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HIGH COURT OF TRIPURA
AGARTALA

Arb.P. No.09/2026

Sri Kashinath Bhattacharjee, son of Late Dinesh Chandra Bhattacharjee, resident of 38/1, Thakurpalli Road, Krishnanagar, P.O.-Agartala, Sub-Division-Agartala, District-West Tripura, PIN-799001.

…… Petitioner(s).

V E R S U S

1. Bharat Sanchar Nigam Limited (BSNL), a Government of India Enterprise, represented by its General Manager, Door Sanchar Bhawan, Kaman Chowmuhani, Agartala, District-West Tripura, PIN-799001.

2. The Assistant General Manager (HQ), Office of the General Manager, Bharat Sanchar Nigam Limited, Door Sanchar Bhawan, Kaman Chowmuhani, Agartala, District-West Tripura, PIN-799001.

…… Respondent(s).

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mr. Haradhan Sarkar, Advocate.

For Respondent(s) : Mr. Ratan Datta, Advocate,
Ms. Debalina Debroy, Advocate,
Ms. Samadrita Debnath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO

CAV reserved on : **31.07.2026**.

Judgment delivered on : **10.08.2026.**

Whether fit for reporting : **YES**.

JUDGMENT & ORDER

Heard Mr. Somik Deb, learned Senior Counsel assisted by Mr. Haradhan Sarkar, counsel appearing for the petitioner and Mr. Ratan Datta, counsel appearing for the respondents-BSNL.

2. This application has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator

for adjudication of the dispute between the parties arising out of an agreement against BID document bearing NIT No.WZ-59/Pt-IV/12-13/19 dt.26.10.2012.

3. Admittedly, the said agreement contains an Arbitration Clause in Clauses 17.1 to 17.3.9.

4. After the dispute arose between the parties, initially the applicant filed Money Suit No.35 of 2021 before the Civil Judge, Senior Division, Court No.2, West Tripura, Agartala.

5. The respondents brought to the notice of the Civil Court the existence of the Arbitration Clause referred to above and contended that the suit is not maintainable in view of the existence of such an Arbitration Clause and also in view of the Section 8 of the Arbitration and Conciliation Act, 1996 under which the Court has to refer the parties to arbitration.

6. This objection was accepted by the said Court on 12.12.2025, the plaint was rejected and the parties were referred to arbitration invoking Section 8(1) of the Act.

7. After the said judgment was delivered, the applicant on 22.12.2025 issued a notice to the General Manager of the respondent No.1 for appointment of an Arbitrator specifically contending that though the agreement requires arbitration by the General Manager, BSNL, Tripura SSA, Agartala, in view of the amendments made to the Act w.e.f. 23.10.2015 and 09.08.2019, such General Manager or any other officer of BSNL has become statutorily disqualified to act as an Arbitrator. It was contended that therefore the General Manager of BSNL cannot act or nominate an Arbitrator and, therefore, the respondents should agree for appointment of an independent and impartial Arbitrator for adjudication of the disputes between the parties.

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8. In response thereto, the respondent No.1 gave a reply through its AGM stating that the General Manager, Tripura BA would be the Sole Arbitrator to settle the dispute arising out of the agreement relating to the above BID document. There is no reference in the said letter to the objection raised by the applicant for the appointment of the General Manager, Tripura BA.

9. The applicant wrote on 19.01.2026 strongly objecting to the appointment of a General Manager of the Tripura BA as Arbitrator, but the respondents on 02.02.2026 refused to accept the said objection because the applicant had already agreed to it.

10. Thereupon, the applicant has filed the instant application seeking appointment of an Arbitrator.

11. The counsel for the applicant relied on sub-section (5) of Section 12 of the Act to contend that this Court is empowered to appoint an Arbitrator and the action of the respondents in appointing their General Manager, BA is not valid.

12. The counsel for the respondent refuted the said contentions and insisted that the action of the respondents in appointing the General Manager , BA is valid since the agreement dt.26.10.2012 was entered into by the parties before the amendment was made to Section 12 of the Act and under the said agreement, the applicant had agreed to the General manager of the respondent to be the arbitrator.

13. I may point out that sub-section (5) of Section 12 of the Arbitration and Conciliation Act, 1996 was inserted by Act 3 of 2016 with retrospective effect from 23.10.2015 and it states as under:

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> *"**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."* (emphasis supplied)

14. A plain reading of this provision of law indicates that even in respect of an agreement entered into before 23.10.2015 (which provided that an employee or officer or one of the parties will be the Arbitrator), if no arbitrator had been appointed prior to 23.10.2015 in relation to a dispute between the parties to the arbitration agreement, then notwithstanding such prior agreement to the contrary, such officer or employee or one of the parties (who would fall under the categories specified in the Seventh Schedule), would be ineligible to be appointed as an Arbitrator after 23.10.2015.

15. Of course, it is open to the parties to waive the applicability of this sub-section by an express agreement in writing, but admittedly there has been no such written agreement waiving sub-section (5) of Section 12 of the Act in this case.

16. This provision of law has been interpreted by the Supreme Court in ***Voestalpine Schienen GMBH v. Delhi Metro Rail Corporation Limited***[1].

In that judgment, the Supreme Court held that the amendment carried out to Section 12 of the Act by the Amending Act, 2015 was to provide for neutrality of Arbitrators. It held that in order to achieve this, sub-section (5) of Section 12 lays down that notwithstanding any prior agreement

[1] (2017) 4 SCC 665

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, he shall be ineligible to be appointed as an arbitrator. In such an eventuality i.e. when the arbitration clause falls foul with the amended provisions, the appointment of an arbitrator would be beyond pale of the arbitration agreement, empowering the Court to appoint such arbitrators as may be permissible.

It held that such would be the effect of the non obstante clause contained in sub-section (5) of Section 12 and the other party cannot insist on appointment of the arbitrator in terms of the arbitration agreement.

It stated that independence and impartiality of the arbitrator are the hallmarks of an arbitration proceeding and that an arbitrator has an adjudicatory role to perform and he must be independent of the parties as well as impartial. It held that the Seventh Schedule mentions those circumstances which may attract the provisions under sub-section (5) of Section 12 and nullify any prior agreement to the contrary; and that an arbitrator, who is an employee, a consultant, an advisor or has any past or present business relationship with the party, would be rendered ineligible to act as an arbitrator.

17. This judgment was subsequently reiterated in ***Jaipur Zila Dugdh Utpadak Sahkari Sangh Limited and others v. Ajay Sales and Suppliers***[2] and it was held that the Chairman, who is an elected member of the petitioners-Sahkari Sangh, would be ineligible to act as an arbitrator under sub-section (5) of Section 12 read with the Seventh Schedule to the Act.

[2] (2021) 17 SCC 248

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18. Similar view was also taken in ***Solaris Chem Tech Industries Limited v. Assistant Executive Engineer, Karnataka Urban Water Supply and Drainage Board and another***[3].

The Supreme Court followed the above two judgments and held that the disqualification contained in sub-section (5) of Section 12 applies to arbitration agreements executed prior to the amendment which came into effect on 23.10.2015, and that the non obstante clause in sub-section (5) of Section 12 clearly applies that provision to pre-amendment agreements.

19. Counsel for the respondents sought to place reliance on the judgment of the Supreme Court in ***Union of India v. Parmar Construction Company***[4].

In the said case, the request to refer the dispute to arbitration was sent and received by the other side before the 2015 Amendment Act came into force, i.e. the arbitration had commenced prior to 23.10.2015.

That was why Section 12(5) was held not to apply to such of the arbitral proceedings which have commenced in terms of the provisions of Section 21 of the principal Act unless the parties otherwise agree. Such is not the case in the instant case. Therefore, the said judgment has no application.

20. In this view of the matter, the objection of the respondents to the maintainability of the instant application is rejected.

21. The Arbitration Petition is allowed and Sri Swapan Bhattacharjee, Grade-I Officer of TJS (Retired), resident of Old RMS Chowmuhani, Agartala, West Tripura, is appointed as an arbitrator to adjudicate the dispute between the parties subject to submission of his consent

[3] (2024) 13 SCC 586
[4] (2019) 15 SCC 682

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and a declaration in terms of Section 12 read with Schedule VI of the Arbitration and Conciliation Act, 1996.

22. Learned Arbitrator is requested to take into consideration the Schedule of Model Fee prescribed under Schedule IV and the timeline prescribed under Section 29-A of the Arbitration and Conciliation Act, 1996 as amended.

Registry is directed to communicate the instant order along with a copy of the entire pleadings of the instant application to the learned Arbitrator forthwith.

23. The instant petition is disposed of.

Pending application(s), if any, also stands disposed of.

(M.S. RAMACHANDRA RAO, CJ)

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