applicants. We, therefore, accept the application, annul the effect of the letter dated 30.07.2019 issued by the respondent and of the appointment of the arbitrator. In exercise of the power conferred by Section 11 (6) of the Act, we appoint Dr. Justice A.K. Sikri, former Judge of this Court as the sole arbitrator to decide all the disputes arising out of the Agreement dated 22.05.2017, between the parties, subject to the mandatory declaration made under the amended Section 12 of the Act with respect to independence and impartiality and the ability to devote sufficient time to complete the arbitration within the period as per Section 29 A of the Act. A copy of the Order be dispatched to Dr. Justice A. K. Sikri at 144, Sundar Nagar, New Delhi - 110003 (Tel. No. 011 - 41802321). The arbitrator shall be entitled to charge fees in terms of the Fourth Schedule to the Act. The fees and other expenses shall be shared by the parties equally.”

and in the case of **Walter Bau Ag (supra)**, it has been held that unless an appointment of arbitrator is ex facie valid, it does not debar the jurisdiction of Court in Section 11 of of the Act in appointing arbitrator. Incidentally, agreement contains Clause 19 regarding two tier arbitration mechanism where arbitrator can appoint the Umpire, therefore on the one hand Shri Neeraj Kumar Sharma while appointing Shri M.L.Swarnkar curtailed the possibility of participation of applicant in the process of appointment of Umpire ignoring the position that he himself was not contractor but appears

to be power of attorney holder on behalf of contractor. If a particular manner is prescribed to do anything that should be done in that manner and not otherwise. Authority of Neeraj Kumar Sharma to appoint arbitrator is itself in doubt because in absence of any Board Resolution dated 01.12.2020 (not placed on record), it cannot be inferred that said person was authorized to operate the agreement as per the law on behalf of contractor. Therefore, on this count also, case of the applicant gains grounds.

26. Once the appointment of arbitrator is void *ab initio* in view of the guidance given by the Apex Court as referred above then in case arbitrator is ineligible by virtue of Section 12 (5) of the Act, then procedure prescribed under Sections 12, 13 and 14 are not applicable being void *ab initio*. In **Bharat Broadband Network Limited (supra)** guidance given by the Apex Court which are as follows :-

“17. The scheme of Sections 12, 13, and 14, therefore, is that where an arbitrator makes a disclosure in writing which is likely to give justifiable doubts as to his independence or impartiality, the appointment of such arbitrator may be challenged under Sections 12 (1) to 12 (4) read with Section 13. However, where such person becomes “ineligible” to be appointed as an arbitrator, there is no question of challenge to such arbitrator, before such arbitrator. In such a case, i.e., a case which falls under Section 12 (5), Section 14 (1) (a) of the Act gets attracted inasmuch as the arbitrator becomes, as a matter of law (i.e., de jure), unable to perform his

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

18. On the facts of the present case, it is clear that the Managing Director of the appellant could not have acted as an arbitrator himself, being

rendered ineligible to act as arbitrator under Item 5 of the Seventh Schedule, which reads as under:

Arbitrator's relationship with the parties or counsel

xxx xxx xxx

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

Whether such ineligible person could himself appoint another arbitrator was only made clear by this Court's judgment in **TRF Ltd. (supra)** on 03.07.2017, this Court holding that an appointment made by an ineligible person is itself void ab initio. Thus, it was only on 03.07.2017, that it became clear beyond doubt that the appointment of Shri Khan would be void ab initio. Since such appointment goes to "eligibility", i.e., to the root of the matter, it is obvious that Shri Khan's appointment would be void. There is no doubt in this case that disputes arose only after the introduction of Section 12 (5) into the statute book, and Shri Khan was appointed long after 23.10.2015. The judgment in **TRF Ltd. (supra)** nowhere states that it will apply only prospectively, i.e., the appointments that have been made of persons such as Shri Khan would be valid if made before the date of the judgment. Section 26 of the Amendment Act, 2015 makes it clear that the Amendment Act, 2015 shall apply in relation to arbitral proceedings commenced on or after 23.10.2015. Indeed, the judgment itself set

aside the order appointing the arbitrator, which was an order dated 27.01.2016, by which the Managing Director of the respondent nominated a former Judge of this Court as sole arbitrator in terms of clause 33 (d) of the Purchase Order dated 10.05.2014. It will be noticed that the facts in the present case are somewhat similar. The APO itself is of the year 2014, whereas the appointment by the Managing Director is after the Amendment Act, 2015, just as in the case of **TRF Ltd. (supra)**. Considering that the appointment in the case of **TRF Ltd. (supra)** of a retired Judge of this Court was set aside as being non-est in law, the appointment of Shri Khan in the present case must follow suit.

27. Since the appointment of arbitrator at the instance of contractor is contrary to law and therefore, ineligible appointment deserves to be set aside and it can be removed at stage of passing of award (See : **Haryana Space Application Centre and Others Vs. Pan India Consultants Pvt. Ltd., 2021 (3) SCC 103**) and contention of the respondent is that applicant submitted the jurisdiction of the arbitrator is misplaced because applicant did not submit to jurisdiction of arbitrator and in fact informed the arbitrator about unilateral and invalid appointment process and proceedings were void ab initio.

28. In cumulatively case of the applicant succeeds and appointment of arbitrator at the instances of respondent/contractor hereby set aside and resultantly appointment and all proceedings

undertaken by arbitrator is hereby set aside.

29. However, on earlier occasion applicant suggested for reference to High Court Arbitration Center, Jabalpur and respondent counsel did not raise any objection in this regard and alternatively agreed so. Therefore, parties are directed to approach the High Court Arbitration Center, Jabalpur wherein proceedings shall be undertaken in accordance with rules so prescribed including the appointment of arbitrator and other incidental matters like procedure/etc.

30. Petition stands **allowed**. Appointment of arbitrator at the instance of respondent is set aside with a direction to proceed in accordance with law before High Court Arbitration Center, Jabalpur.

(Anand Pathak)
Judge

AK/-