

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

CJ Court

Case No. : **Arb P No. 52/2025**

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. CEAFU-25/2018-19: Provn. of deficient officers and NCS (E) Living in Accn. At AF Stn. Leh came to be allotted to the petitioner firm by the respondent No.3 vide sanction letter No. 85019/CEAFU-33/66/E8 dated 29.11.2018 for the contract work of Rs.11,68,54,217.50. That after the allotment of the aforesaid contract work, the Garrison Engineer (P) (AF) Leh issued work Order No. 1 dated 01.12.2018 wherein the date for handing over the site was fixed on 03.12.2018 and was scheduled with completion of work to be done by 09.02.2021. It is submitted by the petitioner firm that after the issuance of the allotment and work order, the complete hindrance free sites were not made available to the petitioner firm as on 10.12.2018. It is submitted that the petitioner firm commenced the execution of the work by demolishing some of buildings

handed over to it and thereafter started laying the foundation for the construction of new buildings on those places.

3. In March 2020, due to spread of COVID-19, the contract work came to be stalled for pretty long period as there were restrictions in the movement of labour and material during the said period. After lifting of the COVID-19 restrictions, the petitioner firm re-commenced the work and achieved good progress during this period on some of the sites. It is further submitted by the petitioner firm that till end of the year 2020, the site of officers block was not handed over to the petitioner firm at all and the work to be executed in the officers block comprised of 70% of the contract work.

4. The petitioner firm vide its letter dated 05.02.2021 explained in detail the reasons leading to the delay in execution of the contract work. When despite the lapse of more than two months, the department failed to handover the remaining building, the petitioner firm again vide letter its dated 16.03.2021 informed the department about the non-handing over of the major buildings for the execution of the contract work and requested for handing over of the same to the petitioner firm. Apart from non-handing over of all the sites/building to the petitioner form, there were many hurdles coming in the way of the execution of the contract work and the completion of the same within the scheduled time.

5. Since the contract work could not have executed and completed because of the non-fulfillment of its obligations under the contract, the petitioner firm applied for grant of extension of time for the completion of the contract work and the respondents department concurring with the reasons assigned in the extension application, the respondent No.3 vide its letter dated 10.06.2024 extended the period for completion of the contract work by 31.12.2024. But the respondent No.3 vide its letter dated 11.10.2024 e-mailed the final notice to the petitioner firm for completion of the contract work by referring to the date of extension of the contract work up to 16.09.2023 and further directed the Garrison Engineer (P) (AF) Leh to take action against the petitioner firm by watching the progress of the work till 17.10.2024. It is urged that the aforesaid letter was a glaring example of the mischief and malafide on the part of the Garrison Engineer (P) (AF) Leh who was bent upon harassing the petitioner firm with the intent of terminating the contract work.

6. That till the end of December 2024, all the buildings in the officers block were not handed over to the petitioner firm for the execution of the contract work. It was only on 24.12.2024 that the Garrison Engineer (P) (AF) Leh issued letter for handing over of the site for third garage and site plan for the said building to the petitioner firm. Admittedly, December 2024 being a non-working season, the physical handing over of the said building could not take place on behalf of the petitioner firm was present at the site. It is submitted that while the working season had yet to commence after the improvement of winter season, the respondent No.3 vide his letter dated 13.02.2025 cancelled the contract work in question by invoking condition 54 of IAFW-2249, the General conditions of the Contract and requested the petitioner firm to attend the B.O.O proceedings on 18.02.2025 for making inventory of complete/incomplete items of work and material, if any lying at the site. That letter dated 13.02.2025 was received by the petitioner firm through e-mail on 14.02.2025 and the petitioner firm immediately deputed its site Engineers to visit the office of Garrison Engineer (P) (AF) Leh for the preparation of inventory but due to bad weather, the site engineers reached Leh on 22.02.2025 and attend the office.

7. That the petitioner firm aggrieved of 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. It is further submitted that 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 respondents proceeded to illegally terminate the contract work and thus the disputes having arisen between the parties, the petitioner firm accordingly vide Letter 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.

8. That respondent No.3 after the 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.
9. 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.
10. Heard. Notice.
11. Pursuant to the notice issued by this Court, the respondents though caused appearance but no reply/response has been filed on their behalf.
12. The existence of the arbitration clause, as aforesaid, and its invocation by the petitioner vide notice dated 07.03.2025 is not disputed.
13. 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.
14. 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.
15. Registry to send a copy of this order to the learned arbitrator.

(ARUN PALLI)
CHIEF JUSTICE

Jammu :
28.11.2025
Pawan Chopra/Secy