

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE
(COMMERCIAL DIVISION)**

**RESERVED ON: 26.11.2025
DELIVERED ON: 28.11.2025**

**PRESENT:
HON'BLE JUSTICE GAURANG KANTH**

AP-COM 712 OF 2025

**SREI EQUIPMENT FINANCE LIMITED
VERSUS
SEIRRA INFRAVENTURE PRIVATE LIMITED**

Appearance:

***Mr. Swatarup Banerjee, Adv.
Mr. Sariful Haque, Adv.
Mr. Rajib Mullick, Adv.
Ms. Sonia Mukherjee, Adv.***

..... for the Petitioner

***Mr. Rohit Das, Adv.
Ms. Kishwar Rahaman, Adv.
Ms. Divya Tekriwal, Adv.***

..... For the respondent

JUDGMENT

Gaurang Kanth, J.:-

- 1.** The Petitioner has preferred the present Arbitration Petition under Section 14 read with Section 15 of the Arbitration and Conciliation Act, 1996, seeking termination of the mandate of the learned Sole Arbitrator.
- 2.** The facts leading to the present case as are follows:
- 3.** The present petition arises out of the arbitral reference concerning disputes under the Master Lease Agreement dated 15.03.2018 bearing Rental Schedule Nos. 156052, 156055, and 156056. Vide order dated 22.02.2022, this Court appointed the learned Sole Arbitrator to adjudicate the disputes between the parties.

- 4.** At the preliminary hearing before the Arbitral Tribunal, the learned Arbitrator furnished a disclosure under Section 12(1) of the Arbitration and Conciliation Act, 1996, stating that he had previously appeared against the Petitioner in a few matters. After considering this disclosure, the Petitioner did not object to his appointment and proceeded with the arbitral proceedings.
- 5.** During the course of the arbitration, the Petitioner, upon further enquiry, came to know that the learned Arbitrator had appeared as a counsel against the Petitioner in some matters during the pendency of the arbitral proceedings. In view thereof the Petitioner requested the learned Arbitrator to make a subsequent declaration under 12 (1) of the Act. In his fresh declaration dated 08.02.2025, the learned Arbitrator admitted that he had indeed appeared against the Petitioner in four proceedings, being (i) AP (Com) No. 823 Of 2024 titled as SREI Equipment Finance Ltd Vs KMC Construction Ltd (ii) AP(Com) 529/2024 titled as SREI Equipment Finance Ltd. Vs Roadwings International Pvt. Ltd (iii) AP (Com) 530 of 2024 titled as SREI Equipment Finance Ltd Vs Roadwings International Pvt. Ltd and (iv) AP No. 722/2022 titled as SREI Equipment Finance Ltd Vs SMS Ltd, while the arbitration was ongoing. According to the Petitioner, this was a new and material development that had not been disclosed earlier.
- 6.** The Petitioner submits that this ongoing adversarial representation gave rise to justifiable doubts as to the Arbitrator's independence and impartiality, thereby attracting the grounds set out in the Fifth Schedule to the Act.
- 7.** Consequently, the Petitioner filed an application under Sections 12 and 13 of the Act challenging the mandate of the learned Arbitrator. It was

submitted that the Arbitrator's continued appearance against the Petitioner during the pendency of the arbitral reference amounted to a conflict of interest incompatible with the neutrality mandated under Section 12(1). The learned Arbitrator, however, rejected the said application by order dated 04.08.2025 and declined to recuse himself.

8. In view thereof, the Petitioner has preferred the present petition under Sections 14 and 15 of the Act.
9. At the outset, learned Counsel for the Respondent has raised a preliminary objection regarding the maintainability of the present petition. Accordingly, this Court deems it appropriate to first address the issue of maintainability.

Submissions on behalf of the Respondent

10. The Respondent submits that the present petition is fundamentally misconceived, as the Petitioner has erroneously invoked Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, on the untenable assumption that the case falls within the Seventh Schedule. It is contended that the facts relied upon by the Petitioner, even if taken at face value, at best disclose circumstances giving rise to justifiable doubts regarding impartiality, matters squarely covered by the Fifth Schedule, and not the Seventh Schedule.
11. The Respondent emphasises that the statutory framework draws a clear and deliberate distinction between (i) the Fifth Schedule, which sets out grounds that may give rise to doubts regarding an arbitrator's independence or impartiality and must be pursued through the challenge mechanism under Section 13 and (ii) the Seventh Schedule, which enumerates categories of absolute and non-derogable ineligibility,

triggering an automatic bar under Section 12(5) and resulting in immediate termination of mandate under Section 14(1)(a).

- 12.** It is submitted that Section 14 becomes relevant only when there exists a de jure ineligibility arising from a Seventh Schedule entry. Had the present case genuinely fallen within the Seventh Schedule, the Petitioner would not have been required to invoke Section 13 at all. Jurisprudence is clear that where a Seventh Schedule disqualification is attracted, the arbitrator's mandate terminates *ipso jure*, and the aggrieved party may directly approach the Court under Section 14 without undertaking the statutory challenge before the arbitrator. The fact that the Petitioner invoked Section 13, contested the matter, and suffered an adverse decision conclusively establishes that the challenge pertains only to Fifth Schedule concerns. In such cases, the statute mandates that the party must await the final award and may thereafter invoke Section 34.
- 13.** The Respondent further submits that the alleged appearance of the learned Arbitrator as counsel against the Petitioner in certain unrelated matters does not fall within any of the categories of absolute ineligibility specified in the Seventh Schedule. At best, such circumstances may fall within indicative entries of the Fifth Schedule, which relate to perception based conflicts and do not result in automatic termination. The Petitioner is attempting to impermissibly elevate a Fifth Schedule contingency into a Seventh Schedule disqualification, contrary to the legislative scheme.
- 14.** Reliance is placed on ***HRD Corporation v. GAIL (India) Ltd.***, reported as ***(2018) 12 SCC 471***; ***Bharat Broadband Network Ltd. v. United Telecoms Ltd.***, reported as ***(2019) 5 SCC 755***; and ***Union of India v. Reliance***, reported as ***2022 SCC OnLine Del 4310***, to contend that these

authorities clearly delineate the two-tier structure introduced by the 2016 Amendment.

- 15.** It is additionally argued that the Petitioner was fully aware of the fact that the learned Sole Arbitrator had appeared as counsel against the Petitioner in certain matters. The Respondent draws attention to the order sheets placed on record, which clearly reflect the name of the learned Arbitrator as defence counsel, alongside the appearance of the Petitioner's own counsel. Under Section 13(2), any challenge must be raised within 15 days of acquiring knowledge of the relevant facts; failure to do so results in waiver under Section 4. Despite such knowledge, the Petitioner waited to seek a formal declaration and thereafter challenged the mandate. The Respondent therefore submits that the Petitioner has waived any such objection by conduct and cannot now resurrect the same grounds through a petition under Sections 14 and 15.
- 16.** The Respondent contends that the Petitioner's reliance on "justifiable doubts" itself demonstrates that the case falls within the Fifth Schedule. The Seventh Schedule does not speak of doubts or perceptions; it deals only with objective and non-waivable categories of ineligibility. Any reference to "justifiable doubt" is thus incompatible with a claim of Seventh Schedule disqualification.
- 17.** For all these reasons, the Respondent prays that the present petition be dismissed as not maintainable, submitting that the Petitioner's allegations do not fall within the Seventh Schedule and hence cannot invoke Section 14. The Petitioner's sole statutory remedy lay under Section 13, which has been exhausted, and the Petitioner must now await the final award and pursue remedies under Section 34, if so advised.

Submission on behalf of the Petitioner

- 18.** The Petitioner submits that the mandate of the learned Sole Arbitrator stands terminated de jure under Section 14(1)(a) of the Arbitration and Conciliation Act, 1996, as the circumstances disclosed squarely attract multiple entries of the Seventh Schedule, rendering the Arbitrator statutorily and automatically ineligible to continue. Though a disclosure under Section 12(1) was initially furnished, it was only upon a specific query that the Arbitrator, for the first time, revealed that he is appearing as counsel against the Petitioner in four different proceedings during the pendency of the present arbitration. This material fact was never disclosed earlier. Upon being apprised of this conflict, the Petitioner promptly invoked the Section 13 mechanism on 13.02.2025.
- 19.** The Petitioner submits that these circumstances directly attract Clauses 15, 16, 19 and 30 of the Seventh Schedule, each of which contemplates present, direct, and incompatible engagements by an arbitrator. Once any entry of the Seventh Schedule is triggered, the disqualification is automatic, jurisdictional in nature, and incapable of waiver except by an express written agreement entered after the disputes have arisen. Accordingly, the learned Arbitrator became de jure incapable of continuing, and no inquiry into actual prejudice or proof of bias is required.
- 20.** It is further submitted that Sections 12(1) and 12(3) impose a continuous and ongoing duty of full disclosure upon an arbitrator. The learned Arbitrator failed to disclose his contemporaneous adversarial appearance

at the time of his appointment and disclosed it only when specifically confronted. Such belated disclosure is contrary to the statutory mandate of a “full and timely” disclosure at the outset. The failure to reveal an active professional engagement against a party whose rights he was simultaneously adjudicating strikes at the foundation of the neutrality framework instituted by the 2016 Amendment.

- 21.** Learned Counsel for the Petitioner submits that there is no quarrel with the legal propositions in the judgments cited by the Respondent; rather, those authorities reinforce the Petitioner’s case. In **HRD Corporation** (supra), the alleged conflicts concerned past engagements, whereas the present case involves a live adversarial engagement by the Arbitrator during the pendency of the arbitration, a situation the Supreme Court expressly distinguished as falling within the Seventh Schedule. Similarly, **Bharat Broadband** (supra) holds that once a Seventh Schedule disability is attracted, the arbitrator’s mandate terminates ipso jure, which directly supports the Petitioner’s position. In **Union of India v. Reliance** (supra), the disqualification arose from an ongoing professional conflict during the arbitral proceedings, squarely analogous to the facts at hand. None of the Respondent’s authorities concerns a scenario where the arbitrator is simultaneously appearing as counsel against one of the parties during the arbitral reference, which is the decisive distinguishing feature of the present case.
- 22.** Without prejudice, the Petitioner submits that Section 14(1)(a) contemplates two independent situations, de jure and de facto incapacity. While the authorities cited concern de jure ineligibility, the present matter may also be viewed as one of de facto incapacity. Seventh Schedule

disqualification corresponds to de jure incapacity, which arises by operation of law; de facto incapacity, on the other hand, concerns an inability as a matter of fact. Here, both standards are satisfied.

- 23.** The Petitioner further submits that the facts also trigger Clauses 21 and 30 of the Fifth Schedule, thereby giving rise to a reasonable apprehension of bias. The governing test is whether a fair minded and informed observer would reasonably apprehend a lack of impartiality. Reliance is placed on ***State of West Bengal Vs Shivananda Pathak & Ors.*** reported as **1998 (5) SCC 513** and ***Central Organisation For Railway Electrification Vs ECI SPIC SMO MCML (JV)*** reported as **2025 (4) SCC 641**, wherein the Supreme Court held that even judicial obstinacy may constitute bias. The Arbitrator's continued adversarial appearance against the Petitioner while adjudicating its disputes undoubtedly satisfies this test.
- 24.** For these reasons, the Petitioner submits that the learned Sole Arbitrator has become both de jure ineligible under Section 12(5) and, on the facts, de facto incapable of continuing within the meaning of Section 14(1)(a). Consequently, the mandate of the Arbitrator stands terminated by operation of law, and the Petitioner prays for appointment of a substitute arbitrator under Section 15 of the Act.

Legal Analysis

- 25.** This Court has heard the arguments advanced by the learned counsel for both parties and examined the records and judgments cited in detail.
- 26.** The present matter raises a foundational question concerning the maintainability of the petition, wherein the Petitioner seeks termination of the mandate of the learned Sole Arbitrator on the ground of alleged lack of independence and impartiality. The Petitioner invokes the jurisdiction of

this Hon'ble Court under Sections 14 and 15 of the Arbitration and Conciliation Act, 1996, contending that the circumstances disclosed attract statutory disqualification.

- 27.** Before advertng to the facts of the present case, this Court deems it appropriate to examine the relevant legal position.

Legislative scheme and purpose behind sections 12-14 read with the fifth and seventh schedules.

- 28.** Prior to the 2016 Amendment, the Arbitration and Conciliation Act, 1996 contained only a broad framework governing the neutrality of arbitrators. Section 12 merely required disclosure of "circumstances likely to give rise to justifiable doubts," without prescribing objective standards for assessing impartiality or independence. The statute did not identify situations in which an arbitrator would be rendered per se ineligible to act. Under the pre-amendment regime, challenges under Section 13 were decided by the arbitrator himself, and the only remedy thereafter was to await the final award and raise the issue under Section 34.
- 29.** This structure was widely criticised for enabling parties, particularly government bodies, to appoint persons with direct connections or affiliations, leading to perceptions of bias and eroding confidence in the arbitral process.
- 30.** To address these systemic deficiencies, the 246th Report of the Law Commission of India recommended the introduction of objective and transparent standards for assessing arbitrator neutrality. Accepting these recommendations, Parliament enacted the Arbitration and Conciliation (Amendment) Act, 2015 (effective from 23.10.2015), which significantly strengthened the neutrality regime by revising Section 12, expanding

mandatory disclosures, and statutorily incorporating the Fifth and Seventh Schedules. These amendments marked a decisive shift from a subjective, party driven model to a structured and internationally aligned framework.

- 31.** The Fifth and Seventh Schedules are substantially modelled on the International Bar Association (IBA) Guidelines on Conflicts of Interest in International Arbitration. The IBA Guidelines classify potential conflict scenarios into three categories: (i) the Red List, concerning the most serious forms of conflict, including non-waivable conflicts that absolutely prohibit an arbitrator from acting and waivable conflicts that may be consented to with informed agreement; (ii) the Orange List, which sets out circumstances that do not automatically disqualify an arbitrator but may reasonably raise doubts regarding impartiality or independence and require disclosure; and (iii) the Green List, which identifies circumstances that objectively do not give rise to conflict and do not attract a duty of disclosure.
- 32.** These Guidelines, first published in 2004 and refined through global arbitral experience, lay down widely accepted standards on impartiality, independence, and disclosure. The Indian Legislature, through the 2016 Amendment, codified these principles by incorporating a structured disclosure and disqualification regime through the Fifth and Seventh Schedules.
- 33.** The Fifth Schedule enumerates circumstances that “give rise to justifiable doubts” regarding an arbitrator’s independence or impartiality. These grounds fall within the domain of Sections 12(1), 12(3), and 13. The Seventh Schedule, read with Section 12(5), identifies categories of persons who are ineligible to serve as arbitrators, creating a bright-line rule of automatic disqualification, subject only to express written waiver after the

dispute arises. Thus, the Seventh Schedule embodies non-derogable and jurisdictional bars.

- 34.** Correspondingly, Section 14 was amended to clarify that a Seventh Schedule disqualification renders an arbitrator de jure incapable of acting, thereby permitting immediate judicial intervention without waiting for the final award. The legislative intent behind the 2016 Amendment is to elevate neutrality standards, institutionalise transparency, eliminate entrenched conflicts of interest, and ensure impartiality through objective and enforceable norms, aligned with internationally recognised arbitration practices.
- 35.** Section 12, as amended, establishes a deliberate and coherent bifurcation: Section 12(5) read with the Seventh Schedule covers mandatory, non-waivable statutory ineligibility going to the root of jurisdiction, resulting in automatic termination of mandate unless expressly waived in writing post-dispute. Sections 12(1)(4) read with the Fifth Schedule cover situations that merely raise justifiable doubts about impartiality, which are assessable, waivable, and subject to the statutory challenge mechanism.
- 36.** Under this scheme, Section 13(2) expressly mandates that all challenges founded on bias, lack of independence, or justifiable doubts under the Fifth Schedule must be raised before the arbitral tribunal itself. The tribunal must adjudicate the challenge under Section 13(3). If rejected, Section 13(4) requires the arbitral proceedings to continue, with the aggrieved party limited to a post-award challenge under Section 34.
- 37.** Section 14 operates in a different domain. It becomes applicable only where (a) there exists de jure inability (statutory ineligibility under Section 12(5)/Seventh Schedule); or (b) there is de facto inability (factual incapacity

to perform functions). In the absence of either condition, Section 14 cannot be invoked to circumvent the procedural mechanism mandated under Section 13.

Judicial Precedents

38. In **HRD Corporation** (supra), the Supreme Court drew a clear and categorical distinction between (i) ineligibility, attracting Section 12(5) read with the Seventh Schedule, and (ii) justifiable doubts as to independence or impartiality, falling under Section 12(1), 12(3) read with the Fifth Schedule. The Court held that only circumstances falling under the Seventh Schedule result in an automatic termination of mandate and render the arbitrator de jure ineligible. All other conflicts, including past professional engagements, prior representations, or circumstances not amounting to an ongoing direct relationship, are matters of assessable bias under the Fifth Schedule, which must be raised and adjudicated through the challenge mechanism prescribed in Section 13. The relevant portions of the judgment make it abundantly clear that unless a specific Seventh Schedule entry is attracted, the remedy lies exclusively under Section 13 and not under Section 14. The relevant portion reads as follows:

“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."

39. In ***Bharat Broadband Network Ltd.*** (supra), the Supreme Court unequivocally held that the grounds enumerated in the Seventh Schedule are strict, exhaustive, and must be applied as per their precise statutory language. The Hon'ble Apex Court emphasised that only where an arbitrator squarely falls within one of the defined categories of ineligibility under the Seventh Schedule does Section 12(5) stand attracted, leading to an automatic and non-derogable termination of mandate under Section 14(1)(a). Conversely, any challenge not fitting within the limited contours of the Seventh Schedule must be addressed exclusively through the procedure prescribed under Section 13, as such circumstances merely give rise to doubts regarding impartiality, which are assessable not jurisdictional. The Supreme Court expressly clarified that Section 14 cannot be invoked as a parallel remedy to bypass the statutory mechanism under Section 13, unless the disqualification is one of de jure ineligibility under Section 12(5). The relevant observations read as follows:

"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.”

40. In ***Union of India v. Reliance Industries Ltd.*** (supra), the learned Single Judge of the Delhi High Court had occasion to consider a situation involving allegations of bias arising from certain procedural directions issued by the Arbitral Tribunal. One of the parties expressed an apprehension of lack of impartiality and approached the Court under Sections 14(2) and 15(2) of the Arbitration and Conciliation Act, 1996, contending that the arbitrator had become de jure incapable of acting and that the mandate therefore stood terminated. Rejecting the petition at the threshold on the ground of maintainability, the learned Single Judge held that such allegations founded on procedural conduct or matters relatable to the Fifth Schedule do not fall within the narrow contours of de jure ineligibility contemplated under Section 12(5) read with the Seventh Schedule. The Court reiterated that unless the circumstances squarely attract a Seventh Schedule disability, the exclusive remedy lies within the

statutory framework of Section 13, and any challenge to the arbitrator's continuation can be raised only post-award under Section 34. Consequently, the prayer for termination of mandate under Section 14 was held to be misconceived and unsustainable.

- 41.** From the above precedents, the governing legal position is that ineligibility under Section 12(5)/Seventh Schedule constitutes strict, non-waivable statutory disqualifications, rendering an arbitrator de jure incapable of acting. Where circumstances clearly fall within a Seventh Schedule entry, the mandate terminates automatically under Section 14(1)(a), and a party may approach the Court under Section 14(2). Section 13 is inapplicable in such cases. Matters under Sections 12(1) and 12(3)/Fifth Schedule do not create disqualification but merely give rise to justifiable doubts, which must be addressed exclusively under Section 13, with post-award remedies under Section 34. Section 14 cannot be invoked as a parallel mechanism.

Factual Analysis

- 42.** Applying these principles to the present case, it becomes evident that the Petitioner's allegations that the learned Sole Arbitrator appeared as counsel against the Petitioner in certain ongoing proceedings do not fall within any of the specific categories enumerated in the Seventh Schedule. The Petitioner relies on Clauses 15, 16, and 19; however, a careful reading of these provisions shows that they are wholly inapplicable. Clause 19 pertains to situations where an arbitrator has a direct or indirect interest in the dispute itself, while Clauses 15 and 16 relate to the arbitrator's relationship with the dispute in question. None of these circumstances are attracted on the factual matrix presented.

- 43.** Such circumstances, at their highest, give rise only to potential or perceived conflicts of interest concerns expressly governed by the Fifth Schedule. These do not amount to statutory ineligibility but constitute grounds that may create justifiable doubts regarding impartiality, for which the Act prescribes a specific procedure under Section 13. Objections of this nature must therefore be raised before the arbitral tribunal, which is vested with the authority to adjudicate the challenge.
- 44.** As rightly pointed out by learned counsel for the Respondent, the Petitioner did invoke Section 13 and mounted a challenge before the learned Sole Arbitrator. That challenge was duly considered and rejected under Section 13(3). Having failed in the mechanism prescribed by the Act, the Petitioner now seeks to avoid awaiting the final award by re-agitating the same grounds through the present petition under Sections 14 and 15. This conduct itself demonstrates that the alleged grounds fall squarely within the Fifth Schedule; for had the Petitioner genuinely believed that the circumstances attracted Seventh Schedule ineligibility, there was no reason to invoke Section 13 in the first place. Approaching the arbitral tribunal initially is indicative that the challenge pertained only to justifiable doubts and not to any de jure statutory bar.
- 45.** Accordingly, the present petition under Sections 14 and 15, seeking direct judicial intervention by bypassing the Section 13 process, is legally untenable. The statutory framework draws a clear distinction between de jure incapacity under the Seventh Schedule and assessable doubts under the Fifth Schedule. Since the Petitioner's allegations do not attract any Seventh Schedule disqualification, Section 14 cannot be invoked, and the petition is not maintainable.

46. Learned Counsel for the Petitioner contends that the case involves de facto incapacity, and that the judgments relied upon by the Respondent do not address de facto ineligibility or bias. This contention is misconceived. De facto incapacity under Section 14(1)(a) arises only where an arbitrator is demonstrably unable to perform his functions during the arbitral proceedings. Mere prior professional engagement or perceived bias does not constitute de facto incapacity. In the present case, the learned Sole Arbitrator continues to perform all functions, thereby negating any claim of factual inability.
47. The Petitioner places reliance on certain judicial precedents to allege bias, particularly **Shivananda Pathak** (Supra) and **Central Organisation for Railway Electrification** (supra). However, a careful examination of these authorities reveals that they operate within the domain of the Fifth Schedule to the Arbitration and Conciliation Act, 1996. The jurisprudence emerging from **Shivananda Pathak** (Supra) underscores that allegations of bias must be grounded in circumstances giving rise to a justifiable doubt as to the adjudicator's impartiality, and that mere suspicion or apprehension does not suffice to disqualify an adjudicator outright. Similarly, in **Central Organisation for Railway Electrification** (Supra), the Supreme Court reaffirmed that issues pertaining to perceived predisposition or apprehended bias are matters intended to be addressed through the statutory mechanism under Section 13, culminating, if required, in a challenge to the award under Section 34.
48. In both these judgments, the Supreme Court has drawn a clear doctrinal distinction between (i) circumstances that merely raise a doubt as to impartiality (Fifth Schedule) and (ii) situations where the arbitrator suffers

from a de jure or de facto inability to act (Seventh Schedule), which alone justify recourse to Section 14. The Petitioner's reliance is therefore misplaced, as neither **Shivananda Pathak** (supra) nor **Central Organisation for Railway Electrification** (Supra) support an inference of a disqualification under the Seventh Schedule. Even a case of perceived or apprehended bias cannot, in law, trigger automatic termination of mandate under Section 14 in the absence of demonstrable incapacity or a prohibited relationship covered expressly by the Seventh Schedule. The statutory scheme makes it explicit that such grievances must be processed through the self-contained remedy under Section 13, with the supervisory jurisdiction under Section 34 being the appropriate stage for judicial examination.

- 49.** Accordingly, the Petitioner's effort to characterize the learned Arbitrator's prior representation in an unrelated proceeding as a circumstance giving rise to *de facto* incapacity is wholly misconceived and legally untenable. Such allegations, even if assumed to raise a doubt as to impartiality, fall squarely within the Fifth Schedule and must be addressed exclusively through the statutory challenge procedure under Section 13. The mandate under Section 14 cannot be invoked to circumvent or dilute this legislatively prescribed framework. The statutory architecture does not permit parties to convert issues of perceived or apprehended bias into assertions of automatic disqualification so as to prematurely terminate the arbitral mandate.

Conclusion

- 50.** In view of the foregoing, the Petitioner's challenge based on prior professional representation does not attract de jure ineligibility under

Section 12(5)/Seventh Schedule. The allegations at most raise potential or perceived conflicts, governed by Section 13/Fifth Schedule, with post-award remedies under Section 34. Judicial authorities consistently hold that only circumstances squarely fall within the Seventh Schedule result in automatic termination under Section 14(1)(a).

51. Accordingly, the present petition under Sections 14 and 15 is not maintainable. The Petitioner's recourse is confined to the Section 13 procedure before the tribunal, and, if necessary, a post-award challenge under Section 34. The prayer for termination of the Arbitrator's mandate under Sections 14 and 15 is therefore legally untenable and unsustainable.

52. Hence, the present petition is dismissed as not maintainable.

(GAURANG KANTH, J.)

SAKIL AMED (P.A.)

