

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

CJ Court

Case No: Arb P No. 40/2020

M/S Varun Trading Company

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

Through: Mr. Mohit Gupta, Advocate.

v/s

Union of India and Ors.

.... Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC

CORAM: HON'BLE THE CHIEF JUSTICE

ORDER
28.11.2025

01. The present petition has been filed under Section 11(6) read with Section 12(5) of the Arbitration and Conciliation Act, 1996, seeking quashment of communication dated 13.02.2020 whereby respondent no.3- Col. Rohan Lewis was appointed as arbitrator in the matter and for appointment of an independent arbitrator.

2. The petitioner firm being a sole proprietorship firm registered with the respondents, participated in the tendering process initiated by the Commanding Officer 58 Regt. Leh, on 17.09.2019 inviting bids for “**supply of Steel Roof Trough (SRT) 1630 x 615 x180 mm of 2mm thickness (Steel Sheets)**”. In the said process, the petitioner was found to be successful and accordingly vide order dated 12.10.2019, the petitioner was informed about the acceptance of his bid for an amount of ₹ 2,17,45,040/- which was cancelled on the same day.

Subsequently, after negotiation, a fresh supply order No. 1400/SO/2019-20/17/OW dated 23.11.2019 for an amount of ₹2,16,90,798/- was issued in favour of the petitioner. The supplies were required to be completed within a period of 30 days. However, owing to non-availability of the approved ISMB in the market, the supplies could not be made within the stipulated time and on account of this the Commanding Officer proceeded to cancel the contract vide his communication dated 23.01.2020. It is submitted that on account of the disputes which arose between the petitioner and the respondents, the petitioner firm invoked the arbitration clause and sought appointment of an independent arbitrator vide communication dated 25.01.2020. Acting on the said communication, the respondent no. 2, accordingly, vide his communication dated 13.02.2020, appointed respondent no. 3 as Sole Arbitrator for resolving the disputes between the parties. Accordingly, after acquiring the knowledge about the appointment of respondent no. 3 as arbitrator, the petitioner vide his letter dated 15.12.2020 informed the arbitrator that his appointment as Sole Arbitrator is against the provisions of the Arbitration and Conciliation Act, as he happens to be the serving officer of the respondent department and requested for not proceeding with the arbitration proceedings. But despite receipt of letter dated 15.12.2020, the respondent no.3-arbitrator neither resigned nor has passed any order for not proceeding further with the arbitration proceedings. It is urged that sub-section (5) of Section 12 of the Act, provides that any person whose relationship, with the parties or counsel or the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. Further, it is submitted that the Seventh Schedule of the Act defines the relationship of Arbitrator with the parties or counsel and

according to Clause 1 of the Seventh Schedule, if the arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party, is ineligible to be appointed as an arbitrator in the case. Therefore, it has been urged that respondent no.3-arbitrator being an employee of the respondent department, is ineligible and could not have been appointed as arbitrator in the present case. Further, it is stated that the petitioner firm has not waived of the applicability of sub-section 5 of Section 12 of the Act, so far as appointment of respondent no.3 as Sole Arbitrator is concerned and there being no express agreement in writing in this regard between the parties, the appointment of respondent no.3 as Sole Arbitrator is illegal. And, as such, an independent arbitrator, in terms of Section 11(6) of the Act, is required to be appointed in the matter.

3. Pursuant to the notice issued by this Court, the respondents had caused appearance and sought time to file response. Till date no response has been filed by the respondents.

4. *Exfacie*, in terms of the impugned communication, the appointment of respondent no.3 as an arbitrator, clearly manifests that there exists an arbitration clause between the parties with regard to the subject contract as also the existence of disputes between them.

05. Thus, having argued the matter at some length and in the given circumstances, learned counsel for the respondent, 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 respondent be

granted liberty to raise all possible pleas/ objections before the arbitral tribunal/ arbitrator in this regard.

6. In the given facts and circumstances, coupled with statement made at the Bar by learned counsel for the respondents, the petition, in so far as appointment of arbitrator in terms of Section 11(6) is allowed. Accordingly, with consent of learned counsel for the parties, **Mr. Vijender Kumar Jain, Retd. Pr. Chief Material Manager, Railways, 3rd Floor Plot no.429 B Block Sushant Lok Phase-1 Sec 43 Gurugram Haryana-122009**, 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.

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

Jammu:
28.11.2025
Sunita/Secy.

(ARUN PALLI)
CHIEF JUSTICE