Sr.No. 07

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CJ Court

Case No. : **Arb P No. 24/2026**

Date of Pronouncement : 10.04.2026
Uploaded on : 16.04.2026

M/s Des Raj Nagpal Contractors Pvt. Limited ….. Appellant/Petitioner(s)

Through: Ms. Nancy Mahajan, Advocate vice
Mr. Dheeraj Sharma, Advocate

Vs

Union of India ….. Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC

Coram: HON'BLE THE CHIEF JUSTICE

ORDER

(ORAL)

1. The present petition has been filed under Section 15 of the Arbitration and Conciliation Act, 1996 for substitution and reference of the disputes to the sole arbitrator.

2. The petitioner is a Company duly incorporated and carrying on the business of MES Contractors and Government Order Suppliers for several years. The petitioner-Company is duly registered and the petition is being filed through its authorized Director, Sh. Ashwani Nagpal. It is submitted that the contract agreement bearing No. CEAFU-39/2003-04 for the Provision of MD ACCN for Airmen at Bakrota at Air Force Station, Dalhousie was officially accepted by the Chief Engineer, Pathankot Zone, in favour of the petitioner-Company. The total value of the contract was for an amount of Rs.2,08,82,729/-. It is submitted that the said contract was accepted in terms of the formal acceptance letter issued by the respondent-Authorities and was further formalized as per the specific work order issued thereafter.

3. It is further submitted that as per the work Order No. 1 (F) dated 31st of January, 2004 issued in favour of the petitioner by the Garrison Engineer (I) AF Pathankot, the date of commencement of work and handing over of the site was fixed as 25th of February, 2004 for both Phase-I and Phase-II. The stipulated date of completion was 24th of November 2004 for Phase-I

and 24th of November, 2005 for Phase-II. Further, it is submitted that the contract agreement entered into between the parties was strictly governed by the IAFW-2249 and the mutual agreement entered upon between the parties also formed a part of the general conditions of the contract. The dispute arising out of the contract was specifically to be referred to the sole arbitrator in terms of Condition No. 70 of IAFW-2249, which is construed as the arbitration agreement between the parties.

4. It is further submitted that vide letter dated 15th of April, 2015, Sh. K.K.Gupta, IDSE was formally appointed as a sole arbitrator by the E-in-C's Branch, Directorate of Contract Management, to resolve the disputes between the parties. That the arbitrator, so appointed, entered the reference and initiated the arbitration proceedings, however, the learned arbitrator failed to conclude the hearing or publish an award, thereby leaving the arbitration without a logical ending. It is submitted that with the passage of several years, the proceedings remained incomplete, which has caused immense hardship to the petitioner, who has been waiting for the adjudication of their legitimate financial claims. It is submitted that the failure of the arbitrator to act with dispatch has frustrated the very purpose of the arbitration agreement.

5. That the respondent CE (AF) vide letter dated 05.04.2019 intimated the sole arbitrator that the contract proceedings were conducted by him and the last hearing was held on 1st of May, 2017. It is submitted that the consent for enlargement of time to publish the award was also given by both parties to the sole arbitrator to facilitate the finalization of the case. It is further submitted that the respondent also requested to intimate the status of the arbitration case and specifically inquired if the arbitrator had resigned, requesting a copy of any such resignation. Further, vide letter dated 17.05.2019, the CE(AF) again requested the E-in-C's Branch to intimate the present status of the case and the status of the sole arbitrator. This indicates that even the respondent was aware of the stalling of the proceedings and the need for a status update.

6. That vide letter dated 08.06.2019, the respondent requested the petitioner to attend the HQ to issue a joint statement for the appointment of a fresh arbitrator as the arbitral proceedings had not been concluded by the

previously appointed sole arbitrator, Sh. K.K.Gupta. This correspondence clearly establishes that the respondent admitted to the failure of the initial arbitration and the necessity for a substitute arbitrator to take over the proceedings and finish the task of adjudication. It is further submitted that again vide letters dated 21.06.2019, 09.09.2019 and 17.01.2020, the respondent repeatedly requested the petitioner to attend the HQ to issue a joint statement for the appointment of a fresh arbitrator. These multiple requests confirm that the mandate of the previous arbitrator had effectively terminated and that both parties were in agreement regarding the need for a new appointment to resolve the long-standing disputes.

7. That vide letter dated 10.10.2020, the respondent once again requested to the petitioner to attend the HQ to issue a joint statement and facilitate the appointment of a fresh arbitrator as the arbitral proceedings remained unconcluded. In reply to the letter dated 10.10.2020, the petitioner intimated the respondent vide letter dated 28.11.2020 that they have no objection for the appointment of a fresh arbitrator as the previous arbitrator was unable to adjudicate the disputes. That vide letter dated 26.05.2025, the petitioner again intimated the respondent that they have no objection if an arbitrator from the MOD Panel of arbitrators or from the panel of Serving Officers would be appointed. The petitioner also attached the agreement of the Manual of Contracts-2020 with the letter and once again requested the respondent to appoint a fresh arbitrator. This shows the petitioner's willingness to cooperate for a speedy resolution.

8. That the mandate of the arbitrator has already expired and a new arbitrator was, therefore, to be substituted. Under Section 15 (1) (b) of the Act, the mandate of an arbitrator shall terminate by or pursuant to agreement of the parties. Since both the parties have repeatedly exchanged correspondence seeking a fresh appointment, the mandate of the previous arbitrator stands terminated by mutual consent. However, the respondent is still delaying the matter and issued a letter dated 30.07.2025 seeking documents again.

9. That in terms of Sections 14 and 15 of the Arbitration Act, the sole arbitrator is to be substituted as the previous arbitrator has become de facto unable to perform his functions and has failed to act without undue delay.

10. Further, it is submitted that the petitioner has given consent and provided requisite documents numerous times, but the respondent has failed to honor that request within the statutory period of 30 days. This failure on the part of the respondent necessitates the intervention of this Hon'ble Court for the appointment of an independent arbitrator. Hence, the petition at hand.

11. Heard. Notice.

12. Pursuant to the notice issued by this Court, the respondent though caused appearance but no reply/response has been filed on his behalf.

13. 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 in the matter. 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.

14. In the given facts and circumstances, coupled with statement made at the Bar by learned counsel for the respondent, **the petition is allowed**. Accordingly, with consent of learned counsel for the parties, Mr. Rajinder Paul Singhal, Additional Director General (Retd.) MES, R/o B-380, Chandi Mandir Cantt.-134107 (Mobile No. 7049983601) is appointed/ substituted as the new 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 :
10.04.2026
Pawan Chopra/Secy

Pawan Chopra
2026.04.15 18:48
I attest to the accuracy and
integrity of this document