

**HIGH COURT OF TRIPURA
AGARTALA**

Arb.P. No.4 of 2024

Ramky Infrastructure Ltd., Ramky Grandiose, Ramky Towers Complex,
Gachibowli, Hyderabad-500032

.....Petitioner(s);

Versus

1. The State of Tripura represented by its Secretary-cum-Commissioner, Government of Tripura, Department of PWD, Agartala, Tripura
2. The Secretary-cum-Commissioner, Government of Tripura, Department of PWD, Agartala, Tripura
3. The Chief Engineer, PWD (Building), New Secretariat Building, Agartala-799003, West Tripura
4. The Executive Engineer, Agartala, Division No.III (PWD), Netaji Chowmuhani, Agartala, West Tripura.

.....Respondent(s).

For Petitioner(s) : Mrs. S. Deb (Gupta), Advocate.

For Respondent(s) : Mrs. P. Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

15/01/2025

Heard Mrs. S. Deb (Gupta), learned counsel appearing for the petitioner and Mrs. P. Chakraborty, learned counsel appearing for the respondents-State.

2. Petitioner approached this Court for appointment of an independent Arbitrator in connection with Memorandum of Understanding dated 07.01.2009 (Annexure-1) arrived at between the parties under Section 11(4) of the Arbitration and Conciliation Act, 1996 as amended.

3. On 19.09.2024 learned counsel for the State was asked to seek instruction and file Counter Affidavit. Counter Affidavit was filed thereafter. Upon hearing learned counsel for the petitioner and learned counsel for the State and after taking note of the relevant materials placed from record, by

order dated 13.12.2024 this Court proposed to appoint Hon'ble Mr. Justice S.C. Das, a retired Judge of the High Court of Tripura as an arbitrator to adjudicate the dispute between the parties. The order dated 13.12.2024 is extracted hereunder:

“2. Petitioner has invoked the jurisdiction of this Court under Section 11(4) of the Arbitration and Conciliation Act, 1996 as amended for appointment of an independent arbitrator to decide the dispute arising out of execution of the work under the Memorandum of Understanding (MOU) dated 07.01.2009 entered into with the respondent No.4 for construction of 1000 persons capacity Auditorium for MBB College campus at Agartala, West Tripura in terms of Clause No.19 thereof which provides for arbitration. Though the stipulated period for work is two years but the work was completed after delay which the petitioner attributes to various hindrances and delay in allotment of site by the respondents. According to the petitioner, he has almost completed the allotted work as per the aforesaid work and raised invoices and bills for a total sum of Rs.5,65,00,025/- out of which the balance amount of Rs.1,65,86,165/- remains unpaid. However, respondents have arbitrarily rescinded the work on 31.12.2019 on grounds of delay in completion of the work. Thereafter, petitioner has made representation on 10.01.2020 and 28.01.2020 explaining the reasons for the delay in execution of the work and protesting against the decision of the contract. Since the respondents failed to redress the grievance of the petitioner, he has invoked the Arbitration Clause 19 of the MOU proposing the name of an arbitrator vide letter dated 29.12.2022 to respondent No.4 (Annexure-6). This was responded vide letter dated 07.08.2023 by respondent No.3 informing him that the name of the proposed arbitrator is not in the panel list for adjudication of the disputes. Thereafter, on 11.12.2023 the petitioner again proposed another name of an arbitrator who is a paneled arbitrator for adjudication of the dispute. Even after 30 days of service of such letter, since no response was received, petitioner has approached this Court for appointment of an independent arbitrator in terms of the Clause 19 of the MOU.

3. Mrs. S. Deb (Gupta), learned counsel for the petitioner submits that there is no delay in invoking the jurisdiction of this Court since the agreement/ MOU was rescinded on 30.12.2019 by the respondents and Clause 19 of the MOU was invoked on 29.12.2022. This Court has been approached on 09.09.2024 within three years of the invocation of the arbitration clause.

4. Mr. Kohinoor N. Bhattacharyya, learned Government Advocate for the respondents-State, has filed a Counter Affidavit in which *inter alia* the allotment of work in favour of the petitioner for construction of 1000 persons capacity Auditorium for MBB College at Agartala, West Tripura and submission of bills up to 12th running account bill by the petitioner has not been disputed. However respondents contend that petitioner was informed about slow progress of works through several letters dated 18.08.2016, 25.08.2017, 15.12.2018, etc. [Annexure-R/4 to R/12]. In respect of the 12th running account and final bill of the petitioner, the Executive Engineer also issued several letters regarding final measurement of executed works and clearance of site vide Annexure-R/13 to R/15 dated 19.02.2020, 13.01.2020 and 06.07.2020. The Executive Engineer, Agartala, Division No.III, PWD (R&B) also paid price adjustment bill for Rs.10 lakhs on 18.03.2017 as recorded in the M.B. The name of a retired District & Sessions Judge, proposed as an Arbitrator by the petitioner could not be accepted since it was not in the panel list of arbitrators. It is further submitted that petitioner has not responded properly to several letters such as letters dated 22.11.2019 & 30.12.2019 issued during the period of execution of the work. Learned Government Advocate for the respondents-State submits, therefore, in the facts and circumstances appropriate orders as may deem fit may be passed.

5. Mrs. Deb (Gupta), learned counsel for the petitioner, in reply, submits that the dispute in relation to the outstanding dues is not controverted. Respondents have made averments on the merits of the case of the parties. Those cannot be gone into in a proceeding under Section 11 of the Arbitration & Conciliation Act, 1996. Therefore, this Court may appoint an independent Arbitrator to adjudicate the dispute between the parties.

6. Upon consideration of the submission of learned counsel for the parties and taking note of the pleadings and the terms of the MOU dated 07.01.2009, this Court finds that an arbitral dispute exists between the parties. The MOU provides for adjudication of such dispute through arbitration. Therefore, this Court proposes to appoint Hon'ble Mr. Justice S.C. Das, a retired Judge of the High Court of Tripura as an Arbitrator to adjudicate the dispute between the parties. The proposed arbitrator is requested to submit his consent and declaration in terms of the provisions of Section 12(1)(b) read with Schedule VI of the Arbitration and Conciliation Act, 1996 as amended.

7. Registry is directed to communicate this order to the proposed arbitrator. The matter be placed after 4(four) weeks upon receipt of the consent and declaration by the proposed arbitrator.

List the matter on **15.01.2025**.”

4. Pursuant to the order dated 13.12.2024, this Court proposed to appoint Hon'ble Mr. Justice S.C. Das, a retired Judge of the High Court of Tripura as an arbitrator to adjudicate the dispute between the parties. The proposed Arbitrator has submitted his consent along with a 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 him as an arbitrator to adjudicate the dispute between the parties.

6. In view of the consent and declaration submitted by the proposed Arbitrator, I, hereby, appoint Hon'ble Mr. Justice S.C. Das, a retired Judge of the High Court of Tripura, as an Arbitrator to adjudicate the dispute between the parties. Learned Arbitrator is requested to take into consideration the Schedule of Model Fee prescribed under Schedule IV and the timeline prescribed under Section 29-A of the Arbitration and Conciliation Act, 1996 as amended.

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

8. The instant petition stands allowed and disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ



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