IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE KAUSIK CHANDA

F.M.A.T 77 OF 2016
WITH
C.A.N. 1 OF 2021

Regent Hirise Private Limited & Ors.

Vs.
Sanchita Chatterjee & Ors.

Mr.Abhrajit Mitra, Senior,Adv.
Mr.Anuj Singh,Adv.
Mr. B.Kumar,Adv.
Mr. I.Hassan, Adv.
Mr. S.Sarangi,Adv.
Mr.D.Sen,Adv.
For the Appellants...

Mr.Rohit Das, Adv.
Ms.Kishwar Rehman,Adv.
Ms. Puspita Pramanik, Adv.
Mr. Indradip Das, Adv.
Mr.Sauvik Dere,Adv.
For the respondent No.3

Judgment On: **08.04.2021**

Harish Tandon, J.:

The nature of the order impugned in the instant appeal, initially, didnot appear to have raised a piquant situation but took a drift

when both the parties addressed us on intricately complex questions lending support from the plethora of the judgment rendered by the Supreme Court. To elaborate the exparte ad interim order of injunction and its continuance till the disposal of the temporary injunction application is challenged in the instant appeal where the Civil Court in a suit seeking declaration that the nominated Arbitrator is ineligible under Section 12(5) of the Arbitratioin and Conciliation Act, 1996 is restricted from continuing with the arbitration proceedings by way of anti Arbitration injunction.

At the first glance the nature of the injunction creates an impression upon us that the said act providing a special fora chosen by the parties to adjudicate and determine the disputes flowing from, arising out of and touching the interpretation of the various terms of the contract should not ordinarily be determined by the Civil Court. However, the parties addressed before us that once the mandate of the Arbitrator or in other words the competence of the

Arbitrator is challenged on the ground of ineligibility enshrined under Section 12 (5) of the Act, the Arbitrator is denuded of its power to proceed further and the proper remedy is by way of a civil suit and not to approach the Arbitrator to rule its own jurisdiction under Section 16 of the Act.

The point appears a deep scrutiny upon assimilation and harmonious construction of the various provisions introduced to the said Act subsequently by way of an amendment in the legislation for the simple reason that whether it strikes at the root of the jurisdiction of the Arbitrator to proceed with the arbitral proceedings. There was no difficulty in upholding the jurisdiction of the Civil Court in 1940 Act where the civil suit could be entertained subject to the exercise of its jurisdiction under Section 21 thereof but such curtailment can be envisioned after its repeal and replaced by a 1996 Act; More particularly, with introduction of Section 5 thereof which takes away the jurisdiction of the Civil court in its ordinary sense of jurisdiction subject to the definition clause defining the court under Section 2(e) of the said Act. Section 5 of the 1996 Act contains a

non-obstante clause and a complete embargo is created upon a judicial authority for its intervention except so provided in the first part. The 1996 Act contains an exhaustive provisions both substantive and procedural including the procedure for challenging the mandate of an Arbitrator, termination of such mandate and the competence of the Arbitral Tribunal to rule its own jurisdiction under Section 16 thereof. However, by an amendment having brought in 2015, Section 12 of the said Act underwent on a sea change and in order to ascertain the true intent and purport thereof both the unamended as well as the amended section 12 of the said Act are quoted as under :-

(unamended)

" 12. Grounds for challenge.—

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in Sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if-

(a) Circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) He does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

(Amended)

12. Grounds for challenge.—

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,--

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.- The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2- The disclosure shall be made by such person in the form specified in the Sixth Schedule.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in Sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

(5) Nothwithstanding 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."

There is a stark distinction between the unamended provisions of section 12 and the corresponding amended provision incorporating expanded ingredients both on the independence and impartiality of the Arbitrator. In any form of adjudication be it formal or chosen by the parties by way of an agreement impartiality and independence is the hallmark intricately related against the element of bias and achieving the fundamental concept of fairness and equal treatment. By introduction of sub-

section 5 of Section 12 of the Act with the non-obstante clause, the impartiality and independence is still retained but ineligibility to act as an Arbitrator has been added if the Arbitrator comes within any of the eventualities and the parameters enshrined in schedule 7 appended thereto. It aimed to strike at the root of the competence of the Arbitrator to act in such capacity conjointly with the element of independence and impartiality. It does not appear to be a static provision which can neither be extended nor abridged because of the proviso appended thereto. What can be discerned therefrom that it imbibe within itself three components namely, the waiver of the applicability of the said sub-section by the parties; waiver can take place subsequent to the dispute having arisen between them and lastly such waiver must be by way of an expressed way of a writing. The three basic elements can been seen from the Seventh Schedule impinging upon the ineligibility of an arbitrator to be appointed or to proceed with the Arbitration if he is related with the parties or counsel or the relationship of the Arbitrator is in relation to the dispute or the Arbitrator has a direct or indirected interest in the subject matter

of dispute. The focal point concerning the ineligibility is founded upon the business relation in relation to a dispute and involvement of a direct or indirect relation therewith.

The Arbitrator is arraigned as a 7th defendant in the suit and alleged to have taken substantial amount of money to facilitate the transaction between the parties or to act as a catalyst, for smooth observance of its terms and conditions of the contract entered into between the other defendants and the plaintiff. As indicated above the suit is filed by the plaintiff/respondent for declaration that the 7th defendant is ineligible to act as an Arbitrator and despite such challenge having thrown is proceeding therewith and an application for temporary injunction was taken out arresting the further carriage of the Arbitral proceedings.

The facts which emanate from the plaint evince that dispute relates to an agreement for procurement of the land by virtue of an agreement for sale. The property orignially belonged to Chandranath Sanpui who made and published his last will dated

04.09.1912 appointing three sons namely Sridhar Chandra Sanpui, Bijaykrishna Sanpui and Atulkrishna Sanpui as joint executors. Just on the advent of two months the said original owner namely Chandranath Sapui died on 04.11.1912. the application for grant of probate was filed which was granted on 17.07.1913. It is further contended that the said original owner had a vast property and a vesting proceeding was initiated against him and ultimately by an agreement for sale dated 27.07.1982 the plaintiff no.3 nominated several purchasers for purchase of various parts of land. In pursuance thereof several deeds of sale were executed covering 63.43 acres of land which was ultimately transferred to the plaintiffs. Subsequently, an agreement was entered into on 23/03/2020 for alleged sale of 50 acres of land. It is alleged that the 7th defendant representing himself to be an influential person having contacts with the officials of the different government departments assured to resolve all the pending litigations of the plaintiff so that the property can be sold unencumbered. In course of such transaction he received a sum aggregating to Rs. 22,50,000/- .

However, when questions are raised over the lethargic and dormant attitude in removing the hurdles, the demand was raised for an account which was refused by him. Subsequently, a notice was received for specific performance of an agreement for sale dated 23.03.2020 containing the alleged arbitration clause and a supplemental agreement dated 21/03/2012. The plaintiff could certainly come to know that the defendant no. 7 was shown to have been appointed as the sole Arbitrator under the aforesaid agreement.Not only the plea of fraud is also alleged in the plaint but the ineligibility of the 7th defendant to act as the sole Arbitrator is raised in the said suit. To put the facts correctly it appears in course of a hearing that the plaintiffs appeared in the Arbitral proceedings and caused a letter raising the plea of ineligibility of the 7th defendant to act as an Arbitrator and to proceed with the Arbitral proceedings. Immediately, thereafter the present suit is filed and an order of injunction is passed to operate till the disposal of the application for temporary injunction.

Mr. Abhrajit Mitra, the learned Senior Advocate appearing for the appellant submits that the suit before the Civil Court is incompetent in view of the existence of an Arbitration Clause and, therefore, the Civil court cannot pass anti-arbitration injunction. It is assiduoulsy submitted that Section 16 of the said Act makes the position more clear that even an allegation of such nature can be raised before the Arbitral Tribunal who is otherwise empowered to rule its own jurisdiction and, therefore, the remedy lies by approaching the Arbitral Tribunal and not by a civil suit. It is further submitted that the true and meaningful reading should be given to the provision contained in Section 5 of the said Act which prohibits intervention by a judicial authority and relies upon a judgment of the Apex Court in case of ***Empire Jute Company Limited and others –Vs- Jute Corportation of India Limited and another*** reported in ***2007 (14) SCC 680***. Mr. Mitra, would further submit that apart from the powers reserved on the Arbitral Tribunal to rule its own jurisdiction, he has further been empowered to adjudicate any objection as to the existence of the validity of the arbitration

agreement and placced reliance upon a judgment of the Supreme court in case of ***K Vaerner Cementation India Limited-Vs- Bajranglal Agarwal and another*** reported in ***2012 (5) SCC 214***. Mr. Mitra would submit that the 1996 Act is aimed to respect this special fora chosen by the party in executing a written agreement intending to wriggle out of the normal corollary of the procedural law applicable to the ordinary civil courts and, therefore, the jurisdiction of the Civil Court has been expressly taken away and in view of Section 9 of the code of Civil procedure such suit is not maintainable.

On the other hand, the learned Advocate appearing for the respondent submits that the jurisdiction of the Civil Court has not been expressely taken away if the challenge is thrown on the ineligibility of the Arbitrator coming within the ambit of Section 12(5) of the said Act conjointly with the incidences incorported in the Seventh Schedule appended thereto. It is thus submitted that the impartiality and the independence of an Arbitrator is the foundation of any adjudicatory process yet by introduction of an amendment in the said legislature

the concept of ineligibility has also been enshrined therein and it is inconceivable that the civil suit is not maintainable.

Mr. Rohit Das, the learned Advocate appearing for the plaintiff/respondent submits that once the Arbitrator is statutorily disqualified to act in such capacity, he thus falls within the category of ineligibility and placed reliance upon a judgment of the Supreme Court is case of ***TRF Ltd.-Vs- Energo Engineering Projects Ltd.*** reported in ***2017 (8) SCC 377***. Mr. Das would further submit that the moment the alleged Arbitrator comes within the peripheral of the Seventh Schedule and becomes inelligibile to act as an Arbitrator, he thus becomes de jure, unable to perform his functions in such capacity and, therefore, the suit to decide on termination of the mandate is maintainable and placed reliance upon the judgment of the Supreme Court in case of ***HRD Corporation-Vs-GAIL (India) Limited*** reported in ***2018(12) SCC 471***. Mr. Das, strenuously submits that Section 12(5) of the Act containing non-obstante clause has its applicability to an agreement executed prior to such amendment having brought in the statute and the

moment the named Arbitrator becomes eligible having come under the Seventh Schedule , he is otherwise disqualified as held by the Supreme Court in case of ***Bharat Broadband Network Limited-Vs- United Telecoms Limited*** reported in ***2019 (5) SCC 755***. Mr. Das, submits that the aforesaid proposition of law laid down in the above noted cases is further reiterated in a subsequent decision of the Apex Court in case of ***Perkins Eastman Architects DPC and Ors.-Vs-HSCC (India) Ltd.*** reported in ***AIR 2020 SC 59***. Mr. Das, arduously submits that the challenge to a competence of the Arbitrator is not only based upon the ground of ineligibility but also the fraud which is of serious nature attracting both the civil and the criminal liabilities. He elaborated such submission in his usual eloquence that a distinction has to be drawn between a simple case of fraud attracting the civil liability and the complicated question of fraud attracting criminal liability and the nature of the fraud involving the serious fraud can be adjudicated by the Court and placed reliance upon a recent judgment of the Supreme Court in case of ***N.N. Global Mercantile Pvt. Ltd. –Vs- Indo Unique Flame Ltd. And others***

reported in ***2021 SCC Online SC 13***. Though the point has not been taken by the adversary but Mr. Das intended to shield the further point pertaining to the stamp duty; according to Mr. Das even if the agreement is insufficiently stamped it does not invite the invocation thereof at the interlocutory stage and placed reliance upon a judgment of a Three Judge's Bench in case of ***N.N. Global Mercantile Pvt. Ltd. (supra)*** As per Mr. Das, the earlier judgment of the Supreme Court in case of ***SMS Tea*** reported in ***2011 (14)SCC 66*** and ***Garware*** Civl Appeal no. 3631 of 2019 has been held to be not a good law and even though the matter has been referred to a larger bench yet it does not take away the binding efficacies of the ratio rendered in ***N.N. Global (supra).*** Mr. Das , thus submits that there is no illegality and/or infirmity in the impugned order as well as the maintainability of the civil suit before the Civil Court and the instant appeal deserves to be dismissed.

As indicated above, we initially thought to confine our consideration to the nature of the impugned order passed by the Trial Court but because of the points having taken which assumes significance and attracts

interesting question of law, we invited both the parties to address us on the same.

We are quite conscious of the some what settled proposition of law that the application for temporary injunction are guided by three factors namely; existence of prima facie case, balance of convenience and inconvenience and irreparable loss and injury. There is a fourth inbuilt ingredient propounded in a various judicial pronouncements i.e., the competence of the court or in other word the jurisdiction of the court in relation to the subject dispute. The court lacking inherent jurisdiction passes an order in a non-maintainable proceeding is per se illegal and nullity and, therefore, the court can also go into such fundamental issue striking at the root of the jurisdiction.

The entire episode is grappling with the jurisdictional issue to be determined before embarking the further journey on the peripheral of the ordinary parameters of the temporary injunction. Section 12 (5) of the said Act is a newly introduced provision with necessary changes in the newly inserted section

pertaining to the grounds of challenge. The independence and impartiality of an arbitrator is the subtratum of adjudicatory process but where the ineligibility is projected as a tool to challenge the jurisdiction of the Arbitrator or upon the Arbitrator to proceed with the Arbitration proceedings provided he comes within the circumference of the Seventh Schedule.

In ***TRF Limited (supra)*** the question which fell for consideration was whether the nominated Arbitrator who is ineligible under Section 12(5) of the Act still loathed with the power to nominate an Arbitrator in exercise of the powers conferred under the Arbitration clause. The argument was advanced therein that even if the managing director of the contracting party may be disqualified to act as an Arbitrator but he is not deprived of the power to nominate an Arbitrator who has no relationship with the parties. The Apex Court held that if the disqualified director is allowed to nominate another Arbitrator it would invite a concept of carrying with the Arbitral proceeding himself in these words:-

" 56. The aforesaid authorities have been commended to us to establish the proposition that if the nomination of an arbitrator by an ineligible arbitrator is allowed, it would tantamount to carrying on the proceeding of arbitration by himself. According to learned Counsel for the Appellant, ineligibility strikes at the root of his power to arbitrate or get it arbitrated upon by a nominee.

57. In such a context, the fulcrum of the controversy would be, can an ineligible arbitrator, like the Managing Director, nominate an arbitrator, who may be otherwise eligible and a respectable person. As stated earlier, we are neither concerned with the objectivity not the individual respectability. We are only concerned with the authority or the power of the Managing Director. By our analysis, we are obligated to arrive at the conclusion that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per prescription contained in Section 12(5) of the Act. It is

inconceivable in law that person who is statutorily ineligible can nominate a person. Needless to say, once the infrastructure collapses, the superstructure is bound to collapse. One cannot have a building without the plinth. Or 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. Therefore, the view expressed by the High Court is not sustainable and we say so."

In view of the enunciation of law as indicate above, once the sole Arbitrator becomes inelligibile having fallen in the category of the Seventh Schedule of Section 12(5) of the Act, he cannot nominate another Arbitrator. However, the position would have been different when both the parties have nominated his Arbitrator and the third Arbitrator is required to be nominated by the aforesaid Arbitrators. The aforesaid concept is based on a legal maxim " Qui Facit per Alium facit per Sec" meaing what one does through another is done by himself. The disqualified Arbitrator cannot invoke its power to appoint any Arbitrator as

the disqualification strikes at the root of the jurisdiction which cannot be cured by nominating the other.

The aforesaid judgment received signifance on the ratio of disqualification seen in the Seventh Schedule of Section 12(5) which cannot be abriged nor expended. Any other interpretation would offend the very purpose of introduction of the aforesaid provision by way of an amendment. Though the impartiality and independence of an Arbitrator is a hallmark of the Arbitration proceeding, yet the eligibility also strikes at the root and if the Arbitrator is found to be disqualified it would not be safe and proper to disregard the mandate of the legislature in taking any other interpretation. The judgment in TRF again came up for consideration in case of ***HRD corportation (supra)*** wherein it is held that by virtue of such amendment the dichotomy is manifested between a person who is ineligible to be appointed as Arbitrator and a person against whom there is a justifiable doubts on the existence of his impartiality and/or independence. It is held that ineligibility strikes at the root of the jurisdiction or in other words the appointment, such

Arbitrator becomes de jure within the meaning of Section 14(1)(a) of the Act and , therefore, unable to perform his functions in such capacity. The enlightening observations in this regard are quoted as under:-

13. After the 2016 Amendment Act, a dichotomy is made by the Act between persons who become "ineligible" to be appointed as arbitrators, and persons about whom justifiable doubts exist as to their independence or impartiality. Since ineligibility goes to the root of the appointment, Section 12(5) read with the Seventh Schedule makes it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes "ineligible" to act as arbitrator. Once he becomes ineligible, it is clear that, Under Section 14 (1) (a), he then becomes de jure unable to perform his functions inasmuch as, in law, he is regarded as "ineligible". In order to determine whether an arbitrator is de jure unable to perform his functions, it is not necessary to go to the Arbitral Tribunal Under Section 13. Since such a person

would lack inherent jurisdiction to proceed any further, an application may be filed Under Section 14(2) to the Court to decide on the termination of his/her mandate on this ground. As opposed to this, in a challenge where grounds stated in the Fifth Schedule are disclosed, which give rise to justifiable doubts as to the arbitrator's independence or impartiality, such doubts as to independence or impartiality have to be determined as a matter of fact in the facts of the particular challenge by the Arbitral Tribunal Under Section 13. If a challenge is not successful, and the Arbitral Tribunal decides that there are no justifiable doubts as to the independence or impartiality of the arbitrator/arbitrators, the Tribunal must then continue the arbitral proceedings Under Section 13(4) and make an award. It is only after such award is made, that the party challenging the arbitrator's appointment on grounds contained in the Fifth Schedule may make an application for setting aside the arbitral award in accordance with Section 34 on the aforesaid grounds. It is clear,

therefore, that any challenge contained in the Fifth Schedule against the appointment of Justice Doabia and Justice Lahoti cannot be gone into at this stage, but will be gone into only after the Arbitral Tribunal has given an award. Therefore, we express no opinion on itmes contained in the Fifth Schedule under which the Appellant may challenge the appointment of either arbitrator. They will be free to do so only after an award is rendered by the Tribunal."

An argument was advanced therein that the ground of challenge incorporated in Section 12 of the Act has been narrowed down which was repelled in these words :-

"20. However, to accede to Shri Divan's submission that because the grounds for challenge have been narrowed as aforesaid, we must construe the items in the Fifth and Seventh Schedules in the most expansive manner, so that the remotest likelihood of bias gets removed, is not an accepatable way of interpreting the Schedules. As has been pointed out by us

hereinabove, the items contained in the Schedules owe their origin to the IBA guidelines, which are to be construed in the light of the general principles contained therein-that every arbitrator shall be impartial and independent of the parties at the time of accepting his/her appointment. Doubts as to the above are only justifiable if a reasonable third person having knowledge of the relevant facts and circumstances would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case in reaching his or her decision. This test requires taking a broad common-sensical approach to the items stated in the Fifth and Seventh Schedules. This approach would, therefore, require a fair construction of the words used therein, neither tending to enlarge or restrict them unduly. It is with these prefatory remarks that we proceed to deal with the arguments of boths sides in construing the language of the Seventh Schedule."

In ***Bharat Broadband Network Limited (supra)*** the horizon of Section 12(5) was further extended to an agreement entered prior to the amendment having brought in the said Act. It would be apposite to quote the relevant observations which run thus:

" 15. Section 12(5), on the other hand, is a new provision which relates to the de jure inability of an arbitrator to act as such. Under this provision, any prior agreement to the contrary is wiped out by the non-obstante Clause in Section 12(5) the moment any person whose relationship with the parties or the counsel or the subject matter of the dispute falls under the Seventh Schedule. The Sub-section then declares that such person shall be "ineligible" to be appointed as arbitrator. The only way in which this ineligibility can be removed is by the proviso, which again is a special provision which states that parties may, subsequent to disputes having arisen between them, waive the applicability of Section 12(5) by an express agreement in writing. What is clear, therefore, is that where, under any agreement between the parties, a person falls

within any of the categories set out in the Seventh Schedule, he is , as a matte of law, ineligible to be appointed as an arbitrator. The only way in which this ineligibility can be removed, again, in law, is that parties may after disputes have arisen between them, waive the applicability of this Sub-section by an "express agreement in writing". Obviously, the "expres agreement in writing" has reference to a person who is interdicted by the Seventh Schedule, but who is stated by parties (after the disputes have arisen between them) to be a person in whom they have faith notwithstanding the fact that such person is interdicted by the Seventh Schedule."

In case of ***Perkins*** (supra) the Apex Court has furthered the law enunciated in ***TRF*** (supra) and ***HRD*** (supra) and held that the moment the named Arbitrator falls within any of the categories enshrined in Seventh Schedule to Section 12(5) he becomes ineligible to act or function in such capacity nor such disqualified Arbitrator retains power to nominate another Arbitrator. What can be logically deduced from the aforesaid decisions that the disqualification and/or

ineligibility of a named Arbitrator goes to the root of the jurisdiction and such Arbitrator can neither act or function in such capacity nor can assume any powers to nominate another Arbitrator who may not be related to the parties or may not come within the clutches of Seventh Schedule to Section 12(5) of the Act. The waiver of the said provision can been seen in the proviso appended thereto meaning thereby by an express agreement in writing, though the waiver is also reserved in the aforesaid provision in juxtaposition of Section 4 of the Act, yet it does not abriged or whittle down or impinged its applicability except under the expressed provisions mentioned therein. There is no doubt that the moment the named Arbitrator is disqualified or ineligible to act or function in such capacity he becomes de jure and the challenge can be thrown under Section 14 (1)(a) of the Act before the Court.

This takes us to another point whether the word "Court" would mean a Civil Court having jurisdiction to the subject dispute had it been a subject matter of suit in absence of any Arbitration agreement or the "Court" defined under Section 2 (1)(e) of the said Act.

The emphasis appears to have been laid upon the observation of the Apex Court in ***HRD Corportation*** where it is expressed that once a person would lack inherent jurisdiction to proceed any further the application may be filed under Setion 14(2) of the Act to decided the termination of his mandate on this ground. According to Mr. Das, such expression manifest the jurisdiction of the ordinary Civil Court having jurisdiction over the subject dispute and should not be confined to the Court defined in the said Act. There appears to be a fallacy in the aforesaid submission. It is some what settled law that if a particular word has been defined in the statute, whereever such word appear in the said statute the same meaning should be assigned and ascribed to it and no lend to an external support or a parimateria provision should be resorted to. It is some what fundamental rule of interpretation that if the word has been defined in the statue such meaning should be given whereever such word appears in the same statute. It would not be proper to ascribe any other meaning which the legislature consciously omitted therein.

To take a lead from the aforesaid observation in case of ***HRD*** (supra) the moment the named Arbitrator becomes ineligible or disqualified under Section 12(5) he becomes de jure and the challenge can be made to a Court. The Court has been defined in Section 2 1(e) of the said Act to mean the principal Civil Court of original jurisdiction in a district, and includes High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of Arbitration if the same had been the subject matter of a suit, but does not include any Civil Court of a grade inferior to such principal civil court, or any court of small causes. Apart from the same Section 5, 8 and 41 contains the expression "judicial authority" and the embargo can be seen in Section 5 thereof containing a non-obstante clause thereby restricting the jurisdiction in relation to an Arbitration. The expression (judicial authority) denotes a court or a judicial authority other than the court defined in section 2 (1)(e) of the Act, though in normal parlance both "court" and "judicial authorities" are synonyms yet cannot be put on a same pedestal, the moment the "court" is defined in the said Act.

Naturally, the said provision excludes the jurisdiction of the judicial authroity who is the court in ordinary sense to intervene in a cases governed under the said Act and, therefore, a restrictive meaning should be assigned to the Court whereever it appears in the said Act as per the definition given in Section 2 (1)(e) of the Act.

Section 9 of the Code of Civil Procedure defining the jurisdiction of the Court expressely indicates that it will not assume or exercise jurisdiction if there is an expressed or implied bar.

The present suit has been filed in the Fourth Court of Civil Judge (Senior Division), Alipore which is definitely inferior in grade to a Court of principal Civil Court of original jurisdiction in a district and,therefore, is not competent to entertain such suit. Even the provision of Section 14 providing the remedy to the Court cannot be stretched to an ordinary Civil Court inferior in grade to a Court of a District Judge in a district and as a logical collolary, the challenge on the ground of disqualification or ineligibility under Section 12(5) cannot be maintained in such Court. The

remedy can only be resorted to a court defined under Section 2 (1)(e) of the Act even for such purposes.

In view of the above, we do not think that the Court which passed the impugned order is the "Court" within the meaning of the "Court" under Section 2 (1)(e) of the Act and, therefore, the order is per se illegal and cannot be sustained.

The order impugned is thus set aside on the observations made herein above.

The appeal succeeds.

No order as to costs.

Urgent certified website copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree,

(Kausik Chanda, J.) ***(Harish Tandon, J.)***