

**HIGH COURT OF TRIPURA
AGARTALA**

Arb.P. No.02/2024

Ram Kripal Singh Construction Private Limited, 702, 7th Floor, Panchwati Plaza, Kutchery Road, P.O.-G.P.O., P.S.-Kutchery, Distt.-Ranchi-834001. Represented by Shri Alok Kumar, Site In-Charge, International Cricket Stadium, Narsingarh, Agartala.

..... Petitioner(s).

V E R S U S

1. Tripura Cricket Association through its Hony. Secretary-cum-Employer, Tripura Cricket Stadium, Agartala, West Tripura-799001.
2. President, Tripura Cricket Association, Agartala, West Tripura-799001.
3. Engineer-in-charge-cum-Executive Engineer, Tripura Cricket Association, Agartala, West Tripura-799001.

.....Respondent(s).

For Petitioner(s) : Mr. Paramartha Datta, Advocate,
Mr. Tanmay Debbarma, Advocate,
Mr. P. Tripura, Advocate.

For Respondent(s) : Mr. Kohinoor N. Bhattacharyya, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

14/08/2024

Heard Mr. Tanmay Debbarma, learned counsel appearing for the petitioner and Mr. Kohinoor N Bhattacharyya, learned counsel appearing for the respondents-Tripura Cricket Association (TCA, for short).

2. Petitioner approached this Court for appointment of an independent Arbitrator in connection with agreement dated 10.04.2017 (Annexure-1) entered into between the parties under Section 11(6) read with Section 12 of the Arbitration and Conciliation Act, 1996 as amended.

3. The case of the parties is captured in the order dated 12.07.2024 which is extracted hereunder:

"Heard Mr. Tanmay Debbarma, learned counsel appearing for the petitioner and Mr. Kohinoor N Bhattacharyya, learned counsel appearing for the respondents-Tripura Cricket Association (TCA, for short).

2. Petitioner has invoked Clause-22.2 for appointment of an independent arbitrator in respect of the dispute arising out of the agreement dated 10.04.2017 (Annexure-1) entered into with the respondent No.1 for construction of International Cricket Stadium at Narsingarh, Agartala, Tripura bearing agreement No.01/TCA/AGT/TEC/17-18 for an agreed value of Rs.185,13,18,958/- to be completed within a stipulated period of 24 months from the date of commencement of the said work, i.e. 22.08.2017.

3. Learned counsel for the petitioner has submitted that petitioner is a construction company engaged in Government Civil Contracts and other road, building construction projects, highway and bridge projects etc. The first Running Account (RA) bill along with GST was submitted by the petitioner vide letter dated 15.03.2018 and after payment of 1st and 2nd RA bills of additional work, the respondent authority stopped the payment of RA bills without any valid reason. After long persuasion, the respondent paid the said pending RA bills up to 8th RA bill, but the 9th and 10th RA bills are still pending amounting to Rs.16,89,24,475/- though the petitioner has completed the work within the time limit. The construction work is still pending due to complete inaction on the part of the respondents such as pendency of bills, availability of work, funds, design and drawing etc. By letter dated 05.12.2018 issued by the respondent-Association, the work was stopped. After the Covid-19 pandemic, the progress of work got interrupted and came to a standstill till May, 2021. Though the petitioner has approached the Executive Engineer-cum-Engineer-in-Charge seeking payment of pending bills and in connection with long pending disputes comprising administrative, financial and technical in nature vide letter dated 05.11.2021 and also invoked Clause 22.1 of the Conditions of Contract, but the Executive Engineer-cum-Engineer-in-Charge failed to give any response within the stipulated period of 20 days. Thereafter, the petitioner was compelled to invoke Clause 22.2 of the Conditions of Contract which provides for an arbitration clause by requesting the respondent-President, TCA, Agartala, West Tripura for appointment of an arbitrator for adjudicating the matters in dispute as reflected in their financial claims at para-2.0. This letter also remained totally unresponded. Thereafter, petitioner sent a reminder letter to the General Secretary of the Association with a request to release the outstanding payments. However, since the request of the petitioner made in terms of Clause-22.2 of the agreement dated 10.04.2017 remained unresponded, petitioner has invoked the jurisdiction of this Court for appointment of an independent arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996.

4. Respondents have appeared on notice. A counter affidavit has been filed by respondents No.1 to 3 *inter alia*, making the following statements:

In reply to paragraphs-1 to 6 of the petition, it has been stated that separate work order was issued for all the additional works awarded to the petitioner whose value was not included in the Agreement for construction of the International Cricket Stadium at Narsingarh. However, payments had already been done to the petitioner for undertaking such additional works separately.

With regard to statements made at paragraphs-7 to 9 of the petition, it is stated that first advance payment against bills submitted by the petitioner for an amount of Rs.10,00,00,000/- was made on 15.10.2018. The Association took up the matter of full payment of the 1st and 2nd R.A. bills. The agency had submitted its 3rd bill on 03.12.2020 for an amount of Rs.3,26,24,392/- at that stage. Certain observations were made while disposing the bills.

Accordingly, respondents had started recording measurements by TCA officials in MB. Till action in that respect matured, payments of running bills were allowed on the basis of submission of the petitioner-company. The action matured at the stage of 5th RA bill and thereafter the respondents started bill verification in terms of the agreement and those recorded in MB and undertook adjustment of excess payments. Statement of payment of running bills has been furnished under paragraph-4 in a tabular chart against 3rd RA, 4th RA, 5th RA, 6th RA, 7th RA and 8th RA on different dates between 20.02.2021 till 03.03.2023.

Respondents further state that during disposal of 9th RA bill, it was found that there was an advance payment of Rs.12.99 crores against extra item of LED light high mast proposed by the petitioner-company vide letter dated 17.02.2023 and approval communicated by the Secretary, TCA vide letter dated 10.03.2023 with a condition of 50% advance as against agreement item value of Rs.25.986 crores. General Body had taken a decision to refer the matter to Special Investigation Team constituted by the High Court of Tripura to examine its correctness, authority and to exercise due scrutiny. Therefore, in the review meeting dated 12.03.2024 it was decided to keep the execution of this item stayed until further decision. It was also decided to continue the construction work of stadium as per agreement items. Accordingly, 75% of net payable amount against 9th RA bill has been paid for an amount of Rs.2,33,68,952/- and only Rs.77,89,651/- is due as on date. Regarding 10th RA bill, it is stated that the bill statement submitted to TCA on 03.12.2023 has not been found in the office of the respondents. Learned counsel for the petitioner submits that this bill is dated 02.12.2023 instead of 03.12.2023.

It is further stated that this bill statement has been received for the first time as an enclosure to the petition of arbitration submitted before this Court. In the review meeting dated 12.03.2024 the matter of payment against 10th RA bill was also discussed. Petitioner's authorized representative has not come to the office of the respondents for its verification. The bill has been examined and recorded in the MB by the respondent's officials on the basis of actual work done and entitlement as per agreement. All other miscellaneous claims including some portion which were specifically rejected earlier would remain as not entitled and rejected.

Respondents further state that after issuance of the letter dated 08.04.2024, the authorized representative of the petitioner had attended office of the respondents and put their signatures in concurrence to the measurement accorded by respondent's officials and bill prepared thereon and the payment so released.

Learned counsel for the respondents submits that the payment against RA bills has been delayed for which respondents are not responsible at all. Respondents have given relaxation to the petitioner by making payments against RA bills beyond the condition of the contract, such as Clause-43: Schedule of payment-The value of RA bills shall not be less than 10% of the amount of agreement value. However, the decision of the Association in this regard will be final and binding for smooth progress of the work.

In reply to paragraph-10 of the arbitration petition, it is stated that there is no pendency of bills. Preparation of RA bills and disbursement of payment from TCA has already been done as per progress of the work. There is no shortage of working funds with the respondents. The respondent is financially sound and in a position to complete the work as per agreement. There is no shortage of design and drawing at site to continue the work as per agreement. It is also mentioned that due to poor labour strength the work is progressing sluggishly.

In a tabular chart under paragraph-6 of the Counter Affidavit, the respondents have given their response to the different claims raised by the petitioner and as considered by the respondents on 05.11.2020. It is also stated that even after submission of the letter dated 05.11.2021, the petitioner preferred to continue the work under constant monitoring from the respondent side and regular running payments inclusive secured advance were given at different intervals.

Learned counsel for the respondents has also referred to Clause-22.1 and Clause-22.2. Clause-22.1 relates to request before the Engineer-in-Charge for adjudication which should be responded within 20 days time of the date of written notice. It is contended that petitioner submitted his letter on 05.11.2021 way back in the year 2021 under Clause-22.1 but in the absence of any decision by the Engineer-in-Charge in writing within the period of 20 days, the petitioner had submitted a letter on 06.12.2021 invoking Clause-22.2 of the agreement beyond the 15 days appeal period as per Clause-22.2. The respondents have sent a reply on 12.01.2022 responding claim-wise to the petitioner. Petitioner had again after two years made a request on 02.12.2023 to the General Secretary wherein he had only put forward his claim before the respondents and nowhere referred to his request for appointment of arbitrator which is contrary to the agreement. Therefore, the present reference by the petitioner for seeking arbitration by linking the letter dated 05/06.11.2021 is not maintainable at the present stage. If the petitioner has any legitimate point of dispute, he

can complete the work or determine the contract and make fresh application for the arbitration under Clause-22.1. That will provide equal opportunity for presenting claims and counter claims on issues of disputes, if any, by both the parties.

Respondents have under paragraph-9 of the counter affidavit given their comments on the total number of 11 claims submitted by the petitioner which are extracted hereunder:

Sl. No.	Description	Claim Amount	Comments of the Respondents
1.	Balance payment of 9 th RA	Rs.03,48,72,333.00	As on date only Rs.77,89,651.00 is balance
2.	Payment against 10 th RA	Rs.13,40,52,142.00	Bill submitted by RKSCPL has been verified in terms of actual measurement and entitlement in terms of Agreement. Correct value of bill is Rs.6.68 crores. After adjustment of recoveries payable amount is Rs.3.29 crores. 80% payment already done. As on date only Rs.65,90,405.00 is due.
3.	Payment against Secured Advance	Rs.08,56,80,112.00	This claim is on extra item of work on LED light installation in substitution of Agreement item for Metal Halide light, of course, for the same level of illumination/ brightness as essential for cricket matches. The validity of this extra item is under question on correctness in terms of the agreement. The matter would be reviewed towards correctness in terms of the agreement and referred to Special Investigation Team constituted by the High Court of Tripura. Pending Investigation by SIT and review toward correctness the execution of this extra item has been kept stayed. An advance for an amount of Rs.12.99 crores has been paid against the extra item, as put under question as said above, the advance payment is much higher than this claim of secured advance by RKSCPL. So, there are 3 issues- i) Approval of the item itself is not tenable in terms of the Agreement. ii) The advance payment already made is recoverable from RKSCPL. iii) Work has to be executed as per agreement item specification. LED light may be taken back by RKSCPL.
4.	Payment against	Rs.02,16,23,702.00	Rust removal is already included in

	rust removal		the compensation allowed for idle time for suspension of work. The total agreed compensation value has already been paid, though RKSCPL yet to give final statement of actual work loss.
5.	Payment against SD	Rs.04,22,35,245.00	As per decision taken in the meeting dated 05.11.2020, TCA reviewed the matter and found that, the circular of GOI is not applicable for TCA. Hence, TCA denied the request.
6.	Payment against wrong calculation of account section of TCA	Rs.01,18,80,990.00	It is under examination in accounts section of TCA.
7.	Payment against GST	Rs.41,16,59,835.00	As per provision of the Agreement all taxes and levies are included in the rate quoted by RKSCPL. Hence, this item also not eligible for payment. It is mis claim.
8.	Payment against Escalation as per 10CC & 10CA	Rs.24,78,91,297.00	Compensation due to price variation for 15 months of work suspension period has already been allowed. The agreement is for fixed and firm price. Therefore, price variation is not eligible in terms of the agreement. The agreement has no provision for 10CA & 10CC as used by RKSCPL in its claim.
9.	Payment against Idle charges	Rs.21,29,81,316.00	An amount of Rs.5.50 crores has been paid to RKSCPL for idle of resources for held up of work for 15 months. After that there is no idling of resources, only there is delay of work for reasons attributable to RKSCPL.
10.	Payment against Opportunity losses	Rs.51,57,26,877.00	TCA has not withdrawn from the contract. RKSCPL has already executed work for an amount of Rs.114.00 crores out of total tendered amount of Rs.185.00 crores and on work for the rest of work slowly. So, there is no question of opportunity loss on the part of RKSCPL. Rather TCA has suffered opportunity loss.
11.	Payment against other claims	Rs.12,45,01,955.00	This is a fictitious claim without any foundation.

At paragraph-10 of the counter affidavit, they have also given a brief counter claim against the petitioner which are as under:

- (i) Penalty for delayed performance under clause no.46 (GCC)-Rs.18,51,31,896.00
- (ii) Return of compensation paid against agreement dated 05.11.2020 as performance schedule has not been maintained- Rs.13,00,00,000.00
- (iii) Opportunity loss by losing scope of 2(two) international

	matches and 2 IPL matches-	Rs.70,00,00,000.00
(iv)	Due interest on mobilization advance-	Rs. 1,14,51,900.00
(v)	Payment of consultant due to holding of work-	Rs. 1,50,00,000.00
(vi)	Loss of income tax relief for such delayed payment-	Rs.11,00,00,000.00 (approx.)
(vii)	Loss due to idle investment loss of interest-	Rs.27,65,00,000.00 (approx.)
(viii)	Loss due to underutilization of TCA Staff, vehicle & monitoring expenses-	<u>Rs. 5,00,00,000.00</u>

Total=Rs.147,80,83,796.00

Based on these averments, learned counsel for the respondents submits that the instant arbitration petition has been preferred after two years of the invocation of Clause-22.2 by the petitioner on 06.12.2021 before the President, TCA. As such, the claim is not alive. This Court in such circumstances should not exercise its jurisdiction under Section 11(6) of the Act to appoint an arbitrator as there is no explanation for invoking the jurisdiction of this Court after about two years of delay. Learned counsel for the respondents further submits that certain claims have been added in the request letter dated 06.12.2021 which were not initially claimed. As such, those claims are beyond the purview of reference to the learned arbitrator. Learned counsel for the respondents further submits that the work has not yet been fully executed. Payments have been made in favour of the petitioner from time to time. The respondents have also taken steps to address the grievances and claims raised by the petitioner which are genuine over a period of time. As such, the cause of action is not ripe for reference of the dispute to an independent arbitrator. After about two years of issuance of a letter of request made under Clause-22.2 to the President, TCA, petitioner has made a representation to the General Secretary, TCA instead of the appropriate authority. As such, petitioner is himself not clear as to the arbitrability of the disputes being raised.

5. Learned counsel for the petitioner has, in reply, straightway relied upon the decision rendered by the Apex Court on the question of delay in approaching the Court rendered in the case of *M/S Arif Azim Co. Ltd. Vrs. M/S Aptech Ltd.* [*Arbitration Petition No.29 of 2023 decided on 01.03.2024*]. He has referred to paragraphs-52 and 53 of the judgment wherein the Apex Court has dealt with the issue as to when does the right to apply under Section 11(6) accrue. It has been held that the limitation period for filing an application seeking appointment of arbitrator commences only after a valid notice invoking arbitration has been issued by one of the parties to the other party and there has been either a failure or refusal on the part of the other party to make an appointment as per the appointment procedure agreed upon between the parties. It has been further held that since no specific period of limitation has been prescribed for making a request under Section 11(6) to the Court to take the necessary measure for appointing an arbitrator, therefore, Article 137 of the Limitation Act, 1963 which provides the limitation period of three years for filing any other application for which no period of limitation is provided elsewhere being a residuary article can be applied. The present arbitration petition was filed on 25.01.2024 which was well within the time period of 3 years provided by Article 137 of the Limitation Act, 1963 from the date of the first notice invoking Clause-22.2 on 06.12.2021 to the respondent-President, TCA. He submits that the present case is fully covered by the ratio rendered in the case of *M/S Arif Azim Co. Ltd.* (supra) by the Apex Court. It is further submitted that the averments in the counter affidavit filed by the respondents only give an indication that the dispute arising out of the agreement dated 10.04.2017 exists. Since the agreement under Clause-22.2 provides for an arbitration clause, which the petitioner has invoked vide letter dated 06.12.2021, the present petition is wholly maintainable. It is further submitted that this Court in an application under Section 11(6) of the Act is not required to enter into the merits of the dispute between the parties as it lies within the sole jurisdiction of the arbitrator. Parties are at liberty to raise their claims and counter claims which have to be determined in accordance with law on the basis of the pleadings and evidence produced by the parties. Therefore, this Court may appoint an independent arbitrator to decide the dispute between the parties in terms of Clause-22.2 of the agreement.

6. I have considered the submissions of learned counsel for the parties and also taken note of the pleadings placed from the record in the foregoing part of the order.

The agreement dated 10.04.2017 was executed between the parties for construction of an International Cricket stadium at Narsingarh, Agartala, Tripura for agreed value of Rs.185,13,18,958/- to be completed within a stipulated period of 24 months from the date of commencement of the said work is accepted by both the parties.

7. Clause-22 relates to settlement of disputes and is extracted hereunder:

"22. **Settlement of disputes:**

22.1 If any dispute or difference of any kind whatsoever arises between the department and the Contractor in connection with, or arising out of the Contract at stage, whether during the progress of the works or after their completion and whether before or after the termination, abandonment or breach of the contract, it shall in the first place, be referred to and settled by the Engineer-in-charge who shall, within a period of twenty days after being requested by the Contractor to do so, give written notice of his decision to the Contractor. Upon receipt of the written notice of the decision of the Engineer-in-Charge the Contractor shall promptly proceed without delay to comply with such notice of decision.

22.2 If the Engineer-in-Charge fails to give notice of his decision in writing within a period of twenty days after being requested or if the Contractor is dissatisfied with the notice of the decision of the Engineer-in-Charge, the Contractor may within fifteen days after receiving the notice of decision appeal to the concerned President, Tripura Cricket Association who shall refer the matter or matters in dispute to the arbitrator & the arbitrator will be appointed by the President, Tripura Cricket Association.

22.3 It is also a term of contract that the party in invoking arbitration shall specify the dispute or disputes to be referred to arbitration under this clause together with the amount or amounts claimed in the respects of each such dispute."

8. The pleadings of the parties clearly indicate existence of a dispute on the claims raised by the petitioner and also certain counter claims raised by the respondents which have been extracted hereinabove. This Court in exercise of the powers conferred under Section 11(6) of the Act is not required to get into the merits of the disputes, claims or counter claims raised by the parties. If an arbitrable dispute exists and the procedure for invoking the arbitration clause has been followed, the Court exercising powers under Section 11(6), on being satisfied, is required to appoint an independent arbitrator to adjudicate the dispute between the parties.

9. A plea has been raised by the respondents that the petitioner had invoked the arbitration clause 22.2 vide letter dated 06.12.2021 before the President, TCA (Annexure-5) after the Engineer-in-charge had failed to take any decision on his request in terms of Clause-22.1 made through letter dated 05.11.2021 within the stipulated period of 20 days. Petitioner has invoked the jurisdiction of this Court under Section 11(6) of the Act of 1996 after two years by way of this application filed on 31.01.2024. Therefore, and also for the reason that petitioner had later on made a request for settlement of his claim before the General Secretary of the Association on 02.12.2023, the instant application is barred by time. In the case of *M/S Arif Azim Co. Ltd.* (supra), while dealing with the issue relating to the period for filing an application for appointment of arbitrator under Section 11(6) of the Act from the date of the request made under the arbitration clause under the agreement to the respondents for appointment of an arbitrator, it has been held that since no period of limitation has been provided therein, the period of limitation should be held as 3 years as per Article 137 of the Limitation Act, 1963 i.e. the residuary clause. Going by the ratio rendered by the Apex Court in the case of *M/S Arif Azim Co. Ltd.* (supra), the instant petition cannot be said to be barred by delay as it has been filed within 3 years period from the date of

invocation of Clause-22.2 vide letter dated 06.12.2021 addressed to the President, TCA for appointment of an arbitrator in respect of the claims raised by the petitioner. As such, this plea is fit to be rejected.

10. Respondents have also taken a plea that against the RA bills raised by the petitioner, payments have been made from time to time. The work has not yet been completed. As such, the instant petition is premature. A bare reference to Clause-22.1 relating to settlement of disputes extracted above leaves no room for doubt that dispute or difference of any kind whatsoever as arises between the department and the Contractor in connection with, or arising out of the contract at stage, whether during the progress of the work or after their completion and whether before or after the termination, abandonment or breach of the contract, shall be in the first place referred to and settled by the Engineer-in-charge who shall within a period of twenty days of such request being made, give written notice of his decision to the contractor. Clause-22.2 provides that if the Engineer-in-Charge fails to give notice of his decision in writing within a period of twenty days after being requested or if the contractor is dissatisfied with the notice of the decision of the Engineer-in-Charge, the contractor may within 15 days after receiving the notice of decision, appeal to the concerned President of the TCA who shall refer the matter in dispute to the arbitrator and the arbitrator will be appointed by the President of the TCA. As such, the contention raised by the respondents that certain payments have been made from time to time against the Running Account bills and that the work has not yet been completed and, therefore, the dispute being raised for arbitration is premature, is not in accordance with the agreed terms laid down under Clause-22.1 of the agreement between the parties. Dispute or difference, if any, arising out of the contract of any kind at a stage even during the progress of the work or after completion of the work or even before or after the termination, abandonment or breach of the contract can be raised by the contractor by following the procedure prescribed under Clause-22.1 followed by Clause-22.2 of the agreement. As such, the instant plea is also fit to be rejected. Since the arbitration clause under the agreement between the parties provides for adjudication of the dispute through arbitration and there exists an arbitrable dispute between the parties as borne out from the pleadings referred to hereinabove and that the petitioner has followed the procedure prescribed under Clause-22.1 followed by Clause-22.2 of the agreement and further that the instant arbitration petition has been filed within 3 years of the date of request made by the petitioner for appointment of an arbitrator in terms of Clause-22.2 vide his letter dated 06.12.2021, this Court is satisfied that all the ingredients for invocation of jurisdiction of this Court for appointment of an independent arbitrator for adjudication of the dispute between the parties is made out. [See *SBI General Insurance Co. Ltd. Vs. Krish Spinning*, reported in *2024 SCC OnLine SC 1754*].

11. As indicated above, Clause-22.2 relates to appointment of an arbitrator. Respondents in their counter affidavit have while referring to Clause-22.2 at page-108 also made a statement that minutes of the Pre-bid meeting held on 17.10.2016 has been made a part of the contract. It states that there shall be 3 arbitrators, out of which one each shall be appointed by both the parties and the two so appointed arbitrators shall appoint a third arbitrator/ principal arbitrator on mutual agreement. Copy of the agreement at Annexure-1 at page-11 refers to the nature of work, the agreement number and other clauses relating to the estimated cost, agreement amount, the stipulated time for completion as also the contents of the agreement which is as under:

"THIS AGREEMENT CONTAINS 3(THREE) PART.

Part-A Containing Volume-I-General bid document, Minutes of the Pre-bid Meeting, Amendment and queries, Technical bid submitted by the Agency, work programme submitted by the Agency.

Containing 954 Pages.

Part-B Containing Section-V-Technical Specification and Drawings.

Containing 398 Pages.

Part-C Volume-III-(Amended Price bid submitted by Agency), Amendment and queries, Letter No.RKSCPL/TCA/16-17/002 dated 28th

March, 2017 of Agency offering rebate, acceptance letter, Volume-III (Price-bid before Amendment).

Containing 645 Pages."

12. Since the entire minutes of the Pre-bid meeting which are contained in Volume-I of the agreement were not annexed to the arbitration application, the respondent-Association has produced the Part-A of the agreement which is Volume-I, i.e. General bid document, Minutes of the Pre-bid Meeting, Amendment and queries, Technical bid submitted by the Agency, work programme submitted by the Agency. Minutes of the Pre-bid meeting held on 17.10.2016 at TCA office complex with the representatives of the different firms are at pages-93 and 95 thereof. The relevant queries and the replies/clarification and the amendment thereof to be treated as part of the agreement are annexed in the subsequent pages of this Part-A. The minutes dated 21.10.2016 are also extracted hereunder:

"No.F.29/TCA/AGT/607

Dated:-Agartala, 21/10/2016.

Minutes of pre-bid meeting was held on 17/10/2016 at TCA office Complex in-connection with "Construction of International Cricket Stadium at Narshingarh, Agartala, Tripura".

At the outset the President, TCA, for and on behalf of the TCA, welcomed all the representatives of different firms for attending the pre-bid meeting and expressed gratitude for taking keen interest in implementing the project "Construction of International Cricket Stadium at Narshingarh, Agartala" and seeking Co-operation from all concerned.

Queries received/raised by different agencies were discussed in the meeting and it was informed that the reply to the queries will be uploaded in the Website of TCA and also be communicated to the agencies/ representative of agencies who have attended the pre-bid meeting.

One of the prime decision taken in the pre-bid meeting considering the Diwali holidays that dropping/receiving dates of Tender shall be from 09/11/2016 to 16/11/2016 instead of 24/10/2016 To 02/11/2016 (Between 11:00 Hrs. To 15:00 Hrs. on working days only). Places for receiving Bids is unchanged i.e. (1) office of the Tripura Cricket Association, Post Office Chowmuhani, Agartala, Tripura, PIN-799001. (2) Office of the Chief Resident Commissioner, Tripura Bhawan, Kautilaya Marg, Chanakyapuri, New Delhi-21. (3) Office of the Addl. Resident Commissioner, Tripura Bhawan, 1-Pretoria Street, Kolkata-700071. Also it has been decided that queries on the Bid Document shall be received upto 24/10/2016 and TCA shall furnish the clarification on 31/10/2016 (if possible) including amendment if any.

The period of sale of bidding documents has also been extended up-to 14/11/2016 up-to 16.00 hours and place of sale of Bidding document is Office of the Tripura Cricket Association, Post Office Chowmuhani, Agartala, Pin-799001, Tripura.

The date of opening of Technical Bid shall be on 21/11/2016 on 15:30 hours at the office of TCA.

Regarding Earnest money deposit it has been clarified that the Tenderer shall furnish requisite Earnest money deposit along with the Tender in the form of a Bank demand draft on any scheduled Bank/Nationalised Bank in favour of Hony. General Secretary, TCA (Earnest money other than bank demand draft shall not be accepted).

The Minutes of the pre-bid meeting and reply of queries/ clarification and the amendment will be part of the agreement.

The pre-bid meeting ended with thanks to all.

Sd/-(21/10/2016)
(Sourav Dasgupta)
Hony. General Secretary
Tripura Cricket Association
Agartala, Tripura."

13. The relevant query relating to Clause-22.2 is at page-119 of this Volume-I relating to the number of arbitrators to be appointed under Clause-22.2. The clarification of the respondent-TCA thereunder in the last column of the query No.85 clearly indicates that the arbitration shall be conducted as per the Arbitration and Conciliation Act, 1996 by appointing 3(three) arbitrators-one each by both the parties and third arbitrator/principal arbitrator shall be appointed by the two arbitrators on mutual agreement. The seat of arbitration shall be in Agartala. Regarding settlement of disputes, other conditions under Clause 22 page 46 shall prevail. The query and its clarification by TCA at query No.85 and its clarification by the TCA at page-119 of Part-A of the agreement is also extracted hereunder:

Sl. No.	Clause Reference	Page No.	Tender Clause	Existing Clause/Description/Provision as per Bid-Document	Queries/Request for Amendment	Clarification of TCA
85.	Condition of Contract CL-22.2	46	Arbitration	Sole arbitrator will be appointed by TCA.	The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation (Amendment) Act, 2015 (No.3 of 2016) or any statutory modifications or re-enactment thereof and the rules made thereunder. There shall be three Arbitrators, one each would be appointed by both the parties and third arbitrator would be appointed by other two whose decision will be final and binding on both the parties. Please confirm.	The arbitration shall be conducted as per the arbitration & conciliation act, 1996 by appointing 03 (three) arbitrator-one each by the both party and third arbitrator/principal arbitrator shall be appointed by the two arbitrator on mutual agreement. The seat of arbitration shall be in AGARTALA. Regarding settlement of disputes other conditions

						under clause 22 page 46 shall prevail.
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14. It, therefore, follows that the mechanism provided under arbitration clause 22.2 has to be read along with the pre-bid queries and clarification which form Part-A of the agreement contained in Volume-I. As such, this Court proposes to appoint two independent arbitrators who shall thereafter appoint the third arbitrator/principal arbitrator by their mutual agreement.
15. I, therefore, propose to appoint Hon'ble Mr. Justice S.J. Mukhopadhaya, former Judge of the Supreme Court of India and Hon'ble Mr. Justice Permod Kohli, former Chief Justice, Sikkim High Court as the arbitrators to decide the dispute between the parties. The proposed arbitrators are requested to submit their consent and a declaration in terms of Section 12 read with Schedule VI of the Arbitration and Conciliation Act, 1996.
- The Registry shall communicate this order to the proposed arbitrators.
- As per the stipulated procedure between the parties, upon obtaining their consent and appointment as arbitrator, both the arbitrators are required to appoint the third arbitrator by their mutual consent.
- Let Part-A of the agreement containing Vol-I-General bid document, Minutes of the Pre-bid meeting, Amendment and queries, Technical bid submitted by the Agency, work programme submitted by the Agency as produced by the respondents be kept along with the record.
- Let the matter appear on **09.08.2024**."
4. Pursuant to the order dated 12.07.2024, this Court proposed to appoint Hon'ble Mr. Justice S.J. Mukhopadhaya, former Judge of the Supreme Court of India and Hon'ble Mr. Justice Permod Kohli, former Chief Justice, Sikkim High Court as arbitrators. The proposed Arbitrators have submitted their consent along with declaration under Schedule-VI of the Arbitration and Conciliation Act, 1996 as amended.
5. Learned counsel for the parties, therefore, submit that this Court may appoint them as arbitrators who may appoint the third Arbitrator so that the dispute between the parties may be adjudicated by the three member panel of Arbitrators as per the terms of the Agreement.

6. In view of the consent and declaration submitted by the proposed Arbitrators, I, hereby, appoint Hon'ble Mr. Justice S.J. Mukhopadhaya, former Judge of the Supreme Court of India and Hon'ble Mr. Justice Permod Kohli, former Chief Justice, Sikkim High Court, as Arbitrators to adjudicate the dispute between the parties. Learned Arbitrators are 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. Learned Arbitrators would also proceed to appoint the third Arbitrator so that the dispute can be adjudicated by the panel of three Arbitrators as per the terms and conditions of the agreement arrived at between the parties.

7. Learned counsel for the parties have supplied the e-mail address and phone number of the respective parties. These are indicated hereunder for convenience of the learned Arbitrators in conducting the proceedings:

Petitioner:

e-mail i.d. : ynathrai@gmail.com
3aaa3group@gmail.com
Phone no. : 8638916270

Respondent:

e-mail i.d. : tcaagt@yahoo.com
Phone no. : 9774144215

8. Registry is directed to communicate the instant order along with a copy of the entire pleadings of the instant application to the Learned Arbitrators forthwith.

9. The instant petition stands allowed.

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

(APARESH KUMAR SINGH), CJ

Pulak

SIDDHARTHA LODH

Digitally signed by SIDDHARTHA
LODH

Date: 2024.08.16 15:56:41 +05'30'



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