

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Arb P No.10/2022
CM No. 907/2024

Reserved on:19.12.2024.
Pronounced on:26 .12.2024.

M/s A. K. Engineer & Contractor Pvt. Ltd.

....Petitioner(s)/Appellant(s)

having its Registered Office at Bindra Home,
Plot No.3, Sector No.2, Opp Matador Stand,
Channi Himmat, Jammu through its
Managing Director
Sh. Anil Sharma, Age 64 years
S/o Late Sh. Bindraban Sharma.

Through :- Mr. R K Gupta, Senior Advocate with
Mr. Uday Bhasker, Advocate.

V/s

**1. J&K Projects Construction Corporation
Ltd (JKPCC) Panama Chowk, Jammu through its
Managing Director.**

....Respondent(s)

**2. The General Manager,
J&K Projects Construction Corporation Ltd.
(JKPCC), Panama Chowk, Jammu.**

**3. Dy. General Manager,
J&K Projects Construction Corporation Ltd.
(JKPCC)**

Through :- Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE THE CHIEF JUSTICE

ORDER

CM No. 907/2024

This is an application filed on behalf of the petitioner company for placing on record the documents/correspondences pertaining to the construction of the contract work of Pre Stressed Double Lane Bridge of 300 M Span over Nikki Tawi, Jammu and other allied/additional works.

On examination of the application coupled with the submissions made by the learned senior counsel appearing for the applicant/petitioner, the application is

allowed and documents/correspondences annexed with the application are taken on record.

CM No. 907/2024 stands disposed of accordingly.

Arb P No. 10/2022

1. The present petition has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996 for the appointment of an independent Arbitrator.
2. Brief facts, which lead to the filing of the present petition, are that the petitioner is a company engaged in the execution of various civil contract works for the last number of years and is duly registered as 'A' class contractor with the Public Works Department of the Union Territory of J&K.
3. It is averred in the petition that vide e-NIT No.01 of 2014-15 dated 25.02.2015 followed by the addendum -1 No. 1184 dated 13.03.2015, addendum-2 No.1201-08 dated 16.03.2015 and addendum -3 No.1231-38 dated 19.03.2015, the Dy. General Manager, JKPC, the addressee no.3 invited bids/tenders from all the eligible contractors for the allotment of the contract: Design and Construction of pre stressed double lane bridge of 300 mts. Span over Nikki Tawi on Turnkey Basis. The petitioner also submitted its tender/bid to the department.
4. The petitioner company was declared as successful/lowest bidder in the aforesaid tendering process and the addressee no.2 vide his letter No. DGM/J/3rd/542-48 dated 08.08.2015 allotted the aforesaid contract to the petitioner company for an amount of Rs.2172.00 Lac.
5. That as per the allotment letter, the contract work was required to be completed within a period of 18 months and therefore immediately after the allotment of the aforesaid contract, the petitioner company deployed its men and

machinery at the site for the execution of the contract work in right earnest to complete the same within the scheduled period as provided in the contract.

6. It is also averred in the petition that the Structural Design of Double Lane Bridge was accordingly prepared which was approved by IIT Bombay and subsequently by the respondent department.

7. It is also mentioned in the petition that the then Chief Minister during her visit for site inspection of the contract work being executed by the petitioner company directed the Engineers/Officers of the JKPCC for the construction of approach road to the said Double Lane Bridge over Nikki Tawi. The cost of this additional work of construction of approach road to the Double Lane Bridge over Nikki Tawi was fixed at Rs. 3.25 Crore by the Engineers/Officers of the JKPCC and in this manner, the total cost of the project came to be Rs. 24.97 Crore. The petitioner company as per the contract agreement and the instruction imparted to it by the Engineers/Officers of the JKPCC at the directions of then the Chief Minister constructed and completed the contract work of Construction of Pre Stressed Double Lane Bridge of 300 Span Over Nikki Tawi on Turnkey Basis as also the work of approach road to the said Bridge. The work on the said bridge was completed in March 2017 and the same thereafter was formerly inaugurated by the Hon'ble Chief Minister on 19.04.2017.

8. That the department during and after completion of the contract work including the work of approach road, made a part payment of Rs. 19.80 Crore to the petitioner company and the rest of the amount of Rs. 5.17 Crore remained unpaid.

9. It is averred that since the completion of the project and its inauguration in April 2017, the final bill of the work executed by the petitioner company, the

respondent department did not make/finalize the final bill and the same has not been made/finalized till date. The completion certificate was also issued on 25.07.2017 by the respondent department.

10. That the petitioner company suffered huge losses in terms of non-payment of the amount due for the work executed by it. The petitioner company is further entitled to be compensated for the delayed payments as well as the interest on the amount due which has not been paid so far.

11. Averred further in the petition is that the petitioner company vide legal notice dated 07.01.2019 had called upon the respondents to make the payment of Rs. 6.83 Crore to the petitioner company. A reminder in this regard was also sent to the respondents on 19.11.2020 but to no effect. Despite the receipt of legal notice dated 07.01.2019 and reminder dated 19.11.2020, the respondents neither made the payment demanded in the said notice nor the final bill of the petitioner company was finalized by the department.

12. That the petitioner company vide legal notice dated 10.02.2022 invoked clause 24 of the general conditions of the contract of SBD for the settlement of the disputes/claims within 45 days of the receipt of the notice. Further in the legal notice, it was called upon that in the event of the failure of the competent authority to settle the claims/disputes of the petitioner company within the time stipulated in Clause 24 of the SBD, the said notice be also treated as notice for invoking Clause 25 of the SBD for reference of disputes/claims of the petitioner company to arbitration/arbitral tribunal in terms of the said clause.

13. It is pertinent to mention here that construction of approach road was taken up simultaneously costing Rs.3.25 crore. However, the department released only part payment of Rs. 19.80 crore during the construction and till date have not

released the balance due liability of Rs. 5.17 crore in favour of the petitioner. Hence the present petition.

14. Learned senior counsel appearing for the petitioner Mr. R K Gupta, submitted that the additional approach road was constructed on the instructions of competent authority (Annexure-1 to the CM No. 907/2024) and the said approach road has been thrown open for the general public by the respondents since its completion.

15. In support of his case, the learned senior counsel has relied upon judgment of Punjab and Haryana High Court in the case of Punjab State v. Moji Ram, reported as (1957) AIR (Punjab) 223. Para 8 of the said judgment is reproduced hereinbelow:

“8. It is well settled that an arbitration agreement is to be construed according to its language and in the light of circumstances in which it is made to determine if the dispute is covered by it, vide Gaya Electric Supply Co. Ltd. Vs. The State of Bihar. In the present case the plaintiff's claim is that he is entitled to receive payment for certain items of work done in carrying out the contracts. In other words, he claims that in executing the contracts, he had done extra work for which he is entitled to separate payment.

This is denied by the Government. It is therefore clear that this dispute can only be settled after looking at and construing the items given in the work orders. That being so, obviously, it is a dispute under the work orders and the arbitration agreement is applicable. The claim made in the suit is not outside the ambit of the contracts and the arbitration agreement between the parties. It may be pointed out that the arbitration agreement reads—

“In matter of dispute the case shall be referred”

These words are very wide and even wider than the words “under the contract.” Lord Esher, M. R., in Re, Hohenzollern Action Gesellschaft Fur Locomotiv ban and City of London Contract Corpn. (1886) 51 L.T. 596 at p. 597 (G), interpreting a clause that all disputes were to be settled by the engineer observed as follows:--

“Now, of course, ‘all disputes’ cannot mean disputes as to matters that have no relation at all to the contract. But I think that these words are to be read as if they were ‘all disputes that may arise between the parties in consequence of this contract having been entered into.’”

I think that, as my brother Mathew pointed out in the Court below, there being all these clauses in the Contract as to any of which a dispute might arise, this last clause was added to settle them all.

“I agree with what my brother Lepes has said, that a dispute as to ‘the construction of the contract’ is within the clause. The question, therefore, comes to be, was this a dispute in consequence of the contract having been made?”

If this rule is applied then it is obvious that the present dispute is covered by the arbitration agreement. It must also be remembered that it is well settled that if resort has to be had to the terms of a contract to settle a dispute between the parties, then that dispute arises out of the contract and the arbitration agreement in the present case would cover the dispute. Even if it be held that the contractor has done some work which is not covered by the items mentioned in the work orders a claim for payment of this extra work would be covered by the arbitration agreement.

It is after all a dispute which relates to the contract. Every slight deviation or every deviation from the original terms of the contract would not make the dispute relating to that deviation outside the scope of the contract. In Woolf v. Collis Removal Service, (1947) 2 All E.R. 260(H), As outh, L. J., laid down the legal position in these words:

“The arbitration clause in the present case is, as to eh subject matter of claims within its ambit, in the widest possible terms. That clause is not in terms limited to claims arising under the contract. It speaks simply of claims. This, of course, does not mean that the term applies to claims of every imaginable kind, Claims which are entirely unrelated to the transaction covered by the contract would no doubt be excluded; but we are of opinion that, even if the claim in negligence is not a claim ‘under the contract’, yet there is a sufficiently close connection between that claim and that transaction to bring the claim within the arbitration clause even though framed technically in tort.”

Similarly, every extra work done in performing the contract of construction must be held to be a claim relating to the contract and therefore covered by the arbitration agreement.

16. Reliance is also placed by learned senior counsel for the petitioner on the order passed by this court in **Arb P No.13/2022** titled **M/s A K Engineers and Contractors Pvt. Ltd. v. Union Territory of J&K and others**’, wherein in paragraph 24, it is held as under:

“24. If there is an additional work which is an integral part of the original contract which cannot be segregated, such a work has to be deemed to be part of that original contract and any dispute arising out of such integrated work would be amenable to arbitration if the original work agreement contains an arbitration clause. In my opinion, the double lane bridge which was constructed by the petitioner can be considered to be an

integral part of the initial contract. The double lane bridge was not a separate work allotted to the petitioner or executed after the completion of the single lane bridge. In fact, once the said work of double lane bridge was approved by the respondent authorities, from the very beginning of the work, the work of the single lane bridge of which there is a contract and an arbitration clause gets mixed with the work of the double lane bridge and thus, by implication, the contract for the single lane bridge gets converted to double lane bridge and any dispute pertaining to any component of the original work of the single lane bridge cannot be separated and any other interpretation would be greatly prejudicial to the petitioner, and not yet detrimental to the interest of the respondents, in as much as it was only because of the urging and approval of the respondents that the petitioner executed the double lane bridge in lieu of a single lane bridge.

17. In **AIR 1985 SC 1156, Renusagar Power Co. Ltd. v. General Electric Company and another**, the Supreme Court on the amplitude of arbitration clause in para 25 held as follows:

Four propositions emerge very clearly from the authorities discussed above:

- 1. Whether a given dispute inclusive of the arbitrator's jurisdiction comes within the scope or purview of an arbitration clause or not primarily depends upon the terms of the clause itself; it is a question of what the parties intend to provide and what language they employ,*
- 2. Expressions such as 'arising out of' or 'in respect of' or 'in connection with' or 'in relation to' or 'in consequence of' or 'concerning' or 'relating to' the contract are of the widest amplitude and content and include even questions as to the existence, validity and effect (scope) of the arbitration agreement.*
- 3. Ordinarily as a rule an arbitrator cannot clothe himself with power to decide the questions of his own jurisdiction (and it will be for the Court to decide those questions) but there is nothing to prevent the parties from investing him with power to decide those questions, as for instance, by a collateral or separate agreement which will be effective and operative.*
- 4. If, however, the arbitration clause, so widely worded as to include within its scope questions of its existence validity and effect (scope), is contained in the underlying commercial contract then decided cases have made a distinction between question as to the existence and or validity of the agreement on the one hand and its effect (scope) on the other and have held that in the case of former those questions cannot be decided by the arbitrator, as by sheer logic the arbitration clause must fall along with underlying commercial contract which is either non-existent or illegal while in the case of the latter it will ordinarily be for the arbitrator to decide the effect or scope of the arbitration agreement i.e. to decide the issue of arbitrability of the claims preferred before him.*

18. Per contra, objections stand filed by Mrs. Monika Kohli, learned senior AAG on behalf of the respondents.

19. The prime objection of the respondents is that since the additional approach road is not approved by the respondents and was not on the instructions of the respondents. Hence the claim of the petitioner for an exceeded amount of Rs. 3.25 cr above the agreed amount of 2172 lacs is unjustified and outside the preview of the contract agreement and is not arbitrable and the same cannot be granted.

20. Heard learned counsel for the parties at length and perused the file. After giving thoughtful consideration to the issue at hand and having gone through the judgments relied upon by the learned counsels, this court is of the view that if additional work is assigned after the signing of the main contract and it intrinsically forms a part of the original work, the dispute relating to it will also be amenable to arbitration, if there is an arbitration clause in the original contract for resolving the dispute by arbitration. This court further went on to observe that even otherwise also, by invoking the principle of 'competence-competence', the Arbitral Tribunal can examine if it will have jurisdiction to consider such dispute relating to additional work by examining whether such additional work forms an intrinsic part of the original work. Thus, the Arbitral Tribunal can ascertain whether the dispute relating to the additional work will be amenable to arbitration or not. Further, relying on the decision in *Vidya Drolia v. Durga Trading Corpn.*: (2021) 2 SCC 1, it was observed that if there be any doubt about the arbitrability of the issue, the rule is to refer the dispute to the arbitrator

and the issue shall be decided by the arbitrator, based on the sound principle, 'when in doubt, do refer'.

21. A perusal of annexures appended with CM No. 907/2024, shows that the additional work of approach road was assigned by the respondents themselves to supplement the original work. The additional work was executed by the applicant company and after execution the approach road was thrown open to the general public by the respondents. In that eventuality, the question of grant of approval or otherwise pales into insignificance.

22. Under the circumstances, I am of the view that since the additional work of approach road is closely related to the original work executed by the petitioner company and the same was done at the instance of the respondents, the dispute relating to the said additional work will be amenable to the arbitration process.

23. As regards the claim made by the applicant relating to the original work as per the tender, the same have not been denied by the respondents except for the additional work of approach road which has been duly answered by this court in the preceding paragraphs.

24. Accordingly, for the reasons discussed above, this court is of the opinion that the present application is maintainable.

25. Since the existence of controversy relating to alleged no payment by the respondents to the applicant for the works executed by the applicant in respect of the original work as per the tender is not denied by the respondents, it can be said that there is a certain dispute relating to the non-payment which may be resolved by way of arbitration. As provided under Clause 24 of the GCC, the dispute was to be resolved by the Managing Director of JKPC. However, since there was no resolution of the dispute by the Managing Director, as provided

under Clause 25 of the GCC, the dispute would now be required to be resolved by the Arbitral Tribunal consisting of three members.

26. Mr. R K Gupta, learned senior counsel appearing for the applicant company during the course of arguments submitted that since the amount disputed by the respondents is not a big amount, so the above dispute can be referred to any arbitrator, to which the other side is not averse.

27. In view of what has been observed hereinabove, the present application is disposed of and **Sh. Justice Ali Mohammad Magrey**, *Retired Chief Justice of High Court of J&K and Ladakh*, is appointed as sole arbitrator in this case, who shall proceed in the matter in accordance with the provisions of the *Act* to make an award within the time provided in the *Act* itself, after charging the prescribed fee along with incidental expenses to be shared by the parties.

28. Parties may raise their claims and counter claims before the Id. Arbitrator.

29. Registry shall send the copy of this order to the arbitrator appointed by this court today for information.

30. With the above observation and direction, the petition stands disposed of.

Jammu:
26.12.2024
Raj Kumar

(Tashi Rabstan)
Chief Justice

Whether the order is reportable?:	Yes
Whether the order is speaking?:	Yes