

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

Pronounced on : 11.02.2026.
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Arb P. No. 54/2025

M/s D.S. Constructions

.....Petitioner

Through: Mr. Jugal Kishore Gupta, Advocate

Vs

Union of India & Ors.

.....Respondents

Through: Mr. Vishal Sharma, DSGI with
Mr. Sumant Sudan, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
(11.02.2026)

- 01.** Through the medium of the present petition, the petitioner has invoked jurisdiction of this Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator.
- 02.** As per case of the petitioner, it is a partnership firm enlisted with MES Department as 'A' Class contractor. It has been submitted that the petitioner's firm is engaged in the business of execution of civil and other allied works for the last more than 15 years and that the firm is

duly registered with the Registrar of Firms. The petition has been filed through Sh. Diljeet Singh Sachdeva, who happens to be one of the partners of the firm.

03. It has been submitted that contract work bearing **CA No. CEAUFU-12/2018-19: Provn. Of Watch Towers and Other Security Infrastructure at Air Force Station Thoise** came to be allotted to the petitioner firm by respondent No. 3-**The Chief Engineer, HQ CE (AF) Udhampur Zone, Air Force Station, Udhampur**, vide Sanction Letter No. 85019/CEAFU-36/88/E8 dated 30.07.2018 and the cost of work was estimated at Rs. 1,74,76,913/-. Work order No. 8190/CEAFU-12/2018-19/06/E8 dated 10.08.2018 was issued in favour of the petitioner firm and the date of commencement of the work was fixed as 20.08.2018 with date of completion as 19.04.2020.

04. It is case of the petitioner that after the issuance of work order, the petitioner firm marshalled its resources, labour and machinery in the right earnest and was able to raise construction of the towers upto the slab level of 1st floor within two months of the commencement of the work. It is submitted that on the commencement of the next

working season in April, 2019 when the work had just started, the petitioner firm was asked by respondent No. 4-**Garrison Engineer (AF) Thoise, Military Engineering Services**, to withhold further construction at site as the said respondent had received instructions from the Air Force Authorities for change of design of the Watch Towers. These instructions were contained in a communication No. 21007/AF/Leh/Thoise/159/E2(DES) dated 05.01.2019. Accordingly, the petitioner firm was asked by Garrison Engineer, (AF) Thoise, to withhold further execution of the contract work.

- 05.** It has been submitted that vide communication dated 14.08.2019, respondent No. 4 forwarded the revised drawings to the petitioner which were received by the petitioner on 03.03.2020. Vide communication dated 17.02.2021, the petitioner firm informed respondent No. 4 about the hurdles which it was facing in the execution of the contract work. The petitioner firm is stated to have addressed a number of communications to respondent No. 4 seeking permission to go ahead with execution of the work, however, no response was received to these communications.

06. Vide communication dated 19.04.2022, respondent No. 4 is stated to have informed the petitioner firm that Revised Administrative Approval (RAA) is in process. In terms of Communication dated 25.07.2022, the petitioner firm was informed by the respondent No. 4 that requirement of extra funds for the changed design has not been approved and therefore, the work may be continued as per the original drawings only and the petitioner firm was asked to proceed ahead with the original designs/drawings. In the process, about three and a half years were lost.

07. It is further case of the petitioner that during the execution of the work, it had purchased, collected and brought the entire building material at site which was duly recorded in the measurement book and this material remained lying at the site unused because of the non-finalization of drawings and the instructions from the end of the respondents. On 25.07.2022, respondent No. 4 asked the petitioner firm to resume the construction as per the original designs but when one of the partners of the firm visited the site it was observed that the material which had been dumped at the site in the year 2018-19

had been removed. The petitioner firm requested respondent No. 4 to lodge an FIR in this regard but no action was taken in the matter which resulted in further delay in the execution of the work. The material worth more than Rs. 40 lakhs is stated to have been stolen from the site.

08. The respondents convened a Board of Officers to enquire or investigate with regard to the theft/missing of dumped material at site and the petitioner firm participated in the said process but no findings were supplied to the petitioner by the Board of Officers. It has been submitted that the Board of Officers in its report dated 09.01.2025 has recorded the value of the material in June, 2019 as Rs. 44,86,372/- and value of the material lying at site as Rs. 1,12,268/-.

09. The contract ultimately came to be terminated by the respondents in terms of communication dated 13.02.2025 which was received by the petitioner on 14.02.2025 through e-mail. However, none of the grievances of the petitioner were addressed by the respondents.

10. The petitioner is stated to have approached the Court by filing a petition under **Section 9 of the Arbitration and Conciliation Act, 1996**, upon feeling aggrieved by letter of termination dated 13.02.2025. In the aforesaid petition, an interim order came to be passed by the Court on 18.03.2025 whereby the respondents were permitted to go ahead with the completion of the balance work through another contractor, however, it has been provided that the condition of execution of balance work at the risk and cost of the petitioner would remain subject to outcome of the proposed Arbitration proceedings.

11. It has been submitted that the work could not be completed because of the defaults and inaction committed by the respondents and that the contract work has been illegally terminated which has given rise to disputes between the parties. Accordingly, legal notice dated 07.03.2025 is stated to have been served by the petitioner firm upon the respondents with a view to invoke Clause-70 of IAFW-2249 General Conditions of the Contract making a request to the respondent No. **2-Engineer-in-Chief, E-in-C's Branch, Directorate of**

Contract Management, Integrated HQ of Ministry of Defence Army, Kashmir House Rajaji Marg, New Delhi, to refer the disputes to a mutually acceptable Independent Sole Arbitrator. However, respondent No. 3 has declined the request of the petitioner firm for reference of disputes on the ground that the same cannot be done until alternative arrangements have been finalized by the Government to get the work completed by or through another contractor.

12. It has been contended by the petitioner that the stand taken by the respondents is wholly illegal and arbitrary and that the same is not sustainable in the eyes of the law. It has been further contended that the stand taken by the respondents renders the petitioner firm remediless.

13. Notice of this petition was issued to the respondents on 11.07.2025 and learned counsel appearing for the respondents had sought time to have instructions in the matter and to file response to the petition. However, no response has been filed by the respondents.

14. Heard and considered.

- 15.** So far as the existence of Arbitration agreement vide Clause 70 of the General Conditions of the Contract is concerned, the same is not in dispute. As per this Clause, all disputes between the parties to the contract excepting those for which decision of the C.W.E. or any other person is by the contract expressed to be final and binding, have to be referred to sole arbitration after written notice by either party to the contract. The arbitrator so appointed has to be a Serving Officer having degree in Engineering or equivalent or having passed final/direct final Examination of Sub-Division II of Institution of Surveyor (India) recognized by the Government of India, to be appointed by the authority mentioned in the tender documents.
- 16.** The invocation of arbitration clause by the petitioner is not disputed.
- 17.** It is also an admitted fact that disputes have arisen between the parties during the execution of the contract work. Therefore, in order to determine these disputes, an arbitrator is required to be appointed, particularly, when the appointing authority has failed to appoint the

arbitrator in terms of the covenants of the Arbitration Clause.

- 18.** During the course of the arguments, it has come to the fore that disputes between the parties arising out of two more contracts have already been referred to arbitration by this Court in terms of the order dated 28.11.2025 passed in the **Arbitration Petition No. 52/2025** and in terms of another order of the same date passed in **Arbitration Petition No. 53/2025**. In both those cases, Mr. Satish Chandra, Additional Director General (Retd.), has been appointed as the sole arbitrator.
- 19.** In view of the above, the petition is **allowed** and with the consent of the learned counsel for the parties, **Mr. Satish Chandra, Additional Director General (Retd.), R/o H. No. 89, Lane No. 4, Greater Kailash, Jammu-180011, is appointed** as the sole arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the agreement referred to above.
- 20.** A copy of this order shall be communicated to the learned Sole Arbitrator by the Registry of this Court within a

period of ten (10) days from today and the learned Arbitrator is requested to forward the 'Statutory Statement of Disclosures' **under Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996**, to the parties within a period of two weeks from the date of receipt of this order.

21. The parties shall appear before the learned Sole Arbitrator on the date and place, to be fixed by the learned Sole Arbitrator. It is further directed that all the arbitration costs and fees of the Arbitral Tribunal shall be borne by the parties equally and shall be subject to the final award that may be passed by the learned Arbitrator in relation to the costs.

22. Disposed of.

**(SANJAY DHAR)
JUDGE**

**JAMMU
11.02.2026
SUNIL**

Whether the order is speaking ?	:	Yes
Whether the order is reportable ?	:	No