

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

CJ Court

Case No. : **Arb P No. 53/2025**

Date of Pronouncement : 28.11.2025

Uploaded on: 29.11.2025

M/s D.S. Constructions

..... Appellant/Petitioner(s)

Through: Mr. R.K.Gupta, Sr. Advocate with
Ms. Khyati Sharma, Advocate

Vs

Union of India and others

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI

Coram: HON'BLE THE CHIEF JUSTICE

ORDER

28.11.2025

(ORAL)

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an arbitrator.
2. The petitioner is a partnership firm duly enlisted with MES department as "A" class contractor and is engaged in the business executing civil and other allied works for over 15 years. The petitioner firm is duly registered with the Registrar of Firms and the petition is being filed through Sh. Diljeet Singh Sachdeva who is one of the partners of the petitioner firm. It is submitted that the contract work bearing CA No. CEAUFU-09/2023-24: Provn. of Plinth Adjoining Mehar Dispersal at AF Stn. Leh came to be allotted to the petitioner firm by the respondent No.3 vide Acceptance Letter No. C-85025/CEAFU-14/46/E8 dated 04.07.2023 for the contract work of Rs.1.88 Crores. That after the allotment of the aforesaid contract work, the respondent No.4 issued work Order No. 1 (P) dated 01.09.2023 wherein the date for handing over the site and commencement of the work was fixed as on 01.09.2023 with completion date as on 31.08.2024.
3. That after the allotment of the aforesaid contract work, the petitioner firm marshalled its resources and deployed the labour and machinery at site in right earnest and was able to complete 55% of the contract work and the payment of

the executed work of 55% was released to the petitioner firm in 2nd RAR in the month of November, 2023.

4. That after the resumption of working season in April, 2024, the petitioner firm visited all the stone quarries as mentioned in the contract agreement clause and submitted the sample of the stone to the Engineer-in-Charge on 10.04.2024 who sent the same to the Govt. Approved Lab and the sample approval was accorded by the said lab vide its letter dated 07.05.2024. After receiving the approval report from the aforesaid lab, the Engineer-in-Charge sought NABL certificate and confirmation from the said lab again vide his e-mail dated 28.06.2024, 03.07.2024 and 11.07.2024 and on receipt of the confirmation sent the report to the respondent No.4 for final approval. It is submitted by the petitioner firm that despite continuously approaching the respondents for issuing the formal stone sample approval order, the respondents failed to issue the same and as a result of which no further work could be executed at site.

5. To the utter surprise of the petitioner firm, the respondent No. 4 after the gap of 158 days of the submission of sample, vide its letter dated 05.09.2024 forwarded to CSIR-CRRI Delhi again requested for the petro-graphic analysis and other tests of rock stone of the stone sample submitted by the petitioner firm and duly approved by the GECS Lab. On the one hand, the work had been stalled on account of seeking approval of the sample from another lab and also on account of non-working season and on the other hand, respondent No.3 was writing letters to the petitioner firm to expedite the progress of the work and vide letter dated 29.11.2024 issued final notice to the petitioner firm for completion of the work and also threatening to cancel the work in case the present state of affairs continuous for another 15 days despite knowing that the execution of the work during that period was not possible because of the extreme winter season and closure of the road network to Leh. It is submitted by the petitioner firm that reply to letter dated 29.11.2024 issued by the respondent No.3 vide its letter dated 26.12.2024 submitting in detail the reasons which had led to the stoppage of the work and requested for intervening into the matter by requesting the respondent No.4 to allow the petitioner firm to execute the balance work as per the sample approved by the GECS lab. Despite the fact that the contract work could not have been completed because of the defaults committed by the department in

performing their part of obligations under the contract, the respondent No.3 proceeded to illegally terminate the contract work vide its order/letter dated 13.02.2025.

6. The petitioner firm aggrieved of the aforesaid order/letter dated 13.02.2025 issued by respondent No.3, whereby contract allotted to the petitioner firm has been terminated under Condition 54 of IAFW-2249 General conditions of the Contract filed a petition under Section 9 of the Arbitration and Conciliation Act before this Court and the Court vide its order dated 18.03.2025 passed an interim order that the respondents shall be at liberty to go ahead with the completion of the balance work at the risk and cost of the petitioner firm which shall be subject to outcome of the proposed arbitration proceedings. Thus, the disputes having arisen between the parties, the petitioner firm accordingly vide legal notice dated 07.03.2025 invoked Clause 70 of IAFW-2249 General Conditions of the Contract and requested the respondent No.2 to refer the disputes/claims of the petitioner firm to a mutually acceptable independent Sole Arbitrator within 30 days of the receipt of legal notice.

7. That respondent No.3 after receipt of the notice dated 07.03.2025, vide its letter dated 03.04.2025 has declined the request of the petitioner firm for reference of the disputes/claims to an Independent Sole Arbitrator. It is submitted that the respondents thus despite having received the legal notice dated 07.03.2025 have failed to refer the claims/disputes to the petitioner firm to an independent arbitrator.

8. It is urged that since the respondent, despite notice dated 07.03.2025, neither agreed for settlement of the disputes through arbitration nor directed appointment of an arbitrator. Hence, the petition at hand.

9. Heard. Notice.

10. Pursuant to the notice issued by this Court, the respondents though caused appearance but no reply/response has been filed on their behalf.

11. The existence of the arbitration clause, as aforesaid, and its invocation by the petitioner vide notice dated 07.03.2025 is not disputed.

12. Thus, having argued the matter at some length and in the given circumstances, learned counsel for the respondents, as always, fairly submits that

let an arbitrator be appointed. But since the claim that is sought to be made by the petitioner is vehemently disputed/denied, it is submitted that respondents be granted liberty to raise all possible pleas/objections before the arbitral tribunal/arbitrator in this regard.

13. In the given facts and circumstances, coupled with statement made at the Bar by learned counsel for the respondents, the petition is allowed. Accordingly, with consent of learned counsel for the parties, Mr. Satish Chandra, Additional Director General (Retd), R/o H.No. 89, Lane No.4, Greater Kailash, Jammu-180011 (Mobile No. 9417256367) is appointed as the sole arbitrator. Who shall proceed with the matter in accordance with the provisions of the Act. And 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.

14. Registry to send a copy of this order to the learned arbitrator.

(ARUN PALLI)
CHIEF JUSTICE

Jammu :
28.11.2025
Pawan Chopra/Secy

